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Friday
October 1, 1982

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Environmental Protection Agency

Animal Drugs
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Civil Aeronautics Board

Charter Flights
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

Milk in the Iowa Marketing Area; Temporary Revision of Shipping Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rules.

SUMMARY: This action temporarily relaxes the shipping requirements for pool supply plants under the Iowa milk marketing order for the months of October and November 1982 to prevent uneconomic shipments of milk to the market and to maintain the pool status of producers who regularly supply the market. The revisions are made in response to the request of a pool supply plant operator who ships milk to distributing plants regulated under the order.

EFFECTIVE DATE: October 1, 1982.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, 202–447–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Proposed temporary revision of shipping percentages: Issued September 7, 1982; published September 13, 1982 (47 FR 40182).

It has been determined that this action is not a major rule under the criteria set forth in Executive Order 12291.

Also, it has been determined that the need for adjusting certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the **Federal Register.** However, this would not permit the completion of the procedure in time to give interested parties timely notice that supply plant shipping requirements for October 1982 would be modified. The initial request for the action was received on August 30, 1982. A notice of proposed temporary revision of the shipping requirements was issued September 7, 1982, inviting interested parties to comment on the proposed action by September 20, 1982.

It has been determined that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to assure that the market would be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from pool supply plants.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1079.7(b)(1) of the Iowa milk order.

Notice of proposed rulemaking was published in the **Federal Register** (47 FR 40182) concerning a proposed decrease in the shipping requirements for pool supply plants for the months of October and November 1982. The public was afforded the opportunity to comment on the proposal by submitting written data, views and arguments. No comments were received in response to this notice.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice and other available information, it is hereby found and determined that the supply plant shipping percentages should be lowered by 10 percentage points from the present 35 percent to 25 percent for each of the months of October and November 1982.

Pursuant to the provisions of § 1079.7(b)(1) the supply plant shipping percentages set forth in § 1079.7(b) may be increased or decreased by up to 10 percentage points during any month to encourage additional milk shipments to pool distributing plants for Class I use or to remove the need for milk shipments to such plants merely to qualify a supply plant for pooling under the order.

The handler requesting the action said that under the current supply conditions distributing plants in the Iowa market will have more than an adequate supply of milk for Class I use and that there will be no need for supply plants to ship 35 percent of their producer receipts to distributing plants during October and November 1982. The petitioner said that a 25 percent shipping standard would be adequate for such months and would prevent uneconomic shipments of milk merely to assure pool status for supply plants.

Data for the first seven months of 1982 indicate that although producer milk receipts for the market were about 4 percent lower than for the same months last year, the pounds of pooled Class I milk were down nearly 8 percent from a year ago. The decline in Class I milk was due to certain handlers shifting their Class I sales from plants pooled under the Iowa order to plants regulated under other nearby orders. Thus, the quantity of milk that must be shipped from supply plants to distributing plants for Class I use during this October and November will be less than it was one year ago.

The shipping percentage reductions are aimed at facilitating the delivery of milk to the market from supply plants for Class I use without requiring uneconomic shipments merely for pooling purposes. It is concluded that the supply-demand conditions in the market warrant a lowering of the shipping requirements 10 percentage points for each month of October and November 1982.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of October and November 1982;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this temporary revision. No comments were received.

Therefore, good cause exists for making this temporary revision effective October 1, 1982.

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

It is therefore ordered. That the aforesaid provisions of the order are hereby revised for the months of October and November 1982.

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

Effective Date: October 1, 1982.

Signed at Washington, D.C., on: September 28, 1982.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 82-27136 Filed 9-30-82; 8:45 am]

BILLING CODE 3410-02-M

CIVIL AERONAUTICS BOARD

14 CFR Part 320

[Docket 40891; Reg. PR-251]

Procedures for Awarding Japanese Charter Authorizations

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is adopting procedures for allocating charter flights for operation by U.S. carriers between the United States and Japan under an interim aviation agreement between the two countries. The rule provides for grandfather allocations to be made to certain carriers, and provides for a one-time lottery to distribute the remaining flights. It is needed to allocate these new charter rights in a fair and orderly manner.

DATES: Effective: October 1, 1982. Adopted: September 28, 1982.

FOR FURTHER INFORMATION CONTACT: Patricia L. DePuy, Assistant Chief, Regulatory Affairs Division, Bureau of International Aviation (202–673–5878), Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the application, reporting, and recordkeeping requirements in §§ 320.12, 320.14, 320.16, 320.17 and 320.18 have been submitted to the Office of Management and Budget for approval. These have been approved by OMB under number 30240055.

In Notice of Proposed Rulemaking PDR–79 (47 FR 33981, August 5, 1982) we proposed an allocation system designed to equitably distribute charter rights contained in a then provisional interim aviation agreement concluded with Japan. The agreement, signed September 7, 1982, provides that both designated and nondesignated U.S. carriers may operate charters in the U.S.-Japan market under country-of-origin rules, but limits the total number of charters that may be operated to 300 one-way flights per year for the duration of the interim agreement.

In PDR–79, we stated our view that U.S. carrier demand to obtain the limited Japan charter authorizations was likely to be far in excess of the 300 flights available, and that a form of allocation was required to prevent undesirable consequences both to the traveling and shipping public and to U.S. carriers.

The allocation system set forth in PDR–79 was to apply only to the first year's allocation of 300 charters, and contained two distinct phases. In the first phase we proposed to grant to incumbent carriers so-called "grandfather" allocations, in recognition of designated scheduled carriers' current levels of charter operations in the market and, in the case of nondesignated charter carriers, the levels of their charter operations before they were largely excluded from the market by Japan beginning in 1976. In the second phase, we proposed to distribute the remaining flights through a lottery open to any certificated air carriers (including those receiving grandfather allocations) with the operational ability to conduct charters to Japan. We tentatively decided to permit aftermarket sales or transfers of the allocations, and proposed to penalize carriers for not using or for selling allocations. We also proposed, in the alternative, a specific variation to the two-phase grandfather/lottery system, and modifications to many elements of our proposal, such as allocating the flights on a multi-year basis, and limiting after-market transfers of authorizations.

Comments and reply comments on the proposed rule were received from ten U.S. carriers and from the Department of Transportation and the Office of Management and Budget.[1]

After review of the comments, we have decided to adopt the primary allocation system proposed in PDR–79, with the modifications described below. In brief, the rule we are adopting provides that:

(1) A one-time allocation will be made of the available charters for a three-year period, the minimum duration of the agreement;

(2) We will review operations conducted under this rule in 18 months and reserve the right, at that time, to refine its procedures, if necessary;

(3) Grandfather allocations will be made to the scheduled designated carriers now serving the Japan market, based on their 1981 operations, and to charter carriers which previously served the market but whose efforts to continue were severely inhibited by Japan after 1975, based on their operations in that year;

(4) A lottery will be held shortly to distribute the remaining charters, and will be open to all U.S. carriers with the operational capability to conduct charters to Japan;

(5) Applications for charter authorizations for the lottery will be accepted in blocks of ten one-way flights and carriers may submit multiple applications of ten so long as the aggregate number of flights sought by a carrier does not exceed the maximum number of flights available in the lottery;

(6) No carrier may receive more than 50 flights (about one-half those available) in the lottery and no carrier may obtain through a combination of grandfather and lottery-obtained allocations more than 100 flights;

(7) Aftermarket sales of both grandfather and lottery charter authorizations will be permitted; however, a "grandfather" carrier will be subject to a penalty if it sells an excessive number of its grandfather authorizations. That penalty will be the loss of one flight in each succeeding year, for each grandfather authorization sold in excess of 10% of those received. There will be no penalty for the sale of authorizations received in the lottery;

(8) Any carrier which allows an authorization to expire unused at the end of a year will be subject to a penalty. A carrier will forfeit, in each ensuing year covered by the interim agreement, two authorizations for each it causes to be wasted; and

(9) Authorizations forfeited by the penalty mechanism will be redistributed annually to eligible carriers.

General Comments

As discussed in detail in PDR–79, the premise for this rule is a recently concluded agreement on charter services between the United States and Japan, first set forth in a June 4, 1982, Record of Consultations and made effective in a September 7, 1982, Memorandum of Understanding (MOU). The MOU provides that the designated and nondesignated airlines of each side

[1] The commenting carriers were Arrow Airways, Inc., Capitol Air, Inc., The Flying Tiger Line Inc., Four Seas Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Transamerica Airlines, Inc., United Air Carriers, Inc., d.b.a. Overseas National Airways, United Air Lines, Inc., and World Airways, Inc.

will, commencing October 1, 1982, be permitted to operate a total of 300 one-way charter flights per year under country-of-origin rules. The MOU will remain in effect for a period of three years or until the conclusion of negotiations which are to be reconvened before the end of 1983, whichever period is longer. A side-letter exchange accompanying the MOU stated the understanding of both the United States and Japan that the U.S. aeronautical authorities retain the sole discretion to allocate among U.S. airlines the 300 one-way charter flights per year to be operated by such airlines.

The rule we are adopting today provides the mechanism by which we will allocate the 300 one-way yearly charters permitted under the MOU.[2] Although most commenters seemed to accept the need for us to allocate these flights, several felt we should leave it solely to the free marketplace and one questioned our legal basis. Furthermore, several carriers expressed concern that the United States would enter into this type of charter accord. We are not persuaded by these comments to depart from our proposal to adopt a Board-administered allocation system.

The commenting carriers, as well as DOT and OMB, were in general agreement that some form of allocation system was necessary. ONA and Four Seas, however, disagreed, stating that we should leave carriers free to plan and market their programs without restriction and let the marketplace sort out exactly who will operate. To the extent the flights are oversold, the carriers argue that they may simply be cancelled or rerouted to other destinations as happens today in Europe. The opponents claimed that our proposal would inhibit competition, play into the hands of the Japanese, restrict tour operators' ability to market large, competitively priced programs, and force tour operators to deal with carriers not of their own choosing. They cited other markets where operational restrictions on charters exist and where we did not impose allocation measures, and stated that no disruptive consequences resulted.

Northwest Airlines, while not addressing the question of a need for an allocation system nor opposing our award of grandfather allocations, did oppose further allocation by lottery on the basis that we lack the legal grounds to do so.

We too would prefer to have U.S.-Japan charter transportation evolve as market forces dictate, without the need for any government intervention. However, the Interim Agreement limits this charter market and assigns to us the responsibility for allotting these limited charter opportunities. We explained in PDR–79 why we foresaw this allocation was necessary, and no commentor has demonstrated that inaction or alternative approaches would better serve the public interest. It is true that we have not previously found it necessary to establish at the outset procedures to allocate charter operations in other markets where numerical restrictions have existed. However, in those cases we determined that the available supply of charters exceeded or roughly coincided with the probable demand, and that there was no need for an allocation system. We were and are prepared to take some action in those markets if circumstances require. And, in fact, we did so in the case of the United Kingdom when one carrier sought to obtain the majority of waivers provided under the Cargo Annex to Bermuda II.[3] In the case of Japan it is obvious to us that the demand for Japan charters far outstrips the supply, and that allocation is necessary.

We disagree with Northwest's assertion that we lack the authority to allocate these charters. Northwest relies primarily on section 401(e)(4) of the Act, which states, "No term, condition, or limitation of a certificate shall restrict the right of a carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require."

Section 1102(a) of the Act requires the Board to act consistently with U.S. obligations under international agreements. The U.S.-Japan Memorandum of Understanding, with accompanying side letters, constitutes an agreement within the meaning of section 1102(a). That agreement expressly contemplates a scheme of charter flight allocations, with the U.S., aeronautical authorities, i.e., the Civil Aeronautics Board, denominated the agency to perform the allocation. This is similar to the situation with the U.S.-Japan Memorandum of Consultations of September 20, 1980, under which the Board has allocated scheduled service frequencies.[4] The Board must often reconcile apparently conflicting statutory provisions. In this case our specific obligations under the statute and the Interim Agreement must override the technical limitations of section 401(e).[5]

More broadly, the Board has been given the power in section 204(a) to issue such rules "as it shall deem necessary to carry out the provisions of * * * the Act." The purposes of the Act are set out in section 102, and include several provisons that are relevant to what the Board is doing in this proceeding:

> The availability of a variety of adequate, economic, efficient and low-price services by air carriers and foreign air carriers * * * (102(3))
>
> The placement of maximum reliance on competitive market forces and on actual and potential competition * * * taking account, nevertheless, of material differences, if any, which may exist between interstate and overseas air transportation, on the one hand, and foreign air transportation, on the other hand. (102(4))
>
> The strengthening of the competitive position of United States air carriers to at least assure equality with foreign air carriers, including the attainment of opportunities for United States air carriers to maintain and increase their profitability, in foreign air transportation. (102(12))

As the U.S. Supreme Court stated in *Mourning v. Family Publications Service*, 411 U.S. 356 (1973), quoted recently in Diefenthal v. CAB, 681 F.2d 1039 (5th Cir. 1982) (upholding the CAB smoking rule):

> Where the empowering provision of a statute states simply that the agency may "make * * * such rules and regulations as

[2] DOT stated that proposed section 320.3(b), which requires that air carriers may operate U.S.-Japan charter flights only if they hold a charter authorization under Part 320, would have the unintended effect of precluding the operation of any charter flights above the 300-flight limit, if the Japanese were later to agree to additional charter frequencies. We disagree and will adopt this provision as proposed (see section 320.4(a)). We believe that a requirement that all U.S. carriers operating Japan charters hold authorizations is necessary for us to effectively monitor the use of the 300 flights provided by the Interim Agreement. Should the United States and Japan agree to increase the number of available charters, we can, of course, use our exemption powers to authorize promptly the operation of these flights.

[3] See letter to Mr. Russell E. Pommer from Daniel M. Kasper, dated September 26, 1980, a copy of which is being placed in this Docket. As it turned out, allocation of the waivers proved unnecessary since U.S. carrier demand for them was far less than their supply.

[4] E.g., Order 82–3–36, March 4, 1982.

[5] We have, for example, notwithstanding section 401(e)(4), regulated a carrier's schedules under section 404(a)(1) after finding that it had not provided adequate service. E.g., Flint-Grand Rapids Adequacy of Service, 30 CAB 1120. See also Colonial Airlines, Inc., Order 78–11–72, November 16, 1978 (Board conditioned air carrier's certificate upon operations solely with low noise aircraft); Transpacific Low-Fare Route Investigation, Order 80–10–44, October 9, 1980, finalized by Order 81–1–30, December 24, 1980 (Board designated incumbent carriers to provide services pursuant to a Memorandum of Understanding providing for limited carrier designation and flight frequency). Technically, there is some doubt whether the restrictions of this rule on the total number of charter flights even fall into the category of a "term, condition, or limitation of a certificate."

may be neccessary to carry out the provisions of the Act," we have held that the validity of a regulation promulgated thereunder will be sustained so long as it is "reasonably related to the purposes of the enabling legislation."

As a final matter, we share the disappointment expressed by several of the commenters that is was necessary to agree to any limitations on the operation of charters to Japan. As DOT explained in its comments, the United States sought to remove all restrictions, but agreed to the 300 charter flight limit only because it provides, on an interim basis, an immediate expansion of charter opportunities available to nondesignated airlines and benefits for the traveling and shipping public. The agreement offers to U.S. carriers an improved operating environment over that which existed before. Moreover, as DOT stated, the United States will seek further liberalization of the charter regime when the bilateral negotiations resume.

Period To Be Covered by Allocation

In PDR–79 we proposed to limit our initial allocation to only the first year's charter authorizations. We stated that we would consider, in the alternative, a multiple-year allocation. We specifically sought comments on the minimum time needed by carriers and/or charterers to realize economies of scale in their operations. Our reasons for proposing to limit the initial allocation to one year were that a multi-year allocation might inhibit new entry in later years, lead to extensive aftermarket sales, and complicate the imposition of penalties. In addition, we felt that given the speed with which we need to conduct this proceeding, it would be beneficial to have a later, more extensive review of the various allocation methods.

DOT, OMB and all but one of the carriers commenting on this aspect supported a single, initial allocation to cover the entire duration of the MOU (*i.e.*, a minimum period of three years). They argued that our concerns were outweighed by the need for carriers to engage in long-range planning, which was essential for successful charter programs, and that annual allocations would introduce inhibiting uncertainties into carrier planning, interfering with the establishment of ongoing efficient programs and tour operator-carrier relationships.

United, on the other hand, supported a one-year allocation. Otherwise, it argued, new entry would be thwarted and the Board would be prevented from amending its rules in a timely fashion should abuses occur.

We are persuaded by the majority commenters that annual reallocation of the charter authorizations would not be the best, most efficient course to take, and that our reservations about a multiple-year lottery are largely overcome by the benefits of such a system. Therefore, we are adopting a final rule that provides for a single allocation of the charter flights to cover a 3-year period, and which would correspond to the minimum duration of the charter MOU.

We are not willing, however, to tie the term of the allocation period to the outside-expiration date of the MOU—that is, the conclusion of reopened negotiations—as we cannot predict what conditions may be in 3 years and how rapidly or slowly the reopened talks might progress. In addition, we, like United, do not believe that we should relinquish total control over this process since the actual operation of the mechanism we are adopting may show that revision to these procedures is necessary. Therefore, the final rule provides for review of this allocation process at mid-term (*i.e.*, in 18 months). We reserve the right at that time to change the allocation process if necessary.

As to the concern that a multi-year allocation may inhibit new entry in later years by carriers not yet operational at the time of the lottery, it is true that the possibility exists. However, we believe that the rule's provisions for sales of charter authorizations and the annual reallocation of authorizations relinquished due to penalty will provide a sufficient pool from which carriers in later years will be able to obtain charter authorizations.

Further, the entire effect of the new rule will be to substantially increase the access of new entrants to the U.S.-Japan market for the first time in many years. The fact that new entry will occur is what is significant; the extent of new entry is less important and here, limited by circumstances largely outside our powers to redress.

Allocation System

We have decided to adopt our primary allocation system proposed in PDR–79, *i.e.*, a first phase wherein certain scheduled and charter carriers are granted grandfather allocations, and a second phase wherein the remaining flights are allocated by lottery to any eligible carriers. Carriers receiving authorizations in either or both phases will have them in each of the three-year periods, except to the extent that carriers' authorizations are reduced due to penalty.

Only one carrier explicitly advocated the alternative allocation proposal, arguing that it is unfair to give Transamerica and World preferential treatment over other charter carriers. We will deal with this and the other comments made on our allocation proposal in the following discussion.

1. *Grandfather Allotments.* Several carriers opposed the grant of any grandfather allotments, and one opposed the awards to the charter carriers. The carriers opposed to awarding grandfather allocations to the designated schedule carriers argued generally that such awards contravene the purpose of the agreement, and that we have failed to adequately explain why it is necessary to award these grandfather rights, particularly since these carriers are free to perform similar operations under their route authority. Those opposed to awarding grandfather allocations to the charter carriers argued that operations in 1975 bear no relation to desire or ability today to perform Japan charters; that Transamerica and World were not alone in expending money and time to open up the Japan charter market, since other charter carriers also paid fees to the National Air Carrier Association (which, as an association of charter carriers, has worked to open up this and other markets) in the 1970's; and that the only reason Transamerica and World played an "historic" role in the market is because they were the only ones licensed.

On the other hand, other commenters, largely the grandfather carriers, supported our proposed grandfather allocation system. They argued that the scheduled, designated carriers were assured by the U.S. Delegation to the Japan talks that they would receive such allocations. The charter carriers say it was only through their long and constant efforts that the charter agreement was reached. DOT took no firm position on the grandfather allocation to the charter carriers, urging us to carefully examine the 1970's charter experience of all carriers.

Pan American and Northwest questioned the base periods we proposed to apply to allocate the grandfather authorizations. They argued that they too conducted substantial charters to Japan in the early 1970's, and were harmed by Japanese restrictions of slots and fuel. They asserted that we should treat the charter and scheduled carriers similarly, either by using the same base year or giving carriers their choice, then proportionally reducing all grandfather allocations, if necessary. One commenter urged us to limit all

grandfather allocations to only the first year.

FTL and DOT asserted that notwithstanding the number of flights operated by FTL in 1981, FTL was assured by the U.S. Delegation that it would receive not fewer than 80 flights for each year of the agreement. They stated that the charter agreement alters the relative freedom that designated scheduled carriers had to perform charters in the U.S.-Japan market; that FTL, which conducted extensive charters in the market, was amenable to the agreement only after receiving assurances that it would be guaranteed a minimum level of operations; and that the understanding that emerged between the U.S. delegation and FTL was that FTL would be allotted 80 flights per year (with an opportunity to participate in the allocation of the "non-grandfather" authorizations). DOT argued that the delegation would be in breach of its understanding with FTL if we adhered to the 68-flight allocation proposed in PDR-79.[6] DOT urged us to grant FTL 80 flights and to include a growth factor for each of the grandfather allotments to the incumbent designated airlines.

We have decided to adopt in full our grandfather allocation proposal set forth in PDR-79,[7] modified only to account for the matters raised by FTL and DOT.

As described in PDR-79 and in the comments of DOT and FTL, the U.S. delegation in agreeing to a numerically limited charter accord provided assurances to the designated scheduled carriers that they would retain charter opportunities, for each year that the accord is in effect, at least as valuable as those they had enjoyed in recent years. The delegation chairman has asked us to honor this commitment, and we will.

United has suggested that these grandfather allotments be limited to only one year. However, it is clear that the commitment was made for each year of the MOU's effectiveness. While we will honor this commitment, the penalty system we are imposing to assure that the authorizations are used efficiently may result, in later years, in grandfather carriers' forfeiting some of their authorizations. Since the accrual of a penalty will be the result of a conscious business decision of the carrier involved (*i.e.*, to sell an excessive number of authorizations or to allow some to expire unused), we do not consider such an occurrence to constitute an abridgement of the delegation chairman's commitment.

The commitment to incumbent carriers was deemed necessary since, prior to the agreement, designated scheduled carriers were permitted relative freedom by Japan to conduct charter operations between the U.S. and Japan; thus, unless special measures were taken, these carriers might have had to relinquish any existing charter-market penetration, as well as forego future market development.

Having accepted the need to allocate grandfather authorizations to the designated scheduled carriers, we conclude that our reasons set forth in PDR-79 for according similar treatment to charter carriers are sound. Two of these carriers—specifically, Transamerica and World—were active participants in the Japan market prior to their being virtually excluded in 1976 by actions of the Japanese Government. Since that time they have persistently worked to have the market reopened to them. We have no reason to believe, as certain commenters suggested, that Transamerica and World will not now continue their development of the Japan charter market with the same amount of effort they have expended in the last decade. Indeed, it is clear from the pleadings filed by Transamerica and World that they intend to continue their development of the market. Further, that Transamerica and World were the only two charter carriers licensed in the early to mid 1970's to offer charter services to Japan does not diminish our reasons for allowing them to resume participation today at roughtly the same level at which they operated before being cut-off by the Japanese in 1976. Nor do we find membership in NACA relevant to our decision; our decision is based on incumbent carrier operations and market development, not fees paid to an association. In short, no commenter has demonstrated to us a sound basis for not recognizing through the allocation of grandfather authorizations the historic level of activity of charter carriers in the Japan market.

We have decided, as proposed, to use CY 1981 as the year upon which we will base the scheduled designated carrier allocations and CY 1975 for the charter carrier allocations. This is in keeping with the purpose of the grandfather allocations to preserve the most recent level of operations actually achieved absent artificial restraint. We disagree with certain commenters that we should use the same base year for both classes of carriers or give carriers a choice. Our selection of the year for each class of carrier was not done arbitrarily, nor does it relate to the time of carriers' greatest activity. Rather, 1975 was chosen for the charter carriers because that was the last year preceding wholesale Japanese curtailment of charters by nondesignated carriers. CY 1981 was selected for scheduled carriers because it reflects the level of charter activity that these carriers have chosen to conduct in recent years and represents the delegation chairman's request to us.

While we realize that both Pan American and Northwest participated much more heavily in the Japan charter market in the early to mid-1970's, they did not sustain that level in recent years. Whether this reflects the absence of charter carrier competition or reassessment of business opportunities, we cannot say. While Japanese-imposed slot and fuel restrictions may have constricted the operation of charters somewhat at mid-decade, these carriers have not asserted—nor do we believe they can—that they were prevented from expanding charter operations in recent years. On the contrary, as is shown by the continuing high level of charters performed by FTL and Japan Air Lines, designated scheduled carriers have been relatively unencumbered in the recent past in their ability to conduct charters in the U.S.-Japan market. Thus, we find no merit in Northwest's and Pan American's arguments that their grandfather allocations should be based on a period other than 1981.

Finally, we have decided to increase somewhat the size of each grandfather allocation from that originally proposed to permit some room for expansion beyond the levels operated in the base years. Absent this accord, the incumbent scheduled carriers would have had the option to conduct an even greater number of charter flights than they did in 1981. Similarly, were the charter carriers not excluded from the market by Japan in 1976, we have every reason to believe that their operations would have continued at or above the 1975 levels, expanding as market conditions dictated. Thus, the

[6] Based on our and FTL's records, FTL operated in 1981 68 Third and Fourth Freedom one-way charters. DOT explains correctly that the figure 83 was earlier provided to the delegation chairman as the number of flights operated by FTL, and that the letter from the chairman to us, in all likelihood, assumed that number. Later analysis of FTL's operations showed that the 83 figure included some Fifth Freedom activity.

[7] Pursuant to our request in PDR-79, the commenting carriers supplied data on their historic U.S.-Japan charter operations. FTL, Northwest and Transamerica confirmed our preliminary data in PDR-79 that showed them operating, respectively, 68, 1 and 42 one-way flights. Pan American stated that it had operated three one-way flights, not the four we had shown, and World told us that it had operated 48 one-way flights, not 54. No other carrier supplied data showing operations in the relevant base years.

grandfather awards are intended not merely to maintain the *status quo* but to allow the grandfather carriers some semblance of the opportunity for market expansion they previously enjoyed.

DOT and FTL referred in their comments to a commitment made by the U.S. delegation that FTL would be allotted no fewer than 80 flights, and we will honor that commitment. The 80-flight figure represents an increase of 18 percent over FTL's CY 1981 operations of 68 flights. We shall increase the other grandfather carriers' allotments for market development purposes by the same percentage. Based upon our data, as confirmed or modified by carrier comments, the following carriers will receive the indicated number of one-way flights as grandfather allocations:

Carrier	Base year [1]	×	Uniform growth factor	=	Total [2]
The Flying Tiger Line Inc.	68		(1.18)		80
Northwest Airlines Inc.	1		(1.18)		1
Pan American World Airways, Inc.	3		(1.18)		4
Transamerica Airlines, Inc.	42		(1.18)		50
World Airways, Inc.	48		(1.18)		57
Total					192

[1] One-way flights.
[2] Allocated one-way flights.

2. Lottery System. The primary lottery system we proposed had the following characteristics: Eligibility criteria designed to permit participation by only those carriers having economic authority and the operational ability to conduct charters to Japan; participation open to any eligible carriers, whether or not they received grandfather allocations; minimum application size, with no maximum other than the total number of flights available in the lottery; and a stipulation that related carrier entities or carriers employing trade names to be considered as a single carrier.

The majority of commenters supported our eligibility criteria. Two carriers suggested we further require that qualifying carriers operate some wide-body aircraft, arguing that this is necessary to ensure maximum benefits to the public. One carrier opposed our requirement that carriers must hold FAR 121 authority and possesss aircraft suitable for the route. It argued that this requirement would be unfair as it would preclude participation by new entrants not yet operational but which planned to begin operations in the future.

We have decided to adopt our eligibility criteria as proposed. We disagree that we should require carriers to possess wide-body equipment. We wish to make the Japan charter authorizations available to as many air carriers as are operationally capable of conducting them. The wide-body limitation would defeat this purpose and severely reduce the pool of eligible carriers. The alleged public benefit of maximizing available seats through a wide-body requirement is, in our view, outweighed by the opening up of the lottery to any carrier that believes it can provide the public with an attractive, low-price charter service, regardless of equipment size.

On the other hand, we are not willing to permit nonoperational carriers to participate in the lottery. We believe it essential that recipients of these valuable authorizations have the capability to put them to public use. Many carriers we have authorized have, for a variety of reasons, experienced unpredictable delays in becoming operational. Allowing nonoperational carriers to obtain these allotments introduces an unacceptable risk that they may not be used to their fullest extent. When these new entrants obtain requisite FAA operating certificates and suitable equipment, they will be able to obtain access to the market in two ways—by purchasing authorizations from carriers seeking to sell them, and by participating in the procedures to redistribute authorizations forfeited by carriers incurring penalties.

Several carriers argued that recipients of grandfather allocations should be precluded from participating in the lottery. They claimed that it would be unfair for these carriers after receiving grandfather allocations to be able to obtain even more authorizations, and that there is too great a possibility that one or more of them could wind up with an unacceptably high percentage of total available charter authorizations.

On the other hand, DOT and certain recipient carriers of the grandfather allocations argued that such carriers should be able to participate in the lottery. They claimed generally that such participation is essential for them to be able to mount efficient, low-cost charter programs. FTL further asserted that to exclude it from the lottery would go against the government's commitment that it would have the opportunity to participate in any lottery or other system designed to distribute the nongrandfathered charter allocations.

We have decided to permit those carriers receiving grandfather authorizations to participate in the lottery. As DOT pointed out, the U.S. delegation made a commitment to FTL that it would have the opportunity to participate in the distribution of the nongrandfather allocations. Moreover, the Delegation chairman has specifically requested that we permit all grandfather carriers to so participate.[8] Further, we disagree with the opponents' claims that it would be unfair to permit these carriers to participate in the lottery. On the contrary, we believe the public benefits to be derived from these carriers' participation, particularly considering that they are the only carriers with experience in operating charter programs in the U.S.-Japan market, are substantial. However, to ensure that through the luck of the draw one or more of the carriers receiving grandfather authorizations will not receive an unacceptably high percentage of the total available charter authorizations, we are imposing a ceiling of 100 one-way flights as the maximum number a grandfather recipient may obtain through a combination of the grandfather and lottery phases.

As to the application procedures for the lottery, there was universal agreement among those commenting that applications should be made in blocks of 10 flights. The commenting carriers largely supported our proposal to permit multiple applications so long as the aggregate number of flights did not exceed the maximum number of authorizations available in the lottery. DOT, on the other hand, suggested that we should limit the total number of authorizations that a carrier could pursue in its applications to 50. It argued that this would allow distribution of authorizations to a variety of carriers, enhancing the range of offering to the public and minimizing the likelihood that authorizations would be wasted by carriers. Northwest and Pan American also supported establishing some maximum lottery participation level.

We will adopt the commenters' suggestion and provide that each application be for a block of 10 one-way flights. While in PDR–79 we proposed the slightly different approach that applications only be for a minimum of 10

[8] See letter of July 7, 1982, to Chairman McKinnon from Deputy Secretary of Transportation Darrell M. Trent, a copy of which has been placed in this Docket.

flights, we also offered, as an alternative, the 10-flight block approach. We believe that given the universal preference of commenters for 10-flight blocks it is reasonable to adopt that application process.

We will adopt our proposal to permit carriers to submit multiple applications provided the aggregate number of flights sought does not exceed the total number available in the lottery. However, out of an abundance of caution, and to guard against a freak occurrence, the final rule provides that no one carrier may receive through the lottery process alone more than 50 flights. This imposes the result DOT suggested. This limitation coupled with the 100 one-way flight maximum that recipients of grandfather authorizations may receive through the combination of the grandfather and lottery allocation process should serve to ensure that a variety of carriers will be able to participate in the Japan charter market.

Finally, we have decided to affirm our tentative decision to consider related entities and carriers employing trade names (*e.g.* FTL/Metro) as "one" for purposes of participating in the lottery.

Capitol and Arrow strongly objected to our considering them as one carrier, arguing that their relationships and activities are not of a nature that should lead to that conclusion. They stated that their shareholders are substantially different, that there are only two interlocking relationships, and that their operations and activities are separate from a legal and practical standpoint. They also stated that for purposes of the FAA airport slot allocation, the FAA's Chief Counsel has found them to be separate carriers. Finally, Capitol urged that if we uphold our preliminary finding we permit it and Arrow to participate independently on a contingent basis pending resolution elsewhere of the validity of our determination. Several carriers disputed Arrow's and Capitol's contentions.

Mr. George Batchelor and his family own 100% of the Arrow stock. Through Delair, Inc., the family owns 52% of the Capitol stock. Thus, there is common majority stock ownership of the two entities. Moreover, Batchelor is the Chairman of the Board and President of Arrow, in addition to being the Chairman of the Board of Capitol. As such, he is clearly in a position to influence the decisions of both airlines. In fact, we recently relied on his "management" and "executive" expertise in finding that Arrow was fit, willing and able to engage in scheduled foreign air transportation. [9]

[9] Order 82-4-19, p. 5.

By Order 80-7-73 we exempted from sections 408 and 409 of the Act, the acquisition of Capitol stock by Delair, Inc., and the resulting interlocking relationships between Arrow, Capitol and the other aeronautical enterprises owned by Mr. Batchelor and his family. We also approved, under section 412 of the Act, the stock purchase and related management agreement under which Mr. Batchelor would assist Capitol. In their application in that proceeding, George Batchelor, Delair, Inc., Arrow Airways, Inc. and the other aeronautical enterprises owned by Mr. Batchelor or his family specifically stated that Delair and Arrow were "under his [Mr. Batchelor's] control" [10] and that "Mr. Batchelor will make available to Delair the funds to purchase the shares of stock of Capitol and after the purchase of the shares by Delair, Mr. George Batchelor will become the Chairman of the Board of Directors of Capitol." [11] The applicants relied heavily on Mr. Batchelor's expertise in urging us to approve the stock purchase/management assistance agreements and interlocking relationships involving the Batchelor enterprises and Capitol. Indeed, they alleged that if "there is not an immediate injection at the highest levels of the corporate structure of managerial, administration, technical, and financial expertise, Capitol's downward trend will shortly become irreversible." And that "George E. Batchelor will provide the Company with the necessary leadership, expertise, entrepreneurial attitude, and financial resources to allow the Company to continue to be a viable entity in the airline industry." [12]

Against this background, we are not persuaded by Capitol's and Arrow's arguments that they should be treated as separate and distinct carriers. Our finding in Order 80-7-73 that the Arrow/Capitol relationship would not pose a significant anticompetitive threat was made in recognition of our ability to grant worldwide charter authority to all fit applicants. That finding is not, contrary to the two carriers' assertion, applicable to the specific question of whether Arrow and Capitol should be able to bid separately for Japan charter authorizations. The Interim Agreement obviously limits the number of carriers which will be able to participate, making the U.S.-Japan market a discrete exception to the unlimited-authorization regime in which we found the Capitol-Arrow relationship innocuous. In our opinion, given the limitations here, the relationship that exists between Arrow and Capitol provides a real possibility, within the framework we have established, for coordinated bidding and subsequent business dealings between the two companies that could give them an unfair and inequitable advantage over the other participants in the lottery. Such a result is clearly contrary to our goal of allocating these limited, valuable rights as fairly and equitably as possible among the carriers desiring to operate them.

[10] Application, Docket 38387, p. 1.

[11] Id. p. 3.

[12] Application Docket 38387, pp. 13 and 14.

Further, while the FAA determined that Capitol and Arrow could participate separately in its airport slot allocation procedures, we have learned that this did not result from any affirmative decision that relationships such as theirs should multiply access to scarce operating privileges (See September 22, 1982 memorandum to this docket from the CAB Associate General Counsel for Rules and Legislation). Moreover, we do not find that the FAA's determination is relevant to our decision here. The FAA did not, in adopting ownership standards for its allocation procedures (SFAR 44-5, 47 FR 35156, 35161, August 13, 1982), expressly set forth the rationale behind these standards. However, it seems that the agency's goal was to reflect as far as possible the carriers' circumstances as they existed before the controllers' strike. The situation facing us here is far different. The charter allocations made available by the Interim Agreement represent new rights in a market previously closed to the majority of the carriers qualified to participate in the lottery. In the case of Japan charter allocations, we are dealing with one market (U.S.-Japan) and one type of service (charters)—carriers will necessarily be competing for the same limited, highly valuable commodity. In short, the FAA ownership standards are a specialized set of rules designed to meet a specific, unique set of circumstances, and are not directly applicable to the situation we face here.

Transfer/Redistribution of Authorizations After Initial Allocation; Penalties for Sale or Nonuse

In the proposal, we tentatively decided to permit carriers to transfer charter authorizations among themselves for any consideration including money. Alternatively, we proposed to permit only those authorizations drawn in the lottery to be transferred, and to preclude the transfer of grandfather authorizations. We proposed also to penalize carriers for nonuse or sale of the charter authorizations obtained in either the

grandfather or lottery phases by reducing their future years' allocation of Japan charters. We set forth various methods of effecting this reduction, as well as alternative penalty systems. The proposed, combination transfer/penalty system was intended to allow for prompt redistribution of these limited authorizations while, at the same time, discouraging speculation and waste.

The majority of those commenting on the transfer provisions supported some after-market sales or transfers of the charter authorizations. Two carriers, however, opposed any market sales of authorizations, supporting instead Board reallocation.[13] In addition most of those commenting supported some form of penalty primarily for nonuse of authorizations, although there was no consensus on the best system.

We have decided to adopt in large part the transfer/penalty system proposed in PDR-79, with certain modifications. The system we are adopting has the following characteristics:

- Carriers will be permitted to transfer or sell authorizations obtained in both the grandfather and lottery phases to any other air carrier that at the time of transfer meets our eligibility qualifications.
- No penalty will be assessed for selling authorizations obtained in the lottery.
- Carriers will be permitted to sell without incurring penalty up to 10% of the authorizations obtained in the grandfather phase; carriers will be penalized for selling grandfather authorizations above that amount through a one-flight-for-one-flight reduction in future years' authorizations.
- Carriers which allow authorizations to expire unused at the end of the allocation year (September 30) will be penalized by a two-to-one flight reduction for future year allocations.
- To avoid penalty, carriers receiving grandfather authorizations will be given two days following publication of this rule in the **Federal Register** to tell us if they wish to receive less than their grandfather allocation.
- Carriers will be required to file "Notices of Transfer," "Notices of Intent To Use Charter Authorizations" and "Reports of Charter Authorizations Used," as set forth in our proposal. Further, to permit us to monitor the use and sale of the authorizations, and, where necessary, penalize the appropriate carriers, each flight authorization will be assigned a number and carriers will be required to identify authorizations by number when submitting the above notices and reports. [First year flight authorizations will be identified as A001, A002 * * * A300; second year as B001, B002 * * * B300, and third year as C001, C002 * * * C300).
- Following receipt of the last monthly report (due on October 15 of each year), we will identify carriers to be penalized, reduce their flight authorizations for future years accordingly, and redistribute those flights through a lottery to be held no later than November 1.
- Eligibility criteria for these future redistribution lotteries will be the same as for the initial lottery except that penalized carriers will not be permitted to participate. We will issue a notice shortly after October 15 each year announcing the number of authorizations available in the lottery, and the manner in which (*e.g.*, blocks of 2, 4, * * * 10 flights, depending on number available) and when applications will be entertained.

Transfer or Sales of Authorizations

Those commenters opposing any sales or transfers of flights among carriers argued that the U.S. government negotiated for these charter authorizations to benefit the public, not for the private benefit of lottery speculators. They claim that the only way to assure that speculators do not take part in the allocation process is to prohibit sales of authorizations.

DOT, while favoring aftermarket sale of authorizations obtained in the lottery, opposed sale of grandfather authorizations. It argued that there is no basis for rewarding with cash past efforts if the carrier does not intend to exploit the market position that the grandfather allotment was intended to preserve. DOT contrasted the sale of grandfather allocations with those from the lottery, arguing that in the lottery all carriers have an equal chance of obtaining authorizations and thus equal opportunity to monetarily profit should they choose to do so. OMB, on the other hand, urged us not to constrain the sale of grandfather authorizations, arguing that since we have decided to reward these carriers' prior efforts, we should not object to their liquidating their reward.

We have decided to permit the aftermarket sale or transfer of both grandfather and lottery authorizations, because it promises the quickest, most efficient transfer of rights to carriers that will redeem the public benefits of them. We are not persuaded by the arguments of the opponents to do otherwise. While we too are concerned that carriers may participate in the allocation process merely for purposes of speculation, we find that the benefits associated with aftermarket sales of authorizations *vis-a-vis* Board reallocation are so substantial as to outweigh our concerns on speculators.

There is no question that these authorizations have value; the fact that one carrier may be willing to pay another to obtain an authorization merely acknowledges that value. However, that a carrier may profit from the sale of authorization is a peripheral consideration. The important thing here is that we find that the sale or transfer of flights in the market without undue government interference appears to us to be the most effective means of assuring that these authorizations are ultimately placed in the hands of carriers having the greatest desire and ability to use them.

Even the best intentioned carriers may find that they are not in a position to market or operate a flight or program to Japan. Intercarrier transfers allow for immediate reallocation of the flights to the carriers in the best position to use them. Government reallocation by any system, on the other hand, necessarily introduces unacceptable delay in the redistribution of the flights, is burdensome to administer and for carriers to participate in, and does not have the qualities of a free market that tend to ensure an effective redistribution. Thus, for example, Transamerica's proposal for a monthly redistrubution system would cause delays in the transfer of authorizations; these delays could be far longer than the one-month period suggested by the proposal since flights programmed for late year months will not be available for reallocation until then. It also would impose heavy paperwork burdens on us and the industry, and, since the "back-up" list is predetermined, would offer little promise that the reallocated flights would go to the most earnest users—an objective that becomes increasingly important as the allotment year progresses. Moreover, to require carriers to establish monthly operating plans and then penalize them for failure to adhere to them, as Transamerica's proposal would have us do, would require avid surveillance on our part and would

[13] Transamerica proposed an alternative redistribution and penalty system of its own that would require carriers receiving authorizations to submit to us a plan of intended usage by month. Authorizations planned but not used would be "recaptured" by us and redistributed through a random lottery mechanism; carriers would not be assessed a penalty in the first year on these returned flights but would be in later years on a one-to-one basis; and flights assigned to the end of the year and allowed to go unused would be penalized on a two-for-one basis.

deprive carriers of needed flexibility to rearrange their flights in accordance with market demands or unexpected occurrences. Further, it may result in inefficient use of the flights as carriers try to operate "according to plan" rather than in accordance with public demands.

In sum, having reviewed a variety of government reallocation systems, we see none that will allow prompt and effective redistribution with minimal government interference in carrier management decisions, and we conclude that only by allowing aftermarket sales and transfers among carriers will these properties be achieved. If abuse or undesirable consequences do result, contrary to our expectations, we will have the power to modify the transfer provisions as necessary.

Transamerica had asked that we include in the rule a mechanism providing for substitute service in certain circumstances. Since we are allowing for intercarrier transfers, such a provision is not necessary.

We are adopting DOT's suggestion and modifying our transfer provisions set forth in § 320.12, to allow any carriers to participate in the aftermarket if they meet our eligibility requirements at the time of the transfer.

Penalties

The majority of commenters opposed our proposal to impose a penalty on inter-carrier transfers or sales of authorizations, including those obtained in the lottery. On review of the comments and upon further consideration, we have decided not to adopt penalties on the transfer of authorizations obtained in the lottery. As explained in the preceding section, we believe that the transfer mechanism encourages the earliest exchange and the most efficient use of these authorizations. Any penalty on the transfer or sale of lottery authorizations, which all eligible carriers have an equal chance of obtaining, would serve to inhibit their best use by deterring transfer. Thus, in the absence of any convincing reasons to the contrary, we see no need to impose penalties on the transfer of authorizations obtained in the lottery.

The situation is somewhat different with respect to the grandfather allotments. Although OMB argues that no constraints should be placed on the transfer of these authorizations, we disagree and believe that a limited penalty provision is appropriate. Under the procedures we are adopting, the grandfather carriers are receiving a special, preferential allotment in order to maintain the level of their past operations in the U.S.-Japan market. While we believe these carriers should, for the sake of efficiency, be permitted to transfer their grandfather authorizations if they so choose, we do not believe that after doing so they should retain a right to receive the same number of these special grandfather entitlements in future years. Rather, we believe that a one-for-one reduction of future-year grandfather authorizations is warranted. While Transamerica argued for a two-for-one reduction as the optimal penalty, and Pan American and FTL suggested that grandfather carriers be guaranteed an irreducible minimum number of authorizations, we find that a one-for-one penalty is preferable since it will result in a reduction of authorizations in future years commensurate with the number of authorizations the carrier has chosen to relinquish. We will, however, permit carriers to transfer up to ten percent of their grandfather authorizations without incurring a penalty, in recognition of the fact that unexpected operational problems beyond the control of these carriers may make some grandfather transfers unavoidable. In addition, to enable the grandfather carriers to avoid otherwise foreseeable penalty, we will allow them two days following actual notice of this rule within which to return to us any grandfather authorizations they do not desire to hold.

The situation we particularly want to prevent is for an authorization, whether grandfather or lottery, to expire unused at the end of a year. We believe this would occur only rarely. Each such occurrence, however, would deprive the public, as well as U.S. carriers, of an incremental but significant portion of the rights negotiated in the interim agreement. We wish to stress in the strongest possible terms that we expect carriers to use, or to transfer to carriers which will use, all the authorizations we confer. To further discourage the waste of authorizations, we will impose a penalty of two authorizations in future years for any authorization a carrier permits to expire unused.

In its comments, FTL argued that under the terms of the delegation's commitment to it, its grandfather authorizations may not be reduced below 80 flights in any year by virtue of any penalty we may impose. FTL is incorrect. There is no support in the record for the carrier's position, and we have no other corroboration that the delegation's commitment to FTL extended to this particular point. As a matter of discretion, we decline to afford this special protection to the grandfather carriers.

Certain commenters suggested that penalties on the first year's authorizations should be less harsh than for later years. Another commenter argued that we should review carriers' performance at the end of each year to determine whether there are special conditions that require some relief in the normal penalty provision. We disagree with both proposals. Given the carrier demand we perceive for these authorizations in the first year, and the freedom we are permitting carriers to transfer authorizations among themselves to avoid or minimize penalties, we see no need to reduce penalties in the first year or make provision to review individual carrier requests for relief of the penalty provision.

Although OMB stated a preference for no penalty system, it set forth an alternative penalty system that it considered to be more effective than that which we proposed. This system provided that carriers should pay cash penalties in some circumstances.

We considered OMB's suggestion of a cash penalty system and have decided not to adopt it. We believe that the penalty system we are adopting, that of flight forfeiture and redistribution, is adequate to discourage carriers from wasting flights, and more closely corresponds to the nature of the offense.

We also find that a cash penalty system would likely cause problems out of proportion to the benefits it would provide. First, a system of monetary fines would result in the transfer of carrier monies from the industry to the government, depriving carriers of capital which would be better utilized in their operations. Second, we believe that a monetary penalty system is unnecessarily harsh in view of the nature of the transgression—that of failing to use a privilege bestowed by the government. Third, we have no experience in this area, doubt the accuracy with which we could calibrate the fines, and find that the concept raises substantial legal and policy questions which cannot be resolved in time to permit prompt completion of this rulemaking proceeding. Unless there proves a compelling need for such a system, and an absence of workable, less Draconian alternatives (a situation which does not exist here), we are not prepared to adopt such an untried approach.

Reallocation of Forfeited Authorizations

We are adding a new section to the rule to govern future year allocations of forfeited authorizations. Reallocations of these flights will be accomplished in

much the same manner as our initial allocation, *i.e.*, we will distribute the flights through lottery, with participation open to any carriers that, at the time the lotteries are held, meet the eligibility criteria of the rule, except for the carriers relinquishing authorizations due to penalties. We expect the number of authorizations available for reallocation to be quite small, and, therefore, it may not be feasible to invite applications in blocks of 10 flights. We will issue an order shortly after the end of each allocation year establishing the number of authorizations available to be reallocated, and the manner in which and when applications will be entertained.

Delegation of Authority

In an accompanying rulemaking, OR–200, we are delegating to the Director, Bureau of International Aviation, authority to take actions necessary to implement this rule.

Regulatory Flexibility Act

In PDR–79, the Board certified that this rule would not, if adopted as proposed, have a significant economic impact on a substantial number of small entities. As noted in the NPRM, none of the direct air carriers effected by the Interim Agreement is a small business. The allocation of direct carrier charter authorizations will indirectly affect charter operators and other charterers, some of which are small businesses, by limiting their choices of direct carriers. This result is primarily attributable to the underlying Interim Agreement, and the marginal economic impact of the proposed allocation procedures on these businesses is not significant. No comments were filed in response to the Board's negative certification of the proposed rule, and the Board knows of no other reason to change the negative certification.

Members' Statements

Vice Chairman Bailey and Member Schaffer concurred in the adoption of this rule. Chairman McKinnon and Member Dalley concurred and dissented. Member Smith dissented. Chairman McKinnon, Member Dalley and Member Smith filed the following separate statements.

McKinnon, Chairman, Concurring and Dissenting

The Japan Charter Rule, which the Board adopts today, will enable U.S. travelers and shippers to realize significant benefits from our Interim Agreement with Japan.

However, I cannot agree to a system that will reward speculators with money profits from selling something the Government gave them free.

Under this system, an airline can get charter authorizations without paying for them or earning them in any other way—just by being lucky in our lottery. There isn't anything wrong with that if the airline then uses its flight authorizations for the good of the people for whom we got them in the first place.

A lottery is an efficient method of allocation but winners in the lottery or grandfather rights recipients should not be allowed to sell their rights and receive unearned profits.

The majority has been persuaded that allowing such sales will make more effecient use of the rights.

That may be true, but it does not overcome my opposition to buying and selling these rights. The American work ethic says to earn money you need to perform some service or work for it. This is a giveaway of something of value by the government to a commercial company for nothing.

This charter agreement was negotiated for the public interest—sale of charters only raises the cost to the consumer.

Why negotiate a deal for the U.S. traveling public then give an airline a chance to make money by selling that right and increase the cost to the traveling public?

It's just plain not fair or right.

I cannot concur in that part of the rule.

Dan McKinnon.

Member Dalley, Concurring and Dissenting

I agree with the majority of my colleagues on all major aspects of this rule allocating charter flights in the U.S.-Japan market except for those provisions which award unwarranted preferential treatment to selected carriers through grandfather access to most of these scarce flights.

From the U.S. Government standpoint, the principal purpose of the charter agreement should be to open the U.S.-Japan market to additional competition for the benefit of the travelling and shipping public. The U.S. Government should not be in the business of negotiating private rights for specific U.S. carriers. The grandfathering of more than half of the limited charter capacity in this market for the full duration of the agreement is inconsistent with our policy objective of maximizing competitive market entry. It will inhibit new carriers from gaining a foothold in this market and will retard the development of new marketing techniques to serve the public. It seems to signal a return to the mercantilist trading practices that prevailed prior to Chairman Kahn's tenure at the Board and against which he argued so eloquently.

Although I agree with the majority that a lottery system is a very satisfactory method of allocating these scarce resources, I am disappointed that we did not come up with a system that would have put more downward pressure on charter, and ultimately on scheduled, prices in this market. Given the limited window the Japanese have opened to us, I expect that the prices charged for these flights will not offer a significant discount from the prevailing scheduled service prices. While this is the result that the free market produces in a limited supply situation, this is not a free market and I would have been more satisfied if we could have traded obvious U.S. carrier interest in securing access to these very valuable rights for significant price concessions on their part to benefit the public.

George A. Dalley.

Smith, Member, Dissenting

I reject the notion that the United States should allow any carrier's interests in international route rights granted to it by this country to set the boundaries within which the U.S. can negotiate increased opportunities for the traveling public and for all carriers interested in that market. Every negotiation is a balancing process. If we allow the carriers the ultimate decision on when the appropriate balance has been struck, we have abdicated our responsibilities in the negotiating arena. The grandfathering aspects of this order tend toward compensating incumbent carriers because of new competition and new opportunities for the public to select from a broader spectrum of fares and services.

Assuming it is true that U.S. carrier demand for U.S.-Japan charters is "likely to be far in excess of the 300 flights available," then a lottery would be one acceptable way of distributing the flights. However, I would not permit the carriers that won in the lottery to turn around and sell those flights. These are rights which the U.S. government has negotiated to benefit the flying public. These rights will also be a benefit to carriers that receive a share of those flights and operate them profitably. We grant carriers these benefits so they may perform for the benefit of the public, not so they can derive financial gain without the concomitant service requirement. It is little consolation that by allowing sales after the lottery, these flights will eventually end up in the hands of a carrier that will actually operate them. Just as with slot sales at capacity controlled domestic airports, third parties who added nothing to the transportation system would be unduly enriched at the expense of the consumer who would be expected to pay the total cost of the travel in the fare level.

If the charter market will really exceed the available charters, then restricting the lottery to carriers that want to serve it, by removing the windfall profit aspect, should ensure that all charter allocations are used. To take care of the infrequent situation where a flight is not used, the carrier could be penalized a part or all of its allocation for the next year. Alternatively, carriers could be required to make a deposit for each block of flights won in the lottery. The deposit would be returned upon the successful completion of the flights. Either method would keep carriers out of the bidding who were not confident of their ability to operate the flights.

James R. Smith.

List of Subjects in 14 CFR Part 320

Charter flights, Reporting requirements, Treaties.

Accordingly, the Civil Aeronautics Board adds a new Part 320 to Chapter II of Title 14, Code of Federal Regulations, to read:

PART 320—PROCEDURES FOR AWARDING JAPANESE CHARTER AUTHORIZATIONS

Subpart A—General Provisions

Sec.

320.1 Purpose.
320.2 Applicability.
320.3 Definitions and terminology.
320.4 Charter authorizations.
320.5 Related carriers counted as one.

Subpart B—Specific Procedures

320.10 Allocation.
320.11 Grandfather allotment.
320.12 Initial lottery.
320.13 Final order.
320.14 Transfer of charter authorizations.
320.15 Unused charter authorizations.
320.16 Secondary lotteries.
320.17 Notice of intent to use charter authorizations.
320.18 Report of charter authorizations used.

Authority: Secs. 204, 401, 407, 1102, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 766, 797; 49 U.S.C. 1324, 1371, 1377, 1502.

Note.—The application, reporting, and recordkeeping requirements contained in § 320.12, 320.14, 320.16, 320.17, and 320.18 have been approved by the Office of Management and Budget under number 30240055.

Subpart A—General Provisions

§ 320.1 Purpose.

This part sets out procedures by which the Board will award air carriers the authority to perform the charter flights authorized by the September 7, 1982, Memorandum of Understanding concerning bilateral aviation relations between the United States and Japan. That memorandum provides that each country's direct air carriers may perform 300 one-way charter flights between the two countries each year in accordance with country-of-origin rules.

§ 320.2 Applicability.

This part applies to United States direct air carriers with respect to charter flights between the U.S. and Japan beginning on October 1, 1982.

§ 320.3 Definitions and terminology.

(a) "Charter flight authorization" means the authority to perform one of the 300 annual one-way charter flights between the United States and Japan authorized in the Memorandum of Understanding described in § 320.1.

(b) A charter authorization is "used" when the flight is performed.

(c) An "allocation year" runs from October 1 through September 30 and is used as a reference for reporting requirements and reallocation of forfeited authorizations.

§ 320.4 Charter authorizations.

(a) No charter flights between the United States and Japan shall be operated except in accordance with a charter authorization awarded or acquired under this part.

(b) A charter flight award obtained through the grandfather allotment or the initial lottery shall entitle the holder to authorizations for each of the three years beginning October 1, 1982, with the following exceptions:

(1) A charter flight authorization for an allocation year that has not been used by September 30 of that year will result in a penalty of a forfeiture of two charter flight authorizations for the remaining allocation years, as provided in § 320.15;

(2) A charter flight authorization obtained in a secondary lottery shall not continue beyond the time period remaining for the original, forfeited award that it supersedes;

(3) The Board will review the procedures provided by this part 18 months after adoption and make changes after notice and opportunity for public comment as necessary.

(c) Each flight authorization shall be assigned an identification number by the Bureau of International Aviation at the beginning of the initial allocation period.

§ 320.5 Related carriers counted as one.

Two or more air carriers that are related will be considered as a single air carrier for the purposes of this part. One carrier is related to another carrier if it controls, is controlled by, or is under common control with the other carrier.

Subpart B—Specific Procedures

§ 320.10 Allocation.

The Board will make a grandfather allotment of charter authorizations as set forth in § 320.11. The rest of the charter flights will be allocated by lottery as set forth in §320.12.

§ 320.11 Grandfather allotment.

(a) An air carrier is eligible for a grandfather allotment if it:

(1) Was designated, as of 1981 to provide schedule air transportation between the United States and Japan, or

(2) Performed any charter flights between the United States and Japan in 1975.

(b) Except as set forth in paragraph (c) of this section, the number of charter authorizations that an eligible air carrier will receive in a grandfather allotment is equal to 1.18 times the number of one-way charter flights that the carrier performed between the United States and Japan in—

(1) 1981, for air carriers that are described in paragraph (a)(1) of this section;

(2) 1975, for other air carriers that are described in paragraph (a)(2).

(c) An eligible air carrier that wishes to receive fewer charter authorizations than the number it would receive under paragraph (b) of this section shall so notify the Board within 2 days after it receives notice of the issuance of this part. The Board will reduce the carrier's grandfather allotment accordingly.

§ 320.12 Initial lottery.

(a) An air carrier is eligible to participate in the lottery, whether or not it is eligible for a grandfather allotment under § 320.11, if, as of the date of the lottery, it—

(1) Holds a charter certificate authorizing transpacific service or a schedule route certificate;

(2) Holds FAR 121 operating authority from the Federal Aviation Administration; and

(3) Is an operating air carrier that possesses aircraft having an over-water range at maximum payload of at least 3000 statute miles.

(b) The Board will issue an order announcing the total number of charter authorizations to be available in the lottery and inviting eligible air carriers to submit applications for them.

(c) Each application shall be for a block of 10 one-way flights. Each eligible air carrier may submit more than one application, but the aggregate number of authorizations sought by any one air carrier shall not exceed the total number available as announced in the Board's order issued under paragraph (b) of this section.

(d) The Board will grant applications for charter authorizations by random drawing, without replacement of drawn applications, from among all timely filed applications. The drawing will continue until all available charter authorizations have been granted. If the last application drawn requests more charter authorizations than there are remaining, only the remaining ones will be awarded pursuant to that application.

(e) Carriers holding charter authorizations under the grandfather provisions will be limited to a maximum award of 100 one-way flights, considering both grandfather and lottery awards. No one carrier may receive through the lottery process alone more than 50 one-way flights.

§ 320.13 Final order.

The Board will issue an order awarding charter authorizations in

accordance with the grandfather allotments and the lottery.

§ 320.14 Transfer of charter authorizations.

(a) Any air carrier holding a charter authorization awarded or acquired by it under this part may transfer it, for any consideration, to any other air carrier that meets the criteria set forth in § 320.12(a) as of the time of transfer.

(b) There shall be no penalty for the transfer of a charter authorization obtained in an initial or secondary lottery.

(c) An air carrier may transfer up to 10 percent of its grandfather authorizations for a given year without penalty. The base number shall not include any grandfather authorizations declined under § 320.11(c). A carrier's charter flight authorization for the remaining allocation years shall be reduced on a one-to-one basis for each flight beyond the 10 percent figure that it transfers, and the carrier may not participate in any following secondary lotteries.

(d) A transfer of a charter authorization shall not become effective until the transferring air carrier files a notice in duplicate with the Director, Bureau of International Aviation. The notice shall be labeled "Notice of Transfer of Japan Charter Authorization," and identify the transferred charter authorization by the flight authorization number(s) assigned under § 320.3(d). It shall be filed within 15 days after the date of the transaction, but in any event before departure of the authorized flight, whether the flight is performed by the transferee or by any subsequent transferee. The notice shall indicate the number of charter authorizations transferred and the date of the transaction, and shall be signed by both the transferor and the transferee.

(e) An air carrier that transfers a charter authorization to another carrier shall retain for at least 1 year after the conclusion of the allotment year for which it was awarded a record of the consideration received for the transfer.

§ 320.15 Unused charter authorizations.

Any carrier that fails to use its charter flight authorization by September 30 of an allocation year shall be penalized in the remaining allocation years at the rate of two charter flight authorizations for each unused authorization. If this penalty results in a negative number, the carrier's allotment will be zero. The flight authorizations forfeited under this section shall be reallocated as provided in § 320.16.

§ 320.16 Secondary lotteries.

(a) Any charter authorization forfeited will be reallocated by the Board in a secondary lottery.

(b) Secondary lotteries will be open to all carriers that meet the eligibility requirements of § 320.12(a), except for carriers that have forfeited one or more flight authorizations under § 320.15, and carriers that have transferred more than 10 percent of their grandfather authorizations under § 320.14(c).

(c) The Board will issue an order shortly after the end of each allocation year establishing the number of authorizations available to be reallocated, and the manner in which and when applications will be entertained. These secondary lotteries will be held not later than November 1 of the following allocation year in which one or more charter flight authorizations were forfeited.

§ 320.17 Notice of intent to use charter authorization.

An air carrier shall file in duplicate with the Director, Bureau of International Aviation, a notice of its intention to use a charter authorization at least 7 days before departure of the flight. The notice shall be labeled "Notice of Intent To Use Japan Charter Authorization," and include the flight authorization number(s).

§ 320.18 Report of charter authorizations used.

Within 15 days after any month in which an air carrier uses a charter authorization, it shall file in duplicate a report with the Director, Bureau of International Aviation. The report shall be labeled "Report of Japan Charter Authorizations Used." It shall include identification numbers of the authorizations, flight itineraries, flight dates, aircraft type, and the number of passengers or cargo tons transported. Passenger and cargo figures may be aggregated for the month.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-27233 Filed 9-30-82; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 385

[Regulation OR-200; Amdt. No. 127]

Delegations and Review of Action Under Delegation; Nonhearing Matters

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB delegates authority to the Director, Bureau of International Aviation to implement the procedures for awarding and overseeing Japan charter authorizations as provided for in the September 7, 1982, Memorandum of Understanding between the United States and Japan and in 14 CFR Part 320.

DATES: Adopted: September 28, 1982. Effective: October 1, 1982.

FOR FURTHER INFORMATION CONTACT: Patricia L. DePuy, Assistant Chief, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (202) 673-5878.

SUPPLEMENTARY INFORMATION: In an accompanying rulemaking, PR-251, the Board issued a new Part 320, *Procedures for awarding Japanese charter authorizations.* This final rule delegates authority to the Director, Bureau of International Aviation to implement those procedures and generally oversee the operation of that allocation and reporting system. The Director is delegated authority to establish procedures for, and hold, lotteries, award charter authorizations, assess penalties as provided for in Part 320 and extend the period for filing the required reports.

Since this is a rule of agency organization and procedure, the Board finds that notice and public procedure are unnecessary and that the rule may take effect in less than 30 days.

List of Subjects in 14 CFR Part 385

Administrative practice and procedure, Authority delegations.

PART 385—[AMENDED]

Accordingly, the Board amends 14 CFR Part 385, *Delegation and Review of Action Under Delegation; Nonhearing Matters,* as follows:

1. The authority for Part 385 is:

Authority: Secs. 102, 204, 401, 402, 403, 407, 416, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 754, 758, 766, 771, 49 U.S.C. 1302, 1324, 1371, 1372, 1373, 1377, 1386; Reorganization Plan No. 3 of 1961, 26 FR 5989.

2. A new paragraph (cc) is added to § 385.26 to read as follows:

§ 385.26 Delegation to the Director, Bureau of International Aviation.

The Board delegates to the Director, Bureau of International Aviation the authority to:

* * * * *

(cc) With respect to the procedures for awarding Japan charter authorizations under Part 320 of this chapter:

(1) Establish procedures for, and hold, lotteries;

(2) Award the charter authorizations;

(3) Assess penalties as described in Part 320;

(4) Extend the period for filing the required reports.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-27232 Filed 9-30-82; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 106

[Docket No. 80N-0025]

Infant Formula Quality Control Procedures

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 the final rule establishing infant formula quality control procedures. FDA has reviewed the comments received in response to the final rule and concludes that no arguments were presented that convince the agency that any changes in the final rule are necessary. Therefore, no changes are made in the final rule at this time.

EFFECTIVE DATE: The provisions of the final rule became effective July 19, 1982.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Bureau of Foods (HFF-204), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-3117.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 20, 1982 (47 FR 17016), FDA issued a final rule establishing quality control procedures for infant formulas in accordance with the Infant Formula Act of 1980 (Pub. L. 96-359; 94 Stat. 1190) (section 412 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a)). FDA provided a 30-day comment period, during which 20 comments from individuals, consumer groups, and industry were received. Most of the comments from individuals said that there should be a single uniform quality control procedure for infant formula. Other comments said that the regulations were too flexible and allow infant formula manufacturers to set their own controls. Some comments suggested specific changes to the final rule. The American Nurses' Association supported the final rule.

FDA did not require a single uniform quality control system for all manufacturers because of the variances in manufacturing processes, practices, and equipment (see comment 17 of the final rule). The agency believed then, and believes now, that no single type of system would be appropriate for all manufacturers. Consequently, FDA affirms its conclusion that a manufacturer may establish any reasonable quality control system as long as it follows the requirements of 21 CFR Part 106.

The remaining comments, in general, concerned matters that were commented on previously and are answered in the preamble to the final rule.

The agency continues to believe that the provisions of the final rule will provide additional assurances of product safety and nutritional adequacy and will carry out the act's intent. Therefore, the agency concludes that no changes are necessary, and no changes are made in the final rule at this time.

Dated: September 24, 1982.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 82-26855 Filed 9-30-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 137

[Docket No. 80P-0022]

Cereal Flours and Related Products; Confirmation of Effective Date and Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date and correction.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date for compliance with all provisions of the amended standards of identity for flour and whole wheat flour to allow the optional ingredient "α-amylase obtained from *Aspergillus oryzae*" to be declared alternatively as "Fungal *alpha*-amylase" (or "Fungal α-amylase), "Enzyme", or "Enzyme added for improved baking". The agency also is making some minor corrections to the final rule.

DATES: Effective July 1, 1983, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may have begun August 9, 1982.

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: In the **Federal Register** of June 8, 1982 (47 FR 24692), FDA published a final rule amending the standards of identity for flour (21 CFR 137.105) and whole wheat flour (21 CFR 137.200) to allow the listing of the optional ingredient "α-amylase obtained from *Aspergillus oryzae*" to be declared alternatively as "Fungal *alpha*-amylase" (or "Fungal α-amylase"), "Enzyme," or "Enzyme added for improved baking". Any person who would be adversely affected by the regulation could have, on or before July 8, 1982, filed written objections to the final regulation and requested a hearing on the specific provisions to which there were objections. No objections or requests for a hearing were received. However, FDA is making some minor corrections.

The summary and preamble to the June 8, 1982 final rule stated that the subject ingredient may be declared alternatively as "Fungal *alpha*-amylase" (or "Fungal α-amylase"), "Enzyme", or "Enzyme added for improved baking". However, in §§ 137.105 and 137.200 the alternative term "Fungal *alpha*-amylase" was not included. Therefore, corrections are now being made to include this term. In addition, to be consistent with §§ 137.105(a) and 137.200(a), the agency is changing the Greek word "*alpha*" to the letter "α" in paragraph (b).

List of Subjects in 21 CFR Part 137

Cereal, Flour, Food standards.

PART 137—CEREAL FLOURS AND RELATED PRODUCTS

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), notice is given that the effective date for compliance with 21 CFR 137.105 and 137.200 as amended in the **Federal Register** of June 8, 1982 (47 FR 24692) is July 1, 1983. Voluntary compliance may have begun August 9, 1982.

Additionally, in FR Doc. 82-15276 appearing at page 24692, in the issue of Tuesday, June 8, 1982, the following corrections are made:

§ 137.105 [Corrected]

1. On page 24693, first column, under § 137.105(b)(2), fourth line, change "*alpha*" to "α"; and in the seventh line, add "Fungal *alpha*-amylase," at the end of the line.

§ 137.200 [Corrected]

2. On page 24693, second column, under § 137.200(b)(2), fourth line, change "*alpha*" to "α"; and in the seventh line, add "Fungal *alpha*-amylase," at the end of the line.

Dated: September 22, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-26700 Filed 9-30-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 146

[Docket No. 78N-0236]

Grapefruit Juice; Standards of Identity; Termination of Stay of Effectiveness, Confirmation of Effective Date, and Further Amendment

AGENCY: Food and Drug Administration.

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

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date for compliance with the June 4, 1982 amendments to the standards of identity for grapefruit juice that revised the acidity requirement, provided for grapefruit hybrids, and removed the alternative name "reconstituted grapefruit juice." FDA is further amending the standards of identity for grapefruit juice to set the minimum soluble solids requirement for "grapefruit juice from concentrate" at 10-percent soluble solids. This action is based on a review of recent data and information on the issue submitted in support of an objection that stayed this provision of the identity standards for grapefruit juice. This document also terminates that stay of effectiveness.

DATES: Compliance with the provision being revised herein may begin December 30, 1982. Effective July 1, 1985, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date.

Objections to the provision being revised herein by November 1, 1982. The agency is also providing under § 12.20(e) (21 CFR 12.20(e)), for those interested persons objecting to the final regulation on or before November 1, 1982, an opportunity to submit additional information supporting the objection until December 30, 1982.

Compliance with the three provisions amended in the **Federal Register** of June 4, 1982 (47 FR 24286), revising the acidity requirement, providing for grapefruit hybrids, and removing the alternative name "reconstituted grapefruit juice," including any labeling changes, may have begun August 3, 1982, 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: In the **Federal Register** of January 27, 1981 (46 FR 8462), FDA published a final regulation establishing standards of identity and fill of container (21 CFR 146.132 (a) and (c), respectively) for grapefruit juice. In the **Federal Register** of June 4, 1982 (47 FR 24286), FDA published a final regulation further amending the standard of identity for grapefruit juice by revising the correction for acidity, removing "reconstituted grapefruit juice" as an alternative name for "grapefruit juice from concentrate," and providing for up to 10 percent by volume of the unfermented juice obtained from mature hybrids of grapefruit. The June 4, 1982 final rule also confirmed the effective date of all provisions of the January 27, 1981 final rule, except for the minimum 9-percent grapefruit soluble solids requirement for "grapefruit juice from concentrate," the effective date of which was stayed pending resolution of whether a public hearing was required.

The State of Florida, Department of Citrus, the Florida Citrus Commission, the Florida Citrus Processors Association, and the Florida Citrus Mutual Inc., jointly, objected in writing to § 146.132(a)(1), which set the minimum requirement for grapefruit soluble solids in "grapefruit juice from concentrate" at 9 percent, and asked that the minimum requirement be set at 10 percent. Sunkist Growers, Inc., also supported a 10-percent grapefruit soluble solids requirement. The objectors argued that 9-percent soluble solids does not represent the average soluble solids of grapefruit; that there is no technical difficulty in producing "grapefruit juice from concentrate" containing 10-percent soluble solids rather than 9 percent; and that 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 juice from the fruit of which the concentrate was made.

FDA now understands, based on the data submitted in response to the June 4, 1982 final rule and other available data and information, that the preponderance of grapefruit produced in the United States contains an average Brix (soluble solids) of 10 percent or greater. Further, the agency understands that no concentrated grapefruit juice is imported for use in this country, thus diminishing any impact of the fact that the Codex standard is 9 percent. Therefore, FDA concludes that it will promote honesty and fair dealing in the interest of consumers to revise § 146.132(a)(1) to establish that "grapefruit juice from concentrate" shall contain not less than 10 percent, by weight, of soluble solids, exclusive of added sweeteners.

List of Subjects in 21 CFR Part 146

Canned fruit juice, Food standards, Fruit juices.

PART 145—CANNED 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), notice is given that the effective date for complying with the June 4, 1982 (47 FR 24286) amendments of the standards of identity for grapefruit juice (§ 146.132(a) (1) and (3)(i)(*b*)) that revised the acidity requirements, provided for grapefruit hybrids, and removed the alternative name "reconstituted grapefruit juice" is July 1, 1983. The stay of effectiveness of the minimum 9-percent soluble solids requirement for "grapefruit juice from concentrate" is terminated. In addition, § 146.132 *Grapefruit juice* is amended in the seventh sentence in paragraph (a)(1) by changing the phrase "not less than 9 percent," to "not less than 10 percent,".

Any person who will be adversely affected by the foregoing amendment to the final regulation as set forth above may at any time on or before November 1, 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 anlysis 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. The agency is also providing, under § 12.20(e) (21 CFR 12.20(e)), for those interested persons objecting to the final regulation on or before November 1, 1982, an opportunity to submit additional information supporting the objection until December 30, 1982. The agency is providing the additional 60 days for the submission of information supporting any objections to eliminate any hardship in compiling such information that may be caused by the agency's decision to adopt the 10-percent soluble solids standard at this point in this proceeding.

Effective date. Except as to the amendment that may be stayed by the filing of proper objections, compliance with this amendment to the final regulation may begin December 30, 1982. Except as to the provision being herein revised, the effective date of those amendments to the standards of identity for grapefruit juice in the **Federal Register** of June 4, 1982 that revised the acidity requirements, provided for grapefruit hybrids, and removed the alternative name "reconstituted grapefruit juice" is confirmed as follows: Compliance with this regulation, except for the minimum 10-percent grapefruit soluble solids requirement for "grapefruit juice from concentrate," including any required labeling changes, may have begun August 3, 1982, and all affected products initially introduced or initially delivered for introduction into interstate commerce on or after July 1, 1983, shall fully comply. The mandatory compliance date for the minimum 10-percent soluble solids requirement for "grapefruit juice from concentrate" shall be July 1, 1985. Notice of the filing of objections or lack thereof will be published in the **Federal Register.**

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

Dated: September 24, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-27064 Filed 9-30-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 176

[Docket No. 81F-0357]

Indirect Food Additives; Paper and Paperboard Components

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 poly(diallyldimethylammonium chloride) as a flocculant in the clarification of water used to manufacture food-contact paper and paperboard. This action is in response to a petition filed by Calgon Corp.

DATES: Effective October 1, 1982; objections by November 1, 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: Anthony P. Brunetti, 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 December 4, 1981 (46 FR 59309), FDA announced that a petition (FAP 8B3372) has been filed by Calgon Corp., Calgon Center, Box 1346, Pittsburgh, PA 15230, proposing that § 176.170 (21 CFR 176.170) be amended to provide for the safe use of poly (dimethyldiallylammonium chloride) as a coagulant aid in the clarification of water used in the manufacture of food-contact paper and paperboard.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed use is safe, and that § 176.170 should be amended as set forth below, but that the additive is more properly identified as poly(diallyldimethylammonium chloride). This regulation will list the compound under that name.

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 21 CFR 171.1(h)(2), the agency will remove 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.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging, Paper and paperboard.

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

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), Part 176 is amended in § 176.170(a)(5) by alphabetically inserting a new item in the list of substances, to read as follows:

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

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * * * *	
Poly(diallyldimethylammonium chloride) (CAS Reg. No. 26062-79-3) produced by the polymerization of diallyldimethylammonium chloride so that the finished resin has a nitrogen content of 8.66±0.4 percent on a dry basis and a minimum viscosity in a 15-weight percent aqueous solution of 10 centipoises at 25° C (77° F), as determined by LVF Model Brookfield viscometer using a No. 1 spindle at 60 r.p.m. (or equivalent method). The level of residual monomer is not to exceed 1 weight percent of the polymer (dry basis).	For use only as a flocculant employed prior to sheet-forming operation in the manufacture of paper and paperboard, and used at a level not to exceed 10 mg/L (10 parts per million) of influent water.
* * * * *	

Any person who will be adversely affected by the foregoing regulation may at any time on or before November 1, 1982 submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers

Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that 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 November 1, 1982.

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

Dated: September 23, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-27058 Filed 9-30-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 182, 184, and 186

[Docket No. 79N-0071]

GRAS Status of Bentonite and Clay (Kaolin)

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that bentonite is generally recognized as safe (GRAS) as a direct human food ingredient, and that clay (kaolin) is GRAS as an indirect human food ingredient. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

EFFECTIVE DATE: November 1, 1982.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-8950

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 18, 1980 (45 FR 3598), FDA published a proposal to affirm that bentonite is GRAS for use as a direct human food ingredient, and that clay (kaolin) is GRAS for use as an indirect human food ingredient. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review and the report of the Select Committee on GRAS Substances (the Select Committee) on bentonite and clay (kaolin) are available for public review in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of these documents also are available for public purchase from the National Technical Information Service as announced in the proposal.

In addition to proposing to affirm the GRAS status of bentonite and clay (kaolin), FDA gave public notice that it was unaware of any prior-sanctioned food ingredient uses for these ingredients other than the proposed conditions of use. Persons asserting additional or extended uses, in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of any prior-sanctioned uses could be determined, that notice was also an opportunity to have prior-sanctioned uses of bentonite and clay (kaolin) recognized by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181) or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for bentonite and clay (kaolin) were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for use of bentonite and clay (kaolin) under conditions different from those set forth in this final rule has been waived.

One comment was received in response to the agency's proposal on bentonite and clay (kaolin). The comment requested inclusion of a free swell test among the specifications for bentonite because the test will allow for rapid and simplified identification of bentonite, The method for the free swell test is described in the U.S. Pharmacopoeia XIX. The comment also requested that the impurity limits on arsenic and lead be raised from 3 to 5 and from 10 to 35 parts per million, respectively.

The agency agrees with the comment that a free swell test and increases in the impurity limits on arsenic and lead may be appropriate. The U.S. Pharmacopoeia method for the free swell test appears to be suitable, but the test method for the lead content suggested by the comment has not been validated. The agency therefore concludes that it is not appropriate to establish food-grade specifications for bentonite based on the limited information available to it at this time. Therefore, the agency is withdrawing the proposed specifications from this final rule.

The agency concludes that affirmation of bentonite as GRAS without detailed specifications does not represent a health problem. No bentonite has been found to be retained in processed food, and tests have shown that there is essentially no migration of lead or arsenic to food from bentonite. FDA will work with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop acceptable specifications for this ingredient. If acceptable specifications are developed, the agency will incorporate them into this regulation at a later date. Until specifications are developed, FDA has determined that the public health will be adequately protected if commercial bentonite complies with the description in § 184.1155 and is of food-grade purity (21 CFR 170.30(h)(1) and 182.1(b)(3)).

The format of the final regulations is different from that in previous GRAS affirmation regulations. FDA has modified paragraph (c) of § 184.1155 and paragraph (b) of § 186.1256 to make clear the agency's determination that GRAS affirmation is based upon current good manufacturing practice conditions of use, including the technical effects listed. This change has no substantive effect but is made merely for clarity.

The agency has determined under 21 CFR 25.24(d)(6) (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.

The requirement for a regulatory flexibility analysis under the Regulatory Flexibility Act does not apply to this

final rule because the proposed rule was issued prior to January 1, 1981, and is therefore exempt.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this rule, and the agency has determined that the rule is not a major rule as defined by the Order. A copy of the threshold assessment supporting this determination is on file with the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

21 CFR Part 186

Food ingredients, Generally recognized as safe (GRAS) food ingredients, Indirect food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 182, 184, and 186 are amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§ 182.90 [Amended]

1. In § 182.90 *Substances migrating to food from paper and paperboard products* by removing the entry for "Clay (kaolin)".

§ 182.1155 [Removed]

2. By removing § 182.1155 *Bentonite.*

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

3. In Part 184 by adding new § 184.1155 to read as follows:

§ 184.1155 Bentonite.

(a) Bentonite ($Al_2O_3 \cdot 4SiO_2 \cdot nH_2O$, CAS Reg. No. 1302–78–9) is principally a colloidal hydrated aluminum silicate. Bentonite contains varying quantities of iron, alkalies, and alkaline earths in the commercial products. Depending on the cations present, natural deposits of bentonite range in color from white to gray, yellow, green, or blue. Bentonite's fine particles provide large total surface area and, hence, pronounced adsorptive capability.

(b) FDA is developing food-grade specifications for bentonite in cooperation with the National Academy of Sciences. In the interim, the ingredient must be of a suitable purity for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a processing aid as defined in § 170.3(o)(24) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice. Current good manufacturing practice results in no significant residue in foods.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

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

4. In Part 186 by adding new § 186.1256 to read as follows:

§ 186.1256 Clay (kaolin).

(a) Clay (kaolin) $Al_2O_3 \cdot 2SiO_2 \cdot nH_2O$, Cas Reg. No. 1332–58–7) consists of hydrated aluminum silicate. The commercial products of clay (kaolin) contain varying quantities of alkalies and alkaline earths. Clay (kaolin) is a white to yellowish or grayish fine powder. There are at least three different minerals, kaolinite, dickite, and nacrite, classified as kaolin. Kaolinite or china clay is whiter, less contaminated with extraneous minerals, and less plastic in water.

(b) In accordance with § 186.1(b)(1), the ingredient is used as an indirect human food ingredient with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as an indirect human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used in the manufacture of paper and paperboard that contact food.

(2) The ingredient is used at levels not to exceed current good manufacturing practice.

(c) Prior sanctions for this ingredient different from the uses established in this regulation do not exist or have been waived.

Effective date. This regulation is effective November 1, 1982.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a)))

Dated: September 13, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-27056 Filed 9-30-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs not Subject to Certification; Nitrofurazone Soluble Powder

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 new animal drug application (NADA) filed by Medico Industries, Inc., providing for use of nitrofurazone soluble powder as a topical antibacterial on dogs, cats, and horses. The application provides labeling that reflects the conclusions of the National Academy of Sciences/National Research Council (NAS/NRC) review of such products.

EFFECTIVE DATE: October 1, 1982.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Bureau of Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Medico Industries, Inc., P.O. Box 338, Elwood, KS 66024, is sponsor of NADA 126–236 providing for use of a water soluble powder containing 0.2 percent nitrofurazone as a topical antibacterial on dogs, cats, and horses. This product is the generic equivalent of one codified for animal use in 21 CFR 524.1580c. That regulation provides that because the conditions of use were NAS/NRC reviewed and deemed effective, applications for these uses need not include certain effectiveness data as specified by 21 CFR 514.111. Bioavailability studies are not required because the product is intended solely for topical administration (21 CFR 320.22(b)(2)). Therefore, NADA 126–236 is approved on the basis of generic equivalence to an approved, NAS/NRC reviewed product. The regulations are amended to reflect this approval.

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 524

Animal drugs, topical.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 524 is amended by revising § 524.1580c(b), to read as follows:

§ 524.1580c Nitrofurazone soluble powder.

* * * * *

(b) *Sponsor.* See Nos. 000149 and 015562 in § 510.600(c) of this chapter.

* * * * *

Effective date. This amendment is effective October 1, 1982.

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

Dated: September 22, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82–26856 Filed 9–30–82; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Penicillin G Procaine and Dihydrostreptomycin in Soybean Oil

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 new animal drug application (NADA) filed by Philips Roxane, Inc., providing for intramammary use of penicillin G procaine and dihydrostreptomycin in soybean oil in nonlactating dairy cattle.

EFFECTIVE DATE: October 1, 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: Philips Roxane, Inc., 2621 North Belt Highway, St. Joseph, MO 64502, filed NADA 55–097 providing for intramammary use of penicillin G procaine and dihydrostreptomycin for the treatment of subclinical mastitis caused by *Staphylococcus aureus* and *Streptoccus agalactiae* in dairy cows at the time of drying off.

The firm submitted data from adequate and well-controlled studies demonstrating the product's effectiveness in compliance with FDA's combination policy. Toxicity and residue depletion studies demonstrate animal and human safety when the product is used in accordance with label directions. Accordingly, the NADA is approved and the regulations are amended to reflect the approval.

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 and environmental impact statement is required.

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

List of Subjects in 21 CFR Part 540

Animal drugs, Antibiotics, Penicillin.

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512 (i) and (n), 82 Stat. 347, 350–351 (21 U.S.C. 360b(i) and (n))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 540 is amended by adding new § 540.874d to read as follows:

§ 540.874d Penicillin G procaine-dihydrostreptomycin in soybean oil for intramammary infusion (dry cows).

(a) *Requirements for certification.*—(1) *Standards of identity, strength, quality, and purity.* Penicillin G procaine-dihydrostreptomycin in soybean oil is penicillin G procaine and dihydrostreptomycin sulfate suspended in a soybean oil vehicle. Each 10 milliliters of suspension contains penicillin G procaine equivalent to 200,000 units of penicillin G and dihydrostreptomycin sulfate equivalent to 300 milligrams of dihydrostreptomycin. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of units of penicillin G and the number of grams of dihydrostreptomycin it is represented to contain. Its moisture content is not more than 1.4 percent. The penicillin G procaine used conforms to the standards prescribed by § 440.74a(a)(1) of this chapter, except § 440.74a(a)(1) (ii), (iii), and (iv). The dihydrostreptomycin used conforms to the standards prescribed by § 444.10a(a)(1) of this chapter, except the standards for sterility, safety, pyrogens, and histamine content.

(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 penicillin G procaine used in making the batch for potency, moisture, pH, pencillin G content, and crystallinity.

(*b*) The dihydrostreptomycin sulfate used in making the batch for potency, loss on drying, pH, streptomycin content, and crystallinity, if it is crystalline dihydrostreptomycin.

(*c*) The batch for penicillin G content, dihydrostreptomycin content, and moisture.

(ii) Samples required:

(*a*) The penicillin G procaine used in making the batch: 5 packages, each containing approximately 500 milligrams.

(*b*) The dihydrostreptomycin sulfate used in making the batch: 6 packages, each containing approximately 500 milligrams.

(*c*) The batch: a minimum of 6 immediate containers.

(b) *Tests and methods of assay.*—(1) *Potency*—(i) *Penicillin G content.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Expel the syringe contents into a high-speed glass blender jar containing 1 milliliter of polysorbate 80 and sufficient 1-percent potassium phosphate buffer, pH 6.0 (solution 1) to give a final volume of 500 milliliters. Blend for 3 to 5 minutes. Further dilute an aliquot of this stock solution with solution 1 to the reference concentration of 1 unit of penicillin G per milliliter (estimated).

(ii) *Dihydrostreptomycin content.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: expel the syringe contents into a high-speed glass blender jar containing 1 milliliter of polysorbate 80 and sufficient 0.1 *M* potassium phosphate buffer, pH 8.0 (solution 3) to give a final volume of 500 milliliters. Blend for 3 to 5 minutes. To an aliquot of this stock solution add sufficient penicillinase to inactivate the penicillin; further dilute with solution 3 to the reference concentration of 1.0 microgram of dihydrostreptomycin per milliliter (estimated). Allow to stand ½ hour at 37° C before filling the cylinders on the plates.

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(c) *Conditions of marketing.*—(1) *Specifications.* Each 10-milliliter disposable syringe contains penicillin G procaine equivalent to 200,000 units of penicillin G and 300 milligrams of dihydrostreptomycin base as dihydrostreptomycin sulfate, in a soybean oil vehicle, and conforms to the certification requirements of paragraph (a) of this section.

(2) *Sponsor.* See No. 000010 in § 510.600(c) of this chapter.

(3) *Conditions of use.* (i) For intramammary use for the treatment of subclinical mastitis in dairy cows at the time of drying off. Specifically it should be used against infections caused by *Staphylococcus aureus* and *Streptococcus agalactiae.*

(ii) The drug is administered at the last milking prior to drying off. The drug is infused, 1 syringe into each quarter.

(iii) Not to be used within 6 weeks of calving. For use in dry cows only. Milk taken from cows within 24 hours (2 milkings) after calving must not be used for food. Animals infused with this drug must not be slaughtered for food within 60 days of treatment nor within 24 hours after calving.

Effective date. This regulation is effective October 1, 1982.

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

Dated: September 27, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82–27057 Filed 9–30–82; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

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 for Webel Feeds, Inc., providing for use of 0.33- and 0.67-gram-per-pound tylosin premixes for making complete swine feeds.

EFFECTIVE DATE: November 1, 1982.

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

SUPPLEMENTARY INFORMATION: Webel Feeds, Inc., R.R. 3, Pittsfield, IL 62363, is sponsor of a supplement to NADA 116–196 to provide for use of 0.33- and 0.67-gram-per-pound tylosin premixes for making complete swine feeds for increased rate of weight gain and improved feed efficiency. The supplemental application was submitted on behalf of Webel Feeds by Elanco Products Co. The firm presently holds an approved NADA for such use utilizing 0.8-, 1-, 2-, and 10-gram-per-pound tylosin premixes.

Approval of this supplemental NADA is based on safety and effectiveness data contained in NADA 12–491. Elanco has authorized use of the data in NADA 12–491 to support approval of this application. This approval does not change the approved use of the drug. Consequently, approval of this supplement poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species.

Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this is a Category II supplemental approval which does not require reevaluation of the safety and effectiveness data in NADA 12–491 or NADA 116–196.

The supplement is approved and the regulations are amended accordingly.

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 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.625 is amended by revising paragraph (b)(73) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(73) To 035098: 0.33 and 0.67 gram per pound; paragraph (f)(1)(vi)(*a*) of this section; 0.8, 1, 2, and 10 grams per pound; paragraph(f)(1) (i) and (vi) (*a*), (*b*), and (*d*) of this section.

* * * * *

Effective date. November 1, 1982.

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

Dated: September 24, 1982.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 82-27059 Filed 9-30-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Federal Bureau of Investigation

21 CFR Part 1316

28 CFR Part 0

Delegation of Authority to FBI and DEA Officials

AGENCY: Department of Justice, Federal Bureau of Investigation, Drug Enforcement Administration.

ACTION: Final order.

SUMMARY: As a result of the Attorney General expanding the jurisdiction of the Federal Bureau of Investigation over drug offenses, this final order delegates to FBI officials the authority to seize and take custody of property seized in connection with such drug offenses, and amends various regulatory provisions relating to drug enforcement activities.

EFFECTIVE DATE: October 1, 1982.

FOR FURTHER INFORMATION CONTACT: William M. Lenck, Associate Chief Counsel, Drug Enforcement Administration, Department of Justice, Washington, D.C. 20537, (202-633-1276), or John A. Mintz, Assistant Director—Legal Counsel, Federal Bureau of Investigation, Department of Justice, Washington, D.C. 20535 (202-324-5018).

SUPPLEMENTARY INFORMATION: On January 18, 1982, the Attorney General by Order No. 968-82 (47 FR 4989 2/3/82) authorized the Director of the Federal Bureau of Investigation to investigate violations of the criminal drug laws, including the authority to seize property subject to forfeiture under Section 511 of the Controlled Substances Act (21 U.S.C. 881). This order amends the regulations applicable to such seizures to facilitate the seizure and taking into custody of such property by FBI officers and implements the procedures for the impound release of property pursuant to 28 CFR 0.101(c) (45 FR 44267, 7/1/80). The order also amends the Delegation of Functions provisions in the Appendix to Subpart R of Title 28 of the Code of Federal Regulations.

It has been determined that this is an internal management matter not requiring consultation with the Office of Management and Budget under E.O. 12291. Moreover, the Acting Administrator hereby certifies that this matter will have no impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

By virtue of the authority vested in us by 28 CFR 0.100, and 0.104 and 21 U.S.C. 871(b), the following amendments are made to Title 21, §§ 1316.71(e), 1316.72, 1316.73, 1316.79(a), and to Title 28, Part 0, Appendix to Subpart R, of the Code of Federal Regulations:

List of Subjects

21 CFR Part 1316

Administrative practice and procedures, Drug traffic control, and research.

28 CFR Part 0

Government employees and organization and functions (government agencies).

PART 1316—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

1. In § 1316.71, paragraph (e) is revised to read as follows:

§ 1316.71 Definitions.

* * * * *

(e) The term "Special Agents-in-Charge" means Drug Enforcement Administration Special Agents-in-Charge and Federal Bureau of Investigation Special Agents-in-Charge.

* * * * *

2. Section 1316.72 is revised to read as follows:

§ 1316.72 Officers who will make seizures.

For the purpose of carrying out the provisions of the Act, all special agents of the Drug Enforcement Administration and the Federal Bureau of Investigation are authorized and designated to seize such property as may be subject to seizure.

3. Section 1316.73 is revised as follows:

§ 1316.73 Custody and other duties.

An officer seizing property under the Act shall store the property in a location designated by the custodian, generally in the judicial district of seizure. The Special Agents-in-Charge are designated as custodians to receive and maintain in storage all property seized pursuant to the Act, are authorized to dispose of any property pursuant to the Act and any other applicable statutes or regulations relative to disposal, and to perform such other duties regarding such seized property as are appropriate, including the impound release of property pursuant to 28 CFR 0.101(c).

§ 1316.79 [Amended]

4. Section 1316.79(a) is amended by removing the words "Regional Administrator" and inserting in its place the words "Special Agent-in-Charge of the DEA."

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

5. The Appendix to Subpart R of Chapter I of Title 28, Part 0 Code of Federal Regulations is revised to read as follows:

Appendix to Subpart R—Redelegation of Functions

Section 1. *Scope of authority.* The authority delegated by this order is applicable to all officers and employees of the Drug Enforcement Administration (DEA) and Federal Bureau of Investigation (FBI).

Sec. 2. *Supervisors.* All Special Agents-in-Charge of the DEA and the FBI are authorized to conduct enforcement hearings under 21 U.S.C. 883, and to take custody of seized property under 21 U.S.C. 881. All Special Agents-in-Charge of the DEA and the FBI are authorized to release information pursuant to 28 CFR 0.103(a) (1) and (2) which is obtained by the DEA and the FBI, and to authorize the testimony of DEA and FBI officials in response to prosecution subpoenas under 28 CFR 0.103(a)(3).

Sec. 3. *Enforcement officers.* (a) All DEA criminal investigators (series 1811 under Office of Personnel Management regulations) and special agents of the FBI are authorized to exercise all of the powers of enforcement personnel granted by 21 U.S.C. 876, 878, and 879; to serve subpoenas, administer oaths, examine witnesses, and receive evidence under 21 U.S.C. 875; to execute administrative inspection warrants under 21 U.S.C. 880; and to seize property under 21 U.S.C. 881 and 21 CFR 1316.71 *et seq.*

(b) All DEA compliance investigators (series 1810 under Office of Personnel Management regulations) are authorized to administer oaths and serve subpoenas under 21 U.S.C. 875 and 876; to execute administrative inspection warrants under 21 U.S.C. 878(2) and 880; and to seize property incident to compliance and registration inspections and investigations under 21 U.S.C. 881.

Sec. 4. *Issuance of subpoenas.* (a) The Assistant Administrator for Planning and Inspection and the Deputy Assistant Administrator of the Office of Professional Responsibility of the DEA, all Special Agents-in-Charge of the DEA and the FBI, DEA Inspectors assigned to the Planning and Inspection Division, DEA Resident Agents-in-Charge, DEA and FBI Assistant Special Agents-in-Charge, and FBI Supervisory Senior Resident Agents are authorized to issue subpoenas with respect to controlled substances under 21 U.S.C. 875 and 876 in regard to matters within their respective jurisdictions.

(b) The Administrative Law Judge of DEA is authorized to sign and issue subpoenas to compel the attendance of witnesses and the

production of documents and materials to the extent necessary to conduct administrative hearings pending before him.

Sec. 5. *Legal functions.* The Chief Counsel of the DEA is authorized to execute under any certification required to authenticate any document pursuant to § 0.146 of Title 28, Code of Federal Regulations; to adjust, determine, compromise, and settle any claims involving the Drug Enforcement Administration under 28 U.S.C. 2672, relating to tort claims where the amount of the proposed adjustment, compromise, settlement or award does not exceed $2,500; to settle any employee claims filed under the Military Personnel and Civilian Employee's Claims Act in an amount not to exceed $15,000; to formulate and coordinate the proceedings relating to the conduct of hearings under 21 U.S.C. 875, including the signing and issuance of subpoenas, examining of witnesses and receiving evidence; and to conduct enforcement hearings under 21 U.S.C. 883. The Forfeiture Counsel of the DEA is authorized to exercise all necessary functions with respect to decisions on petitions under 19 U.S.C. 1618 for remission or mitigation of forfeitures incurred under 21 U.S.C. 881.

Sec. 6. *Import and export permits.* The Deputy Assistant Administrator of the DEA Office of Diversion Control is authorized to perform all and any functions with respect to the issuance of importation and exportation permits for controlled substances under 21 U.S.C. 952 and 953, and all functions in regard to transshipments and intransit shipments of controlled substances under 21 U.S.C. 954.

Sec. 7. *Promulgation of regulations.* The Deputy Assistant Administrator of the DEA Office of Diversion Control is authorized to exercise all necessary functions with respect to the promulgation and implementation of the following regulations published in Chapter II, Title 21, Code of Federal Regulations:

(a) Part 1301, incident to the registration of manufacturers, distributors, and dispensers of controlled substances, except that final orders in connection with suspension, denial or revocation of registration shall be made by the Administrator of DEA.

(b) Part 1302 relating to labelling and packaging requirements for controlled substances.

(c) Part 1304 relating to records and reports of registrants.

(d) Part 1305 relating to order forms.

(e) Part 1306 relating to prescriptions, except provisions relating to dispensing of narcotic drugs for maintenance purposes.

(f) Part 1307, Title 21, Code of Federal Regulations, relating to miscellaneous provisions, except § 1307.31 concerning special exempt persons.

(g) The following sections of Part 1308: §§ 1308.21 and 1308.22 relating to excluded nonnarcotic substances; §§ 1308.23 and 1308.24 relating to exempt chemical preparations; and §§ 1308.31 and 1308.32 relating to excepted stimulant or depressant compounds, except that any final order following a contested proposed rulemaking shall be made by the Administrator of DEA.

(h) Part 1311 relating to registration of importers and exporters of controlled substances, except that final orders in connection with suspension, denial or revocation of registration shall be made by the Administrator of DEA.

(i) Part 1312 relating to importation and exportation of controlled substances, except that all final orders following a contested proposed rulemaking regarding the denial of an application for an import, export or transshipment permit shall be made by the Administrator of DEA.

Dated: September 17, 1982.

William H. Webster,

Director, Federal Bureau of Investigation.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 82-27101 Filed 9-30-82; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 201

[Docket No. R-82-1044]

Mortgage Insurance Loans; Changes in Interest Rates

AGENCY: Department of Housing and Urban Development, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the HUD/FHA maximum allowable finance charge on Title I mobile home loans and combination and mobile home lot loans. This action by HUD is designed to bring the maximum interest rate and financing charges on HUD/FHA-insured loans into line with market rates and help assure an adequate supply of and demand for FHA financing.

EFFECTIVE DATE: October 1, 1982.

FOR FURTHER INFORMATION CONTACT: John L. Brady, Director, Office of Title I Insured Loans, Office of Single Family Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410 (202-755-6680).

SUPPLEMENTARY INFORMATION: The following miscellaneous amendments have been made to this chapter to decrease the maximum interest rate which may be charged on loans insured by this Department. Maximum finance charges on mobile home loans lowered from 16.50 percent to 16.00 percent, and the finance charge on combination loans for the purchase of a mobile home and a developed or undeveloped lot has been lowered from 16.00 percent to 15.50 percent.

The Secretary has determined that such changes are immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709-1, as amended. The Secretary has, therefore, determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this amendment effective immediately.

This is a procedural and administrative determination as set forth in the statutes and as such does not require a determination of environmental applicability.

List of Subjects in 24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Mobile homes, Manufactured homes and lots.

Accordingly, Chapter II is amended as follows:

PART 201—MOBILE HOME LOANS

1. Section 201.540(a) is revised to read as follows:

§ 201.540 Financing charges.

(a) *Maximum financing charges.* The maximum permissible financing charge which may be directly or indirectly paid to, or collected by, the insured in connection with the loan transaction, shall not exceed 16.00 percent simple interest per annum. No points or discounts of any kind may be assessed or collected in connection with the loan transaction, except that a one percent origination fee may be collected from the borrower. If assessed, this fee must be included in the finance charge. Finance charges for individual loans shall be made in accordance with tables of calculation issued by the Commissioner.

* * * * *

2. Section 201.1511(a), subparagraph (1) is revised to read as follows:

§ 201.1511 Financing charges.

(a) *Maximum financing charges.*

* * * * *

(1) 15.50 percent per annum.

* * * * *

(Sec. 3(a), 82 Stat. 113; 12 U.S.C. 1709-1; Sec. 7, Department of Housing and Urban Development Act, 42 U.S.C. 3534(d))

Dated: September 23, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 82-27080 Filed 9-30-82; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Parts 203, 205, 207, 213, 220, 221, 232, 234, 235, 236, 241, 242, and 244

[Docket No. R-82-1043]

Mortgage Insurance Loans; Changes in Interest Rates

AGENCY: Department of Housing and Urban Development, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the HUD/FHA interest rates on insured loans. This action by HUD is designed to bring the maximum interest rates into line with other competitive market rates and help assure an adequate supply of and demand for FHA financing.

EFFECTIVE DATE: September 24, 1982.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Director, Financial Analysis Division, Office of Financial Management, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410 (202-426-4667).

SUPPLEMENTARY INFORMATION: The following amendments have been made to this chapter to decrease the maximum interest rate which may be charged on loans insured by this Department. The maximum interest rate on HUD/FHA insured home mortgage insurance programs has been lowered from 14.00 percent to 13.50 percent for level payment (including operative builder) and graduated payment home loan programs (GPM). For insured multifamily project mortgage loan programs, the maximum interest rate has been lowered from 15.00 percent to 14.50 percent. The maximum interest rate for multifamily construction and Title X land development loans has been lowered from 16.00 percent to 15.50 percent.

The Secretary has determined that such changes are immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709-1, as amended. The Secretary has, therefore, determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this amendment effective immediately.

This is a procedural and administrative determination as set forth in the statutes and as such does not require a determination of environmental applicability.

List of Subjects in 24 CFR Parts 203, 205, 207, 213, 220, 221, 232, 234, 235, 236, 241, 242, and 244

Mortgage insurance.

Accordingly, Chapter II is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. Section 203.20 paragraph (a) is revised to read as follows:

§ 203.20 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.50 percent per annum, except that where an application for commitment was received by the Secretary before September 24, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

2. Section 203.45 paragraph (b) is revised to read as follows:

§ 203.45 Eligibility of graduated payment mortgages.

* * * * *

(b) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.50 percent per annum, except that where an application for commitment was received by the Secretary before September 24, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

3. Section 203.46 paragraph (c) is revised to read as follows:

§ 203.46 Eligibility of modified graduated payment mortgages.

* * * * *

(c) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.50 percent per annum, except that where an application for commitment was received by the Secretary before September 24, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 205—MORTGAGE INSURANCE FOR LAND DEVELOPMENT

4. Section 205.50 is revised to read as follows:

§ 205.50 Maximum interest rate.

Effective on or before September 24, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 15.50 percent per annum. Applications for conditional or firm commitments received on or after September 24, 1982 will be processed at the 15.50 percent rate, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

5. Section 207.7 paragraph (a) is revised to read as follows:

§ 207.7 Maximum interest rate.

(a) Effective on or after September 24, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 14.50 percent per annum with respect to permanent financing;

(2) 15.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after September 24, 1982 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

6. Section 213.10 paragraph (a) is revised to read as follows:

§ 213.10 Maximum interest rate.

(a) Effective on or after September 24, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 14.50 percent per annum with respect to permanent financing;

(2) 15.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after September 24, 1982 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

7. Section 213.511 paragraph (a) is revised to read as follows:

§ 213.511 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.50 percent per annum, except that where an application for commitment was received by the Secretary before September 24, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

8. Section 220.576 paragraph (a) is revised to read as follows:

§ 220.576 Maximum interest rate.

(a) Effective on or after September 24, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 14.50 percent per annum with respect to permanent financing;

(2) 15.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after September 24, 1982, will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable prevous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

9. Section 221.518 paragraph (a) is revised to read as follows:

§ 221.518 Maximum interest rate.

(a) Effective on or after September 24, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 14.50 percent per annum with respect to permanent financing;

(2) 15.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after September 24, 1982 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

10. Section 232.29 paragraph (a) is revised to read as follows:

§ 232.29 Maximum interest rate.

(a) Effective on or after September 24, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 14.50 percent per annum with respect to permanent financing;

(2) 15.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after September 24, 1982 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

11. Section 232.560 paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) On or after September 24, 1982, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 14.50 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

12. Section 234.29 paragraph (a) is revised to read as follows:

§ 234.29 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.50 percent per annum, except that where an application for commitment was received by the

Secretary before September 24, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

13. Section 234.75 paragraph (b) is revised to read as follows:

§ 234.75 Eligibility of graduated payment mortgages.

* * * * *

(b) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.50 percent per annum, except that where an application for commitment was received by the Secretary before September 24, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

14. Section 234.76 paragraph (c) is revised to read as follows:

§ 234.76 Eligibility of modified graduated payment mortgages.

* * * * *

(c) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.50 percent per annum, except that where an application for commitment was received by the Secretary before September 24, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

15. Section 235.540 paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after September 24, 1982, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 14.50 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

16. Section 236.15 paragraph (a) is revised to read as follows:

§ 236.15 Maximum interest rate.

(a) Effective on or after September 24, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 14.50 percent per annum with respect to permanent financing;

(2) 15.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after September 24, 1982, will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

17. Section 241.75 is revised to read as follows:

§ 241.75 Maximum interest rate.

Effective on or after September 24, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(a) 14.50 percent per annum with respect to permanent financing;

(b) 15.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after September 24, 1982, will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

Section 242.33 paragraph (a) is revised to read as follows:

§ 242.33 Maximum interest rate.

(a) Effective on or after September 24, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 14.50 percent per annum with respect to permanent financing;

(2) 15.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after September 24, 1982, will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES

19. Section 244.45 paragraph (a) is revised to read as follows:

§ 244.45 Maximum interest rate.

(a) Effective on or after September 24, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 14.50 percent per annum with respect to permanent financing;

(2) 15.50 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after September 24, 1982, will be processed at the rates specified above, with the

exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

(Sec. 3(a), 82 Stat. 113; 12 USC 1709–1; sec. 7, Department of Housing and Urban Development Act, 42 USC 3535(d)).

Dated: September 23, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner

[FR Doc. 82–27079 Filed 9–30–82; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF LABOR

Employment and Training Administration

29 CFR Part 91

Worker Adjustment Assistance: Emergency Extension of Regulations Pertinent to the Trade Act of 1974

AGENCY: Employment and Training Administration, Labor.

ACTION: Extension of regulations.

SUMMARY: The Department of Labor extends 29 CFR Part 91 (Adjustment Assistance for Workers After Certification) established under Title II, Chapter 2, of the Trade Act of 1974 (Pub. L. 93–618), until September 30, 1983. The Worker Adjustment Assistance Program authorized under Section 284 of the Trade Act of 1974 was scheduled to terminate on September 30, 1982. However, the Omnibus Budget Reconciliation Act of 1981 amended and extended the program through September 30, 1983. New regulations promulgating the 1981 amendments of the Worker Adjustment Assistance Program, which reflect a fundamental shift in program emphasis to placement, reemployment services and training, have not been published as of this date.

29 CFR Part 91, (§ 91.68) now contains a specific termination date of September 30, 1982 for the benefits portion of the regulations. The current regulations are being extended to assure a continuation of a common regulatory base for the States to deliver benefits to workers who have been certified as eligible to apply for trade adjustment assistance.

EFFECTIVE DATE: September 28, 1982.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Golding, Director, Unemployment Insurance Service. Telephone: (202) 376–7032.

SUPPLEMENTARY INFORMATION: This notice simply provides for an extension of current regulations governing the delivery of trade adjustment assistance benefits. It does not conflict with any of the provisions of the 1981 amendments which became effective for weeks of unemployment beginning on and after October 1, 1981. The extension applies solely to benefit determinations which would be applicable under the Trade Act of 1974 and which would be made after September 30, 1982.

Subsection (b) of 5 U.S.C. 553 requires that a notice of proposed rulemaking be published in the **Federal Register**, except when the agency for good cause finds that notice and public procedures thereon are impracticable, unnecessary or contrary to the public interest. I have determined that the notice and comment procedures of section 553(b) are unnecessary, since the purpose and effect of this rule is to remove an anomalous situation in which a program has been extended by amending legislation but for which pertinent regulations have not yet been published and an earlier termination date than is applicable under the amended legislation threatens to disrupt the administration of the program after September 30, 1982, unless otherwise extended.

Drafting Information

This document was prepared under the direction and control of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 "D" Street, NW., Washington, D.C. 20213; telephone (202) 376–7032 (this is not a toll-free number).

Classification—Executive Order 12291

The rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, and therefore no regulatory impact analysis is required.

Regulatory Flexibility Act

Because notice of proposed rulemaking is not required for this rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., pertaining to regulatory flexibility analyses, do not apply to this rule.

§ 91.68 [Removed]

Accordingly, for the reasons set out above, § 91.68 of 29 CFR Part 91 is removed.

Signed at Washington, D.C., on September 28, 1982.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 82–27177 Filed 9–29–82; 4:00 pm]

BILLING CODE 4510–30–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–5–FRL 2199–8]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: On February 25, 1980, the State of Ohio submitted to EPA revisions to its State Implementation Plan (SIP). The revisions were to rules 01 through 06, 08 and 09 of Chapter 3745–15 of the Ohio Administrative Code (OAC) which establish general provisions for the control of air pollution. In a May 7, 1982 notice (47 FR 19722), EPA proposed to approve all these rules except for 05 which EPA proposed to delete from the Ohio SIP at the request of the State. Three comments were received on this proposed rulemaking. After review of the comments EPA takes final action today to approve rules 01 through 04, 06, 08 and 09 as revisions to the Ohio SIP and to delete rule 05 from the Ohio SIP.

EFFECTIVE DATE: This final rulemaking becomes effective November 1, 1982.

ADDRESSES: Copies of this SIP revision are available for review at the following addresses:

Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

Office of the Federal Register, 110 L Street, NW., Washington, D.C. 20408

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Regulatory Analysis Section, Air Programs Branch, EPA,

Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6038.

SUPPLEMENTARY INFORMATION: On February 25, 1980, the State of Ohio submitted revisions to rules 01 through 06, 08 and 09 of Chapter 15 of the Ohio Administrative Code. These rules establish general provisions for the control of air pollution.

At various times rules 01 through 09 have been recodified. Originally, these rules were codified as AP–2–01 through 09. The AP–2 series were the rules approved by EPA as part of the Ohio SIP on April 15, 1974 (39 FR 13539). Subsequent to that date, these rules were recodified as EP–10–01 through 09 and then 3745–15–01 through 09.

On May 7, 1982 (47 FR 19722) EPA proposed to approve rules 01 through 04, 06, 08 and 09 as revisions to the Ohio SIP and to delete rule 05 from the Ohio SIP. A thirty day public comment period was provided for interested individuals to submit their comments on EPA's proposed rulemaking. EPA received comments from a citizen's group, from a law firm representing a utility, and from the Ohio EPA. The comments relate to rules 01, 04 and 06.

Following is a brief description of the changes to rules 01 through 06, 08 and 09 from the previously approved APC–2 series, and evaluation of the issues raised in the public comments and EPA's response, and EPA's final action on all the rules.

Rule 3745–15–01: Definitions

This rule has been changed to include definitions for three new terms: facility, owner and non-methane hydrocarbon.

Comment: The citizen's group does not feel the definition of facility is consistent with EPA's definition of facility for New Source Review purposes (nonattainment or prevention of significant deterioration (PSD)).

Response: The definition of facility in this rule does not apply to New Source Review. Separate definitions which encompass the concept of facility and which relate to nonattainment areas, are contained in Rule 01 of Chapter 3745–31. EPA has dealt with this rule in a separate rulemaking action dated October 31, 1980 (45 FR 72119). Furthermore, as a result of the delegation of authority to administer the Federal PSD program on May 1, 1980, the State of Ohio is bound to enforce the EPA definitions for such terms as facility in its administration of the PSD program.

For the purposes of Chapter 3745–15, the definition of facility is acceptable.

Action: EPA approves this rule.

Rule 3745–15–02: Purpose; 03: Submission of Emission Information; 08: Circumvention; and 09: Severability

These rules have been changed to replace references to the Ohio Environmental Review Board (Board) with references to the Director of Ohio EPA (Director). EPA finds these rules acceptable and approves them.

Rule 3745–15–04: Measurement of Emissions of Air Contaminants

This rule provides the Director of Ohio EPA with the authority to require, under certain circumstances, that any person who is responsible for pollutant emissions shall conduct tests on the source of those emissions. It has been changed to expand the Director's authority by explicitly stating that the Director may reject the results of any test which is not performed in accordance with approved test procedures or in accordance with the provisions of this rule. Any test method which is different from what is contained in the federally approved SIP must be submitted as a SIP revision.

Comment: A law firm commented that the Director of Ohio EPA should have discretion to adapt and modify test procedures, as appropriate and consistent with valid scientific principles, without having to undergo a formal SIP revision. Further, the commentator believes the SIP revision requirement does not allow for appropriate flexibility in the unusual testing cases.

Response: It is EPA's position that a minor modification to an approved test method need not be submitted as a SIP revision. However, use of a test method which has not been approved by EPA must be submitted as a SIP revision. EPA believes that this approach provides a reasonable amount of flexibility.

It is important that test methods not approved by EPA be submitted as SIP revisions because the use of different test methods can produce different test results. The Ohio EPA in their comment agrees with EPA's position that any substantive change to test procedures which have been previously approved as part of the SIP must be submitted to EPA for approval.

Action: EPA approves this rule.

Rule 3745–15–05: Control Plan Compliance Schedule

This rule has been repealed by the State. Rule 05 states that compliance schedules in other Air Pollution Control Chapters of the OAC are to supersede the requirements of this rule. Since the other Chapters specify compliance dates this rule is no longer necessary and EPA deletes it from the Ohio SIP.

Rule 3745–15–06: Malfunction of Equipment; Scheduled Maintenance; Reporting

This rule establishes procedures to be followed by a source in the case of the malfunction or scheduled maintenance of its air pollution control equipment. The State has revised paragraphs (A), (B) and (C) and has added a new paragraph (D).

The following public comment relates to paragraphs (B) and (D).

- Paragraph (B) requires that if a malfunction has lasted more than 72 hours, the owner of the air pollution source must develop and submit to Ohio EPA a detailed report on corrective programs for malfunctions.
- Paragraph (D) allows the Director to require the submission of a preventive maintenance and malfunction abatement plan to prevent, detect and correct malfunctions or equipment failures.

Comment: The law firm believes that the requirements, of paragraphs (B) and (D), seem too formal and unnecessarily add burdensome reporting requirements.

Response: EPA agrees with Ohio's reporting and preventive maintenance and malfunction plan requirements. Air pollution control equipment malfunctions can result in significant increases in emissions. It is important for a State agency to keep a record of these excess emissions and to require a preventive maintenance program where appropriate.

The following comment pertains to paragraph (C).

- Paragraph (C) allows the Director to take appropriate action if the reporting requirements of this rule have not been met; if the equipment was not properly operated and maintained prior to breakdown; if the shutdowm of the source or operation during the period of maintenance or breakdown has become practicable; if the shutdowm or breakdown was or has become avoidable or was induced or prolonged in bad faith; or if the emissions endanger or tend to endanger the health or safety of the public.

Comment: The citizen's group believes paragraph (C) is not consistent with EPA's malfunction policy because it does not describe the specific action the Director shall take in the event that the malfunction of a source is avoidable or caused by operation in bad faith.

Furthermore, the citizen's group believes that under the provisions of paragraph (C) the Director may or may not take action that is consistent with

the malfunction policy. If the Director fails to act, this would be an automatic exemption for sources from mass/or visible emission limits.

Response: EPA believes this provision is not inconsistent with EPA's malfunction policy. EPA's basic criterion in reviewing malfunction rules is that the rules must not provide for an automatic exemption during a maintenance/malfunction episode. EPA does not interpret paragraph (C) or any paragraph of rule 3745–15–06 as providing a source with an automatic opportunity to violate any mass or visible emission limitation due to a maintenance/malfunction occurrence.

For example, Ohio Rule 3745–17–11 provides allowable emission limitations for industrial process sources. If these limits are exceeded due to a malfunction, the result is still a violation. Rule 3745–15–06 permits the Director to exercise enforcement discretion on a case-by-case basis depending on the circumstances surrounding the malfunction.

The following comment pertains to the rule in general.

Comment: The law firm believes that a source should be entitled to rely on its proper and timely reporting of a malfunction incident. The firm believes there are no provisions within the rule which warrant EPA's interpretation that further action by the Director of the OEPA is required to "perfect" the exemption during malfunctions.

Response: EPA disagrees with the commentator's position that no action is required by the Director of OEPA to perfect a malfunction exemption. EPA believes that 3745–17–06 imposes a duty upon the Director to review a source's claim for a malfunction exemption against the criteria outlined in the rule. EPA believes that a complete review of the circumstances surrounding each claimed malfunction must be undertaken by the Director before he can exercise his enforcement discretion and refrain from initiating any enforcement action against the source. In all cases, the Director must carefully scrutinze the source's claim for an exemption.

Action: EPA approves this rule.

Summary

After review of the public comments EPA takes final action today to approve rule 01 through 04, 06, 08 and 09 as revisions to the Ohio SIP and to delete rule 05 from the Ohio SIP.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Note.— Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1982.

(Section 110 of the Clean Air Act, as amended (42 U.S.C. 7410))

Dated: September 21, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal regulations, Chapter I, Part 52 is amended. Section 52.1870(c) is amended by adding new subparagraph (45) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(45) On Feburary 25, 1980, the State submitted revisions to rules 01 through 06, 08 and 09 of Chapter 15 of the Ohio Administrative Code. These rules establish general provisions for the control of air pollution and were previously codified and approved as AP–2–01 through 06, 08 and 09. Rules 01 through 04, 06, 08 and 09 are approved as revisions to the Ohio SIP and rule 05 is deleted from the Ohio SIP.

[FR Doc. 82–27140 Filed 9–30–82; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 65

[ORC–5–FRL–1874–1; ORC–5–FRL–1874–1]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Notice of Disapproval of an Administrative Order Issued by the Indiana Air Pollution Control Board to Bethlehem Steel Corp.

AGENCY: Environmental Protection Agency.

ACTION: Final action.

SUMMARY: By this action, the Administrator of the U.S. Environmental Protection Agency (EPA) disapproves a Delayed Compliance Order (DCO) issued by the Indiana Air Pollution Control Board to Bethlehem Steel Corporation (Bethlehem). The DCO requires the company to bring air emissions from its coke oven batteries at Burns Harbor, Indiana, into compliance with regulations APC–3 and APC–5 of the Indiana Air Pollution Control Board (Indiana APC–3 and APC–5). Because this DCO has been disapproved, Bethlehem's compliance with the DCO will not preclude suits under the Federal enforcement provisions of the Clean Air Act (Act) for violations of the State Implementation Plan (SIP) regulations covered in the DCO.

DATES: This action takes effect October 1, 1982.

ADDRESS: Copies of the DCO, public comments on the notice of proposed disapproval and other documents relied upon by EPA are available for inspection in Docket No. 5A–81–1 at: U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, Assistant Regional Counsel, (312) 886–6724.

SUPPLEMENTARY INFORMATION: The decision involves an administrative order submitted by Indiana to EPA for approval as a "delayed compliance order" (DCO) under Section 113(d) of the Clean Air Act. The order relates to Bethlehem Steel's coke oven batteries at its Burns Harbor, Indiana, facility. Under the Clean Air Act, issuance of a DCO extends the time allowed for complying with specified provisions of a State Implementation Plan.

This DCO was disapproved by EPA on September 17, 1979, 44 FR 53746. Bethlehem appealed EPA's disapproval to the United States Court of Appeals for the Seventh Circuit which reversed and remanded EPA's action, *Bethlehem Steel Corp. v. EPA*, 638 F. 2d 994 (7th Cir. 1980). The court found, in part, that EPA had inadequately supported the reasons for its action and ordered EPA to initiate new proceedings.

EPA is again disapproving the DCO. Since the period proposed to be covered by the DCO has passed, the effect of this action is to clarify whether the period of noncompliance involved is or is not covered by a federally-approved DCO.

The passage of time has made irrelevant a number of EPA's original objections dealing with the adequacy of the requirements of the DCO relating to

interim controls to be imposed on the Burns Harbor plant.

One issue upon which EPA based its original disapproval retains its importance, however, and is the basis for EPA's renewed disapproval. The state implementation plan provision involved here is Indiana Air Pollution Control Regulation 3 (APC–3), relating to visible emissions from "combustion" operations. In 1974 Indiana amended this regulation to clarify that it applied to coke batteries. At the same time Indiana granted certain sources, including coke batteries, a fifteen-minute exemption from compliance in each twenty-four hour period. On review, EPA approved the SIP revision, but expressly disapproved the fifteen-minute exemption. 40 FR 50032–33 (October 28, 1975).

Under the Clean Air Act, a DCO must provide for compliance with the applicable, i.e., EPA approved, state implementation plan. The proposed DCO required compliance with the version of APC–3 submitted by Indiana, not the version approved by EPA.

In a proceeding filed in the Seventh Circuit, Bethlehem challenged this basis for disapproval, among others, arguing that EPA had no authority to partially approve proposed SIP revisions. In its decision, the Seventh Circuit reserved decision on the legal question but remanded to EPA for clarification of the record on certain factual issues, *Bethlehem Steel Corp. v. EPA*, 638 F.2d 994 (7th Cir., 1980).

EPA has re-examined this issue on remand. That re-examination affirmed EPA's conclusions that its October 28, 1975 action approving APC–3 did not approve but disapproved the fifteen-minute exemption. See Notice of Proposed Disapproval, 46 *Fed. Reg.* 21790 (April 14, 1981). See also EPA Response to Comment 1 below.

On April 14, 1981, the Regional Administrator of EPA's Region V Office published in the **Federal Register** (46 FR 21790) a notice of proposed disapproval of the DCO. EPA's proposed second disapproval was based again upon the fact that the DCO does not require compliance with the applicable Indiana State Implementation Plan (SIP) as approved by EPA. The DCO instead requires compliance with Indiana APC–3 as promulgated by Indiana on October 7, 1974. The DCO requires compliance with a requirement less stringent than the APC–3 approved by EPA on October 28, 1975, 40 FR 50032. It therefore violates Section 113(d)(1)(D) of the Clean Air Act, 42 U.S.C. 7413(d)(1)(D).

Three letters of comment were received during the public comment period. Two were from Bethlehem, the source affected by the DCO. Bethlehem's comments can be summarized as follows:

1. Bethlehem disputes that EPA ever validly approved, in accordance with the requirements of Section 110(a), the version of APC–3 that it relied upon in the proposed disapproval.

2. Bethlehem claims that the decision of the Seventh Circuit Court of Appeals in *Bethlehem Steel Co.* v. *EPA*, 638 F. 2d 994 (7th Cir. 1980) was dispositive on the issue of whether EPA's actions on October 28, 1975 were adequate to constitute a partial approval of Indiana's APC–3.

3. Bethlehem cites numerous areas where it claims that APC–3 is vague and unenforceable.

4. Bethlehem contends that the disapproval violates Section 113(d)(2) in that EPA has failed to issue a simultaneous compliance order.

5. Bethlehem objects that the Region V, Air Enforcement Branch Chief was permitted to have a role in the proposal prior to publication.

Comments were also received from the Indiana Air Pollution Control Board which generally reiterate Bethlehem's first two concerns.

Response to Comments 1 and 2

EPA's October 28, 1975 action approving APC–3 also partially disapproved the regulation. Its status as partially approved was so understood at the time and since. See documents in EPA files responsive to Bethlehem's request for records under the Freedom of Information Act dated April 23, 1981. These documents, which are generally contemporaneous with EPA's rulemaking on October 28, 1975, and others which have been placed in the docket confirm the nature of EPA's action as an approval of APC–3 with the exception of the fifteen minute exemption. They refer repeatedly, for instance, to EPA's "partial approval" of APC–3. A recent federal circuit court decision also confirmed EPA's view of the applicable SIP regulation APC–3. *Public Service Company of Indiana, Inc. v. U.S.* (7th Cir., No. 81–1241, June 25, 1982) *affirming Public Service Company of Indiana v. U.S. EPA*, No. I.P. 80–332–C (S.D. Ind. Jan. 12, 1981). Contrary to Bethlehem's argument, the Seventh Circuit in the *Bethlehem* case, *supra*, expressly declined to decide the validity of EPA's partial approval of APC–3 on October 28, 1975. To the extent that Bethlehem's comments constitute a challenge to the validity of EPA's partial approval, they are also untimely by more than five years.

Response to Comment 3

Bethlehem cites a number of areas where it alleges that APC–3 is unconstitutionally vague and unenforceable. The enforceability of APC–3 is irrelevant to this proceeding. The criterion under Section 113(d)(1)(D) is whether or not the DCO provides for compliance with the applicable SIP. It is clear from the record that the DCO does not provide for compliance with APC–3 as federally approved.

Response to Comment 4

Bethlehem contends that this disapproval violates Section 113(d)(2) in that there has been no simultaneous issuance of a compliance order under Section 113(a). EPA noted in its proposed disapproval that Section 113(d)(2) requires that where the Administrator objects to the issuance of the State Order, "he shall simultaneously proceed to issue an enforcement order in accordance with subsection (a) or an order under this subsection."

The issuance of an order under Section 113(a) of the Act would be futile under the circumstances. Were it to call for less than immediate compliance it would modify the SIP in contravention of Section 110(i). Section 110(i) prohibits modification of a SIP (including modification of the date of compliance) except in accordance with certain specific subsections of the Act, which do not include Subsection 113(a). Bethlehem itself concedes that it is not capable of immediate compliance. Therefore, if EPA were to issue a Section 113(a) order, EPA would immediately be confronted with the need to institute a proceeding under Section 113(b).

This has already been accomplished by the filing of a civil action against Bethlehem in the Northern District of Indiana. *United States v. Bethlehem Steel Corporation*, Civil No. H78–491 (N.D. Ind.), filed on December 21, 1978.

Response to Comment 5:

EPA believes that the limited advisory function of the Air Enforcement Branch Chief, Mr. David Ullrich, in this action is Consistent with the decision in *Bethlehem Steel v. EPA*, 638 F. 2d 994, 1008–10 (7th Cir. 1980). Mr. Ullrich's limited role was necessary to ensure adequately informed decisionmaking and agency consistency. Mr. Ullrich's participation is fully documented in the rulemaking docket. He was not the attorney primarily responsible for managing the enforcement litigation, nor was he the principal person in charge of

reviewing and recommending a disposition of the DCO.

Conclusion.—The order issued by the Indiana Air Pollution Control Board to Bethlehem therefore conflicts with the applicable SIP and must be disapproved as a DCO pursuant to the authority of Section 113(d)(2) of the Act, 42 U.S.C. 7413(d)(2).

The propriety or legality of EPA's 1975 review of APC–3 is not at issue in this proceeding. EPA's actions in approving or disapproving SIPs can be challenged directly in the proper Court of Appeals under Section 307(d) of the Clean Air Act. No such challenge was brought to EPA's actions on the SIP provisions involved here. The SIP approved by EPA is the SIP with which the DCO must assure compliance. Proceedings to review DCO action should not—and in EPA's view, legally cannot—serve as a vehicle for collateral attacks on the status of underlying SIP requirements.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days. Under Section 307(b)(2) of the Clean Air Act, the action which is the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce the SIP.

(42 U.S.C. 7413(d), 7601)

Anne M. Gorsuch,

Administrator.

September 24, 1982.

List of Subjects in 40 CFR Part 65

Air pollution control.

PART 65—DELAYED COMPLIANCE ORDERS

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

1. By adding an entry to the table in § 65.192, to read as follows:

§ 65.192 EPA disapproval of State delayed compliance Orders.

The State Order identified below has been disapproved by the Administrator in accordance with Section 113(d)(2) of the Act and with this part. With regard to this Order, the Administrator has determined that it does not satisfy the applicable requirements of Section 113(d) of the Act.

Source	Location	Number	SIP Regulation(s) involved	Date of FEDERAL REGISTER proposal	Final Comp. Date
Bethlehem Steel Corp.	Burns Harbor, Indiana	None	APC–3, APC–5	Apr. 14, 1981	July 1, 1979

[FR Doc. 82–27112 Filed 9–30–82; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 228

[OW–FRL 2207–2]

Ocean Dumping; Final Cancellation of Site Designations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today cancels the designation of four ocean dumping sites which are currently designated on an iterim basis. This action is being taken because there is no projected future need for these sites. These sites will be removed from the list of "Approved Interim and Final Ocean Dumping Sites."

DATE: This cancellation shall become effective on November 1, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. T. A. Wastler, Chief, Marine Protection Branch (WH–585), EPA, Washington, D.C. 20460, 202/755–0356.

SUPPLEMENTARY INFORMATION: EPA published revised Ocean Dumping Regulations and Criteria in the **Federal Register** on January 11, 1977 (42 FR 2462 et seq.). Section 2281.2 contains a list of "Approved Interim and Final Ocean Dumping Sites." This list was amended on December 9, 1980 (45 FR 81042 et seq.) to extend the interim designation of some ocean dumping sites and cancel the designation of six industrial sites and one dredged material site. At that time EPA stated its intention to identify additional ocean dumping sites for which there is no projected future need.

Four such sites were identified, and EPA proposed cancellation of the designation of these sites on April 23, 1982 (47 FR 17580). The public comment period expired on June 22, 1982. No comments were received.

The sites with their identifying coordinates are listed below.

1. Withlacoochee River, FL—28d 59′ 54″N., 82d 47′ 14″W.; 29d 00′ 28″N., 82d 46′ 06″W.; 29d 00′ 14″N., 82d 45′ 58″W.; 28d 59′ 40″N., 82d 47′ 06″W.

2. Horseshoe Cove, FL—29d 25′ 23″N., 83d 17′ 53″W.; 29d 25′ 18″N., 83d 17′ 43″W.; 29d 25′ 09″N., 83d 17′ 49″W.; 29d 25′ 14″N., 83d 17′ 59″W.

3. Crescent City, CA, 100 fathom site—41d 43′ 50″N, 124d 28′ 00″W (center coordinates).

4. American Samoa, Pago Pago Harbor—14d 23′ 00″S., 170d 39′ 30″W (center coordinates).

The cancellation of these four sites as EPA Interim Approved Ocean Dumping Sites is being published as final rulemaking.

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis.

EPA has determined that this final rule will not have a significant impact on small entities. No small entities are using or, as far as EPA is aware, are planning to use these sites in the near future. Furthermore, the cancellation of these site designations will have no effect on the economy or cause any of the other effects which would result in its being classified as a "major" action. Consequently, this final rule does not necessitate the preparation of a Regulatory Flexibility Analysis or Regulatory Impact Analysis.

This final rule 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 in Room 2709, Waterside Mall, 401 M Street Southwest, Washington, D.C.

List of Subjects in 40 CFR Part 228

Water pollution control.

(33 U.S.C. 1412 and 1418)

Dated: September 24, 1982.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

§ 228.12 [Amended]

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended by removing from § 228.12(a) four ocean dumping sites as follows:

1. Withlacoochee River, FL—28d 59′ 54″ N., 82d 47′ 14″ W.; 29d 00′ 28″ N., 82d 46′ 06″ W.; 29d 00′ 14″ N., 82d 45′ 58″ W.; 28d 59′ 40″ N., 82d 47′ 06″ W.

2. Horseshoe Cove, FL—29d 25′ 23″ N., 83d 17′ 53″ W.; 29d 25′ 18″ N., 83d 17′ 43″ W.; 29d 25′ 09″ N., 83d 17′ 49″ W.; 29d 25′ 14″ N., 83d 17′ 59″ W.

3. Crescent City, CA, 100 fathom site—41d 43′ 50″ N., 124d 28′ 00″ W. (center coordinates).

4. American Samoa, Pago Pago Harbor—14d 23′ 00″ S., 170d 39′ 30″ W. (center coordinates).

[FR Doc. 82-27141 Filed 9-30-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 20

Employee Responsibilities and Conduct; Corrections and Amendment

Correction

In FR Doc. 82-26407, appearing at page 42359 in the issue of Monday, September 27, 1982, the following changes should be made:

1. On page 42359, in the last line of column two, the section number now reading "20.735.36" should read "20.735-36".

2. On page 42359, in column three, between the fifth paragraph and the heading "List of Subjects in 43 CFR Part 20," insert the following:

Authority: 5 U.S.C. 301; 5 CFR 735.104; 5 CFR 734.103; E.O. 11222, 30 FR 6469, 3 CFR 1964-65 (Comp.) as amended (18 U.S.C. 201 note).

3. On page 42361, the citation in the fifth line of the first column should read, "(43 U.S.C. 31(a))".

4. On page 42362, the authority cite appearing above the heading "Privacy Act Notice" in column three should be removed.

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 312

[Docket No. FEMA-P-312]

Use of Civil Defense Personnel, Materials and Facilities for Natural Disaster Purposes

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule authorizes the use for natural disaster purposes of civil defense personnel, materials, and facilities supported with contributions under the Federal Civil Defense Act of 1950, as amended, and provides terms and conditions for such use. This regulation is necessary to implement section 803 of the Department of Defense Authorization Act of 1982.

EFFECTIVE DATE: October 1, 1982.

FOR FURTHER INFORMATION CONTACT: John E. Bokel, Federal Emergency Management Agency, Washington, D.C., 20472, (202) 287-3843.

SUPPLEMENTARY INFORMATION: On March 16, 1982, FEMA published for comment in the **Federal Register** (Vol. 47, No. 51 pages 11297-8) a proposed rule on Section 207, an amendment to the Federal Civil Defense Act of 1950, as amended. That Section clarified the "dual-use" policy regarding the use of resources funded under the Federal Civil Defense Act for preparedness to cope with natural disasters. The amendment makes explicit authority for States and their political subdivisions to use funds and resources in preparation for and response to both attack-related and natural disaster-related events. However, use of attack-related preparedness resources for natural disaster response purposes is allowed only if such use is consistent with, contributes to, and does not detract from attack-related preparedness. The Act directed the issuance of regulations to implement this policy.

As Federal funding to which these regulations will be applicable is less that $100,000,000 annually, the regulation is not considered to be a major regulation requiring a regulatory analysis under Executive Order 12291. The regulation also is applicable to States to whom the funding is made available, and thus is not subject to the requirements of the Regulatory Flexibility Act which is concerned with small entities. No regulatory flexibility analysis will be prepared.

The amendment and these regulations reflect the interchangeable nature of many aspects of emergency management. Personnel, materials, and facilities designated for one purpose are able to be used with equal effectiveness in other situations. The regulation allows for the fact that there is a primary and secondary use of certain resources provided under the Act and that they may be so used with the important proviso of the statute. Such usage also contributes to the mission of FEMA by encouraging the development of comprehensive emergency management, by assisting in achieving greater coordination of disaster preparation and response programs, and by providing technical assistance for organizing and preparing to meet the effects of disasters.

The regulation provides for a mechanism and process through which the dual-use policy can be managed. The Director, FEMA, will provide information on Agency mission, goals and program emphasis, and political subdivisions. Financial contributions to States and their political subdivisions will be made based on approval by the Regional Director, FEMA, of specific activities described in their individual applications. Activities and projects in preparation for and response to attack-related disasters must be identified, and progress must be shown and reported.

Comments were received from 27 individuals or organizations, primarily State emergency offices. A few supported the rule without any further comment. Several commenters suggested changes to the Definitions Section (§ 312.2). Suggestions included adding terms such as mitigation, terrorism and subversion, hazardous substance, and radiological; others suggested a modification of the definition of natural disaster. At least one comment suggested that there would be some confusion caused by the redefinition of civil defense as inclusive of both attack-related and natural disaster-related events. The confusion results from the normal connotation of civil defense as being limited to attack-related activities, a meaning that will linger in usage despite the redefinition of the Act and that will require much clarification in both oral and written communication. The commenter suggested that the term "emergency management" is the broadest and most useful definition, with attack-related and natural disaster-related activities, among others, retaining their separate and traditional meanings. In all cases, and because the rule uses the language of the statute itself, no changes were in order.

One comment raised the question of prior approval for the usage or commitment of resources for natural disaster-related activities in light of the provision that such usage be consistent with, contribute to, and not detract from attack-related civil defense preparedness. Section 312.4 sets out the basic process through which approval is given. That is, States and their political subdivisions apply for financial assistance and describe their programs and activities which are reviewed and approved on their compatability with FEMA's Annual Program Emphasis and guidance. The most significant criterion in the approval is the inclusion of substantive activities and projects in preparation for and response to attack-related disasters. The process allows for a general permission prior to making contributions to States and their political subdivisions, and does not require permission in individual usage instances.

Another comment, citing § 312.4, stated concern that FEMA may levy requirements that might be difficult to meet, particularly for small political subdivisions of States. The comment addressed certain program areas in attack-related civil defense which can be primarily regarded as national priorities, such as the Nuclear Civil Protection program, which in the judgment of the commenter requires full support from the Federal Government. The statement of Agency mission and goals is not designed to preclude even the smallest political subdivision from participating in FEMA's emergency management programing, though there are practical limits to the resources at hand. The purpose of mission and goals statements is to identify and describe the key elements of FEMA's responsibility. The application of the mission and goals to States and their political subdivisions is largely determined by their respective needs and resources. The approval and monitoring process set out in 312.4 envisions program design and development originating at the State and local level based on FEMA guidance, and the needs of each political subdivision.

One comment suggested amending § 312.4(c) to allow for the occurrence of unavoidable circumstances and the good faith effort of the applicant. That change has been incorporated.

Another comment suggested that the term response operations in § 312.5(c) was too broad, and that the term emergency should be added. That change has been incorporated.

The majority of the respondents with comments addressed subsection § 312.5(c). The comments noted such things as the following: the overall restrictiveness of this subsection; the entire matter of prior authorization of the Regional Director, and that none be required at least for the first time span; the length of time of the first time span and that it be increased; the maximum overall amount of time of an emergency assignment, and that this should be left to the discretion of the respective State officials. The comments indicated strong disagreement with the proposed approach in that it limited the flexibility needed for the management of resources in emergencies and for the achievement of other emergency management goals in a State. Several comments offered specific amendments to the proposed language and they have been incorporated in the final version of § 312.5.

Another comment suggested adding a subsection to § 312.6 specifying other equipment loaned to States. That suggestion has been incorporated as § 312.6(e).

FEMA has determined that an environmental impact statement is not needed for this final rule. A copy of the finding of no significant impact is available for inspection at the above address.

List of Subjects in 44 CFR Part 312

Civil defense, Grant program, National defense.

Accordingly, Title 44, the Code of Federal Regulations, is amended by adding a new Part 312 to Subchapter E, Chapter 1, as follows:

PART 312—USE OF CIVIL DEFENSE PERSONNEL, MATERIALS, AND FACILITIES FOR NATURAL DISASTER PURPOSES

Sec.

312.1 Purpose.
312.2 Definitions.
312.3 Policy.
312.4 General.
312.5 Personnel.
312.6 Materials and Facilities.

Authority.—Sec. 803(a)(3) Pub. L. 97–86; Sec. 401, Federal Civil Defense Act of 1950, as amended, 50 U.S.C. App. 2253; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp. p. 329; and Executive Order 12148 of July 20, 1979, 44 FR 43239.

§ 312.1 Purpose.

The purpose of the regulations in this part is to prescribe the terms and conditions under which civil defense personnel, materials, and facilities, supported in whole or in part through contributions under the Federal Civil Defense Act of 1950, as amended, 50 U.S.C. App. 2251, *et seq.*, hereinafter referred to as "the Act", may be used for natural disasters, to the extent that such usage is consistent with, contributes to, and does not detract from attack-related civil defense preparedness.

§ 312.2 Definitions.

Except as otherwise stated, when used in the regulations in this part, the meaning of the listed terms are as follows:

(a) The term "attack" means any attack or series of attacks by an enemy of the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner by sabotage or by use of bombs, shellfire, or atomic-radiological, chemical, bacteriological, or biological means or other weapons or processes;

(b) The term "natural disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, or other catastrophe in any part of the United States which causes, or which may cause, substantial damage or injury to civilian property or persons and, for the purposes of the Act, any explosion, civil disturbance, or any other manmade catastrophe shall be deemed to be a natural disaster;

(c) The term "civil defense" means all those activities and measures designed or undertaken (1) to minimize the effects upon the civilian population caused, or which would be caused, by an attack upon the United States, or by natural disaster, (2) to deal with the immediate emergency conditions which would be created by any such attack, or natural disaster, and (3) to effectuate emergency repairs to, or the emergency restoration of vital utilities and facilities destroyed or damaged by any such attack or natural disaster. Such term shall include, but shall not be limited to, (i) measures to be taken in preparation for anticipated attack or natural disaster (including the establishment of appropriate organizations, operational plans, and supporting agreements; the recruitment and training of personnel; the conduct of research; the procurement and stockpiling of necessary materials and supplies; the provision of suitable warning systems; the construction or preparation of shelter areas, and control centers; and, when appropriate, the non-military evacuation of civil population); (ii) measures to be taken during attack or natural disaster (including the enforcement of passive defense regulations prescribed by duly

established military or civil authorities; the evacuation of personnel to shelter areas; the control of traffic and panic; and the control and use of lighting and civil communications); and (iii) measures to be taken following attack or natural disaster (including activities for firefighting; rescue, emergency medical, health and sanitation services; monitoring for specific hazards of special weapons; unexploded bomb reconnaissance; essential debris clearance; emergency welfare measures; and immediately essential emergency repair or restoration of damaged vital facilities);

(d) The word "materials" shall include raw materials, supplies, medicines, equipment, component parts and technical information and processes necessary for civil defense;

(e) The word "facilities", except as otherwise provided herein, shall include buildings, shelters, utilities, and land;

(f) The term "United States" or "States" shall include the several States, the District of Columbia, the Territories, and the possessions of the United States;

(g) The term "political subdivisions" shall include local governments, including but not limited to cities, towns, incorporated communities, counties, parishes, and townships; and

(h) The term "CPG 1–3" refers to FEMA's "Federal Assistance Handbook" promulgated as Civil Preparedness Guide (CPG) 1–3, as amended, by numbered changes thereto and by Civil Preparedness Circulars (CPC) as provided in 44 CFR 310.20. CPG 1–3 sets forth detailed guidance on procedures which a State and, where applicable, its political subdivisions must follow in order to request financial assistance from FEMA. It also sets forth detailed requirements, terms, and conditions upon which financial assistance is granted.

§ 312.3 Policy.

(a) It is the policy of FEMA to provide a means of assistance to States and their political subdivisions in their carrying out responsibilities to alleviate the suffering and damage from attack-related or natural disasters by:

(1) Providing contributions for personnel, equipment, materials and facilities that may be used in preparing for or responding to disasters, provided that the use of such funds for natural disasters is consistent with, contributes to, and does not detract from attack-related civil defense preparedness.

(2) Encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the State and its political subdivisions.

(3) Assisting in achieving greater coordination of disaster preparation and response programs.

(4) Providing technical advice and guidance to States and their political subdivisions for organizing and preparing to meet the effects of disasters.

(b) These regulations are not to be interpreted as authorizing States and their political subdivisions to request or receive additional assistance relating to particular disaster incidents.

§ 312.4 General.

(a) The Director, FEMA, will provide statements to States and their political subdivisions concerning Agency mission and goals, Annual Program Emphasis, and other directions, instructions, and technical guidance which together specify preparedness and response activities for both attack-related and natural disasters.

(b) States and their political subdivisions may apply to FEMA for financial assistance under the Act in a manner prescribed by Federal Regulations governing grants and cooperative agreements. Such applications must be compatible with FEMA's goals and requirements described in paragraph (a) of this section.

(c) Financial contributions to States and their political subdivisions are made by FEMA based on approval of the activities and projects described in the Annual Program Paper, and/or Comprehensive Cooperative Agreement, and which are in conformance with provisions of CPG 1–3, and applicable FEMA regulations set forth in Chapter 1 of this Title 44, Chapter 1, Subchapter E, of the Code of Federal Regulations. Financial contributions will not be made unless substantive activities and projects in preparation for and response to attack-related disasters are identified, and progress is indicated in the submissions, and recorded in program reporting systems. The presence of unavoidable circumstances, and the good faith effort of the applicant, will be considered if certain objectives are not met.

(d) State and local officials may use personnel, equipment, and facilities for natural disasters outside the physical boundaries of the jurisdiction and under the conditions stated within this regulation.

(e) Specific criteria relating to the preparedness and response activities are given in Sections 5 and 6 of this part.

§ 312.5 Personnel.

FEMA contributes to the development and support of emergency management organizations in the States and their political subdivisions, and to the development, operation, and maintenance of specific programs, through payment of salaries and benefits of State and local civil defense staff, and the payment of administrative expenses and travel, not to exceed 50 percent. FEMA also provides contributions for training and education expenses. The following use of such personnel for natural disaster purposes is allowable provided that such usage is consistent with, contributes to, and does not detract from attack-related civil defense preparedness:

(a) In developing, maintaining, testing and exercising plans, systems, and procedures for the protection of people and property from the effects of attack-related disasters, States and their political subdivisions may include and provide for natural disasters.

(b) Personnel supported in part through contributions under the Act may be assigned responsibilities for preparation for and response to natural disasters in any specific emergency occurring in a State or its political subdivisions as determined by the responsible State or local officials, respectively.

(c) Personnel supported in whole under the Act, may be assigned to emergency response operations for 15 days at the discretion of State officials; approval of the FEMA Regional Director is required for the use of these personnel in excess of 15 days. An assignment to emergency response operations does not preclude the accomplishment of program work and objectives. Failure to accomplish such work may subject the State to the withholding of funds contributed under the Act, or to collection of funds already obligated, not to exceed the estimated cost of the work not performed, as determined by the Regional Director.

(d) In the event of an emergency or major disaster declared under the Disaster Relief Act of 1974, as amended, personnel will not be provided overtime compensation and expenses under the Act.

§ 312.6 Materials and facilities.

FEMA also contributes to the development and support of emergency management in the States and their political subdivisions, and to the development, operation, and maintenance of specific programs, through providing certain materials and facilities. The following may be used for

natural disaster purposes provided that such usage is consistent with, contributes to, and does not detract from attack-related civil defense preparedness:

(a) Materials provided and maintained through contributions under the Act.

(b) Technical information, guidance through which technical assistance is provided, and training courses, may contain examples, illustrations, discussion, suggested applications and uses of material.

(c) Equipment loaned under provisions of the Contributions Project Loan Program.

(d) Facilities, such as Emergency Operating Centers, provided and maintained through contributions under the Act.

(e) Equipment loaned or granted to the States for civil defense purposes (e.g., radiological instruments, shelter supplies).

Dated: September 23, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-27103 Filed 9-30-82; 8:45 am]

BILLING CODE 6718-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Parts 205, 206, 232, 233, 234, 235, 238, and 239

Aid to Families With Dependent Children

Correction

In FR Doc. 82-3018 appearing on page 5648 in the issue of Friday, February 5, 1982, make the following changes:

1. On page 5658, first column, last line, "§ 233.30 (a)(3)(ii)(E)" should read "§ 233.20 (a)(3)(ii)(E)".

2. On page 5661, first column, fifth line from the top, "possibile" should read"possible"; second column, seventh line from the bottom, "detrermination" should read "determination"; and in the sixth line from the bottom,"exceptation" should read "exception".

3. On page 5663, second column, third full paragraph, last line, "§ 233.20 (a)(6)(v)(B)" should read "§ 233.20 (a)(6)(v)(*b*)".

4. On page 5664, first column, twelfth line from the bottom, insert "FR" after "44"; second column, second full paragraph, sixth line, "imcome" should read "income"; third column, seventeenth line from the top, "propspective" should read "prospective".

5. On page 5665, third column, first full paragraph, second line, insert "*not*" after "*is*".

6. On page 5673, third column, the amendatory language for § 205.80 should read as follows: "2. A new § 205.80 is added to read as follows:".

7. On page 5674, first column, § 206.10, insert "* * * * *" above subparagraph (4); third column, amendment numbered 8, ninth line, "paragraph" should read "paragraphs".

8. On page 5675, first column, § 233.20 (a)(3)(ii)(D), second line, "(a)(3)(xii)" should read "(a)(3)(xiii)", second column, § 233.20 (a)(3)(ii)(E), sixth line from the top, insert a period after "goods".

9. On page 5677, third column, § 233.20(a)(13)(i), fourth line from the bottom, remove the comma after "income" and in the last line, insert ")" after "month.".

10. On page 5680, first column, § 233.50(b)(2), second line, "Aporil" should read "April"; in § 233.51(a), eighth line, "application" should read "applicable".

11. On page 5682, second column, § 233.100(c)(1)(iv)(*a*), fourth line, insert ")" after "section".

12. On page 5686, second column, § 239.80, fifth line, insert a comma after "children".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 82-312]

Commission Organization; Amendment of the Commission's Rules To Reflect a Reorganization of the Common Carrier Bureau

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This amendment changes the Commission's Rules to incorporate the reorganization of the Common Carrier Bureau. The reorganization was necessary to: (1) Abolish the Consumer Affairs Division and the Pole Attachments Branch; (2) consolidate all complaints functions within the Enforcement Division; and (3) designate a substructure within the Enforcement Division.

EFFECTIVE DATE: October 6, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: A. O'Donoghue, Office of Managing Director, (202) 632-7513.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies).

Order

In the matter of Amendment of Part 0 of the Commission's Rules to reflect a reorganization of the Common Carrier Bureau.

Adopted: July 9, 1982.

Released: September 22, 1982.

1. The Commission has before it for consideration proposed changes in the organization of the Common Carrier Bureau. Implementation of the proposed changes would require amendments to § 0.92 of the Commission's Rules and Regulations.

2. To promote operating efficiency, the Commission is hereby approving the consolidation of the Consumer Affairs Division and the Pole Attachments Branch, Tariff Division into the Enforcement Division, plus the establishment of a Computer II Staff within the Enforcement Division. All other Common Carrier Bureau divisions will remain the same. The reorganization will consolidate all complaints functions, formal and informal, within the Enforcement Division. The consolidation of the Consumer Affairs Division into the Enforcement Division will centralize the complaints function within the Bureau, enhancing coordination and speed of service. The pole attachments program, while still legislatively mandated, has not evolved into as large a program as originally envisioned. The reduced functions will be transferred to the Enforcement Division. The Enforcement Division is also responsible for implementation of Computer II, which is one of the Bureau's highest priority projects. Since the Computer II project is unique and requires a full time effort, a Computer II Staff is established within the Enforcement Division, Part 0 of the Rules and Regulations is being amended to reflect these changes.

3. The amendments adopted herein pertain to agency organization. The prior notice procedure and effective date provisions of Section 4 of the Administrative Procedure Act are, therefore, inapplicable. Authority for the amendments adopted herein is contained in Sections 4(i) and 5(b) of the Communications Act of 1934, as amended.

4. In view of the foregoing, it is ordered, effective October 6, 1982 that Part O of the Rules and Regulations is amended as set forth in the Appendix hereto.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 0—COMMISSION ORGANIZATION

Part O of Chapter 1 of Title 47 of the Code of Federal Regulations is hereby amended as indicated below.

1. Section 0.92 is revised in its entirety to read:

§ 0.92 Units of the bureau.

(a) Office of the Bureau Chief.
(b) Deputy Bureau Chief for Operations.
(c) Deputy Bureau Chief for Policy.
(d) Assistant Bureau Chief/ Management.
(e) Assistant Bureau Chief/ International.
(f) International Facilities Planning Division.
(g) International Facilities Authorization and Licensing Division.
(h) Enforcement Division.
(i) Domestic Facilities Division.
(j) Hearing Division.
(k) Mobile Services Division.
(l) Tariff Division.
(m) Accounting and Audits Division.
(n) Economics Division.
(o) Policy and Program Planning Division.

[FR Doc. 82-27072 Filed 9-30-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 81-725; RM-3862]

Radio Broadcast Services; FM Broadcast Station in Atlantic City, New Jersey Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns FM Channel 240A to Atlantic City, New Jersey, as requested by Doctor A. Crants, Jr. The assignment could provide a fourth local FM service.

DATE: Effective November 16, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Philip S. Cross, Broadcast Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcast.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Atlantic City, New Jersey); BC Docket No. 81-725, RM-3862; Report and order (Proceeding Terminated).

Adopted: September 7, 1982.

Released: September 17, 1982.

1. The Commission has before it the *Notice of Proposed Rule Making* published in the **Federal Register** on October 26, 1981 (46 FR 52151).

2. The Notice proposed assigning FM Channel 240A to Atlantic City, New Jersey, in response to a petition filed by Doctor R. Crants, Jr. ("petitioner").

3. Atlantic City is located on the New Jersey shore, approximately 85 kilometers (52 miles) southeast of Philadelphia. The community presently receives local service from FM Stations WAYV (Channel 236), WFPG (Channel 245), and WMGM (Channel 279), and from AM Stations WIIN (1450 kHz), WMID (1340 kHz), and WUSS (1490 kHz).

4. Comments in support were filed by petitioner. Pleasant Broadcasters ("WADB"), licensee of Station WADB-FM, Channel 240A, Point Pleasant, New Jersey, filed a late opposition to the proposal. Reply comments were filed by Franklin Broadcasting Company ("WFLN"), licensee of Station WFLN-FM, Channel 239, Philadelphia, Pennsylvania, in opposition to the proposal.

5. In the *Notice*, we denied petitioner's request for a waiver of the short-spacing requirements in favor of the alternative site restricted assignment.[1] Petitioner had proposed a tower site approximately one mile offshore. We found no fault with the idea of an offshore site. We stated, though, that receipt of the requisite clearances from such Federal agencies as the Federal Aviation Administration, Coast Guard, and Army Corps of Engineers and from any relevant state agencies are matters more appropriately considered at the application stage. However, in order to assure ourselves that a transmitter site would be "available" if an assignment were made we requested that petitioner generally indicate in his comments the extent to which he has investigated Federal, State and local requirements, if any, which must be complied with in order to obtain approval for use of such a site, and the factual basis for his belief that his proposed use of the site would fulfill such requirements. Additionally, we stated that a significant question had been raised as to whether the requisite city-grade signal could be placed over all of Atlantic City from the offshore site. We requested that the petitioner submit a technical exhibit responding to this issue.

6. In comments, petitioner submitted a showing that based on its preliminary investigation there is a reasonable expectation of obtaining the offshore site. Petitioner states that three government agencies will be involved in jurisdiction of any proposed offshore antenna structure, the State of New Jersey, the U.S. Army Corps of Engineers and the U.S. Coast Guard.

7. We are told by petitioner that the State of New Jersey will require a Waterfront Development permit prior to construction and an application for Grant in Conveyance to occupy the site. Petitioner states that consultations with the State of New Jersey agencies indicate that no unusual problems will be involved.

8. Petitioner reports that the U.S. Army Corps of Engineers, whose primary concern is with navigational issues, will require a formal application for a construction permit. From his review of the application form, petitioner anticipates no difficulty in meeting the Corps' requirements.

9. Petitioner states that the U.S. Coast Guard, through its Aids to Navigation offices, has jurisdiction over the marking and lighting of the proposed antenna structure for the safety of marine navigation. From its review of the applicable Coast Guard regulations, petitioner concludes that he can satisfy the marking and lighting requirements.

10. Petitioner added that he is aware of the additional requirements of the Federal Aviation Administration for marking and lighting the structure. Petitioner assures that he would apply for, and await, an FAA No Hazard determination before construction.

11. Petitioner adds that no unusual physical difficulties are anticipated in construction of the offshore facility.

12. With respect to the question of whether the requisite city-grade signal could be placed over all of Atlantic City from the offshore site, petitioner submitted an engineering affidavit showing that the required 3.16 mV/m contour would cover the entire developed and inhabited portion of the

[1] The site would be restricted to a location approximately 4.2 miles southwest of Atlantic City.

city and fail only by "a few tenths of a mile" to include the southernmost tip of the area (uninhabited) within the city limits.

13. WFLN filed no comments in this proceeding but filed reply comments. WFLN contends that citizen groups may oppose and use the multiplicity of permit requirements to delay substantially, if not prevent, construction of the offshore tower. WFLN also contends that petitioner has not made the requisite showing of placing a city grade signal over all of Atlantic City.

14. WABD filed a motion to accept its late-filed comments opposing the proposal. Illness of WABD's president and delay in obtaining copies of the *Notice* herein are reasons given in support of the motion. We find that good cause has been shown in support of the motion, and the comments are being considered.

15. WABD states that it has been appointed by the State of New Jersey as the primary alerting station for the Oyster Creek Nuclear Generating Plant. WABD contends that "an essentially over water path to the WABD service area by another station on the same frequency would prevent reliable reception of WABD's signal by the nuclear warning network as well as to a large population in the central and southern part of Ocean County." WABD claims that the FCC rules on spacing are based on signal propagation characteristics over land and do not include characteristics over purely water path, as between the offshore site and the service area of WABD. Thus the Commission should not base interference considerations on its mileage separation standards.

16. As for the practicability of the proposal, WABD further contends that an offshore site would require maintenance and create personnel problems from wet air, power supply, wind, storms and hurricanes. WADB alleges that these obstacles would make the proposal impractical.

17. We conclude from the showing made by petitioner that an offshore tower site is feasible and we are willing to allow petitioner or any other applicant the opportunity to provide another Atlantic City station. There is nothing in the record to establish that petitioner cannot obtain the requisite authorization from those agencies with jurisdiction over the offshore site matter.

18. From the showing made by petitioner and our staff study, we conclude that petitioner could provide the requisite city-grade signal to all of the inhabited part of Atlantic City. The area in which the station cannot be predicted to cover appears to include uninhabited marshlands within the boundaries of Atlantic City. On that basis we believe it is appropriate to waive the city grade signal requirement (Section 73.315(a) of the Commission's Rules) for purposes of the channel assignment.

19. As for WADB's objections about expected interference to its signal in the Oyster Creek area, we find no basis for protecting that station beyond the normal criteria defined by the mileage separation rules. These rules were devised to permit the operation of the greatest number of stations in an area with some acceptable degree of interference between stations. The rules require that Class A stations on the same channel be at least 65 miles apart. The proposed station meets that spacing. Class A Station WADB, located north of Point Pleasant, with 3 kW radiated power and with an antenna elevated only 155 feet above average terrain provides a city grade signal of 3.16 mV/m that just encompasses the southern edge of the city of Point Pleasant. It's 1 mV/m signal would be expected to extend some 4 or 5 miles further south of the city limits. The Oyster Creek area is some 30 or more miles further away. We acknowledge that prior to commencement of operation of the proposed new station in Atlantic City, WADB may provide a marginal but needed emergency warning signal to the Oyster Creek area. Our calculations indicate that even allowing for the unusual (largely water) path from WADB to the area in question, WADB's signal would be expected to be less than 50 μV/m (the far-fringe level) in the Oyster Creek area. Reception of signals this marginal usually require the use of elaborate receiving installations (large antenna or relatively tall poles or masts). The proposed new station in Atlantic City should provide a much better signal to this area and thus more reliable reception than WADB's signal.

20. We believe that the public interest would be served by the assignment of Channel 240A to Atlantic City. An interest has been shown for its use, and such an assignment would provide the community with its fourth FM station.

21. Authority for the adoption of the amendment herein is contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's Rules.

22. Accordingly it is ordered, That effective November 16, 1982, § 73.202(b) of the Commission's Rules, the FM Table of Assignments, is amended with regard to the following community:

City	Channel No.
Atlantic City, New Jersey	236, 240A, 245, 279

23. It is further ordered, That this proceeding is terminated.

24. For further information concerning the above, contact Philip S. Cross, Broadcast Bureau, (202) 632–5414.

Federal Communications Commission.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Roderick K. Porter,

Chief, Policy and Rules Division.

[FR Doc. 82–27071 Filed 9–30–82; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[BC Docket No. 82–193; RM–4043]

Radio Broadcast Services; FM Broadcast Station in Hope, Arkansas; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns a second FM channel to Hope, Arkansas, in response to a petition filed by Freddie Riley.

DATE: Effective November 16, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Hope, Arkansas), BC Docket No. 82–193, RM–4043; Report and Order (Proceeding Terminated).

Adopted: September 9, 1982.

Released: September 17, 1982.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 47 FR 16807, published April 20, 1982, which seeks the assignment of Channel 269A to Hope, Arkansas. The *Notice* was issued in response to a petition filed by Freddie Riley ("petitioner"). Supporting comments were submitted by the petitioner and by James Mason,[1]

[1] James Mason's petition requesting the assignment of Channel 269A to Hope, Arkansas, is being treated as comments in the proceeding.

both stating their intent to apply for the channel, if assigned. Comments in opposition to the proposal were submitted by Newport Broadcasting Company ("Newport") to which petitioner responded. Newport also submitted reply comments.[2]

2. Petitioner incorporated by reference the information in the *Notice* which demonstrated a need for the requested assignment. In response to the *Notice* petitioner states that no community with a population greater than 1,000 will be precluded by the proposed assignment. However, pursuant to the action taken in BC Docket No. 80–130, *Revision of FM Policies and Procedures*, 90 F.C.C. 2d 88 (1982), this information is no longer required to justify an assignment.

3. Newport opposes the assignment as being contrary to the original plan governing FM channel allocations, *Revision of FM Broadcast Rules, First Report and Order* 33 F.C.C. 309 (1962). Newport points out that the petitioner failed to provide preclusion information or make an adequate showing of convincing need for an additional assignment to Hope, Arkansas. Based on these issues, Newport urges the Commission to deny the requested assignment. In response, petitioner states that the policy and procedures referred to by the opposition are no longer applicable (pursuant to *Docket 80–130, supra*). Riley reasserts the need for the proposed assignment as indicated in his comments and in those submitted by James Mason.

4. After considering the proposal and comments, the Commission is persuaded that the public interest would be served by granting the requested assignment. Although the *Notice* requested additional information to justify a second assignment to Hope, Arkansas, the action taken in the *Revision of FM Policies and Procedures, supra* (Docket 80–130) eliminates the need to provide the additional material to justify a second channel allocation. Thus, the issues discussed by Newport Broadcasting are no longer a consideration in this type of case.

5. In view of the foregoing and pursuant to the authority contained in sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's rules, it is ordered, That effective November 16, 1982, the FM Table of Assignments (§ 73.202(b) of the Rules) is amended with respect to the following community:

City	Channel No.
Hope, Arkansas	269A, 285A

6. It is further ordered, That this proceeding is terminated.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau (202) 632–7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-27073 Filed 9-30-82; 8:45 am]

BILLING CODE 6712-01-M

[2] The Reply Comments submitted by Newport merely point out that the requested assignment would result in a third aural service to Hope, Arkansas, and repeats their request for dismissal of the petition.

47 CFR Part 73

[BC Docket No. 82-234; RM-4046, RM-4139]

Radio Broadcast Services; FM Broadcast Station in Lahaina, Hawaii; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Class C FM Channels 260 and 266 to Lahaina, Hawaii, in response to requests from Maui Broadcasting Company and from Shoblam Broadcasting, Inc. The assignments could provide Lahaina with the opportunity for a second and third commercial FM station.

DATE: Effective November 19, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Lahaina, Hawaii); BC Docket No. 82–234, RM–4046, RM–4139; Report and Order (Proceeding Terminated).

Adopted: September 9, 1982.

Released: September 20, 1982.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 47 FR 20157, published May 11, 1982, issued in response to a petition filed by Maui Broadcast Company ("petitioner"), seeking the assignment of Class C FM Channel 266 [1] to Lahaina, Hawaii. In response to the *Notice*, comments and a counterproposal [2] were filed by Shoblom Broadcasting, Inc. (Shoblom"), to which the petitioner responded.

2. In its comments and counterproposal, Shoblom, one of two applicants [3] for Channel 228A [4] in Lahaina, Hawaii, requests the assignment of a second Class C channel to Lahaina. Shoblom wishes to be able to amend its application to specify the new Class C channel without losing the cutoff status it now has for Channel 228A. [5]

3. In its comments, Shoblom states the reason it wishes a second Class C channel is to eliminate intermixture at Lahaina. However, it recognizes that the Commission recently removed this policy as an obstacle to new assignments. See, *Second Report and Order* in BC Docket No. 80–130, *Revisions of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982).

4. With respect to its application for Channel 228A, Shoblom advises that although the cutoff date had not arrived, those applicants who timely filed for Channel 228A should be able to amend their application to specify the Class C channel without losing their cutoff protection. Citing *Carnelian Bay and South Lake Tahoe, California, et al.*, 50 R.R.2d 1179 (1982); *Lake Havasu City, Arizona*, 46 FR 37898, published July 23, 1981; and *Petoskey, Michigan* (BC Docket No. 81–504, released June 10, 1982).

5. As an alternative, Shoblom requests that a second Class A channel be assigned in lieu of Class C Channel 266.[6] If a second Class A channel is assigned, Shoblom indicates its willingness to retain its application for Channel 228A. However, if a second Class C channel is assigned to Lahaina, it indicates that it will amend its application.

[1] Although petitioner originally requested the assignment of Channel 258 to Lahaina, it subsequently amended its request to specify Channel 266 since its initial proposal conflicted with a channel proposed for Honolulu, Hawaii (BC Docket No. 82–124; RM–3782).

[2] *Public Notice* of the counterproposal was given June 21, 1982, Report No. 1359.

[3] The other applicant is Gardiner Broadcasting Company.

[4] Shoblom advises that the *Notice* in this proceeding did not indicate that Channel 228A had been assigned to Lahaina by *Report and Order*, 46 FR 43172, effective October 20, 1981. We have corrected that oversight herein.

[5] The cutoff date for channel 228A was August 25, 1982.

[6] Throughout its comments, Shoblom refers to the possibility of assigning Class C Channel 256 and 260 to Lahaina. We assume the former channel should be 266.

6. In response, petitioner asserts that the Commission can separately treat Shoblom's cutoff rights after the channel assignment decision is made. While it has no objection to any action which the Commission may take in response to Shoblom's request to add a second Class C channel to Lahaina, it does object to the alternative suggestion to assign a second Class A channel in lieu of any Class C channel. This according to petitioner, would contravene the public interest in view of the numerous Class C channels which are available to Lahaina.

7. In view of the interests of Shoblom and petitioner in Class C channels, we believe that the public interest would be served by assigning Channels 260 and 266 to Lahaina. The channels can be assigned in accordance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

8. Shoblom's alternate proposal to assign a second Class A channel in lieu of any Class C channel would be inconsistent with the Commission's general policy of assigning channels based on the expression of an interest. See, *Mountain Home and Marshall, Arkansas,* adopted July 20, 1981, 46 Fed. Reg. 39142. Here we have no interest in a second Class A channel. As for Channel 228A, we believe that the channel should be retained for use by the other existing applicant.

9. Pursuant to the *Ashbacker* doctrine,[7] the addition of a new Class C channel at Lahaina requires that the assignment be made available for competing applications. See, *Cheyenne, Wyoming,* 62 F.C.C. 2d 63, 38 R.R. 2d 1665 (1976). The cases cited by Shoblom are inapposite to its position. In *Lake Havasu City, Arizona, Carnelian Bay* and *South Lake Tahoe, California,* and *Petosky, Michigan, supra,* the prevalent theme involved the modification of existing station licenses from Class A to Class C channels, in the absence of other expressions of interest, to avoid intermixture. In addition, in *Carnelian Bay,* two applicants for a Class A channel at Incline Village, Nevada, retained their "cutoff" status to permit an amendment of their applications to specify another Class A channel. Here we have an applicant, not a licensee, seeking to obtain cutoff rights to an entirely different class of channel which has not previously been available for application at Lahaina. Thus, we find no precedent for Shoblom's position.

10. As to whether an exception to the policy of opening up new assignments for application should be made here, we find no factual basis for treating Shoblom differently. As in other situations, the fact that an interested person did not apply for a Class A channel does not permit us to assume that it would not be interested in applying to operate a Class C station. We have retained Channel 228A for use at Lahaina because we have no indication that Gardiner, the other applicant, desires a Class C station.

11. In view of the foregoing, and pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's Rules, IT IS ORDERED, That effective November 19, 1982, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended with respect to Lahaina, Hawaii, as follows:

City	Channel No.
Lahaina, Hawaii	228A, 260, 266

12. It is further ORDERED, That this proceeding is terminated.

13. For further information concerning the above, contact Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-27076 Filed 9-30-82; 8:45 am]

BILLING CODE 6712-01-M

[7] *Ashbacker Radio Corp. v. F.C.C.,* 326 U.S. 327 (1945).

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47 CFR Part 73

[BC Docket No. 82-210; RM-4065]

Radio Broadcast Services; FM Broadcast Station in Gibson City, Illinois; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns a first FM channel (292A) to Gibson City, Illinois, as requested by John R. Noble.

DATE: Effective November 16, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Philip S. Cross, Broadcast Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Gibson City, Illinois) BC Docket No. 82-210, RM-4065; Report and Order (Proceeding Terminated).

Adopted: September 9, 1982.

Released: November 17, 1982.

By the Chief, Policy and Rules Division:

1. The Commission has before it for consideration a notice of proposed rule making, (47 FR 1731), published April 22, 1982, in response to a petition filed by John R. Noble ("petitioner"), proposing the assignment of FM Channel 292A to Gibson City, Illinois, as the community's first FM assignment. Supporting comments were filed by petitioner in which it reaffirmed its intent to file for the channel, if assigned. No oppositions to the proposal were received.

2. In the notice, we stated that a site restriction of 7 miles north of Gibson City would be required in order to maintain a 65 mile separation to Station WSAK (Channel 292A), Sullivan, Illinois, and requested that petitioner furnish the Commission with a technical study demonstrating that a 70 dBu signal could be provided throughout Gibson City from such a distance.

3. Petitioner submitted a technical study showing that from its proposed transmitter site, which meets the site restriction, the 70 dBu signal contour would extend 8.24 miles and cover all of Gibson City.

4. On the basis of the technical showing, we believe that the public interest would be served by the assignment of Channel 292A to Gibson City, Illinois. An interest has been shown for its use, and such an assignment could provide the community with an FM station which could render a first local FM broadcast service.

5. Authority for the adoption of the amendment herein is contained in sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's rules.

6. Accordingly, it is ordered, That effective November 16, 1982, § 73.202(b) of the Commission's Rules, the FM Table of Assignments, is amended with regard to the following community:

City	Channel No.
Gibson City, Ill.	292A

7. It is further ordered, That this proceeding is terminated.

8. For further information concerning the above, contact Phil Cross, Broadcast Bureau, (202) 632–5414.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82–27075 Filed 9–30–82; 8:45 am]

BILLING CODE 6712–01–M

[BC Docket No. 81–781; 3869]

47 CFR Part 73

Radio Broadcast Services; TV Broadcast Station in Las Vegas, Nevada, Changes Made in Table Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns UHF Television Channel 15 to Las Vegas, Nevada, as its fifth commercial TV channel in response to a request from Doctor R. Crants, Jr.

DATE: Effective November 19, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Phil Cross, Broadcast Bureau (202) 632–5414.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations, (Las Vegas, Nevada); BC Docket No. 81–781, RM–3869; Report and Order (Proceeding Terminated).

Adopted: September 9, 1982.

Released: September 20, 1982.

1. A notice of proposed rule making in this proceeding was published in the **Federal Register** on December 3, 1981, 46 FR 58721.

2. The proceeding was initiated in response to a petition by Doctor R. Crants, Jr. ("petitioner"), requesting that UHF Television Channel 15 be assigned to Las Vegas, Nevada. It would be the city's fifth commercial television assignment.

3. In response to the notice, comments were filed by petitioner, and by the National Association of Business and Educational Radio, Inc. ("NABER").[1]

4. In its comments, the petitioner supported the proposed assignment and reaffirmed its intent to apply for the channel if it is assigned.

5. NABER's comments opposed the assignment. It alleged that the assignment would result in co-channel interference to Business Radio Services in the 460 MHz band. The practical effect of the interference is said to be a desensitizing of land mobile receivers so that the range of the systems would be decreased. NABER claims that the interference would be intensified by location of petitioner's transmitter in proximity to the primary sites of existing land mobile stations. It is said that between 60 and 100 Business Radio Service licensees and over 300 system users in the Las Vegas area would be affected. NABER suggests the assignment of a channel from 31 through 67, instead of Channel 15, to negate the interference question. Although NABER acknowledged that questions of economic viability of a proposed station, and of avoiding emissions which would cause interference to other services are more appropriately considered at the application stage of the proceeding, it urges that we concern ourselves with the possibility here and assign a higher UHF TV channel instead.

6. In reply comments, petitioner states that NABER's arguments for protection of the Business Services should be rejected since the Commission's Rules do not provide for such protection and a new TV broadcast station should be accorded greater weight than protection of service to 83 businesses in the Las Vegas area.

7. Las Vegas (population 164,674),[2] in Clark County (population 471,816), is located at the southern tip of Nevada, approximately 370 kilometers (230 miles) northeast of Los Angeles, California. It is served by Television Stations KVBC (Channel 3), KLAS–TV (Channel 8), KTNV–TV (Channel 13), Channel 21 (CP issued to Dres Media, Inc.) and KLVX (noncommercial educational Channel *10).

8. Petitioner states that Las Vegas is the sixth fastest growing major city in the United States. The county's projected population for 1990 is approximately 668,800 persons, which, according to petitioner, is due primarily to tourism, new and expanding industry, and the city's attraction as a retirement coummunity and convention center. Petitioner contends that Las Vegas needs, and can readily support, an additional television station.

9. We believe that the assignment of Channel 15 to Las Vegas would serve the public interest by providing a fifth commercial TV service. As for the problem of interference to land mobile stations, Commission Rules prescribe no requirement that a Channel 15 assignment protect operations in the 460–470 MHz band. In a similar situation in *Albuquerque, New Mexico,* (RM–3396) Mimeo No. 33612, released July 16, 1980, we refused to delete Channel 14 from Albuquerque despite claims of interference to land mobile users in the adjacent frequency band (450–470 MHz). Therein we stated that we would not treat Channel 14 as a guard band between Albuquerque's land mobile and UHF stations. Rather less drastic alternatives, including vertical isolation, cross polarization and filtering could minimize interference problems. See also *San Francisco and San Mateo, California,* 68 F.C.C. 2d 860 (1978). Here, we believe that similar corrective measures are preferable to denying the assignment of Channel 15 to Las Vegas. Specific alternative measures can be more appropriately treated at the application stage.

10. As for the request of NABER that we treat the questions of economic viability at this stage, we see no reason to deviate from our policy of treating this issue at the application stage. NABER has not demonstrated how this case is different from the usual case and we believe the issue can be more effectively treated at the application stage. See, *Naples, Florida,* 49 F.C.C. 2d 1266 (1974).

11. Authority for the adoption of the amendment herein is contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281 and 0.204(b) of the Commission's Rules.

[1] Also filed was a letter signed by Bernice Hogan and Christine Staheli opposing the assignment. The letter was not accompanied by a certificate of service as required by § 1.420 (a) and (c) of the Commission's Rules. Accordingly, it was not acceptable as a comment in this proceeding. Nevertheless, as a matter of information, the pleading sets forth that they have filed a low-power TV application for Channel 15 as a noncommercial educational station. They also indicate that Bernice Hogan is a member of the black community. Finally, they assert that a low power grant would provide another local TV service to Las Vegas earlier than a full commercial assignment which would attract many applicants. We believe it is sufficient to state our general policy in this regard which is to treat low power or translator stations as a secondary use of a frequency and unprotected as against a proposed full broadcast use. See § 74. 702(b) of the Commission's Rules and *Future Role of Low Power Television Broadcasting,* 47 FR 96, published May 16, 1982.

[2] Population figures are taken from the 1980 U.S. Census, Advance Report.

12. Accordingly, it is ordered, That effective November 19, 1982, § 73.606(b) of the Commission's Rules, the TV Table of Assignments, is amended with regard to the following community:

City	Channel No.
Las Vegas, Nev	3, 8−, *10+, 13−, 15+, 21+.

13. It is further ordered, That this proceeding is terminated.

14. For further information concerning the above, contact Phil Cross, Broadcast Bureau, (202) 632–5414.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-27074 Filed 9-30-82; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 47, No. 191
Friday, October 1, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1124

Milk in the Oregon-Washington Marketing Area; Notice of Proposed Suspension of Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend certain order provisions of the Oregon-Washington Federal milk order. The provisions relate to how much milk not needed for fluid (bottling) use may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Suspension of the provisions was requested by three cooperative associations associated with the market to prevent uneconomic movements of milk. The proposed suspension would be for the period of October through December 1982.

DATE: Comments are due not later than October 8, 1982.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7183.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as a "non-major action."

It has been determined that the need for suspending certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the **Federal Register.** However, this would not permit the completion of the required suspension procedures in time to include October 1982 in the requested suspension period if this is found necessary. The initial request for the action was received on September 24, 1982.

It has also been determined that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Oregon-Washington marketing area is being considered for the months of October 1982 through December 1982:

In the third sentence of paragraph (a) and (b) of § 1124.11, the word "not."

All persons who want to comment on the proposed suspension, should send two copies of their views to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 7 days from the date of publication of this notice in the **Federal Register.** The period for filing comments is limited because a longer period would not provide the time needed to complete the required procedures and include October 1982 in the suspension period.

The comments that are sent will be made available for public inspection in the Hearing Clerk's office during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed action would remove the limit on the amount of producer milk that a cooperative association or other handlers may divert from pool plants to nonpool plants during the months of October 1982 through December 1982. The order now provides that during any month a cooperative association may divert a total quantity of producer milk not in excess of the total quantity received during the month from all member producers at pool plants. Similarly, the operator of a pool plant may divert a total quantity of producer milk not in excess of the total quantity received from producers (for which the operator of such plant is the handler during the month) at such pool plant.

The suspension was requested by three cooperative associations who represent a substantial number of producers on the market. The basis for the request is that current marketing conditions require the three associations to handle an increasing quantity of reserve milk supplies during the fall months because of increased milk production by member producers. They indicated that this situation will be aggravated by the fact that sales to one of their principal pool plant outlets will decline substantially because this plant will discontinue this fall part of its manufacturing operations. The cooperatives state that the loss of such sales will reduce the basis of their diversion allowances since the order's allowable diversions are based upon the receipts of milk at pool plants.

Consequently, the cooperatives expect their reserve milk supplies during October-December 1982 to exceed the quantity of producer milk that may be diverted to nonpool manufacturing plants under the order's present diversion limitations. In the absence of the suspension, the cooperatives believe that some of the milk of their member producers who have regularly supplied the fluid market would have to be moved, uneconomically, first to pool plants and then to nonpool manufacturing plants, in order to still maintain producer status for such milk during the months of October through December 1982.

List of Subjects in 7 CFR Part 1124

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on September 28, 1982.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 82-27137 Filed 9-30-82; 8:45 am]
BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1701

Proposed Supplement to REA Bulletins 26–1, Budgetary Control and Advance of Electric Loan Funds, and 327–1, Advance of Telephone Loan Funds

AGENCY: Rural Electrification Administration, USDA
ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend Appendix A—REA Bulletins, by issuing a "File With" to REA Bulletins 26–1, Budgetary Control and Advance of Electric Loan Funds, and 327–1, Advance of Telephone Loan Funds, to include documentation requirements when electronic funds transfers are used to disburse loan funds from the borrower's "Trustee, Special Construction Account" (Electric) and "Trustee, REA Construction Fund Account" (Telephone).

DATE: Public comments must be received by REA no later than November 30, 1982.

ADDRESS: Submit written comments to Roland S. Heard, Chief, Technical Accounting and Auditing Staff, Accounting and Auditing Division, Rural Electrification Administration, Room 4305, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Roland S. Heard, Chief, Technical Accounting and Auditing Staff, above address, telephone number (202) 382–8227. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrifiction Act, as amended (7 U.S.C. 901 et seq.), REA proposes to amend Appendix A—REA Bulletins by issuing a "File With" to REA Bulletins 26–1, Budgetary Control and Advance of Electric Loan Funds, and 327–1, Advance of Telephone Loan Funds. This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity and therefore has been determined to be "not major". This action does not fall within the scope of the Regulatory Flexibility Act and is not subject to OMB Circular A–95 review. These programs are listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees, 10.851—Rural Telephone Loans and Loan Guarantees and 10.852—Rural Telephone Bank Loans.

Copies of the draft "File With" are being sent directly to all REA electric and telephone borrowers. Copies are also available upon request from the address indicated above. All written submissions made pursuant to this action will be made available for public inspection during regular business hours at the above address.

Background

This proposed action is intended to provide guidance to REA borrowers on documentation requirements when electronic funds transfers are used to disburse funds from the borrower's "Trustee, Special Construction Account" (Electric) and "Trustee, REA Construction Fund Account" (Telephone). The revision is detailed below.

Proposed Supplement to REA Bulletins 26–1, Budgetary Control and Advance of Electric Loan Funds and 327–1, Advance of Telephone Loan Funds

Subject: Electronic Funds Transfers Documentation.
To: Borrowers with Loans from REA or RTB or Loan Guarantees from REA.

I. Purpose: The purpose of this memorandum is to outline the documentation required when electronic funds transfers are used to disburse funds from the Borrower's "Trustee, Special Construction Account" (Electric) or "Trustee, REA Construction Fund Account" (Telephone).

II. Required Documentation: The borrower's loan contract with REA and supplemental lenders provides that disbursements from the Special Construction Account/Construction Fund Account by check, draft or order be signed on behalf of the borrower. Many loan contracts also require that disbursements be countersigned by an officer of the corporation.

The use of electronic funds transfers to disburse funds from the Special Construction Account/Construction Fund Account makes the countersigning of disbursements by an officer of the corporation impratical. Therefore, the following alternative documentation should be used:

1. The board of directors should adopt a board resolution stating which persons are authorized to intitiate an electronic funds transfer. The bank should be furnished with a list of persons authorized to make transfers.

2. The corporation should maintain a log of electronic funds transfers. This log should detail:

a. Date of the transfer.

b. Amount of the transfer.

c. Payee and bank account.

d. Name of the person authorizing the transfer. The person authorizing the transfer should review supporting documentation before approving the disbursement.

e. Name of the person contacting the bank if different from the person authorizing the transfer.

3. A follow-up letter signed by the person authorizing the transfer should be sent to the bank confirming the details of the transfer. The letter should include:

a. The date, amount and payee.

b. The bank accounts from which and to which funds were transferred.

4. After comparing the debit/credit memos from the bank to the details on the log and follow-up letter for agreement, file the follow-up letter, supporting documentation and bank memoranda for review by REA field accountants and the corporation's independent auditors.

5. The corporation should provide evidence that disbursements made by electronic funds transfer have been reviewed by (1) an officer of the corporation not having responsibility for initiating transfers, (2) the corporation's audit comittee made up of board members, or (3) the board of directors. The review of electronic funds transfer disbursements should be performed at least monthly. Acceptable evidence that this review has been performed would be:

a. The signature of an officer of the corporation or the audit committee on the bank memo indicating that the disbursements have been reviewed; or

b. A memo signed by an officer of the corporation or the audit committee outlining which electronic funds transfer disbursements have been reviewed; or

c. A board resolution outlining which electronic funds transfer disbursements have been reviewed by the board of directors.

III. Disbursements by Check: The alternative procedures outlined above apply to disbursements made by electronic funds transfers only. Any disbursements made from the Special Construction Account/Construction Fund Account using checks, drafts, or orders must be made in accordance with the loan contracts.

List of Subjects in 7 CFR Part 1701

Administrative practice and procedure, Electric utilities, Telephone.

Dated: September 14, 1982.

Jack Van Mark,

Acting Administrator.

[FR Doc. 82-27132 Filed 9-30-82; 8:45 am]

BILLING CODE 3410-15-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 106 and 9031-9039

[Notice 1982-8]

Presidential Primary Matching Fund

AGENCY: Federal Election Commission.

ACTION: Cancellation of hearing and extension of comments period.

SUMMARY: On August 17, 1982, the Federal Election Commission published a Notice of Proposed Rulemaking on regulations governing the Presidential Primary Matching Fund (47 FR 35892). In that Notice, the Commission offered to hold a hearing on September 29, 1982, for those wishing to testify on the proposed rules. Since no requests to testify were received, the Commission is cancelling this hearing date.

The Commission has, however, received requests to extend the comment period on this rulemaking. The Commission has therefore decided to accept comments through November 15, 1982.

The Commission has also determined to tentatively schedule a new hearing for November 17, 1982. Those wishing to testify should notify the Commission in writing on or before October 29, 1982, and should submit their written comments by November 15,1982.

ADDRESS: Susan E. Propper, Assistant General Counsel, 1325 K Street, N.W., Washington, D.C. 20463.

FOR FURTHER INFORMATION CONTACT: Susan E. Propper, Assistant General Counsel (202) 523-4143 or (800) 424-9530.

Dated: September 28, 1982.

Frank P. Reiche,

Chairman, Federal Election Commission.

[FR Doc. 82-27130 Filed 9-30-82; 8:45 am]

BILLING CODE 6715-01-M

21 CFR Parts 182 and 184

[Docket No. 80N-0266]

Carbon Dioxide, Nitrogen, Helium, Propane, *N*-Butane, Iso-Butane, and Nitrous Oxide; Proposed Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to affirm that carbon dioxide, nitrogen, helium, propane, iso-butane, *n*-butane, and nitrous oxide are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

DATE: Comments by November 30, 1982.

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

FOR FURTHER INFORMATION CONTACT: Leonard C. Gosule, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: FDA is conducting a comprehensive review of human food ingredients classified as GRAS or subject to a prior sanction. The agency has issued several notices and proposals (see the **Federal Register** of July 26, 1973 (38 FR 20040)) initiating this review, under which the safety of carbon dioxide, nitrogen, helium, propane, *n*-butane, iso-butane, and nitrous oxide has been evaluated. In accordance with the provisions of § 170.35 (21 CFR 170.35), the agency proposes to affirm the GRAS status of these ingredients.

Carbon dioxide occurs in nature as a colorless, odorless gas that neither burns nor supports combustion. Its density is about 1.5 times that of air, and its solubility in water is 88 mL CO_2/100 mL H_2O at 20° C and atmospheric pressure. At temperatures and pressures below its triple point, carbon dioxide may exist as a solid (dry ice) or as a gas. The solid form passes directly to the gas (sublimes), without exhibiting a liquid phase, at atmospheric pressure and a temperature of −78.5° C.

Carbon dioxide is obtained industrially as a byproduct in the manufacture of lime during the "burning" of limestone, from the combustion of coal, coke, or other carbonaceous material, from fermentation processes, and from gases found in certain natural springs and wells.

Helium is a colorless, odorless, flavorless, nonflammable, inert gas. It is lighter than air, very slightly soluble in water, and present at low concentration in the atmosphere. Helium is produced commercially by the liquefaction and purification of natural gas.

Nitrogen is a colorless, odorless, flavorless gas that neither burns nor supports combustion. It is lighter than air and consitutes approximately 78 percent of the atmosphere by volume and approximately 75 percent by weight. It is somewhat more soluble in alcohol than in water but is only slightly soluble in each. Nitrogen is produced commercially by the fractionation of liquid air.

Propane, *n*-butane, and iso-butane are known collectively as the liquid hydrocarbon or liquefied petroleum gases (LP-gases). These gases may be separated from natural gas, crude oil, or petroleum refinery gases. However, all aerosol-grade LP-gases are obtained from natural gas.

Propane and the butanes are colorless, odorless, flammable gases that are heavier than air at normal temperatures and pressures. They are easily liquefied under pressure at room temperature and are stored and shipped in the liquid state. Propane is slightly soluble in water, while the butanes are considered insoluble. All three gases are soluble in alcohol, chloroform, and ether.

Nitrous oxide is a colorless gas, about 50 percent heavier than air, with a slightly sweet flavor and odor. It does not burn but will support combustion. It is soluble in water, alcohol, ether, and oils.

Nitrous oxide is manufactured by the thermal decomposition of ammonium nitrate. Water is also formed as a primary reaction product, and higher oxides of nitrogen, which are highly toxic, are formed in side reactions. After the water is condensed, the higher nitrogen oxides are removed by passing the gas through a series of scrubbing towers. The gas is then compressed and dried further by passage through a bed of desiccant.

Carbon dioxide, nitrogen, helium, propane, and butane were listed as miscellaneous GRAS ingredients in a regulation published in the **Federal Register** of November 20, 1959 (24 FR 9368). Together with nitrous oxide, these gases also were listed as GRAS for use as miscellaneous and general purpose food additives in a regulation published in the **Federal Register** of January 31, 1961 (26 FR 938).

Carbon dioxide currently is listed as a multiple-purpose GRAS food substance in § 182.1240 (21 CFR 182.1240). Carbon dioxide also is required for the production of soda water by the standard of identity for soda water (21 CFR 165.175) and is the subject of U.S. Department of Agriculture (USDA) prior sanction for use as a cooling agent in

chopping and packaging meat products. This prior-sanctioned use is included in the GRAS affirmation proposal.

Helium and nitrogen currently are listed as multiple-purpose GRAS food substances in 21 CFR 182.1355 and 21 CFR 182.1540, respectively. Nitrogen is also the subject of a prior sanction issued by USDA for use in excluding oxygen from sealed products. This prior-sanctioned use is included in the GRAS affirmation proposal.

Butane (isomeric form not specified) and propane currently are listed as multiple-purpose GRAS food ingredients in 21 CFR 182.1165 and 182.1655, respectively. In addition, butane and propane are regulated in 21 CFR 173.350 for use in the manufacture of combustion product gas used for removing and displacing oxygen during the processing and packaging of foods.

Nitrous oxide currently is listed as a multiple-purpose GRAS food ingredient in 21 CFR 182.1545. Nitrous oxide, carbon dioxide, and propane also are regulated in 21 CFR 173.345 for use with chloropentafluoroethane (an aerating agent) and in 21 CFR 173.360 for use with octafluorocyclobutane (a propellant and aerating agent) in foamed or sprayed food products.

In 1971, the National Academy of Sciences/National Research Council (NAS/NRC) surveyed a representative cross section of food manufacturers to determine the specific foods in which carbon dioxide, nitrogen, helium, propane, butane (isomeric form not specified), and nitrous oxide were used and the levels of usage. NAS/NRC combined this manufacturing inormation with information on consumer consumption of foods to obtain an estimate of the consumer exposure to these gases. Based on NAS/NRC figures, FDA estimates that during the decade 1960–1970, use of carbon dioxide increased by approximately 85 percent, use of nitrogen increased by approximately a factor of 8, and use of nitrous oxide decreased by approximately 50 percent. FDA estimates from the NAS/NRC survey that in 1970, the use of carbon dioxide in food was 44,500,000 pounds, the use of nitrogen in food was 23,100,000 pounds, and the use of nitrous oxide in food was 196,700 pounds. No information was obtained in the survey on the consumption of helium, *n*-butane, iso-butane, or propane. However, FDA obtained information on specific uses of certain of these gases from articles in the published literature and from communications from commercial food processors. In addition, the Select Committee on GRAS Substances (the Select Committee) received information from the National Soft Drink Association that the use of nitrous oxide in soft drinks, which was reported in the NAS/NRC survey, has been discontinued.[1] Therefore, the Select Committee did not include this use in its evaluation of the safety of nitrous oxide as a food ingredient. Any person possessing additional information on the use of these gases in foods should submit such information as a comment on this proposal.

Butane (*n*-butane and iso-butane), helium, nitrogen, nitrous oxide, and propane have been the subjects of a search of the scientific literature from 1920 to the present. Carbon dioxide has been the subject of a separate search of the scientific literature from 1920 to the present. The criteria used in the searches were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) carcinogenicity, teratogenicity, or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology, (11) behavioral effects, (12) detection, and (13) processing. For carbon dioxide, a total of 2,202 abstracts were reviewed, and 38 particularly pertinent reports have been summarized in a scientific literature review. For the other gases, a total of 1,295 abstracts were reviewed, and 28 particularly pertinent reports have been summarized in a scientific literature review.

Information from the scientific literature reviews and the results of other studies have been summarized in two reports to FDA by the Select Committee, which is composed of qualified scientists chosen by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB). The members of the Select Committee have carefully evaluated the available safety information on carbon dioxide,[2] nitrogen, helium, propane, iso-butane, *n*-butane, and nitrous oxide.[3] In the Select Committee's opinion:

Carbon Dioxide

The Select Committee could find no data relating directly to the safety of carbon dioxide as a food ingredient. However, there is substantial evidence that the amount of carbon dioxide ingested with foods is negligible compared with that produced normally by the body. Carbon dioxide also has been administered experimentally without ill effects in amounts orders of magnitude greater than from possible food sources.

Under resting conditions, an average adult will produce in excess of 500 g of carbon dioxide daily, approximately 2,000 times the estimated intake from foods. During moderate or heavy activity, considerably greater amounts of carbon dioxide would be produced. The official occupational standard for the workroom atmosphere is 5,000 ppm, equivalent to the inhalation during an 8-hour work day of about 30 g of carbon dioxide. Human subjects have been exposed to 1.5 percent carbon dioxide (a daily inhalation of over 200 g) continually for 42 days without serious or lasting ill effects.

The amount of bicarbonate that could be produced from the ingested carbon dioxide is far less than the amounts routinely ingested in food or used without ill effects as an antacid.

The Select Committee is not aware of any study on the mutagenicity of carbon dioxide. Carcinogenic actions have been reported only after repeated application of the solid form to the skin. Teratogenic effects were produced after inhalation of carbon dioxide at levels far higher than could be obtained from foods.[2]

Nitrogen

Nitrogen gas is naturally present in all body tissues. It is physiologically inert under the conditions of approved GRAS use. The amount of nitrogen gas commercially added to the food, as consumed, is miniscule compared to the quantity of nitrogen taken in by the human being in the normal process of breathing. There are no food-grade specifications for nitrogen gas. The Select Committee is of the opinion that such standards should be developed.[1]

Helium

The NRC survey did not identify any use of helium gas as a commercially added food ingredient; however, one manufacturer has reported that is was used during food processing to detect leaks from aerosol cannisters. Considering its low solubility in water and fats, its chemical inertness, and its high diffusion coefficient, the amount of helium consumed from foods exposed to it would be minute. Although no feeding tests on foods exposed to helium have been reported, the negative results from any inhalation studies involving high concentrations and pressures of the gas with both man and animals, and other studies on tissue cultures, suggest that no adverse

[1] "Evaluation of the Health Aspects of Nitrogen, Helium, Propane, *n*-Butane, Iso-Butane, and Nitrous Oxide as Gases Used in Foods," Life Sciences Research Office, Federation of American Societies for Experimental Biology, 1979, p. 28.

[2] *Ibid.*, pp. 5, 9–10, 15–17, 22–25, 31–37.

[3] "Evaluation of the Health Aspects of Carbon Dioxide as a Food Ingredient," Life Sciences Research Office, Federation of American Societies for Experimental Biology, 1979, pp. 8–15. In the past, the agency presented verbatim the Select Committee's discussion of the biological data it reviewed. However, because the Select Committee's reports are available at the Dockets Management Branch and from the National Technical Information Service, and because it represents a significant savings to the agency in publication costs, FDA has decided to discontinue presenting the discussion in the preamble to proposals that affirm GRAS status in accordance with current good manufacturing practice.

[2] *Ibid.*, p. 16.

[1] *Ibid.*, p. 6.

physiological effects would result, even from consumption of foods saturated with helium during commercial processing and storage. There are no food-grade specifications for helium gas; it is suggested that such standards should be developed.[1]

Propane, *N*-Butane, and Iso-Butane

It was estimated that a combined total of about 2 million kg of propane, *n*-butane, and iso-butane are used in aerosol food products annually in the United States. This amounts to an exposure of about 26 mg per day per person to these three substances, although only a fraction of this amount would be ingested, most of the gases dispersing into the atmosphere upon dispensing the product. The Select Committee is not aware of GRAS uses of propane, *n*-butane, or iso-butane other than as propellants in aerosol food products.

The absence of any biological observations on animals subsisting on foods treated with propane requires consideration of the chemical properties of the compound itself and other toxicological findings for reasoned inferences as to its safety. The fact that the gas is inert to most reagents suggests the realtive harmlessness of exposing foods to it.

Toxicity has been observed in some cases upon inhalation exposure of animals or humans to high concentrations of propane. However, no adverse effects were noted in a 2-week study using human volunteers receiving propane exposures at least several orders of magnitude greater than might be expected to occur from food use of this compound.

Although there are commercial propellant grade specifications for propane, there are no food-grade specifications listed in the Food Chemicals Codex. Such food-grade specifications should be developed.

The absence of any biological observations on animals subsisting on foods treated with iso-butane and *n*-butane requires consideration of the chemical properties of the compounds themselves and other toxicological findings for reasoned inferences as to their safety. The fact that the gases are inert to most reagents suggests the relative harmlessness of exposing foods to them.

Toxicity has been observed in animals and humans after inhalation of high concentrations of *n*-butane or iso-butane. However, no adverse effects were noted in a 2-week study of human volunteers receiving iso-butane exposures at least several orders of magnitude greater than might be expected to occur from food use of this substance.

Although there are commercial propellant grade specifications for *n*-butane and iso-butane, there are no food-grade specifications listed in the Food Chemicals Codex. Such food-grade specifications should be developed.[1]

Nitrous Oxide

Nitrous oxide is a relatively stable gas. There is little evidence that it is metabolized in mammalian systems. No feeding tests involving foods exposed to nitrous oxide have come to the attention of the Select Committee. The only toxicity studies of which the Select Committee is aware have been carried out by administration of the compound via the inhalation route. Since the exposures used for these purposes were far beyond the estimated human consumption through foods and since the administration is via the respiratory rather than the oral route, a reasonable extrapolation to the exposure from nitrous oxide added to foods is difficult. There have been some observations of toxicity of inhaled nitrous oxide but only at doses much higher than could be expected from consumption of exposed food. Much of the gas probably disperses into the atmosphere during and after dispensing of the food product. Although epidemiological studies of dental practitioners and oral surgeons have indicated adverse effects resulting from anesthetic exposure exceeding 3 hours per week, no specific effects were attributable to the use of nitrous oxide.

Because food-grade specifications have not been established for nitrous oxide, the actual composition of the gaseous mixture being used by food processors is uncertain. Food grade standards for nitrous oxide should be developed.[1]

The Select Committee concludes that:

1. There is no evidence in the available information on carbon dioxide,[2] nitrogen, helium, propane, *n*-butane, and iso-butane [3] that demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when they are used at levels that are now current or that might reasonably be expected in the future.

2. There is no evidence in the available information on nitrous oxide that demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when it is used as a propellant in dairy and vegetable-fat toppings in pressurized containers at levels that are now current or that might reasonably be expected in the future.[4]

FDA has undertaken its own evaluation of all available information on carbon dioxide, nitrogen, helium, propane, *n*-butane, iso-butane, and nitrous oxide and concurs with the conclusions of the Select Committee. The agency concludes that no change in the current GRAS status of these ingredients is justified. Therefore, the agency proposed that these ingredients be affirmed as GRAS.

Because no food-grade specifications exist for carbon dioxide, nitrogen, helium, propane, iso-butane, *n*-butane, and nitrous oxide at the present time, the agency will work with the Committee on Codex Specifications of the National Academy of Sciences to develop acceptable specifications for these ingredients. If acceptable specifications are developed, the agency will incorporate them into these regulations at a later date. Until any such specifications are developed, FDA has determined that the public health will be adequately protected if carbon dioxide, nitrogen, helium, propane, iso-butane, *n*-butane, and nitrous oxide comply with the description in the proposed regulations and are of food-grade purity (21 CFR 170.30(h)(1) and 182.1(b)(3)).

Additionally, FDA is proposing not to include in these GRAS affirmation regulations the levels of use and, except for nitrous oxide, food categories reported in the NAS/NRC 1971 survey for these ingredients. FDA believes that establishing these levels and food categories is unnecessary because of the rapidity with which these gases escape into the atmosphere. In addition, the level of use of each of these gases in food is limited by the solubility of the gas in the food and by the technical effect it is intended to achieve. Furthermore, both FASEB and FDA have concluded that a large margin of safety exists for the use of these substances and that a reasonably foreseeable increase in the level of use of these substances will not adversely affect human health. Therefore, the agency is proposing to affirm the GRAS status of carbon dioxide, nitrogen, helium, propane, iso-butane, *n*-butane, and nitrous oxide when they are used under current good manufacturing practice conditions of use in accordance with § 184.1(b)(1) (21 CFR 184.1(b)(1)). To make clear, however, that the affirmation of the GRAS status of these substances is based on the evaluation of currently known uses, the proposed regulations set forth the technical effects and, in the case of nitrous oxide, the food categories that FDA evaluated. FDA is including food categories in the nitrous oxide regulation because the Select Committee, in its conclusion, specified the types of food in which it had evaluated the use of this ingredient. The Select Committee did not so qualify its conclusions about the safety of any of the other gases addressed in this proposal. Thus, FDA finds that it is appropriate to specify these categories.

In the **Federal Register** of September 7, 1982 (47 FR 39199), FDA proposed to adopt a general policy restricting the circumstances in which it will specifically describe conditions of use in regulations affirming substances as GRAS under 21 CFR 184.1(b)(1) or 186.1(b)(1). The agency proposed to amend its regulations to indicate clearly that it will specify one or more of the current good manufacturing practice conditions of use in regulations for

[1] *Ibid.*, p. 11.
[2] *Ibid.*, pp. 18 and 26.
[1] *Ibid.*, p. 38.
[2] *Ibid.*, p. 16.
[3] *Ibid.*, pp. 6, 11, 18, and 26.
[4] *Ibid.*, p. 38.

substances affirmed as GRAS with no limitations other than current good manufacturing practice only when the agency determines that is is appropriate to do so.

Copies of the scientific literature review and the report of the Select Committee on carbon dioxide, and copies of the scientific literature review, the scientific literature review update, and the report of the Select Committee on gases used in foods are available for review at the Dockets Management Branch (address above), and may be purchased from the national Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, as follows:

Title	Order No.	Price code	Price [1]
Carbon dioxide (scientific literature review).	PB-241-959/AS	A10	$13.00
Carbon dioxide (Select Committee report).	PB-80-104615	A03	6.00
Gases in foods (scientific literature review).	PB-241-953/AS	A07	10.00
A review of the recent literature on the health aspects of gases as food ingredients.	PB-275-750/AS	A03	6.00
Gases used in foods (Select Committee report).	PB-80-112022	A04	7.00

[1] Price subject to change.

This proposed action does not affect the current use of carbon dioxide, nitrogen, helium, propane, *n*-butane, iso-butane, and nitrous oxide in pet food or animal feed.

The format of the proposed regulations is different from that in the previous GRAS affirmation regulations. FDA has modified paragraph (c) of §§ 184.1165, 184.1240, 184.1355, 184.1540, 184.1545, and 184.1655 to make clear the agency's determination that GRAS affirmation is based upon current good manufacturing practice conditions of use, including the technical effects (and for nitrous oxide the food categories) listed. This change has no substantive effect but is made merely for clarity.

The agency has determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that the effect of this proposal is to maintain current known uses of the substances covered by this proposal by both large and small businesses. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposal, and the agency has determined that the final rule, if promulgated, will not be a major rule as defined by the Order.

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Parts 182 and 184 be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§§ 182.1165, 182.1240, 182.1355, 182.1540, 182.1545, 182.1655 [Removed]

1. Part 182 is amended by removing § 182.1165 *Butane*, § 182.1240 *Carbon dioxide*, § 182.1355 *Helium*, § 182.1540 *Nitrogen*, § 182.1545 *Nitrous oxide*, and § 182.1655 *Propane*.

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

2. Part 184 is amended:

a. By adding new §184.1165, to read as follows:

§184.1165 n-Butane and iso-butane.

(a) *n*-Butane and iso-butane (empirical formula C_4H_{10}, CAS Reg. Nos. 106–97–8 and 75–28–5, respectively) are colorless, odorless, flammable gases at normal temperatures and pressures. They are easily liquefied under pressure at room temperature and are stored and shipped in the liquid state. The butanes are obtained from natural gas by fractionation following absorption in oil absorption to surface-active agents, or refrigeration.

(b) The Food and Drug Administration is developing food-grade specifications for *n*-butane and iso-butane in cooperation with the National Academy of Sciences. In the interim, the ingredient must be of a purity suitable for its intended use.

(c) In accordance with §184.1(b)(1), these ingredients are used in food with no limitations other than current good manufacturing practice. The affirmation of these ingredients as generally recognized as safe (GRAS) as direct human food ingredients is based upon the following current good manufacturing conditions of use:

(1) The ingredients are used as propellants, aerating agents, and gases as defined in § 170.3(o)(25) of this chapter.

(2) The ingredients are used in food at levels not to exceed current good manufacturing practice.

b. By adding new §184.1240, to read as follows:

§184.1240 Carbon dioxide

(a) Carbon dioxide (empirical formula CO_2, CAS Reg. No. 000124–38–9) occurs as a colorless, odorless, noncombustible gas at normal temperatures and pressures. The solid form, dry ice, sublines under atmospheric pressure at a temperature of −78.5° C. Carbon dioxide is prepared as a byproduct of the manufacture of lime during the "burning" of limestone, from the combustion of carbonaceous material, from fermentation processes, and from gases found in certain natural springs and wells.

(b) The Food and Drug Administration is developing food-grade specifications for carbon dioxide in cooperation with the National Academy of Sciences. in the interim, the ingredient must be of a purity suitable for its inteded use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitations other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing conditions of use:

(1) The ingredient is used as a leavening agent as defined in §170.3(o)(17) of this chapter; a processing aid as defined in §170.3(o)(24) of this chapter; and a propellant, aerating agent, and gas as defined in §170.3(o)(25) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

c. By adding new § 184.1355, to read as follows:

§ 184.1355 Helium.

(a) Helium (empirical formula He, CAS Reg. No. 007440–59–7) is a colorless, odorless, flavorless, nonflammable, inert gas. It is lighter than air and is produced by the liquefaction and purification of natural gas.

(b) The Food and Drug Administration is developing food-grade specifications for helium in cooperation with the National Academy of Sciences. In the interim, the ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitations other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing conditions of use:

(1) The ingredient is used as a processing aid as defined in § 170.3(o)(24) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

d. By adding new § 184.1540, to read as follows:

§ 184.1540 Nitrogen.

(a) Nitrogen (empirical formula N_2 CAS Reg. No. 007727–37–9) is a colorless, odorless, flavorless gas that is produced commercially by the fractionation of liquid air.

(b) The Food and Drug Administration is developing food-grade specifications for nitrogen in cooperation with the National Academy of Sciences. In the interim, the ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitations other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing conditions of use:

(1) The ingredient is used as a propellant, aerating agent, and gas as defined in § 170.3 (o) (25) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

e. By adding new § 184.1545, to read as follows.

§ 184.1545 Nitrous oxide.

(a) Nitrous oxide (empirical formula N_2O, CAS Reg. No. 010024–97–2), also called dinitrogen monoxide or laughing gas, is a colorless gas, about 50 percent heavier than air, with a slightly sweet smell. It does not burn but will support combustion. Nitrous oxide is manufactured by the thermal decomposition of ammonium nitrate. Higher oxides of nitrogen are removed by passing the dry gas through a series of scrubbing towers.

(b) The Food and Drug Administration is developing food-grade specifications for nitrous oxide in cooperation with the National Academy of Sciences. In the interim, the ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitations other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current food manufacturing conditions of use:

(1) The ingredient is used as a propellant, aerating agent, and gas as defined in § 170.3 (o) (25) of this chapter.

(2) The ingredient is used in dairy product analogs as defined in § 170.3(n)(10) of this chapter at levels not to exceed current good manufacturing practice.

f. By adding new § 184.1655, to read as follows:

§ 184.1655 Propane.

(a) Propane (empirical formula C_3H_8, CAS Reg. No. 000074–98–6), also called dimethylmethane or propyl hydride, is a colorless, odorless, flammable gas at normal temperatures and pressures. It is easily liquefied under pressure at room temperature and is stored and shipped in the liquid state. Propane is obtained from natural gas by fractionation following absorption in oil, adsorption to surface-active agents, or refrigeration.

(b) The Food and Drug Administration is developing food-grade specifications for propane in cooperation with the National Academy of Sciences. In the interim, the ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitations other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing conditions of use:

(1) The ingredient is used as a propellant, aerating agent, and gas as defined in § 170.3 (o) (25) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

The agency is unaware of any prior sanction for the use of these ingredients in foods under conditions different from those identified in this document. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The action proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342), and the failure of any person to come forward with proof of an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on it later. Should any person submit proof of the existence of a prior sanction, the agency hereby proposes to recognize such use by issuing an appropriate final rule under Part 181 (21 CFR Part 181) or affirming it as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

Interested persons may, on or before November 30, 1982 submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 15, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–27061 Filed 9–30–82; 8:45 am]

BILLING CODE 4160–01–M

21CFR Parts 182 and 184

[Docket No. 79N–0162]

Tannic Acid; Proposed Affirmation of Gras Status With Specific Limitation

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to affirm that tannic acid is generally recognized as safe (GRAS), with specific limitations, as a direct human food ingredient. The safety of this ingredient has been evaluated under the comprehensive safety review conducted by the agency.

DATE: Comments by November 30, 1982.

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

FOR FURTHER INFORMATION CONTACT: Corbin I. Miles, Bureau of Foods (HFF–

335), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202–472–4750.

SUPPLEMENTARY INFORMATION: FDA is conducting a comprehensive review of human food ingredients classified as GRAS or subject to a prior sanction. The agency has issued several notices and proposals (see the **Federal Register** of July 26, 1973 (38 FR 20040)) initiating this review, under which the safety of tannic acid has been evaluated. In accordance with the provisions of § 170.35 (21 CFR 170.35), the agency proposes to affirm, with specific limitations, the GRAS status of this ingredient.

Tannic acid, also called tannin or hydrolyzable gallotannin, is a complex polyphenolic organic compound that yields gallic acid and either glucose or quinic acid as a hydrolysis product. It is obtained by solvent extraction of nutgalls, the excrescences that form on the young twigs of *Quercus infectoria* Oliver and allied species of *Quercus* L. (Fam. *Fagaceae*). Tannic acid is also obtained from the seed pods of Tara (*Caesalpinia spinosa*) from the eastern Mediterranean region and from Chinese nutgalls (*Rhus semialata*). However, the so-called condensed tannins, which are also present in various plants but are not used as food ingredients, are not addressed in this evaluation.

Tannic acid is listed in § 182.20 (21 CFR 182.20) as a GRAS natural flavor extractive under a regulation published in the **Federal Register** of June 10, 1961 (26 FR 5221), which was recodified March 15, 1977 (42 FR 14640). FDA has also issued several opinion letters regarding other GRAS uses of tanic acid in foods. On November 5, 1958, the agency issued a letter for the use of tannic acid as a component of salad dressing at a level not to exceed 5.7 parts per million (ppm). Additionally, FDA issued two opinion letters for use of tannic acid as a clarifying agent in beer and apple juice, at a level not to exceed 100 ppm.

Tanic acid is permitted as an agent for refining animal fats under 9 CFR 318.7 but must be eliminated from the finished fat. Tannin is regulated as a food additive under § 173.310 (21 CFR 173.310) for use as a component of boiler water additives. Tannins are also regulated for use as a clarifying agent in wine under 27 CFR 240.525.

In 1971, the National Academy of Sciences/National Research Council (NAS/NRC) surveyed a representative cross-section of food manufacturers to determine the specific foods in which tannic acid is used and the levels of usage. NAS/NRC combined this manufacturing information with information on consumer consumption of foods to obtain an estimate of consumer exposure to tannic acid.

FDA estimates from the NAS/NRC survey that the total amount of food-grade tannic acid used in 1970 was 1.7 million pounds. The NAS/NRC survey reported that tannic acid is used as a flavoring agent, flavor enhancer, pH control agent, and processing aid in a variety of foods, including baked goods, alcoholic beverages, nonalcoholic beverages, gelatins, puddings and fillings, frozen dairy desserts, hard candy, soft candy, and meat products. However, the Select Committee on GRAS Substances (the Select Committee) estimates that more than 99 percent of the total poundage reported for tannic acid is uses as a processing aid and is largely removed from food before it is consumed.[1]

Tannic acid has been the subject of a search of the scientific literature from 1920 to the present. The criteria used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) carcinogenicity, teratogenicity, or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology (11) behavioral effects, (12) detection, and (13) processing. A total of 237 abstracts on tannic acid was reviewed, and 42 particularly pertinent reports from the literature survey have been summarized in a scientific literature review.

Information from the scientific literature review and other sources has been summarized in a report to FDA by the Select Committee, which is composed of qualified scientists chosen by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB). The biological information summarized in the report is as follows:

Tannic acid is considered an hepatotoxic and cirrhotic agent capable of causing severe and even fatal disease at concentrations formerly used in the topical treatment of burns or in certain tannic acid barium enemas. With a few exceptions, data on toxicity resulting from routes of administration other than oral are not relevant to an evaluation of possible hazards from the food uses of tannic acid.

Korpassy *et al.* 1951 tested the absorption of a single dose of tannic acid (U.S.P. Hendon, London) administered by gavage in aqueous solutions to rabbits (0.5 to 2 g per kg) and dogs (0.3 to 2.3 g per kg). The animals were fasted 24 hours prior to the experiment. A dose related increase in plasma phenolic group concentration was noted: however, the test method detected phenolic groups and was not specific for unhydrolyzed tannic acid. Two of 100 dogs dies during the experiment; one died of unknown causes five hours after receiving 415 mg tannic acid per kg, but the second, that received 830 mg per kg, showed extensive acinocentralis (centrolobular) necrosis of the liver. Necropsies were performed on several of the dogs and rabbits but no results were reported.

In 1962, Dollahite *et al.* measured serum levels of tannic acid of 52 to 230 μg per ml by a nonspecific test for phenolic groups after gastric intubation of aqueous tannic acid (reagent grade) solutions at 2 to 8 g per kg to rabbits. At 24 hours after intubation, rabbits receiving more than 4 g per kg had died; "tannic acid" had been eliminated from the serum of the animals receiving up to 4 g per kg. Goats and sheep had "tannic acid" blood levels of 75 to 160 μg per ml within one hour after receiving by the same route a 2 g per kg dose; the blood tested negative at 48 hours.

Most reports of the absorption of tannic acid have relied on nonspecific identification of phenolic substances in blood sera. However, Harris *et al.* in 1966 used thin layer chromatography to identify tannic acid in the blood serum of Long-Evans rats (200 to 250 g) in a study of colonic absorption. Aqueous tannic acid (N.F.) enemas were administered to the animals. Increased amounts of tannic acid were found in hepatic portal vein blood as the concentration and contact time were increased, but no tannic acid was absorbed from a 1 percent solution in the colon from one minute to one hour. There was a trace (approximately 25 μg per ml) of tannic acid in the blood one minute after a 2 percent tannic acid enema was given. Kessler and Blumenberg using paper chromatography have demonstrated the breakdown of tannic acid by the gastrointestinal juices of guinea pigs to gallic acid and glucose. These authors, in another report, were unable to demonstrate intact tannic acid in rabbit blood serum after intubation of tannic acid solutions.

A major metabolite in the urine of rabbits, rats, and chickens ingesting tannic acid or gallic acid was identified as 4-O-methyl gallic acid. The increases in urinary excretion of 3,4-dihydroxyphenolic and phenolic methoxy substances by man after ingestion of 1 g tannic acid (not described) were interpreted as due to metabolic products of tannic acid.

The addition of methionine and choline as a methyl-group source to a diet of high tannin grain sorghum improved feed efficiency and corrected growth depression and body weight loss in chicks and laying hens. Jambunathan and Mertz demonstrated an inverse relationship between rat growth rate and the polyphenolic compound content of sorghum varieties.

[1] "Evaluation of the Health Aspects of Tannic Acid as a Food Ingredient," Life Sciences Research Office, Federation of American Societies for Experimental Biology, 1977, p. 6.

Mitjavila *et al.* studied the absorption of glucose, butyric acid and methionine, using *in vivo* perfusion techniques in the presence of gallotannic acid in the mouse intestine. Statistical analysis of the perfusion data showed that 0.005 to 0.25 percent tannic acid produced a marked reduction in the absorption of water, glucose and methionine, and a less significant reduction in butyric acid absorption. Concurrent histological studies showed edema of the intestinal mucosal villi with shrinkage of the layer of epithelial cells when 0.25 percent tannic acid was tested. This was attributed to denaturation of the intestinal epithelial cells and to reduction in the capability of these cells to actively transfer glucose and methionine through the wall.

Korpassy *et al.* in 1950 administered tannic acid solutions (2.5, 5.0, and 10.0 percent) by gavage two or four times daily for three days to rats (0.75 to 3.0 g per kg), and for one or three days to rabbits (0.67 to 2.7 g per kg), and dogs (0.9 to 3.6 g per kg). Autopsies of animals that died as a result of the test doses and of those sacrificed three days after the dose showed varying degrees of hepatic necrosis in a few animals receiving 2.5 percent tannic acid, in most of those receiving 5.0 percent and in all receiving 10.0 percent solutions.

In mice, the oral LD_{50} of tannic acid (Merck, U.S.P., Chinese nutgall) administered by stomach tube as a 10 percent aqueous solution was between 3 and 4 g per kg body weight. Rats were more resistant than mice to tannic acid, and doses three to four times larger were required to produce toxic signs. The authors reported that the toxicity of gallic acid was less than that of tannic acid in mice, and "large doses" of gallic acid did not produce the signs of tannic acid toxicity. Other workers have noted the differences in toxic effects of tannic acid and gallic acid in rats after intraperitoneal administration. Doses of 40 mg tannic acid per kg produced no hepatohistologic damage in five animals; doses of 60 mg per kg produced hepatohistologic damage in each of five other rats. Gallic acid had no hepatotoxic effects; even at a lethal dose of 2000 mg per kg only renal damage was noted.

Boyd *et al.* reported in 1965 on the toxicity of tannic acid (Fisher Certified) [probably mistakenly referred to as 3-galloyl gallic acid by the authors] in young male albino Wistar rats weighing 125 to 200 g. Doses of 2.0 to 8.0 g per kg were administered by intragastric cannula in solutions of 20 ml per kg body weight. The oral LD_{50} was 2.26 (S.E. 0.083) g per kg with a mean interval between dose and death of 38 hours. Doses of 4.5 to 8 g per kg were fatal within six hours. Drowsiness, pallor, cyanosis and diarrhea were the most common signs of intoxication. Anorexia and oligodipsia also were evident. Death was preceded by tremors and convulsions and finally respiratory failure. A temporary fulminating gastroenteritis followed oral administration but was gone at three days. Hepatic necrosis and nephritis were evident in animals surviving two to four days. The spleen showed hyperplasia as did the adrenal cortex. Spermatogenesis was stimulated in animals dying at two or three days, and those surviving for several weeks had significantly heavier testes.

Texl and Konecńy performed experiments utilizing oral, subcutaneous and rectal treatments of Wistar rats with various tannic acid (Ac. tannicum-Lachema, PhB-2) concentrations. The sulfobromophthalein dye test was used to observe liver function. Oral doses of 1 g per kg of tannic acid caused no damage to the intestinal tract and no impairment of liver function. The author considered this proof that the undamaged digestive tract is impermeable to tannic acid. Doses of 2 to 3 g per kg produced significant liver function impairment, centrolobular necrosis and loss of glycogen, and inflammatory changes and uceleration of the gastric mucosa. After gallic acid was administered subcutaneously (1 g per kg) or rectally (1.5 g per kg) no impairment of liver function could be detected, liver histology appeared normal, and the rectal mucosa was unaffected.

Mitjavila *et al.* in 1971 studied the effect of tannic acid on the phagocytotic activity of the reticuloendothelial system, of the liver in male Wistar rats. In these experiments tannic acid (Aleppo) was administered intravenously or by gastric intubation. The results of the intravenous and oral experiments were similar. The hepatotoxicity of intravenously administered tannic acid (20 mg per kg) was similar to that seen after intragastric administration of higher doses (2 g per kg). Slightly less bile was excreted during the first hour. Sulfobromophthalein elimination was significantly reduced, and Kuppfer cell activity was normal during the first 24 hours but increased by 82 and 75 percent during 48 and 72 hours after injection, respectively. Parenchymal clearance decreased about 23 percent after 24 hours and the decrease persisted after 48 hours. The level of hepatic triglycerides was significantly increased 72 hours after injection.

Dollahite *et al.* gastrically intubated rabbits with aqueous solutions of tannic acid (unidentified), gallic acid and pyrogallol; the single dose LD_{50}'s for these compounds in rabbits were 5.0, 5.0, and 1.6 g per kg, respectively.

Peaslee and Einhellig found the age and weight of mice affected the animals' response to dietary tannic acid. They fed groups of six to eight young male albino mice a diet containing 5 or 8 percent tannic acid (Turkish nutgall, technical grade) in ground laboratory chow for periods of three to eight weeks. Daily tannic acid intake for the two levels was about 16 and 25 g per kg body weight averaged over the test period. Mice starting the test with body weights less than 12 g and fed an 8 percent tannic acid diet continued in depressed growth to sacrifice, exhibited a significant decrease in pituitary gland weight and had a significant increase in pituitary melanocyte stimulating hormone activity. This was postulated by the authors to be evidence of the toxic effect of prolonged intake of tannic acid by young animals.

Handler and Baker found no evidence of hepatic necrosis in Vanderbilt rats given tannic acid (unidentified) at levels of 1 and 2 percent (about 1 to 3 g per kg) in the diet of pair-fed rats over a period of 90 days. No gross or histological signs of liver damage were observed.

Racela *et al.* studied reagent grade gallotannic acid in 60 female Fisher-344 rats. The rats were sacrificed from one to three weeks after a single subcutaneous injection of 700 or 1200 mg tannic acid per kg body weight. Complete autopsies revealed an early and promptly reversible form of nucleolar macrosegregation or "capping." Iron-ribonucleic acid complexes were presented as intra-nuclear inclusions which disappeared gradually over a two-week period from the centrolobular areas. A transient, marked increase in fat in the liver cells diminished to a slight increase after 72 hours. Cytoplasmic degeneration was reflected in irregular eosinophilic bodies, some periodic acid Schiff positive, that were free of glycogen. Focal cytoplasmic necrosis was most prominent in central and mid-lobular zones. Most affected hepatocytes were within normal limits by one week after tannic acid treatment.

Glick and Joslyn fed 50 g weanling Long-Evans rats *ad libitum* a basal 20 percent casein diet containing 0, 4, and 8 percent tannic acid (analytical reagent grade gallotannic acid, J. T. Baker). At the 8 percent tannic acid level (1.8 g per kg) nine of ten animals died in four to seven days as did eight of ten pair-fed controls receiving a tannic acid-free basal diet. Growth was depressed because of decreased food intake as compared to *ad libitum* fed controls, but no deaths occurred at the 4 percent tannic acid level. Mature rats (200 g) on the 8 percent tannic acid diet (0.9 g per kg) had no mortality but gained less weight than pair-fed controls. The growth of 130 g rats on 5 percent tannic acid in a 40 percent casein diet was improved as compared to the basal 20 percent casein diet and was equal to that of pair-fed controls; protein absorption was increased. Methionine or choline added to the basal diet containing 5 percent tannic acid produced no significant improvement in growth rate. The authors noted high fecal nitrogen losses in rats fed tannic acid. The toxicity of tannic acid appeared to be inversely related to age and weight of the animals.

Squillaci and DiMaggio administered tannic acid (1 g per kg) in water daily for 40 days by stomach tube to male rabbits (2 kg) fasted for 12 hours. The general condition of the animals was good for the first 20 days. Later the body weight decreased and albumin showed in the urine at the end of the experimental period. Histological examination revealed certain toxic effects including degeneration of hepatic cells closest to the centrolobular veins, and areas of scaling of the stomach and small intestine mucosal epithelium.

The Joint FAO/WHO Expert Committee on Food Additives in 1970 reported studies of rats and dogs given various dietary levels of hydrolyzable tannins. The rats received 0, 8, 80, or 800 mg per kg body weight of Aleppo or tara tannin in the diet for 12 weeks without significant changes in body weight or food intake and utilization. No liver or kidney abnormalities attributed to the tannins were seen at necropsy. Similar studies with Chinese, Sicilian sumac and Douglas fir tannins produced comparable results. Dogs were given 0.0, 0.117, 0.125, 0.234, and 0.25 percent tannin in their diet as chewing gum (containing 0.5 percent Peruvian tara tannin) for two years with no ill effects. Behavior, food consumption, hematology, organ function tests, organ weights, gross and microscopic pathology were within normal limits.

A report of the Joint FAO/WHO Expert Committee on Food Additives detailed a long-term study in which 100 rats were fed Peruvian tara tannin as 0.0, 0.117, 0.125, 0.234, or 0.25 percent of their diet. In weanling rats, the highest dosage was about 0.3 g per kg body weight. The tannin was incorporated in a chewing gum at a level of 0.5 percent and then added to the diet. No deleterious effects were seen by the usual criteria of growth, food consumption, and gross and microscopic pathology. In a three-generation study, two litters per generation, groups of 20 male and 20 female rats were fed Peruvian tara tannin at levels of 0.0, 0.058, 0.117, and 0.234 percent. The young at weaning fed the highest level of tannin had lower body weights, a feature not observed at lower levels of tannin ingested. Fertility, gestation, viability and lactation were not affected at any feeding levels.

Korpassy *et al.* administered aqueous solutions of tannic acid (U.S.P.) to rats by oral intubation before meals. The animals were dosed (initially, 0.27 g per kg) four times each week with 4 ml of 1.0 percent tannic acid. The tannic acid concentration was increased by 1.0 percent every other month to a maximum of 5.0 percent (1 g per kg). Of 20 rats in this group, seven survived the 390 days of treatment. A second group of 40 rats was dosed once each week with 4 ml of 3 percent tannic acid for one month (initially 0.8 g per kg) and 5 percent for the remainder of the testing period; twenty-eight survived 300 days and four survived 500 days. Autopsies were performed and tissues examined microscopically. The enlarged livers and spleens showed extensive damage in two animals that died and one that was sacrificed during the experiment. There were numerous dividing myelogenous cells in the bone marrow in all of the animals. The kidneys, adrenals and ovaries showed a slight degree of myelogenous leucocytic infiltration. The histological appearance was suggestive of marked myelogenous hyperplasia. The hematopoietic and reticuloendothelial systems showed an activity indicative of response to stimulation of the active mesenchyme.

Weanling male and female albino CF mice were raised on a diet of ground laboratory chow and 8 percent tannic acid (about 12 to 25 g per kg) of technical grade, Turkish nutgall. In one experiment these animals were maintained on the tannic acid diet through two breeding cycles, and they produced litters of smaller number, slower growth rate, and lower body weight plateau. When female mice were removed from the tannic acid diet prior to breeding by control males, there were no significant differences between test and control litter weights or animals per litter. The authors suggested that the protein binding activity of tannic acid may influence hormonal activity. No data on feed intake were reported.

As defined in the background section of this report, food grade tannic acid is a hydrolyzable gallotannin. Some data on condensed tannins are included in this report for comparative purposes, but the health aspects of condensed tannins are not reviewed.

The work of Korpassy indicated that repeated subcutaneous administration of tannic acid (USP) to rats produced hemorrhagic gastric erosions, skin necrosis and ulcers, and hepatic tumors arising in sites of nodular cirrhosis and irregular bile duct proliferation. Doses of 150 to 200 mg per kg body weight administered every fifth day resulted in 30 to 50 percent survival in rats at 200 days and 5 to 15 percent survival for 300 days. More than half of the animals surviving 100 days developed hepatomas and/or cholangiomas, usually multiple and benign, although some histological patterns suggested low-grade malignancy. No metastases involving liver cancer were produced by tannic acid treatment and local carcinogenic effects were not observed associated with the skin ulcers resulting from subcutaneous injections. In reviewing the work in his laboratory on the oral administration of tannic acid to rats, Korpassy has reported no liver tumors in tannic acid treated animals and no gastric erosions after treatment with 2 to 5 percent aqueous tannic acid solutions, precirrhotic changes were observed in livers of rats after 180 days of treatment per os but only if the dose exceeded the effective parenteral dose by several times.

Kirby studied tumor induction in groups of 10 rats or mice after subcutaneous injection of tannic acid (B.D.H.), extracts containing condensed tannins, or extracts containing hydrolyzable gallotannins from myrobalans (*Terminalia chebula* Retz), chestnut (*Castanea sativa* Mill.) and valonia (*Quercus aegilops* L.). Twelve equal weekly doses delivered a total of 350 mg of tannin extract or tannic acid per kg to rats and 750 mg per kg to mice. Sarcomas appeared at the injection site of condensed tannin extracts in rats after one year but did not develop at the injection sites of tannic acid or myrobalan extract, the only hydrolyzable gallotannins tested in the rat. No liver damage or other observable effects were produced in the rat by these hydrolyzable gallotannins. In mice, tannic acid and extracts of myrobalans, chestnut and valonia produced no tumors at the site of injection but liver tumors were described in each of these groups.

Several reports, in addition to the long-term feeding studies reviewed by the Joint FAO/WHO Expert Committee on Food Additives, are negative with respect to carcinogenic effects after parenteral or oral administration of tannic acid. Bichel and Bach injected intramuscularly a group of 30 male and 30 female C_3HA mice with nutgall tannic acid (0.75 mg per kg) every second week for 12 months. The tannic acid was described as equivalent to tanninum (Ph. Nord.), acidum tannicum (Brit. 32) and to tannic acid (USA 47). It was delivered in a mixture of 1 mg cyanocobalamin and 1.5 mg tannic acid in 2 percent aluminum monostearate gel in sesame oil. Equal numbers of mice received the tannic acid preparation without cyanocobalamin and a third group received saline injections. The experiment was terminated six months after the last injection. There were no tumors at the injection sites and histological examination of the liver revealed no differences in the three groups. Perissinotto and Lombardi injected 80 rats subcutaneously with 1 to 2 percent aqueous solution, delivering 100 to 200 mg of tannic acid (not described) per kilogram body weight every five days and reported no evidence of liver tumors after 250 days.

Blumenberg and Kessler administered tannic acid (1000 mg per kg body weight of DAB 6) by gavage daily for 231 days to male Wistar rats and noted no hepatonecrosis. Konstantinov and Ivanov injected subcutaneously 200 mg tannic acid (not described) per kg to chickens weekly for 36 weeks. Intranuclear inclusions in parenchymal cells of the liver and kidney tubules were noted 24 hours after the initial treatment but no hepatomas or cholangiomas developed during the test period. The cellular inclusions indicated repair of the liver cells rather than evidence of carcinogenic changes.

Weinberg *et al.* studied the influence of drug treatments (including tannic acid) given to female rats during gestation on the toxicity of drugs administered to the newborn. There was no influence on the susceptibility of the newborn rats (12 to 24 hr) to lethal doses of tannic acid when the dam was treated before or during gestation. The study showed that younger rats died earlier mainly because of their inability to tolerate the gastrointestinal necrosis that tannic acid induced.

Food grade tannic acid was not mutagenic when tested by *in vitro* microbial assays with and without the addition of mammalian (mice, rats, and monkeys) metabolic activation preparations (liver, lung and testes). The indicator organisms used were *Saccharomyces cerevisiae* D4 and *Salmonella typhimurium* TA–1535, TA–1537 and TA–1538.

Teratologic evaluation of food grade tannic acid was conducted in mice and rats. Administration of up to 135 mg per kg body weight of tannic acid to pregnant mice and up to 180 mg per kg body weight of tannic acid to pregnant rats for 10 consecutive days (day 6 through 15 of gestation) had no clearly discernible effect on nidation or on maternal or fetal survival. The number of abnormalities seen in either soft or skeletal tissues of the test groups did not differ from the number occurring spontaneously in the sham-treated controls. Food grade tannic acid displayed no teratogenicity in the chick embryo test.

Johnston *et al.* reported the case history of one patient who was allergic to both tannic acid and gallic acid.[1]

[1] *Ibid.*, pp. 7–14.

The members of the Select Committee have evaluated all available safety information on tannic acid. In the Select Committee's opinion:

* * * only hydrolyzable gallotannins are within the definition of tannic acid. Tannic acid yields gallic acid and either glucose or quinic acid as hydrolysis products. These hydrolysis products are consumed as naturally occurring constituents of many foods. The total dietary intake of added tannic acid resulting from its use as a flavoring agent or processing aid can be inferred to be very small. The level of addition of tannic acid to various foods is about 100 ppm or less. Thus, the potential level of consumer exposure is orders of magnitude below the lowest levels for which adverse biological effects are reported to occur after oral administration of tannic acid to experimental animals.

While the evidence seems clear that food grade tannic acid at concentration reportedly added to foods is hydrolyzed prior to absorption from the small intestine, the extent and nature of its absorption have not been established for man. In experimental animals, intact tannic acid is apparently absorbed only after mucosal damage caused by large doses of concentrated aqueous tannic acid solutions intubated into empty stomachs or by artificially prolonged exposure of the mucosa to these solutions. Data available to the Select Committee contain no evidence that tannic acid as currently used in foods can induce mucosal damage. However, toxic effects following parenteral administration to animals suggest that additional studies should be made related to the absorption of tannic acid at dietary levels by individuals with gastrointestinal disorders.

Some investigators have reported that daily oral administration of tannc acid to experimental animals by stomach tube for periods of months may cause damage to the liver and other organs similar to that seen after parenteral administration of hydrolyzable tannins to experimental animals, and to that reported historically in man following topical treatment of burns with tannic acid. None of these effects is reported, however, in experimental animals receiving tannic acid as a component of their ration, even at levels of several percent of the diet. Nevertheless, the reported hepatocarcinogenic effect of parenterally injected hydrolyzable gallotannins is of concern to the Select Committee owing, in part, to the lack of uniformity of composition and sources of the preparations used in the tests available in the literature for evaluation. While the evidence available to the Select Committee does not demonstrate hazard of carcinogenicity inherent in food grade tannic acid, research is needed to answer the question of why there are such extreme differences between the results of parenterally and orally administered hydrolyzable tannins in rodents.

There is no evidence of a clear and present danger to the public health occasioned by the current use of dietary tannic acid as a food ingredient.[1]

[1] *Ibid.*, pp. 14–15.

The Select Committee concludes that no evidence in the available information on tannic acid demonstrates, or presents reasonable grounds to suspect, a hazard to the public when tannic acid is used at levels that are now current and in the manner now practiced. However, the Select Committee also states that it is not possible to determine, without additional data, whether a significant increase in comsumption would constitute a dietary hazard.[2]

FDA has undertaken its own evaluation of all available information on tannic acid and concurs with the conclusion of the Select Committee. Based upon available safety data, the agency concludes that this ingredient should be affirmed as GRAS with specific limitations placed on its use. The levels of use set forth in this proposal for various food categories are the maximum levels reported to the NAS/NRC in their 1971 survey of food manufacturers on the use of GRAS ingredients. The agency encourages the submission, as comments on this proposal, of other food uses for this ingredient that may not have been reported during the survey. Each report of a use should include the residue level of tannic acid remaining in the food when consumed, so that the agency may determine whether a significant increase in consumption of tannic acid will result from the new reported use. FDA will address any change in the regulatory status of tannic acid when it issues the final rule.

As discussed earlier, of the 1.7 million pounds of foodgrade tannic acid used in 1970, the major portion is believed by the Select Committee to be used as a processing aid and as such does not become part of the food supply. The agency therefore concludes that with the use limitations presented in this proposal, available data support GRAS affirmation of tannic acid as currently used in food. After a final rule is published, any use of tannic acid that is not permitted by the regulation will be considered an unsafe use within the meaning of section 409(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(a)), whose use in food is unlawful.

The Select Committee states that, in its opinion, additional data should be obtained to answer questions relating to (1) the absorption of tannic acid at normal dietary levels by individuals with gastrointestinal disorders and (2) the differences between the observed toxic effects of parenterally and orally administered hydrolyzable tannins in rodents, specifically the relation between the route of administration and the reported hepatocarcinogenic effects.[1]

[2] *Ibid.*, p. 15.

In response to the questions raised by the Select Committee's report, FDA directed its Cancer Assessment Committee (CAC) to undertake a review of the safety data supporting the use of tannic acid in food. The CAC shared the Select Committee's concern about the induction of tumors and other toxic effects in animals injected with tannic acid. On the other hand, the CAC noted that there is extensive data which demonstrate orally administered tannic acid is not toxic to animals at doses far exceeding the injected doses. The CAC concluded that there was no evidence that orally administered food-grade tannic acid is a carcinogen. FDA requests that safety information addressing these questions, published or unpublished, be submitted as comments on this proposal during the comment period.

As discussed earlier, the agency has issued opinion letters sanctioning the safe use of tannic acid in salad dressing and apple juice. Available data do no indicate, however, that tannic acid currently is being used in these foods. Therefore, FDA is not proposing to affirm these uses. FDA will reconsider this matter if current use information (levels of addition and intended technical effects) is submitted for these uses as comments on this proposal.

Because the use of tannic acid as a boiler water additive is regulated under § 173.310, it would be redundant to include this use in the proposed action. Accordingly, it is not being included in this proposal. The use of tannic acid in refining rendered fats was not reported in the NAS/NRC survey. However, when it is used in accordance with 9 CFR 318.7, the agency has no reason to believe that tannic acid would pose a hazard to the public. Consequently, this prior-sanctioned use if being included in the proposal.

Copies of the scientific literature review on tannic acid, reports of mutagenic and teratogenic evaluations, and the report of the Select Committee are available for review at the Dockets Management Branch (address above), and may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, as follows:

[1] *Ibid.*, p. 15.

Title	Order No.	Price code	Price [1]
Tannic acid (scientific literature review).	PB-223-858/AS	A05	$6.00
Tannic acid (mutagenic evaluation).	PB-245-473/AS	A03	4.50
Tannic acid (teratologic evaluation).	PB-245-519/AS	A03	4.50
Tannic acid (Select Committee report).	PB-274-669/AS	A03	4.50

[1]Price subject to change.

This proposed action does not affect the current use of tannic acid in pet food or animal feed.

The format of the proposed regulation is different from that in previous GRAS affirmation regulations. The agency has modified the form in which the specific limitations on the use of the ingredient is presented. This change has no substantive effect but is made merely for clarity.

The agency has determined under 21 CFR 25.24(d)(6)(proposed December 11, 1979; 44FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human evironment. therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that the effect of this proposal is to maintain current known uses of the substances covered by this proposal by both large and small businesses. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposed rule, and the agency has determined that the final rule, if promulgated, will not be a major rule as defined by the Order.

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Parts 182 and 184 be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§ 182.20 [Amended]

1. In Part 182, § 182.20 *Essential oils, oleoresins (solvent-free), and natural extractives (including distillates)* is amended by removing the entry "Tannic acid."

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

2. In Part 184, by adding new § 184.1097 to read as follows:

§ 184.1097 Tannic acid.

(a) Tannic acid (CAS Reg. No. 1401–55–4), or hydrolyzable gallotannin, is a complex polyphenolic organic structure that yeilds gallic acid and either glucose or quinic acid as hydrolysis products. It is a yellowish-white to light brown substance in the form of an amorphous, bulky powder, glistening scales, or spongy masses. It is also odorless or has a faint characteristic odor and an astringent taste. Tannic acid is obtained by solvent extraction of nutgalls or excrescences that form on the young twigs of *Quercus* L. (Fam. *Fagaceae*). Tannic acid is also obtained by solvent extraction of the seed pods of Tara (*Caesalpinia spinosa*) from the eastern Mediterranean region or of Chinese nutgalls (*Rhus semialata*).

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 319, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c)(1) In accordance with § 184.1(b)(2), the ingredient is used in food only within the following specific limitations:

Category of food	Maximum level of use in food (as served) (percent)	Functional use
Baked goods and baking mixes, § 170.3(n)(1) of this chapter	0.01	Flavoring agent and adjuvant, § 170.3(o)(12) of this chapter
Alcoholic beverages, § 170.3(n)(2) of this chapter	0.015	Flavor enchancer, § 170.3(o)(11) of this chapter; flavoring agent and adjuvant, § 170.3(o)(12) of this chapter; processing aid, § 170.3(o)(24) of this chapter.
Nonalcoholic beverages and beverage bases, § 170.3(n)(3) of this chapter and for gelatins, puddings, and fillings, § 170.3(n)(22) of this chapter.	0.005	Flavoring agent and adjuvant, § 170.3(o)(12) of this chapter; pH control agent, § 170.3(o)(23) of this chapter.
Frozen dairy desserts and mixes, § 170.3(n)(20) of this chapter and for soft candy, § 170.3(n)(38) of this chapter.	0.04	Flavoring agent and adjuvant, § 170.3(o)(12) of this chapter.
Hard candy and cough drops, § 170.3(n)(25) of this chapter	0.013	Do.
Meat products, § 170.3(n)(29) of this chapter.	0.001	Do.

(2) Tannic acid may be used in rendered animal fat in accordance with 9 CFR 318.7.

The agency is unaware of any prior sanction for the use of this ingredient in foods under conditions different from those identified in this document. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The action proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342), and the failure of any person to come forward with proof of an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on it later. Should any person submit proof of the existence of a prior sanction, the agency hereby proposes to recognize such use by issuing an appropriate final rule under Part 181 (21 CFR Part 181) or affirming it as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

Interested persons may, on or before November 30, 1982 submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 16, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-27062 Filed 9-30-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 184

[Docket No. 81N-0348]

Benzoyl Peroxide; Proposed Affirmation of Gras Status

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to affirm that benzoyl peroxide is generally recognized as safe (GRAS) as a direct human food ingredient. The safety of this ingredient has been evaluated under the comprehensive safety review conducted by the agency.

DATE: Comments by November 30, 1982.

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

FOR FURTHER INFORMATION CONTACT: Mary C. Custer, Bureau of Foods, (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: FDA is conducting a comprehensive review of human food ingredients classified as GRAS or subject to a prior sanction. The agency has issued several notices and proposals (see the **Federal Register** of July 26, 1973 (38 FR 20040)) initiating this review, under which the safety of benzoyl peroxide has been evaluated. In accordance with the provisions of § 170.35 (21 CFR 170.35), the agency proposes to affirm the GRAS status of this ingredient as a direct human food ingredient.

Benzoyl peroxide, $(C_6H_5CO)_2O_2$, is a colorless, odorless, tasteless, rhombic crystalline solid. The technical product melts at 103° to 105° C, and the recrystallized compound melts at 106° to 108° C. It is soluble in nonpolar solvents, slightly soluble in alcohol and vegetable oils, and virtually insoluble in water. Benzoyl peroxide may decompose explosively if subjected to excessive heat, friction, or sudden shock. It may also decompose spontaneously when exposed to temperatures of 75° to 80° C for prolonged periods. It is flammable in a dry state but does not ignite when it contains 5 percent or more water. Most commercial preparations contain 15 to 34 percent water. It is synthesized commercially by the reaction of benzoyl chloride, sodium hydroxide, and hydrogen peroxide. Traces of benzoic acid remain after usual purification procedures.

In an advisory opinion letter issued in 1960, FDA stated that benzoyl peroxide is considered to be GRAS for use in bleaching lecithin, assuming the absence of residual unreacted peroxide. Benzoyl peroxide is listed in the standards of identity for use as an optional bleaching agent for flour (21 CFR 137.105). It is also listed in the standards of identity as an optional bleaching agent for milk used in the preparation of certain cheeses (21 CFR 133.102, 133,103, 133.104, 133.106, 133.111, 133.141, 133.165, 133.181, 133.183, and 133.195). Benzoyl peroxide is regulated in § 172.814 (21 CFR 172.814) as an ingredient used in the preparation of hydroxylated lecithin. In addition, benzoyl peroxide is regulated as a component of adhesives under § 175.105 (21 CFR 175.105), as a preservative in paper and paperboard under §§ 176.170 and 176.180 (21 CFR 176.170 and 176.180), as a catalyst in the formulation of polyester resins under § 177.2420 (21 CFR 177.2420), and as an accelerator in the production of rubber articles under § 177.2600 (21 CFR 177.2600).

In 1971, the National Academy of Sciences/National Research Council (NAS/NRC) surveyed a representative cross-section of food manufacturers to determine the specific foods in which benzoyl peroxide was used and the levels of usage. NAS/NRC combined this manufacturing information with information on consumer consumption of foods to obtain an estimate of consumer exposure to this ingredient. FDA estimates from a subsequent 1975 NAS/NRC survey that the total amount of benzoyl peroxide used in food by the U.S. food industry was approximately 1,470,000 pounds. This level of use corresponds to an average per capita usage of about 8.5 milligrams per day. However, this poundage figure represents the amount added to food and not the amount ingested.

The major use of benzoyl peroxide in the food industry is as a bleaching agent for flour. The maximum amount used for this purpose is about 50 parts per million. Studies have shown that the greater part of benzoyl peroxide added to flour decomposes into benzoic acid within a few days, although traces of benzoyl peroxide may persist for several weeks. The decomposition of benzoyl peroxide is accelerated by heating. The NAS/NRC survey reported that benzoyl peroxide is also used to bleach fats and oils. However, NAS/NRC believes that this reported use represents its use in the preparation of "double bleached" and "hydroxylated" lecithin.

Benzoyl peroxide has been the subject of a search of the scientific literature from 1920 to the present. The criteria used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) carcinogenicity, teratogenicity, or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology, (11) behavioral effects, (12) detection, and (13) processing. A total of 132 abstracts was reviewed, and 31 particularly pertinent reports have been summarized in a scientific literature review.

Information from the scientific literature review and the results of other studies have been summarized in a report to FDA by the Select Committee on GRAS Substances (the Select Committee), which is composed of qualified scientists selected by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB). The members of the Select Committee have carefully evaluated all the available information on benzoyl peroxide.[1] In the Select Committee's opinion:

[1] "Evaluation of the Health Aspects of Benzoyl Peroxide as a Food Ingredient," pp. 6-17, 1980. In the past, the agency presented verbatim the Select Committee's discussion of the biological data it reviewed. However, because the Select Committee's report is available at the Dockets Management Branch and from the National Technical Information Service, and because it represents a significant savings to the agency in publication costs, FDA has decided to discontinue presenting the discussion in the preamble to proposals that affirm GRAS status in accordance with current good manufacturing practice.

Benzoyl peroxide is GRAS when used as a bleaching agent in certain foods. It is used extensively for this purpose with flour and to a much lesser extent in the manufacture of some cheeses and with certain forms of lecithin. Data from food processors indicate an average per capita usage of about 8.5 mg/day. Only a small fraction of this amount would be ingested, for benzoyl peroxide is rapidly degraded and little of the intact compound would survive food processing. The amount actually ingested is subjected to further destruction in the gastrointestinal tract and by tissue peroxidases.

Benzoic acid is produced by the degradation of benzoyl peroxide during food processing. The amounts produced are small compared with those normally present or added to foods. There is no evidence of hazard from the ingestion of benzoic acid at these levels.

Oral administration of benzoyl peroxide by animals produced toxic effects only at levels several orders of magnitude greater than the estimated consumption by man from food sources. Various tests for mutagenicity and carcinogenicity of benzoyl peroxide have been negative. No tests of teratogenicity were available to the Select Committee.

Some carotene is destroyed by treatment of milk with benzoyl peroxide in the manufacture of cheese. Governmental regulations require that these losses be compensated for by the addition of supplementary vitamin A. Some vitamin E and vitamin C are probably destroyed during bleaching, but their amounts in flour and milk are small and these losses would have little nutritional significance. There is no evidence that other essential nutrients are destroyed.

Oxidation products of normal food constituents are possible by the action of benzoyl peroxide when it is used as a bleaching agent. These products have not been identified but could conceivably include oxidized forms of pigments, unsaturated fatty acids, and sterols in very small amounts. Possible products thus far tested have not proved hazardous when given by mouth at levels many times greater than any reasonable possible intake from food.

Benzoyl peroxide is used extensively in topical applications for skin disorders. Allergic responses have been reported among patients using these preparations as well as among individuals repeatedly exposed to the compound in the workplace. No reports have come to the attention of the Select Committee of allergic responses to benzoyl peroxide in food.[2]

The Select Committee concludes that no evidence in the available information on benzoyl peroxide demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when it is used at levels that are now current or that might reasonably be expected in the future.[3]

[2] *Ibid.*, p. 18.
[3] *Ibid.*, p. 19.

FDA has undertaken its own evaluation of all available information on food uses of benzoyl peroxide, and concurs with the conclusion of the Select Committee. The agency concludes that no change in the current GRAS status of benzoyl peroxide is justified. Therefore, the agency proposes that benzoyl peroxide be affirmed as GRAS.

Usually, regulations for substances affirmed as GRAS under conditions of current good manufacturing practice (CGMP) list the technical effects, as defined in § 170.3(o) (21 CFR 170.3(o)), for the ingredient in food and the food categories, as defined in § 170.3(n) (21 CFR 170.3(n)), in which the NAS/NRC survey reported that the ingredient is used. However, the uses of benzoyl peroxide in food are not well described by the technical effects and food categories listed in § 170.3. Benzoyl peroxide is used as a bleaching agent in a limited number of food ingredients and basic foods (flour and milk that is used in the preparation of certain cheeses) that may or may not be incorporated into a wide variety of finished products. None of the technical effects listed in § 170.3(o) adequately describe a bleaching agent that is used in several foods, and the food categories listed in § 170.3(n) refer to finished products. Consequently, the technical effects and food categories in § 170.3 do not describe adequately the conditions of use that the agency has evaluated, and the agency has decided not to refer to § 170.3 in the proposed regulation for benzoyl peroxide.

Additionally, FDA is proposing not to include in the GRAS affirmation regulation for benzoyl peroxide the levels of use reported in the NAS/NRC 1971 survey for this ingredient. As noted by the Select Committee, benzoyl peroxide is rapidly degraded, and little of the intact compound would survive food processing. Thus the levels of use reported in the 1971 NAS/NRC survey probably are levels of addition to the basic food during processing and do not represent levels in the finished food product, as served. Furthermore, the use of benzoyl peroxide to bleach flour and to bleach milk that is used in production of certain cheeses is governed by the relevant food standards. Consequently, the agency concludes that it is both inappropriate and unnecessary to include in its proposed GRAS affirmation regulation the levels of use of benzoyl peroxide that were reported in the NAS/NRC survey. To make clear, however, that its affirmation of the GRAS status of benzoyl peroxide is based on the evaluation of its limited use in bleaching flour and bleaching milk that is used in production of certain cheeses, the proposed regulation specifies these CGMP conditions of use.

In the **Federal Register** of September 7, 1982 (47 FR 39199), FDA proposed to adopt a general policy restricting the circumstances in which it will specifically describe conditions of use in regulations affirming substances as GRAS under 21 CFR 184.1(b)(1) or 186.1(b)(1). The agency proposed to amend its regulations to indicate clearly that it will specify one or more of the current good manufacturing practice conditions of use in regulations for substances affirmed as GRAS with no limitations other than current good manufacturing practice only when the agency determines that it is appropriate to do so.

The use of benzoyl peroxide to bleach lecithin is not included in this proposal. It is covered in the proposal that addresses the GRAS status of the use of lecithin in food (47 FR 34161).

Copies of the scientific literature review on benzoyl peroxide and the report of the Select Committee are available for review at the Dockets Management Branch (address above), and may be purchased from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, as follows:

Title	Order No.	Price code	Price [1]
Benzoyl peroxide (Select Committee report).	PB 81 127854	A03	$6.50
Benzoyl peroxide (scientific literature review).	PB 284-877/AS	A03	6.50

[1] Price subject to change.

This proposed action does not affect the current use of benzoyl peroxide in pet food or animal feed.

The format of the proposed regulation is different from that in previous GRAS affirmation regulations. FDA has modified paragraph (c) of § 184.1157 to make clear the agency's determination that GRAS affirmation is based upon current good manufacturing practice conditions of use, including both the technical effects and food categories listed. This change has no substantive effect but is made merely for clarity.

The agency has determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that the effect of this proposal is to maintain current known uses of the substance covered by this proposal by both large and small businesses. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposal, and the agency has determined that the final rule, if promulgated, will not be a major rule as defined by the Order.

List of Subjects in 21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

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

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Part 184 be amended by adding new § 184.1157, to read as follows:

§ 184.1157 Benzoyl peroxide.

(a) Benzoyl peroxide ($[(C_6H_5CO)_2O_2$, CAS Reg. No. 94–36–0) is a colorless, rhombic crystalline solid. It is prepared by the reaction of benzoyl chloride, sodium hydroxide, and hydrogen peroxide.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 35, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a bleaching agent in food.

(2) The ingredient is used in the following foods at levels not to exceed current good manufacturing practice: flour and, for production of certain cheeses in accordance with the appropriate food standard, milk.

The agency is unaware of any prior sanction for the use of this ingredient in foods under conditions different from those identified in this document. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The action proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342), and the failure of any person to come forward with proof of an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on it later. Should any person submit proof of the existence of a prior sanction, the agency hereby proposes to recognize such use by issuing an appropriate final rule under Part 181 (21 CFR Part 181) or affirming it as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

Interested persons may, on or before November 30, 1982 submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 13, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–27060 Filed 9–30–82; 8:45 am]

BILLING CODE 4160–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–001; A–4–FRL 2188–6]

Approval and Promulgation of Implementation Plans, Florida; Testing and Research Programs Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to disapprove the Florida Testing and Research Programs rule. The Florida Department of Environmental Regulation (FDER) designed the rule to allow industry variances from approved emission limits for a period of up to two years, subject to renewal by FDER, without going through the normal State Implementation Plan (SIP) revision procedure.

DATES: To be considered, comments must be submitted on or before November 1, 1982.

ADDRESSES: Written comments should be addressed to Barry Gilbert of EPA Region IV's Air Management Branch (see EPA Region IV address below). Copies of the materials submitted by Florida may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Bureau of Air Quality Mgmt., Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT: Barry Gilbert, EPA Region IV, Air Management Branch, at the above listed address and phone 404/881–3286 or FTS 257–3286.

SUPPLEMENTAL INFORMATION: Section 403.061(18), Florida Statutes, authorizes the Department of Environmental Regulation to "encourage and conduct studies, investigations, and research relating to pollution and its causes, effects, prevention, abatement, and control." To implement this authority, FDER adopted Section 17–1.585, Florida Administrative Code establishing a procedure by which the Department can authorize air pollution sources to conduct testing and research programs. The rule was submitted by FDER on April 7, 1980, for approval as a plan revision. It would allow industry variances from approved emission limits for two years, subject to renewal by FDER. The State would not submit such variances for EPA's review and approval, as is presently done with other variances from the Florida plan.

It is anticipated that some tests might result in emissions in excess of emission limiting standards established by rule or contained in permit conditions, or might cause violations of other rule or permit requirements. Under the rule, a source must petition FDER for authority to conduct a test or research program and identify any rules or permit conditions that might be violated. A public hearing must be held on each petition and FDER, at its discretion, can issue an order authorizing the proposed test. FDER indicates that any order issued under

this section will contain conditions sufficient to assure that the test will not result in violations of State or Federal ambient air quality standards, Prevention of Significant Deterioration (PSD) increments, Federal Standards of Performance for New Stationary Sources (NSPS), or National Emissions Standards for Hazardous Air Pollutants (NESHAPS). The order can authorize emissions in excess of existing emission limiting standards or other conditions different from those contained in applicable rules and permits for up to two years. The order may be renewed.

In the past, FDER has had no formal procedure for authorizing testing or research programs. The general practice, however, has been to grant such authority informally, either in writing or orally, without any provision for public participation or formal consideration of the proposed program. Such an informal practice may not protect a source from legal action taken by a third party where an emission limiting standard or other requirement was violated because such informal authorization under state law was not duly adopted pursuant to enabling statutes or authorized regulations and said informal authorization had not been approved by EPA as a SIP revision. Under Florida law, this rule resolved this problem by providing FDER with a means to establish formally alternate state regulatory requirements applicable to a source. Variances from the rules have been available under State Section 403.201, FSA, Variances, but the reasons for granting variances are very limited. FDER will use the regulations in Chapter 17–2 to review and issue an order. Sections 17–2.220—Public Notice and Comment, 17–2.260—Air Quality Models, 17–2.300—Ambient Air Quality Standards, 17–2.310—Maximum Allowable Increases (Prevention of Significant Deterioration Increments), 17–2 Part IV—Area Designation and attainment dates, and 17–2 Part V—New and Modified Source Review Requirements, shall be specifically used to issue an order.

Section 110(d) of the Clean Air Act states that the "applicable [state] implementation plan" is that plan or "most recent revision thereof" which has been approved by the EPA Administrator pursuant to Section 110(a) of the Act or promulgated by the EPA Administrator pursuant to Section 110(c) of the Act. 40 CFR 51.8 (1981) underscores the point that revisions of a state implementation plan are not considered part of an "applicable implementation plan" until approved by EPA by authority of Section 110 of the Clean Air Act. Under the proposed rule, if FDER does not submit such research and testing variances to EPA for its approval as a state implementation plan revision, then such variances as a matter of federal law are not part of the "applicable implementation plan" for Florida. This practice would raise the problem of sources having to comply with differing state and federal regulatory requirements and possibly subject such sources to citizen suits aimed at enforcement of the "applicable implementation plan"—those applicable air pollution control regulations previously approved by EPA. Furthermore, Section 110(i) of the Clean Air Act expressly forbids the state or EPA from modifying an applicable implementation plan except by means of specified orders, suspensions, exemptions or EPA action on a plan revision pursuant to Section 110(c) and Section 110(a)(3) of the Clean Air Act. The anticipated orders of FDER adopted by virtue of the proposed rule would conflict, under federal law, with the dictates of Section 110(i) of the Clean Air Act.

Additionally, Rule 17–1.585 would not meet the requirements of EPA's bubble policy since there are no emission trade procedures identified. Therefore, EPA is today proposing to disapprove the State submittal and is soliciting public comment on this proposal.

FDER may meet EPA's objections to rule 17–1.585 by agreeing to submit to EPA as SIP revisions any variances or orders issued under it. New sources must meet all PSD and new source review requirements including best available control technology or lowest achievable emission rate.

Under 5 U.S.C. 605(b), I hereby certify that the proposed disapproval would not have a significant economic impact on a substantial number of small entities since FDER could authorize research testing through revision of the Florida plan as approved by EPA.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any response are available for public inspection at the EPA Region IV office (see address above).

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Section 110 of the Clear Air Act (42 U.S.C. 7410))

Dated: July 30, 1982.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 82–27142 Filed 9–30–82; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 123

[OSW-FRL 2220–7]

Hazardous Waste Management Program, Vermont; Application for Interim Authorization, Phase II, Components A, B and C

AGENCY: Environmental Protection Agency, Region I.

ACTION: Notice of public hearing and public comment period.

SUMMARY: EPA is today announcing the availability for public review of the Vermont application for Phase II, Components A, B and C, Interim Authorization, Hazardous Waste Management Program, inviting public comment, and giving notice that if significant public interest is expressed, EPA will hold a public hearing on the application.

DATES: If significant public interest is expressed in holding a hearing, a public hearing is scheduled for November 9, 1982 at 9:00 a.m. EPA reserves the right to cancel the public hearing if significant public interest in holding a hearing is not communicated to EPA by telephone or in writing by November 2, 1982. EPA will determine by November 3, 1982, whether there is significant interest to hold the public hearing. Regardless of whether a public hearing is held, all written comments on the Vermont Interim Authorization Application must be received by the close of business on November 12, 1982.

ADDRESSES: If significant public interest is expressed, EPA will hold a public hearing on Vermont's Application for Interim Authorization on November 9, 1982, at 9:00 a.m. at the Pavillion Auditorium-Pavillion Building, 109 State Street, Montpelier, Vermont 05602.

Written comments on the application, written or telephone communication of interest in EPA's holding a public hearing on the Vermont Application and requests to speak at the hearing must be sent to: Susan L. Santos, Vermont State Coordinator, State Waste Programs Branch, U.S. EPA, Region I, John F. Kennedy Federal Building, Boston, Massachusetts 02203, Telephone (617) 223–5630.

If you wish to find out whether or not EPA will hold a public hearing on the Vermont Application based upon EPA's decision of whether there was

significant public interest in such a hearing, write or telephone after November 3, 1982, the EPA contact person listed below.

Copies of the Vermont Phase II Interim Authorization Application are available during normal business hours at the following addresses for inspection and copying by the public:

Agency of Environmental Conservation, Division of Water Resources and Environmental Engineering, Air and Solid Waste Program, Heritage II, 79 River Street, Montpelier, Vermont 05602, Telephone (802) 828–3395.

Environmental Protection Agency, Region I Office Library, Room 2100 B, John F. Kennedy Federal Building, Boston, Massachusetts 02203, Telephone (617) 223–5791.

EPA Headquarters Library, Room 2404, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Susan L. Santos, Vermont State Coordinator, State Waste Programs Branch, U.S. EPA, Region I, John F. Kennedy Federal Building, Boston, Massachusetts 02203, Telephone (617) 233–5630.

SUPPLEMENTARY INFORMATION: In the May 19, 1980 **Federal Register** (45 FR 33063) the Environmental Protection Agency promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended, to protect human health and the environment from the improper management of hazardous waste. These regulations included provisions under which EPA can authorize qualified State hazardous waste management programs to operate in lieu of the Federal program. The regulations provide for a transitional stage in which qualified state programs can be granted interim authorization. The interim authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program will take effect.

The State of Vermont received interim authorization for Phase I on January 8, 1981.

In the January 26, 1981 **Federal Register** (46 FR 7965), the Environmental Protection Agency announced the availability of portions or components of Phase II of interim authorization. Component A, published in the **Federal Register** January 12, 1981 (46 FR 2802), contains standards for permitting storage and treatment in containers, tanks, surface impoundments and waste piles. Component B, published in the **Federal Register** January 23, 1981 (46 FR 7666), contains standards for permitting hazardous waste incinerators. Component C, published in the **Federal Register** July 26, 1982 (47 FR 32274), contains standards for permitting surface impoundments, waste piles, land treatment facilities and landfills.

A full description of the requirements and procedures for State interim authorization is included in 40 CFR Part 123, Subpart F, as amended by 47 FR 32377.

As noted in the May 19, 1980 **Federal Register**, copies of complete state submittals for Phase II interim authorization are to be made available for public inspection and comment. In addition, if significant public interest exists, a public hearing is to be held on the submittal.

List of Subjects in 40 CFR Part 123

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Dated: September 28, 1982.

Leslie A. Carothers,

Deputy Regional Administrator, Region I.

[FR Doc. 82–27129 Filed 9–30–82; 9:44 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 429

Procedure to Process and Recover Value of Rights-of-Way and Administrative Costs

AGENCY: Bureau of Reclamation, Interior.

ACTION: Proposed rules.

SUMMARY: The Bureau of Reclamation (Reclamation) has elected to reissue proposed rules to provide a uniform policy for processing requests and recovering values and costs for the use of lands under Reclamation's control. The reason for the reissuance of the proposed rules is because of the numerous comments received.

DATE: Comments must be received on or before November 15, 1982.

ADDRESS: Comments should be submitted to the Commissioner, Bureau of Reclamation, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240, attention code 400.

FOR FURTHER INFORMATION CONTACT: Mr. L. David Williamson, Jr., Senior Staff Assistant for Land Resource Management, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240 (202) 343–5204.

SUPPLEMENTARY INFORMATION: In the September 10, 1979, (**Federal Register** Vol. 44 No. 176 pg. 52699ff) the Bureau of Reclamation published proposed rules to establish "Procedure to Process and Recover; Value of Rights-of-Way and Administrative Costs (43 CFR Part 429).

A wide variety of comments and suggestions were received on the proposed rules. In addition to these comments the Department of the Interior issued instructions "Cost Reimbursement Procedures for Rights-of-Way" (Departmental Manual Part 346, Chapter 1, release number 2218 of December 17, 1979). Other land managing Federal agencies also published procedures for recovering rights-of-way costs. The comments and other documents were analyzed and various suggestions and provisions were adopted for the revised proposed rules. A section by section analysis follows:

Section 429.1 Purpose.

No comments or suggestions were received on this section.

Section 429.2 Definitions.

The definition of "Documentation of Administrative Costs" was added to coincide with the Departmental Manual Part 346, Chapter 1 and the definition of "Secretary" was added at the suggestion of several reviewers.

Section 429.3 Establishment of the Value of Rights-of-Way.

This section was reorganized to clarify under what conditions the applicant for a right-of-way might be assessed for prior unauthorized use of the right-of-way by the applicant.

Section 429.4 Request by Other Governmental Agencies and Non-Profit Organizations for Rights-of-Way.

This section was modified as a result of several comments and suggestions resulting from the proposed rules of September 10, 1979, and as a result of the rules and proposed rules published by other agencies. The earlier draft required other Federal agencies and non-profit organizations to reimburse Reclamation for all administrative costs incurred in granting them a right-of-way. The revised section only requires the reimbursement of administrative costs that may be "* * * excessive to normal costs for granting similar rights-of-way * * *" and further requires all billings for such costs to be well documented.

Section 429.5 Request by Other Governmental Agencies for Assistance.

This section was modified in response to comments received to the 1979 proposed rules and now requires administrative cost reimbursement only for costs deemed to be excessive and also requires any charges for excessive costs to be well documented.

Section 429.6 Request by Non-Governmental Entities for Rights-of-Way.

The first change to this section appears under subsection (a) where a new item (3) was added to the required material for a right-of-way application, this item is "A map or drawing showing the approximate location of the requested right-of-way." In subsection (b) in addition to the initial filing fee required in the first proposed rules, we have added a deposit of $2 per lineal mile of right-of-way across Reclamation's land. This is to make our rules more compatible with the rules of other Federal agencies.

Subsection (c) has been added to give the granting official some leadway to reduce or eliminate the required fees when the applicant or the situation meets certain specified conditions. These conditions are:

(1) When the applicant may soon grant a reciprocal right-of-way to the United States.

(2) When the filing fee and administrative costs would exceed the value of the right granted.

(3) When the judgment of the Regional Director, the required fees, and reimbursements would place an undue financial hardship on the applicant.

(4) When the applicant provides without charge, or at a reduced charge, a valuable service to the public or to the programs of the Department.

Subsection (d) received no comments and was not revised. A new subsection (e) was added which requires the applicant to give proof of adequate financial resources to complete the project for which the right-of-way is requested. Subsections (f) and (g) were added to further clarify precisely what payments would be required before Reclamation may grant the requested right-of-way.

Section 429.7 Terms and Conditions of and for Right-of-Way.

Subsection (d) of this section was revised to clarify under what conditions and by what authority the consent of a Water Users Organization is required for Reclamation to grant a right-of-way.

Subsections (e), (f), and (g) specify certain clauses which will appear in all Reclamation right-of-way documents. Subsection (h) specifies when Secretarial approval is required for a permit to construct a powerline and when wheeling stipulations are required. These sections were added in response to several comments received on our first proposed rules.

Section 429.8 Reclamation Land Use Stipulation.

This stipulation has been modified from the original. The original stipulation required Reclamation to compensate the holder of a right-of-way for any damage to his works resulting from construction of Government facilities or works which were unforeseen at the time the right-of-way was granted. The new stipulation permits the Regional Director to select between compensation, mitigation, and the reconstruction of the grantees facilities to accommodate the Government's construction.

Section 429.9 Hold Harmless Clause.

This section has been modified to more closely reflect similar clauses contained in the rules proposed and published by other Federal agencies. An additional clause was added to cover rights-of-way utilized for high risk use and occupancy.

Section 429.10 Decisions and Appeals

This section remains unchanged.

The primary author of this document is Mr. Terence G. Cooper, Staff Assistant for Land Resources Management, O&M Policy Staff, Bureau of Reclamation, U.S. Department of the Interior, Washington, DC 20240, (202) 343–5204.

An assessment of environmental and economic impacts prepared by and on file with Reclamation has determined that this document does not contain a major proposal requiring the preparation of an environmental impact statement under the National Enviromental Policy Act of 1969, or a regultory impact analysis under Executive Order 12291.

Paperwork Reduction Act. The information collection requirements found in § 429.6 of these proposed rules have been submitted to the Office of Management and Budget for approval, as required by 44 U.S.C. 3501 et seq.

Effects on Small Entities. It has been determined that these proposed rules will have no significant economic effect on a substantial number of small entities under 5 U.S.C. 601 et seq.

List of Subjects in 43 CFR Part 429

Rights-of-way, Land.

It is proposed to amend Title 43 of the CFR by adding a new Part 429 to read as follows:

Dated: August 4, 1982.

Garrey E. Carruthers,

Assistant Secretary of the Interior, Land and Water Resources.

PART 429—PROCEDURE TO PROCESS AND RECOVER THE VALUE OF RIGHTS-OF-WAY AND ADMINISTRATIVE COSTS

Sec.

429.1 Purpose.
429.2 Definitions.
429.3 Establishment of the value of rights-of-way.
429.4 Request by other government agencies and non-profit organzations for rights-of-way.
429.5 Request by other governmental agencies for assistance.
429.6 Request by non-governmental entities for right-of-way.
429.7 Terms and conditions of and for the right-of-way.
429.8 Reclamation land-use stipulation.
429.9 Hold harmless clause.
429.10 Decisions and appeals.
429.11 Addresses.

Authority.—Title 43 U.S.C. 387, (53 Stat 1196), as amended by 64 Stat. 463, c. 752 (1950); 31 U.S.C. 483a (65 Stat. 290) (1951), Department of the Interior Manual Part 346, Chapter 1.

§ 429.1 Purpose.

The purpose of this part is to set forth procedures for the Bureau of Reclamation (Reclamation) to recover the value of rights-of-way interests granted to applicants, and for the collection of administrative costs for the issuing of rights-of-way over lands administered by Reclamation. This subsection also refers to costs incurred by Reclamation when, at the request of other agencies and parties, Reclamation gives aid and assistance in right-of-way matters.

These regulations apply to lands and interests in land under the jurisdiction of Reclamation granted to others by the Commissioner of the Bureau of Reclamation. Those interests issued or granted for the replacement or relocation of facilities belonging to others under Section 14 of the Reclamation Project Act of August 4, 1939, 43 U.S.C. Subsection 389 are excepted.

§ 429.2 Definitions.

As used in this part:

(a) *"Commissioner"* means the Commissioner of the Bureau of Reclamation or his designated representative.

(b) *"Reclamation"* means the Bureau of Reclamation.

(c) *"Regional Director"* means any one of the seven representatives of the Commissioner designated to act for the Commissioner in specified rights-of-way actions. The Regional Directors may redelegate certain of their authorities for granting rights-of-way to the supervising heads of field offices.

(d) *"Rights-of-way"* means only those easements, or agreements issued or granted by the Regional Director under the authority granted to him for the purpose of lineal crossings of Reclamation Project lands or facilities. The term "rights-of-way" does not include the leasing of land in the custody or under the control of Reclamation for grazing, agriculture, recreation, or any other purpose where a greater return will be realized by the United States through a competitive bidding process.

(e) *"Other agencies"* or *"others"* means all Federal, State, private individuals, partnerships, firms or corporations, and local governmental agencies not connected in any way with Reclamation, that request rights-of-way either directly or indirectly from Reclamation.

(f) *"Rights-of-way assistance"* means any assistance to obtain a right-of-way given upon request to another party. Such assistance includes but is not limited to work in the processing of environmental requirements, and the preparing, checking, and inspecting of engineering data and standards.

(g) *"Value of rights-of-way"* means the value of the rights, privileges, and estates granted by Reclamation for the use of land under its custody and control.

(h) *"Administrative costs"* means all direct or indirect costs incurred by Reclamation in reviewing, issuing, and processing of rights-of-way requests or the assisting of others in their rights-of-way matters, calculated in accordance with the procedures established by DM 346, chapter 1, "Cost Reimbursement Procedures for Rights-of-Way."

(i) *"Grantor"* means the Bureau of Reclamation, Department of the Interior.

(j) *"Grantee"* means the agency, firm, partnership, or individual who requested and to whom is granted the right-of-way.

(k) *"Documentation of Administrative Costs"* this documentation shall mean documentation in accordance with the provision of Part 346, Chapter 1 of the Departmental Manual as prescribed in release number 2218 of December 17, 1979.

(l) *"Secretary"* shall mean the Secretary of the Interior.

§ 429.3 Establishment of the value of rights-of-way.

(a) The value of a right-of-way shall be determined by Reclamation. The appraised value of a right-of-way shall be established by the use of a Reclamation staff or contract appraiser. The appraisal shall be based on the fair market value for the requested right or privilege.

(b) If the applicant has been or is currently using the right-of-way area without authorization and if it can be determined that the unauthorized use of Federal lands was unintentional and not due to carelessness or neglect on the part of the applicant; then the value of a right-of-way shall not include the value of any unauthorized use by the applicant of land under the custody and control of Reclamation prior to the applicant's request for a right-of-way.

(c) If the applicant's unauthorized use is determined to be intentional on his part or to be a result of his carelessness or neglect, then the value of such previous use shall become part of the right-of-way value.

§ 429.4 Request by other governmental agencies and nonprofit organizations for rights-of-way.

Rights-of-way requested by other governmental agencies and nonprofit organizations or corporations may be provided with no charge being made for the value of these rights-of-way when it is determined that the use of these rights-of-way will not interfere with the authorized current or planned use of the land by Reclamation. Other agencies and nonprofit organizations will be required to reimburse Reclamation for all administrative costs which are deemed to be excessive to normal costs for granting similar right-of-way and which are a result of the nature of the particular right-of-way request. All billings for administrative costs will be well documented. (§ 429.2 (k))

§429.5 Request by other governmental agencies for assistance.

The agency requesting assistance from Reclamation in acquiring a right-of-way shall be required to reimburse Reclamation for any administrative costs deemed to be in excess of the normal for the specific service or assistance (§ 429.2 (h)). Any billing for these excessive costs shall be well documented. (§ 429.2 (k))

§ 429.6 Request by non-governmental entities for rights-of-way.

The applicant for a right-of-way over land or estate in land, in the custody and control of Reclamation, must make application to the Regional Director of the region in which the land is located or to the affected field office. The addresses for the seven Regional Directors are located in § 429.11

A right-of-way will not be granted when it is determined that the proposed right-of-way will interfere with the functions of Reclamation or its ability to maintain its facilities. Only the minimum information needed to make this determination is to be collected. This information collection has been approved by the Office of Management and Budget.

(a) The application does not have to be in any particular form but must be in writing. The application must contain, but is not limited to the following items:

(1) A detailed description of the proposed use of Reclamation's lands.

(2) A legal or metes and bounds description of Reclamation's lands on which the proposed use is desired.

(3) A map or drawing showing the approximate location of the requested right-of-way.

(b) A filing fees of $100 must accompany the initial application. In addition to the $100 filing fee, a deposit of $2 for each lineal mile of requested right-of-way across Reclamation's lands will accompany the application. If, after a preliminary cursory review of the application reclamation determines the granting of a right-of-way is incompatible with present or future uses of the land and the right-of-way cannot be granted, the $2 per mile deposit will be returned. The filing fee of $100 will be retained by Reclamation regardless of its disposition of the right-of-way request. No refund will be made for any deposits if the applicant refuses to accept the right-of-way after it is prepared and offered. Applicants will be required to pay any administrative costs which are in excess of the $2 per mile deposit for the preparation of rights-of-way as well as the value of the right granted. This shall apply equally to rights-of-way which are offered by Reclamation and are rejected by the applicant, as to those which the applicants accepts. Any billing for administrative costs shall be well documented. (See § 429.2 (k)). At the discretion of the Regional Director, applications made by other Federal agencies need not be accompanied by either of the above fees.

(c) All fees and costs may be waived or reduced at the discretion of the Regional Director, when:

(1) It is determined that the applicant for the right-of-way will soon be, or is in the position of granting a right-of-way to the United States, and an opportunity for a reciprocal agreement exists.

(2) The filing fee and the administrative costs would exceed the value of the interests and rights to be granted.

(3) In the opinion of the Regional Director, to charge administrative fees and fair market value would work an undue hardship on the applicant. This decision should be well documented.

(4) The holder provides without charges, or at a reduced charge, a valuable service to the public or to the programs of the Department of the Interior.

(d) The applicant also must furnish, or agree to furnish, the following before Reclamation grants a right-of-way:

(1) A legal land description and/or a plat of the requested right-of-way. The description and plat should relate to Reclamation's land boundaries.

(2) Detailed construction details, construction specifications, engineering drawings, power flow diagrams, one-line diagram, and any other plans and specification which may be applicable.

(3) Statements, reports, or other documents prepared by the applicant which will be used by Reclamation to satisfy the requirements of the National Environmental Policy Act (42 U.S.C. 4321–4347).

(4) Proof of compliance with cultural resource policies prescribed in Executive Order 11593, and CFR, Title 43, Part 422.

(e) Sufficient evidence will be required to satisfy the Regional Director that the applicant has, or prior to commencing construction will have, sufficient technical and financial resources to construct, operate, maintain, and terminate the project for which the right-of-way is requested.

(f) The applicant shall pay all additional administrative costs which Reclamation incurs in addition to the initial filing fee of $100 and the $2 per mile fee required by § 429.6(a)(2) prior to the issuance of the right-of-way. All billing for administrative costs shall be well documented by Reclamation.

(g) The applicant shall also pay Reclamation a fair market value of the right and privilege granted for the use of Reclamation's lands prior to the issuance of the right-of-way. This value shall be determined by an appraisal made as prescribed in § 429.3 of this regulation. Those applicants meeting the provision of § 429.4 may be excepted from this provision. The decision to grant an exemption under § 429.4 will have the justification well documented.

§ 429.7 Terms and conditions of and for the right-of-way.

(a) The right-of-way granting document shall contain such special conditions or requirements as may be necessary to protect the interest of the United States.

(b) Rights-of-way shall be granted only to individuals who are citizens of the United States, or to firms or corporations licensed to do business in the United States, and to Federal, State, or local governmental, and quasi-governmental entities.

(c) No right-of-way shall be granted any person or corporation while any debt is known to be due the United States.

(d) Any grant of a right-of-way for a term of 25 years or longer must have the consent of any involved water user organization pursuant to the legal requirements of 43 U.S.C. 387. Approval of grants for less than a 25-year period may be requested of the water users organization at the discretion of the responsible Regional Director. As a minimum, the water user's organization should be given the opportunity to review the right-of-way application prior to its being granted.

(e) Reclamation land-use stipulation appearing in § 429.8 shall be included in all permanent rights-of-way granted, excepting grants to other Federal agencies.

(f) Temporary right-of-way grants, shall contain a termination clause in the event the applicant use become, or may become, an interference with the Reclamation's use of the land.

(g) Except for grants of right-of-way to Federal agencies, the grant shall contain a hold harmless clause found in § 429.9.

(h) Permits to construct power transmission lines in excess of 100 kilovolt (kV) must have prior approval of the Secretary and shall be secured by the applicant prior to requesting a rights-of-way for such line. Rights-of-way grants for power transmission lines in excess of 66 kV must also contain a wheeling stipulation as prescribed in 43 CFR 2805.1 (c).

§ 429.8 Reclamation land-use stipulation.

There is reserved from the rights herein granted, the prior rights of the United States acting through the Bureau of Reclamation, Department of the Interior, to construct, operate, and maintain public works now or hereafter authorized by the Congress without liability for severence or other damage to grantee's work; provided, however, that if such reserved rights are not identified in the grant and exercised for works authorized by the Congress within 5 years following the date of this grant, they will not be exercised unless grantee, or grantee's successor in interest is, notified of the need for, and grants an extension. If no extension is granted, the Government will compensate, or institute mitigation measures for any resultant damages to works placed on said lands pursuant to the rights herein granted. Compensation shall be in the amount of the cost of reconstruction of grantee's works to accommodate the exercise of the Government's reserved rights. As alternatives to such compensation the United States at its option and at its own expense may mitigate the damages by reconstructing the grantee's works to accommodate the Government facilities, or may provide other adequate mitigation measures for any damage to the grantee's property or right. The decision to compensate or mitigate is that of the appropriate Regional Director.

§ 429.9 Hold harmless clause.

The following clause shall be a part of every land use document issued by Reclamation:

The grantee hereby agrees to indemnify and hold harmless the United States, its employees, agents, and assigns from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death arising out of the grantee's activities under this agreement. In addition to the above clause, the holders of rights-of-way for high risk use and occupancy, such as, but not limited to, powerlines and oil and gas pipelines, shall be held liable for all injury, loss, or damage, including fire suppression costs, caused by the holder's use or occupancy without regard to the holder's negligence, provided that the maximum liability shall be specified in the special use authorization, but shall not exceed $1 million for any one occurrence. Liability for injury, loss, or damage, including fire suppression costs, in excess of the specified maximum shall be determined by the laws governing ordinary negligence of the jurisdiction in which the damage or injury occurred.

§ 429.10 Decisions and appeals.

(a) The Regional Director, acting as designee of the Secretary through the Commissioner, shall make the determinations required under these rules and regulations. A party directly affected by such determinations may appeal in writing to the Commissioner, Bureau of Reclamation, within 30 days of receipt of the Regional Director's determination. The affected party shall have an additional 30 days thereafter within which to submit a supporting brief memorandum to the Commissioner. The Regional Director's determination

will be held in abeyance until the Commissioner has reviewed the matter and rendered a decision.

(b) Any party to a case adversely affected by final decision of the Commissioner of the Bureau of Reclamation under this part shall have a right of appeal to the Director, Office of Hearings and Appeals, Office of the Secretary, in accordance with the procedures in Title 43, CFR, Part 4, Subpart G.

§ 429.11 Addresses.

Regional Director, Pacific Northwest Region, Bureau of Reclamation, Federal Building and U.S. Courthouse, Box 043, 550 West Fort Street, Boise, ID 83724

Regional Director, Mid-Pacific Region, Bureau of Reclamation, Federal Building, 2800 Cottage Way, Sacramento, CA 95825

Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Administration Building, Boulder City, NV 89005

Regional Director, Upper Colorado Region, Bureau of Reclamation, P.O. Box 11568, 125 South State Street, Salt Lake City, UT 84147

Regional Director, Southwest Region, Bureau of Reclamation, 714 South Tyler, Suite 201, Amarillo, TX 79101

Regional Director, Upper Missouri Region, Bureau of Reclamation, P.O. Box 2553, Federal Building, 316 North 26th Street, Billings, MT 59103

Regional Director, Lower Missouri Region, Bureau of Reclamation, P.O. Box 25247, Building 20, Denver, CO 80225

[FR Doc. 82-27045 Filed 9-30-82; 8:45 am]

BILLING CODE 4310-09-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 82-640; RM-4148]

FM Broadcast Station in Prineville, Oregon; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to substitute Channel 236 for Channel 237A at Prineville, Oregon, and to modify Station KIJK(FM)'s license to specify operation on Channel 236 in response to a petition filed by High Lakes Broadcasting Company.

DATES: Comments must be filed on or before November 4, 1982, and reply comments must be filed on or before November 19, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR 73 Affected

Radio broadcasting.

Adopted: September 9, 1982.

Released: September 20, 1982.

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Prineville, Oregon) BC Docket No. 82-640, RM-4148; Notice of Proposed Rule Making:

1. A petition for rule making was filed on June 28, 1982, by High Lakes Broadcasting Company ("petitioner"), proposing to substitute Class C FM Channel 236 for Channel 237A at Prineville, Oregon, and to modify the license of Station KIJK(FM) at Prineville to specify operation on Channel 236.

2. Prineville, seat of Crook County, is presently served by one daytime-only AM station (KRCO) and one FM station (KIJK), both licensed to petitioner. Petitioner presently operates Station KIJK(FM) on Channel 237A and if Channel 236 is assigned, proposes to expeditiously upgrade its facilities and modify its license to specify operation on Channel 236. Petitioner has also submitted information with respect to the Prineville community and its needs for the proposed Class C operation. However, in view of the action taken in *Revision of FM assignment Policies and Procedures,* BC Docket No. 80-130, 90 F.C.C. 2d 88 (1982), the information is no longer relevant in this type of rule making proceeding.

3. Petitioner has also requested a waiver of § 73.207(a) in order to allow the use of Channel 236 at its present transmitter site. That site would be short-spaced approximately 4 miles to the assignment of Class C FM Channel 289 at Bend, Oregon, for which an application is pending. Petitioner has not set forth any public interest reasons for the waiver. However, the issue need not be resolved here. The channel can be assigned in compliance with the minimum distance separation requirements with a site restriction of 6.6 miles southeast of Prineville due to Station KIOK(FM) in Richland, Washington, and to the proposed site for Channel 289 at Bend. The issue of waiver of the mileage separation requirements to permit a 4-mile short spacing can be determined at the application stage. With this approach in mind, petitioner should indicate whether it is still interested in the assignment of Channel 236 with the site restriction of 6.6 miles.

4. We propose, therefore, to substitute Channel 236 for Channel 237A at Prineville and, in accordance with established policy, we propose to modify the license of Station KIJK(FM) (Channel 237A) to specify operation on Channel 236. However, an opportunity for other parties to state their interest in Channel 236 is given in comments herein. Only in the absence of another interest could the modification take place. *See, Cheyenne, Wyoming,* 62 F.C.C. 2d 63 (1976).

5. In view of the above, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Rules, as it pertains to Prineville, Oregon, as follows:

City	Channel No.	
	Present	Proposed
Prineville, Oregon	237A	236

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before November 4, 1982, and reply comments on or before November 19, 1982, and are advised to read the Appendix for the proper procedures.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact D. David Weston, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a

message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the notice of proposed rule making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the notice of proposed rule making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-27077 Filed 9-30-82; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 47, No. 191
Friday, October 1, 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 Governmental Processes; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Government Processes of the Administrative Conference of the United States, to be held at 1:30 P.M. on Tuesday, October 12, 1982, at the Administrative Conference Library, 2120 L Street, NW., Suite 500, Washington, D.C.

The Committee will meet to discuss two projects: Professor Michael Cox's study of regulation of attorneys practicing before federal agencies, and Professor Teresa Schwartz's study of the Consumer Product Safety Commission.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least two days in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting contact David M. Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037. (Telephone: 202–254–7065.) Minutes of the meeting will be available on request.

Richard K. Berg,
General Counsel.
September 28, 1982.

[FR Doc. 82-27135 Filed 9-30-82; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Lumbee River Electric Membership Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500), and REA Bulletin 20–21:320–21, Environmental Policies and Procedures, has made a Finding of No Significant Impact with respect to proposed financing assistance to Lumbee River Electric Membership Corporation (Lumbee River EMC), Red Springs, North Carolina, for the construction of 115 kV transmission facilities in Hoke and Robeson Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact and Environmental Assessment and Lumbee River EMC's Borrower's Environmental Report (BER) may be reviewed in the Office of the Director, Distribution Systems Division, Room 3304, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250, telephone (202) 382–8848, or at the office of Lumbee River Electric Membership Corporation (Mr Derl Hinson, Manager), P.O. Box 830, Red Springs, North Carolina 28377, telephone (919) 843–4131, during regular business hours.

SUPPLEMENTARY INFORMATION: REA, in connection with a request for assistance for financing from Lumbee River EMC, has reviewed the BER submitted by Lumbee River EMC and has determined that it represents an accurate assessment of the environmental impact of the proposed project. The proposed project consists of a 26.4 km (16.5 mi) 115 kV transmission line in Hoke County, a 10.4 km (6.5 mi) 115 kV transmission line in Robeson County, a 25–7.2/12.5 kV substation in Robeson County, two 115–7.2/12.5 kV substations in Hoke County, two 115–7.2/12.5 kV substation in Robeson County, a 115 kV switching station in Hoke County, and a 115 kV switching station in Robeson County. Based on the BER, Lumbee River EMC's 1981–1982 Annual Work Plan and maps, REA prepared an Environmental Assessment concerning the proposed project and its impacts. REA concluded that the proposed financing assistance would not be a major Federal action significantly affecting the quality of the human environment.

The BER and EA adequately consider potential impacts of the proposed project on resources, including threatened and endangered species, important farmlands, cultural resources, wetlands and floodplains. The two transmission lines will cross approximately .46 km (.28 mi) of wetland and approximately 8.6 km (5.4 mi) of floodplain. Approximately 8.6 km (5.4 mi) of prime farmland will be crossed by the proposed project, however, there will be no significant effect as less than 0.4 ha (1 ac) will actually be removed from production due to pole placement and much of this land is already dedicated to nonagricultural uses. Collectively, the environmental effects will be minimal.

Several alternatives were evaluated including taking no action, instituting additonal conservation measures, alternate sources of power generation in lieu of building the proposed Surlock to Quewhiffle transmission line including interconnection into the existing Rockfish or Wayside Substations in Hoke County, interconnection into a public utility transmission line near Aberdeen in Hoke County, construction of a new substation near the Bowmore areas in Hoke County, alternate sources of power generation in lieu of building the proposed Pembroke to Union transmission line including a more direct, but environmentally less favorable route between both substations in Robeson County, interconnection into the Laurenburg and Lumberton Substations in Robeson County, and interconnection into the Rowland Substation in Robeson County. Shifting the load on the Fairmont Metering Point to the McDonald or Hog Swamp Substations in Robeson County was considered in lieu of building the proposed Marietta and Rennert Substations. After reviewing these alternatives, REA has determined that the proposed project is the preferred alternative because it meets Lumbee

River EMC's needs with a minimum of adverse impacts.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: September 23, 1982.

Jack Van Mark,

Acting Administrator.

[FR Doc. 82-26903 Filed 9-30-82; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Eastanollee Creek Critical Area Treatment RC&D Measure, Georgia; 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 Eastanollee Creek Critical Area Treatment Measure, Stephens County, Georgia.

FOR FUTHER INFORMATION CONTRACE: 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: A Notice of A Finding of No Significant Impact for this measure was published in the **Federal Register,** Vol. 47, No. 108, Friday, June 4, 1982. This notice corrects location of the measure from Camden County, Georgia to Stephens County, Georgia, and more explicitly describes the proposal

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 along Eastanollee Creek. The planned works of improvement consist of streambank stabilization with 9,674 linear feet of rock, and 8,286 linear feet of tire mats and associated vegetation.

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 30 days after the date of this publication in the **Federal Register.**

(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: September 21, 1982.

Donald K. Stewart,

Assistant State Conservationist for Water Resources.

[FR Doc. 82-26927 Filed 9-30-82; 8:45 am]

BILLING CODE 3410-16-M

Riverside-Black Bayou Watershed, Mississippi; Intent to Prepare an Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

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 being prepared for the Riverside-Black Bayou Watershed, Bolivar and Washington Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT: Billy C. Griffin, State Conservationist, Soil Conservation Service, Suite 1321, Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone (601) 960-5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Billy C. Griffin, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for watershed protection, flood prevention and drainage. Alternatives under consideration to reach these objectives include systems for conservation land treatment, nonstructural measures, and channel improvement.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Further information on the proposed action, or the scoping meeting may be obtained from Billy C. Griffin, State Conservationist, at the above address or telephone 601-960-5205.

Dated: September 22, 1982.

Billy C. Griffin,

State Conservationist.

[FR Doc. 82-26926 Filed 9-30-82; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Docket 40829]

Aeroamerica, Inc., A. Joel Eisenberg, Enforcement Proceeding; Postponement of Prehearing Conference

On September 24, 1982, the Enforcement Division of the Office of General Counsel requested that the prehearing conference scheduled to be held on September 28, 1982 be postponed for two weeks. In support of its request, the Enforcement Division states that settlement negotiations are taking place and a postponement of the prehearing conference could facilitate these negotiations. The Enforcement

Division also stated that Aeroamerica has no objection to the postponment.

Accordingly, Notice is hereby given that the prehearing conference in the above-entitled matter scheduled to be held on September 28, 1982 (47 FR 38709, September 1, 1982) is hereby postponed until October 13, 1982, at 10:00 a.m. (local time), in Room 1012, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, before the undersigned administrative law judge.

Dated at Washington, D.C., September 27, 1982.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 82-27128 Filed 9-30-82; 8:45 am]

BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Permits filed under subpart Q of the Board's Procedural Regulations (see, 14 CFR 302.1701 et seq.) week ended September 24, 1982.

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
September 23, 1982	41004	All Nippon Airways Co., Ltd., c/o Jerrold Scoutt, Jr., Zuckert, Scoutt, Rasenberger & Delaney, 888 17th Street, N.W. Washington, D.C. 20006. Application of All Nippon Airways Co., Ltd., pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests a foreign air carrier permit to engage in charter foreign air transportation of persons, property and mail: Between any point or points in Japan and any point or points in the United States, and between any point or points in the United States and any point or points not in the United States or Japan, including intermediate and beyond points. Answers may be filed by October 21, 1982.
September 24, 1982	41007	Air National Aircraft Sales and Service, Inc., c/o James M. Burger, Shaw, Pittman, Pots & Trowbridge, 1800 M Street, N.W. Washington, D.C. 20036. Application of Air National Aircraft Sales and Service, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's procedural Regulations requests a certificate of public convenience and necessity to provide interstate and overseas scheduled air transportation and for a fitness determination. Conforming Applications, motion to modify scope, and Answers may be filed by October 22, 1982.
September 23, 1982	39477	Jusgoslovenski Aerotransport, c/o Bruce L. McDonald, Kirkland & Ellis, 1776 K Street, N.W., Washington, D.C. 20006. Amendment No. 1 to the Application of Jugoslovenski Aerotransport for renewal of foreign air carrier permits authorizing JAT to engage in scheduled and charter foreign air transportation. Answers may be filed by October 21, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 27127 Filed 9-30-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 40813]

Firstair Corp. Fitness Investigation; Postponement of Hearing

During the prehearing conference held on this proceeding on September 20, 1982, the applicant was directed to submit certain information by the Bureau of Domestic Aviation (BDA) on September 21, 1982, and other information requested by the undersigned on September 24, 1982. The applicant submitted the information requested by BDA on schedule, but informed the undersigned that it requires approximately 10 additional days to provide the remaining information. The applicant requests that this extension be granted and requests that the hearing, currently scheduled for October 6, 1982, be postponed to allow both BDA and the undersigned time to review the information once it is submitted. The applicant also states that BDA has no objections to this procedure.

Accordingly, notice is hereby given that the hearing in the above-entitled matter scheduled to be held on October 6, 1982, is hereby postponed until further notice.

Dated at Washington, D.C., September 28, 1982.

John M. Virtone,

Administrative Law Judge.

[FR Doc. 82-27129 Filed 9-30-82; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Bureau of Census

Estimates of Cubans and Haitians Who Entered the United States Between April 1, 1980 and October 1, 1980

Executive Order 12256 directs the Bureau of the Census to provide estimates of the number and population characteristics of those Cuban and Haitian immigrants covered by the order. Estimates of the number of such immigrants have been published in the **Federal Register** (June 24, 1981 and May 3, 1982). However, a number of federal programs require the use of characteristics such as per capita income or the number of children 5 to 17 years of age in poor families. Although some demographic infomation was collected from Cuban and Haitian refugees at the time of their arrival, no questions were asked about their income or family relationship.

If we define the income of Cuban and Haitian immigrants to be consistent with the concept used in the 1980 census, then the relevant figure would be their 1979 income. It is impossible to collect such data at this time because of the difficulty of locating everyone covered by the order and because of the long recall period. Given the absence of data, the best estimate of the 1979 income of this group is probably the 1979 per capita income of their countries of origin. Accordingly, we are designating a 1979 per capita income of $1,410 for Cuban refugees and $230 for Haitian refugees.[1] The application of these per capita figures to the population of Cuban and Haitian immigrants, for varying family size categories indicates that all Cuban and Haitian immigrants

[1] World Bank, *World Bank Atlas, Gross National Product, Population, and Growth Rates*, 1980 and 1981.

were living in households with incomes below the 1979 poverty thresholds.

On the other hand, for the purpose of this order, one may want an indication of these refugees' poverty status shortly after they came to the United States. To make this assessment, the Census Bureau procured a special tabulation of these refugees in the Food Stamp program from the State of Florida. About three-fourths of all Cuban and Haitian legal immigrants covered by the executive order reside in Florida. For the months of January and February 1981, the data indicate that virtually all Cuban and Haitian refugee households in Florida were participating in the Food Stamp program and that approximately 98 percent of them were below the 1981 poverty thresholds when adjusted to a monthly accounting period.

Given the above data and analysis, it is reasonable to conclude for the purpose of this executive order that all Cuban and Haitian immigrants covered by the order were in poverty.

Below is a table showing the estimated total number of Cuban and Haitian immigrants covered by the executive order and immigrant children by state and county.

ESTIMATES OF CUBAN AND HAITIAN ENTRANTS AND LEGAL IMMIGRANTS WHO ENTERED THE UNITED STATES BETWEEN APRIL 1, 1980 AND SEPTEMBER 30, 1980, ALL AGES AND CHILDREN, BY STATE AND COUNTY

State and county	Cuban and Haitian immigrants	
	All ages [1]	Children 5–17
United States [2]	132,080	18,154
Alabama	110	3
Arizona	150	8
Maricopa	80	6
Pima	70	2
Arkansas	290	12
Sebastian	160	5
California	4,850	568
Alameda	120	9
Los Angeles	3,270	439
Orange	320	40
Riverside	60	7
Sacramento	70	5
San Bernardino	100	7
San Diego	190	8
San Francisco	220	6
San Mateo	70	9
Santa Clara	160	18
Colorado	100	15
Arapahoe	50	11
Connecticut	330	30
Fairfield	200	14
Hartford	110	12
District of Columbia	330	10
Florida	98,330	14,690
Broward	1,780	118
Collier	190	17
Dade	90,750	13,992
Duval	100	9
Escambia	60	9
Hillsborough	1,580	211
Monroe	540	90
Okaloosa	160	1
Orange	440	25
Palm Beach	2,090	150
Pinellas	90	12
Polk	50	7

ESTIMATES OF CUBAN AND HAITIAN ENTRANTS AND LEGAL IMMIGRANTS WHO ENTERED THE UNITED STATES BETWEEN APRIL 1, 1980 AND SEPTEMBER 30, 1980, ALL AGES AND CHILDREN, BY STATE AND COUNTY—Continued

State and county	Cuban and Haitian immigrants	
	All ages [1]	Children 5–17
Sarasota	70	3
Georgia	390	31
DeKalb	100	12
Fulton	180	15
Illinois	1,730	128
Cook	1,580	118
DuPage	50	4
Indiana	120	12
Iowa	50	1
Kansas	150	23
Sedgwick	60	9
Louisiana	770	89
East Baton Rouge	50	9
Jefferson	220	24
Orleans	400	49
Maryland	310	26
Montgomery	150	13
Prince George's	70	8
Massachusetts	680	60
Essex	60	8
Middlesex	70	7
Suffolk	480	36
Michigan	240	24
Wayne	70	5
Minnesota	330	17
Hennepin	90	2
Ramsey	130	9
Missouri	140	12
Nebraska	90	15
Nevada	370	44
Clark	360	44
New Jersey	9,380	1,223
Bergen	190	25
Essex	920	100
Hudson	6,150	813
Mercer	80	10
Middlesex	270	54
Monmouth	60	3
Morris	50	4
Ocean	90	13
Passaic	340	45
Union	1,230	139
New Mexico	220	53
Bernalillo	150	36
New York	8,170	533
Bronx	990	50
Kings	2,230	62
Monroe	100	15
Nassau	270	41
New York	2,520	212
Queens	1,430	95
Westchester	370	44
North Carolina	60	2
Ohio	160	16
Cuyahoga	50	1
Oklahoma	300	25
Oklahoma	50	8
Tulsa	100	10
Oregon	180	13
Multnomah	140	7
Pennsylvania	990	162
Berks	50	9
Dauphin	220	18
Lancaster	150	46
Lebanon	80	10
Lehigh	60	10
Philadelphia	190	17
Tennessee	120	6
Davidson	60	4
Texas	1,410	81
Bexar	70	9
Dallas	230	10
Harris	400	34
Nueces	50	2
Tarrant	220	7
Utah	80	23
Virginia	220	20
Arlington	70	10
Fairfax	50	6
Washington	70	3
Wisconsin	860	138

ESTIMATES OF CUBAN AND HAITIAN ENTRANTS AND LEGAL IMMIGRANTS WHO ENTERED THE UNITED STATES BETWEEN APRIL 1, 1980 AND SEPTEMBER 30, 1980, ALL AGES AND CHILDREN, BY STATE AND COUNTY—Continued

State and county	Cuban and Haitian immigrants	
	All ages [1]	Children 5–17
Dane	90	10
Grant	90	68
LaCrosse	80	6
Milwaukee	170	35
Monroe	90	3

[1] Rounded to tens.
[2] Includes those states (not shown separately) having less than 50 total Cuban and Haitian immigrants.

Dated: September 24, 1982.

Bruce Chapman,

Director, Bureau of the Census.

[FR Doc. 82–26912 Filed 9–30–82; 8:45 am]

BILLING CODE 3510–07–M

INTERNATIONAL TRADE ADMINISTRATION

Articles of Quota Cheese; Quarterly Determination and Listing of Foreign Government Subsidies

AGENCY: International Trade Administration, Commerce.

ACTION: Quarterly Update of Foreign Government Subsidies on Articles of Quota Cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to our annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: October 1, 1982.

FOR FURTHER INFORMATION CONTACT: Susan E. Silver or Patricia W. Stroup, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, (202) 377–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (19 U.S.C. 1202 note) ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Department of

Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for each of the countries for which programs were identified in the July 1, 1982, quarterly update to our annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

September 27, 1982.

APPENDIX—QUOTA CHEESE SUBSIDY PROGRAMS

Country and program(s)	Gross subsidy (cents per pound) [1]	Net subsidy (cents per pound) [2]
Belgium: European Community (EC) restitution payments	6.8	6.8.
Canda:		
Export assistance on Swiss cheese	16.6	16.6
Export assistance on cheddar cheese	39.1	39.1
Export assistance on mozzarella NSPF cheese	35.3	35.3
Export assistance on all other NSPF cheeses	16.6	16.6
Denmark: EC restitution payments	4.4	4.4
Finland:		
Export subsidy	115.1	115.1
Indirect subsidies	18.9	18.9
Total, Finland	134.0	134.0
France: EC restitution payments	4.9	4.9
Ireland: EC restitution payments	6.3	6.3
Italy: EC restitution payments	18.5	18.5
Luxembourg: EC restitution payments	6.8	6.8
Netherlands: EC restitution payments	1.6	1.6
Norway:		
Indirect (milk) subsidy	20.1	20.1
Consumer subsidy	44.9	44.9
Total, Norway	65.0	65.0
Portugal: Direct subsidy on all sales of gouda cheese	17.1	17.1
Switzerland: Deficiency payments	78.4	78.4
U.K.: EC restitution payments	4.3	4.3

APPENDIX—QUOTA CHEESE SUBSIDY PROGRAMS—Continued

Country and program(s)	Gross subsidy (cents per pound) [1]	Net subsidy (cents per pound) [2]
W. Germany: EC restitution payments	5.6	5.6

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 16776.

[FR Doc. 82-27006 Filed 9-30-82; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council and Its Administrative Subcommittee; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Caribbean Fishery Management Council, established by section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265), has established an Administrative Subcommittee. The Council and its Administrative Subcommittee will hold separate meetings. The Council will hold its 43rd regular public meeting to consider status reports on fishery management plans (FMPs) under development (draft FMP for Coastal Pelagics Resources; draft FMP for the Fishery Resources of the Puerto Rican and St. Croix Geological Platforms), and discuss other Council matters. The Administrative Subcommittee will meet to consider matters related to the Council's budget and to discuss regular administrative operations.

DATES: The Council's public meeting will convene on Wednesday, November 17, 1982, at approximately 1:30 p.m., adjourn at approximately 5 p.m.; reconene on Thursday, November 18, 1982, at approximately 9 a.m.; adjourn at approximately noon. The Council's Administrative Subcommittee public meeting will also convene on Wednesday, November 17, 1982, at approximately 10:30 a.m.; adjourn at approximately noon. All meetings will take place at the Conference Room of the Hotel Pierre, 105 de Diego Avenue, Santurce, Puerto Rico.

FURTHER INFORMATION: Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00198, Telephone: (809) 753-4926.

Dated: September 28, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82-27138 Filed 9-30-82; 8:45 am]

BILLING CODE 3510-22-M

THE COMMISSION OF FINE ARTS

Vietnam Veterans Memorial; Meeting

The Commission of Fine Arts will next meet in open session on Wednesday, October 13, 1982 at 10:00 a.m. in the Commission's offices at 708 Jackson Place NW., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington, D.C. At noon the Commission will convene in the Cash Room at the Treasury Department Building for the purpose of considering proposed changes to the Vietnam Veterans Memorial.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, The Commission of Fine Arts, at the above address.

Dated in Washington, D.C., September 28, 1982.

Charles H. Atherton,

Secretary.

[FR Doc. 82-27143 Filed 9-30-82; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records: Amendment

AGENCY: Defense Advanced Research Projects Agency (DARPA), DOD.

ACTION: Notification of amendment to system of records.

SUMMARY: This notice makes a minor administrative amendment to a system of records maintained by the Defense Advanced Research Projects Agency (DARPA). The change to the system is set forth below, followed by the system notice as amended in its entirety.

DATES: This amendment shall become effective on October 1, 1982.

FOR FURTHER INFORMATION CONTACT: Norma Cook, Privacy Act Officer, ODASD(A), Room 5C315, The Pentagon, Washington, D.C. 20301. Telephone: 202/695-0907.

SUPPLEMENTARY INFORMATION: The Defense Advanced Research Projects Agency (DARPA) system notices for system of records subject to the Privacy

Act of 1974, Title 5 United States Code, Section 552a (Pub. L. 93–579; 44 Stat. 1896 *et seq.*) have been published in the **Federal Register** at:

FR Doc. 82–674 (47 FR 2544) January 18, 1982
FR Doc. 82–21537 (47 FR 34441) August 9, 1982
FR Doc. 82–23920 (47 FR 38574) September 1, 1982

The proposed amendment is not within the purview of the provisions of 5 U.S.C. 552a(o) of the Act which requires the submission of an altered system report.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

September 28, 1982.

E DARPA 001

System name:

Travel File (47 FR 2544, January 18, 1982)

Changes:

Categories of records in the system:

Delete entry under above heading, and insert:

"Traveler's last name, first name, middle initial, office, division, travel dates, days, ticket cost, other cost, travel order number, destination and status."

E DARPA 001

SYSTEM NAME:

Travel file.

SYSTEM LOCATION:

Administrative Services Office, Defense Advanced Research Projects Agency (DARPA), 1400 Wilson Boulevard, Arlington, Va. 22209.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DARPA employees, civilian and military. Selected government employees who visit DARPA on official business at DARPA's expense and certain nongovernment personnel traveling on Invitational Travel Orders for DARPA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Traveler's last name, first name, middle initial, office, division, travel dates, days, ticket cost, other cost, travel order number, destination, and status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, United States Code, Section 301; Department of Defense Directive 5105.41, "Defense Advanced Research Projects Agency (DARPA)". June 8, 1978.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Internal management administrative, and budgetary needs. Provides daily, weekly and monthly status reports to top management concerning status of travel funds.

INTERNAL USERS, USES, AND PURPOSES:

Director and Deputy Directors, Assistant Directors, Staff Assistants, Project Officers, and Personnel and Administrative Officers, DARPA.

EXTERNAL USERS, USES, AND PURPOSES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer paper printouts, paper records and correspondence in file folders, also, magnetic disc.

RETRIEVABILITY:

Accessed by last name, by office, or by any of the data files listed in Record Category.

SAFEGUARDS:

Paper copies are maintained in areas accessible only to authorized personnel. Building employs security guards. File access is available to authorized personnel who have been assigned system passwords.

RETENTION AND DISPOSAL:

Paper files will be destroyed by burning or pulping immediately after they have served their purposes or after 2 years, whichever occurs first. There are no plans to retire or destroy ADP files.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, DARPA, 1400 Wilson Boulevard, Arlington, Va. 22209.

NOTIFICATION PROCEDURE:

Information may be obtained from Administrative Officer, DARPA, Room 607, Architect Building, 1400 Wilson Boulevard, Arlington, Va. 22209. Telephone (202) 694–3032.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to Administrative Officer, DARPA, 1400 Wilson Boulevard, Arlington, Va. 22209.

Written requests for information should contain the full name of the individual, the period for which the information is required and specific categories of information required.

For personal visits, the individual should be able to provide DoD Identification Card.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR Part 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

DARPA Special Orders (TDY, Invitational, PCS, etc.); Travel Vouchers as submitted by travelers and as returned by the local finance offices.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 82–27105 Filed 9–30–82; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF82–208–001]

American Lignite Products Co., Notice of Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 27, 1982.

On August 18, 1982, American Lignite Products Co., (Applicant), P.O. Box 1066, Ione, California 95640, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The proposed steam turbine small power production facility will be located in Ione, Amador County, California. The net electric power production capacity of the facility will be between 12.8 and 14.3 megawatts. The primary energy source of the facility will be a high ash lignite residue which remains after a wax extraction operation. One third of the fuel requirements of the facility will be supplied by recovering low or non-wax lignites that occur in the Ione geologic formation in conjunction with wax bearing lignite. Applicant maintains that these fuels should be considered "waste" under § 292.202(b) of the Commission rules pursuant to sections 201 and 210 of the Public Utility Regulatory Policies Act. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status 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 rules 211 and

214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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. 82-27032 Filed 9-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-208-000]

American Lignite Products Co.; Notice of Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 27, 1982.

On August 18, 1982, American Lignite Products Co., (Applicant), P.O. Box 1066, Ione, California 95640, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The proposed topping-cycle cogeneration facility employing an extraction steam turbine will be located in Ione, Amador County, California. The primary energy source to the facility will be high ash lignite, a byproduct of wax production. The net electric power production capacity of the facility will be between 12.8 and 14.3 megawatts. Low pressure steam will be provided for process use. Installation of the facility is scheduled to begin in December 1982. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility. (Applicant has also filed an application for certification of the facility as a qualifying small power production facility, under Docket No. QF82-208-001).

Any person desiring to be heard or objecting to the granting of qualifying status 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 rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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. 82-27033 Filed 9-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-536-000]

Columbia Gas Transmission Corp.; Notice of Application

September 27, 1982.

Take notice that on September 17, 1982, Columbia Gas Transmission Corporation (Applicant), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP82-536-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction of 58 interconnecting tap facilities to provide additional points of delivery to existing wholesale customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes the following new points of delivery for the following wholesale customers:

(1) Columbia Gas of Kentucky, Inc., 5 taps for residential service—Estimated annual usage of 750 Mcf.

(2) Columbia Gas of Maryland, Inc., 1 tap for residential service—Estimated annual usage of 150 Mcf.

(3) Columbia Gas of Ohio, Inc., 29 taps for residential service, 2 taps for commercial service—Estimated annual usage of 4,763 Mcf.

(4) Columbia Gas of Pennsylvania, Inc., 2 taps for residential service—Estimated annual usage of 4,650 Mcf.

(5) Columbia Gas of Virginia, Inc., 2 taps for residential service—Estimated annual usage of 300 Mcf.

(6) Columbia Gas of West Virginia, Inc., 13 taps for residential service, 1 tap for commercial service—Estimated annual usage of 15,844 Mcf.

(7) The Dayton Power and Light Company, 1 tap for residential service—Estimated annual usage of 220 Mcf.

(8) West Ohio Gas Company, 1 tap for residential service—Estimated annual usage of 140 Mcf.

(9) Union Light, Heat & Power Company, 1 tap for residential service—Estimated annual usage of 600 Mcf.

Applicant estimates that the total cost of the interconnections proposed herein is $17,490 to be financed through internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 19, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27034 Filed 9-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-521-000]

El Paso Natural Gas Co.; Notice of Application

September 27, 1982.

Take notice that on September 2, 1982, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP82-521-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a new meter station and the relocation and modification of

an existing meter station, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of Applicant's proposal is to permit the delivery of natural gas for resale and direct sale to Arizona Public Service Company (APS) in Maricopa County, Arizona. Applicant contends that the relocation and modification and the construction and operation of the meter station facilities proposed herein would permit the relocation, for safety reasons, of an existing meter station which is presently situated under high power electrical transmission lines, the modification of its meter station after relocation to allow for increased deliveries of natural gas to APS in order to accommodate projected growth, and the construction and operation of a meter station located immediately adjacent to the proposed relocation site in order to accommodate increased deliveries of natural gas that APS would require upon completion of modifications to three generating units located at its West Phoenix Power Plant.

APS asserts it has advised Applicant of significant increases expected in its residential resale and new power plant direct sale requirements. On a peak hour basis in 1983, the requirements related to the increase in high-priority load are estimated to range from 700 Mcf to 3,400 Mcf. The design capacity of the existing meter station is said to be 3,375 Mcf at current delivery pressure. Furthermore, the power plant peak hour requirements are estimated to range from 5,474 Mcf to 2,400 Mcf by 1983. It is further stated that due to the increase in the number of residential customers, combined with an increase in their natural gas requirements, Applicant would otherwise experience difficulties in satifying its customers.

Applicant projects the aggregate annual deliveries of natural gas to be 9,103,727 Mcf, 10,969,359 Mcf, and 11,252,153 Mcf in 1983, 1984, and 1985, respectively. In order to meet projected demands Applicant seeks to upgrade the existing meter station facility proposed to be relocated and modified and to construct a new meter station facility. Applicant estimates the total cost to be $461,949. Applicant states that the cost of the facilities proposed would be financed through the use of internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 19, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27035 Filed 9-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-818-000]

Florida Power & Light Co.; Notice of Filing

September 27, 1982.

The filing Company submits the following:

Take notice that Florida Power & Light Company (FPL), on September 21, 1982, tendered for filing documents entitled Amendment Number Three to Agreement to Provide Specified Transmission Service Between FPL and Sebring Utilities Commission.

Amendment Number Three updates the rates for transmission service provided by FPL, bringing them in accord with the increased rates filed by the Commission on July 1, 1981, in *Florida Power & Light Company*, Docket No. ER81-588-000.

FPL requests waiver of the Commission's notice requirements and that the proposed Amendment be made effective immediately.

Copies of this filing have been served upon Sebring Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before October 13, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-2703 Filed 9-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-511-000]

Kansas-Nebraska Natural Gas Company, Inc.; Notice of Application

September 27, 1982.

Take notice that on August 25, 1982, Kansas-Nebraska Natural Gas Company, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP82-511-000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing construction necessary to upgrade certain town border stations and for permission and approval to abandon existing meters at those town border stations located in Balden, St. Edwards, and Trumbull, Nebraska, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of upgrading the town border stations is to enable Applicant to meet the requests from distribution customers served by Applicant in the above mentioned towns for additional gas for use in commercial grain dryers. At Balden, Nebraska, Applicant proposes to replace the existing meter with a meter having a capacity of 40.6 Mcf per hour at a new cost of approximately $2,500. At St. Edwards, Nebraska, Applicant proposes to replace the existing meter with a new meter having a capacity of 55.6 Mcf per hour at a net cost of approximately $2,200. At Trumbull, Nebraska, the upgrading would consist of providing two new meters with a capacity of 88.7

Mcf per hour at a cost of approximately $4,400 to replace two existing meters.

Applicant submits that the combined total annual retail sales represented by the requests for additional service in the above noted towns is expected to be approximately 30,000 Mcf. The total cost of the upgrading would be approximately $9,100. Applicant asserts that it would finance the proposed facilities with cash on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 19, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27037 Filed 9-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-500-000]

Northern Natural Gas Company, Division of InterNorth, Inc.; Notice of Application

September 27, 1982.

Take notice that on August 19, 1982, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP82-500-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to realign volumes of firm entitlement at the request of certain of its market area utility customers, construct and operate facilities to accommodate the deliveries of these volumes, and make increased sales to certain of its South End area customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In accordance with Section 17.5 of Applicant's FERC Gas Tariff, Third Revised Volume No. 1, Applicant proposes to realign 9,635 Mcf of natural gas per day of its market area system firm entitlement and provide an increase in entitlements to its South End customers. Applicant asserts that the proposed realignment would result in a 9,635 Mcf per day increase of winter period service, offset by decreases of 4,744 Mcf per day of contract demand, 2,978 Mcf per day of seasonal service and 1,913 Mcf per day of peaking service volumes. In addition to the realignment among market area customers, Applicant also requests authority on behalf of two of its utility customers to make certain realignments within each of their authorized firm entitlements.

In addition, Applicant proposes to increase the peak day entitlements of its South End customers by 5,001 Mcf per day and to increase annual entitlements by 1,503,000 Mcf. More specifically, the South End area customers, High Plains Natural Gas Co., Westar Transmission Co., and Southern Union Gas Co., have requested increases in contract demand of 4,500 Mcf per day, 300 Mcf per day and 201 Mcf per day, respectively. Applicant states that the proposed realignment of volumes would not result in expansion of authorized sales levels to Northern's market area utilities and would aid in achieving maximum utilization of presently authorized service by allowing Applicant to meet the requirements of the utilities requesting such changes.

In order to provide the requested realignments, Applicant proposes to construct and operate 2.14 miles of 4-inch loopline near Perry, Iowa, from Milepost 3.40 extending southeasterly to Milepost 5.54, all in Greene and Boone Counties, Iowa, and 13.13 miles of 6-inch loopline near Brookings, South Dakota from Section 18 to Section 13, all in Kingsbury County, South Dakota. Applicant also proposes to construct a new delivery point to High Plains Natural Gas Co. in Canadian, Texas, and to modify three existing town border stations in Applicant's market area system, namely, Savage, Minnesota No. 1E, St. Michael, Minnesota No. 1, and LeGrand, Iowa No. 1. Applicant estimates the total cost of construction to be $1,985,548 which would be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 19, 1982, file with the Federal Energy Regulatory Comnmission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27038 3 Filed 9-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-816-000]

Pacific Power & Light Co.; Notice of Filing

September 27, 1982.

The filing Company submits the following:

Take notice that Pacific Power & Light Company (PP&L) on September 21, 1982, tendered for filing PP&L's FERC Electric Tariff, Original Volume No. 3, Service Schedule PPL-3.

PP&L requests this rate schedule to become effective 60 days after filing, which it claims is the date of commencement of service.

Copies of this filing have been served upon the Idaho Public Utilities Commission, Public Service Commission of the State of Montana, Oregon Public Utility Commissioner, Washington Utilities and Transportation Commission, and Public Utilities Commission of the State of California.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before October 13, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27039 Filed 9-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-815-000]

Pennsylvania Power & Light Co.; Notice of Filing

September 27, 1982.

The filing Company submits the following:

Take notice that Pennsylvania Power & Light Company (PP&L) on September 20, 1982, tendered for filing as a rate schedule an executed agreement dated as September 1, 1982 between PP&L and The Connecticut Light and Power Company and Western Massachusetts Electric Company (NU Companies). The proposed rate schedule provides for the sale of interruptible power and energy by PP&L to NU Companies.

The rate schedule provides for a maximum energy reservation charge rate of $24.70 per megawatt hour and an energy charge rate based upon the incremental cost of providing the energy.

PP&L requests the effective date of September 20, 1982, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served upon the NU Companies and the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before October 13, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27040 Filed 9-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-814-000]

Southern California Edison Co.; Notice of Filing

September 27, 1982.

The filing Companyu submits the following:

Take notice that on September 20, 1982, Southern California Edison Company (Edison) tendered for filing an Integrated Operations Agreement which has been executed by Edison and the City of Vernon, California (Vernon). Under the terms of the Agreement, Vernon will be able to reduce purchases of capacity and energy from Edison by obtaining its own capacity and energy resource from the Palo Verde Nuclear Project or by integrating nonfirm energy resources.

Copies of this filing were served upon the City of Vernon and the Public Utilities Commission of the State of California.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before October 13, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F, Plumb,

Secretary.

[FR Doc. 82-27041 Filed 9-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-504-000]

Texas Eastern Transmission Corp. Notice of Application

September 27, 1982

Take notice that on August 23, 1982, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP82-504-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of pipeline and related facilities offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to construct and operate 1.74 miles of 8-inch pipeline, and related facilities extending from Chandeleur Area Block 17, A Platform, to Chandeleur Area Block 25, A Platform, Offshore Louisiana, and 11.4 miles of 12-inch pipeline and related facilities, extending from Chandeleur Area Block 25, A Platform, Offshore Louisiana, to an existing 8-inch sub-sea tap on Applicant's existing 16-inch pipeline in Main Pass Area Block 93, Offshore Louisiana. It is further stated that, upon completion, the pipeline will have a maximum capacity of 74,000 Mcf per day.

It is further stated that the proposed facilities would permit Applicant to attach substantial quantities of natural gas produced from said Chandeleur

Area Blocks. Applicant states that it has entered into gas purchase agreements with Getty Oil Company and Cities Service Company for the purchase of each company's 50 percent interest in Block 25 and with Tenneco Oil Company for the purchase of its 100 percent interest in Block 17.

Applicant estimates the total cost of the proposed facilities to be $14,549,000, which would be financed initially through revolving credit arrangements, short-term borrowing arrangements with banks, or from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 19, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27042 Filed 9-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-503-000]

Transcontinental Gas Pipe Line Corp.; Notice of Application

September 27, 1982.

Take notice that on August 20, 1982, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP82-503-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to establish the Transco-Niagara Storage Service which would provide up to 40,000,000 Mcf of top storage capacity and up to 600,000 Mcf per day of withdrawal capability for its customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the new storage service is made possible by two separate storage arrangements Applicant has entered into with ANR Storage Company (ANR Storage) in Michigan and Union Gas Limited (Union Gas) in Ontario. Each arrangement would provide Applicant up to 20,000,000 Mcf of top storage capacity and up to 300,000 Mcf per day of withdrawal capability. Applicant indicates that it would purchase the gas to be placed in storage from TransCanada PipeLines Limited (TransCanada) upon Commission approval of Applicant's pending import application in Docket No. CP82-115-000.

The storage service would be implemented by numerous transportation arrangements. During the summer injection season, TransCanada would deliver storage injection gas of up to 300,000 Mcf per day to Great Lakes Gas Transmission Company (Great Lakes) at an existing interconnection between TransCanada and Great Lakes at the United States-Canada border near Emerson, Manitoba. Great Lakes then would transport up to 150,000 Mcf per day to an existing interconnection with the facilities of ANR Storage near Crawford, Michigan. ANR Storage would, in turn, transport such injection quantities to an interconnection between the proposed facilities of ANR Storage and the proposed facilities of Niagaran Gas Storage Company (Niagaran) near Whitewater, Michigan. Niagaran, a partnership to be formed by subsidiaries of American Natural Resources and Michigan Consolidated Gas Company (Mich Con), would own the gas storage fields and appurtenant facilities in Whitewater and Union Townships, Michigan, into which the gas to be stored for Applicant would be injected. Great Lakes would transport the remainder of Applicant's storage injection volumes to the United States-Canada border near St. Clair, Michigan, where Great Lakes' facilities interconnect with facilities of TransCanada. TransCanada would, in turn, transport such gas for Applicant's account to Union Gas's system near Dawn, Ontario, for injection into Union Gas' storage facilities.

Applicant further states that during the winter, based upon nominations by Applicant, Niagaran would make up to 300,000 Mcf per day from its withdrawal capacity available to ANR Storage, which would in turn arrange transportation through two delivery systems in Michigan. ANR Storage would deliver up to 147,675 Mcf per day to Mich Con at a proposed interconnection between ANR Storage and Mich Con in Kalkaska Township, Michigan. Mich Con would transport such quantities to an existing interconnection with Great Lakes at Belle River Mills, Michigan. Great Lakes would transport such quantities to its existing interconnection with TransCanada near St. Clair, Michigan. With respect to the second delivery system, ANR Storage would deliver up to 149,550 Mcf per day of gas withdrawn from the Niagaran storage fields directly to Great Lakes at the Crawford Delivery Point, and Great Lakes would transport such quantities to TransCanada at the aforementioned St. Clair interconnection whereupon TransCanada would deliver such quantities to Union Gas near Dawn, Ontario. Both the Niagaran storage quantities and those quantities withdrawn from Union Gas' facilities near Dawn, Ontario would be transported in an easterly direction by Union Gas to a proposed interconnection between Union Gas and TransCanada at Kirkwall, Ontario and then by TransCanada for ultimate redelivery for Applicant's account near Niagara Falls, New York, where the Trans-Niagara Pipeline, pending authorization in Docket Nos. CP82-125-003 and CP82-125-004, would interconnect with TransCanada's facilities, it is explained. Trans-Niagara would transport Applicant's storage quantities, along with Applicant's Canadian purchase quantities, to Applicant's existing pipeline system at the Leidy Storage Field near Tamarack, Pennsylvania.

Applicant states that customers would contract for their desired annual quantity as well as their desired peak day capability; however, such customers withdrawals would be limited during the winter period to 70 percent of the

customer's storage demand quantity when the customer's storage balance is between 10 percent and 19 percent of full quantites and to 40 percent when the customers' balance drops below 10 percent of full quantities. Based on the maximum withdrawal rates and the total top storage capacity, Applicant estimates that it would be able to provide an average of sixty-seven days of storage service.

Applicant states that the proposed Rate Schedule T–NSS Consists of a monthly demand charge of $14.79 per dt of contract demand, a monthly capacity charge of 4.3 cents per dt of annual capacity, and injection and withdrawal charges of 8.8 cents per dt. Applicant indicates that these rates reflect an accumulation and direct assignment of charges for the storage and transportation services upstream of the Niagara Falls point of importation, an allocation to the new storage service of a portion of Trans-Niagara's transportation charges, and an allocation to the storage service of a portion of Applicant's costs of new facilities needed to transport the additional storage and purchase quantities through Applicant's Leidy Line and in the market area.

Applicant avers that its customers have indicated a need for additional peak period deliveries in order to meet their growing high-priority market requirements. Applicant indicates that the proposed storage service is part of its efforts to meet its customers' requirements.

Any person desiring to be heard or to make any protest with reference to said applicant should on or before October 19, 1982, filed with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the National Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–27043 Filed 9–30–82; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER82–817–000]

United Illuminating Co.; Notice of Filing

September 27, 1982.

The filing company submits the following:

Take notice that the United Illuminating Company (UI) on September 21, 1982, tendered for filing an exchange agreement (the Agreement) between UI and the Connecticut Light and Power Company (CL&P), and Western Massachusetts Electric Company (WMECO), the latter two companies, collectively, the NU Companies.

UI indicates that the Agreement, dated August 1, 1982 provides for an exchange of UI system capacity and related energy for an equivalent amount of capacity and related energy in the NU Companies' gas turbines. The capacity and related energy furnished by UI to the NU Companies would be from one or more of existing operable fossil-fired steam generation units at New Haven Harbor Station and English Station in the City of New Haven and/or Bridgeport Harbor Station or Stell Point Station in the City of Bridgeport. However, in most anticipated instances, the capacity and related energy will be supplied from Bridgeport Harbor Station Units 1 and 2.

UI states that the Agreement provides that the parties will, from time to time, determine the amount and period of the exchange of capacity when it is mutually advantageous to the parties.

UI further states that the NU Companies will pay an energy reservation charge to UI for each hour in an amount equal to the amount of the kilowatt capacity exchange in effect during that hour times $0.003. In addition, the NU Companies will pay the costs of energy taken by the NU Companies from UI based, on a before-the-fact agreed upon heat rate at fuel costs in effect for pool dispatching purposes at the time of the exchange.

UI indicates that it will pay the NU Companies for energy actually produced by the NU Companies' generating units which are part of the exchange capacity at the cost to provide such energy (including variable and additional maintenance costs) from such generating units.

UI requests an effective date of August 1, 1982, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served upon WMECO and CL&P.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before October 13, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–27044 Filed 9–30–82; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Fort Peck-Havre Proposed 230–KV Transmission Line, Montana; Draft Environmental Impact Statement, Extension of Comment Period

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Extension of Comment Period for Draft Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Western Area Power Administration, Department of Energy (DOE), has extended the comment period by 60 days for the Fort Peck-Havre draft environmental impact statement (DEIS) (DOE/EIS–0090–D). Comments will now be due October 22, 1982. The extension is in response to a request to allow more time for potentially affected individuals to

comment and is to allow time to study new local routing alternatives in response to comments received at the public hearings.

ADDRESS: Use the following address for further information, copies of the DEIS, and to send comments: Mr. James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box EGY, Billings, MT 59101 (406) 657–6042.

Issued at Golden, Colorado, September 23, 1982.

Don W. Shinkle,

Assistant Administrator for Management Services.

[FR Doc. 82–27123 Filed 9–30–82; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–2220–5]

Availability of Environmental Impact Statements Filed September 20 Through September 24, 1982 Pursuant to 40 CFR Part 1506.9

RESPONSIBLE AGENCY: Office of Federal Activities, general information 382–5075 or 382–5076.

Corps of Engineers:
- EIS No. 820626, Draft, COE, FL, Okeechobee Waterway, Continued Operation and Maintenance, Due: Nov. 15, 1982
- EIS No. 820625, Draft, COE, WA, Centralia Flood Damage Reduction, Skookumchuck Dam, Thurston County, Due: Nov. 15, 1982

Department of Interior:
- EIS No. 820627, Draft, BLM, OR, Andrews Livestock Grazing Management Program, Harney County, Due: Dec. 1, 1982
- EIS No. 820642, Final, BLM, UT, Pinyon Livestock Grazing Mgmt., Iron/Beaver/Washington/Millard Cos., Due: Nov. 1, 1982
- EIS No. 820631, Final, BLM, UT, Ashley Creek Livestock Grazing Mgmt. Plan, Uintah/Duchesne/Carbon Cos., Due: Nov. 1, 1982
- EIS No. 820630, Final, BLM, WY, Grass Creek Livestock Grazing Management Plan, Due: Nov. 1, 1982
- EIS No. 820632, Draft, OSM, WY, North Rochelle Mining and Reclamation Plan, Approval, Campbell County, Due: Nov. 24, 1982

Department of Transportation:
- EIS No. 820637, Draft, FHW, CT, I–284, Construction, I–84 E. Hartford to I–291 W. Windsor, Hartford Co., Due: Nov. 15, 1982

Environmental Protection Agency:
- EIS No. 820628, Draft, EPA, TX, Twin Oak Steam Electric Station, NPDES Permit, Robertson County, Due: Nov. 15, 1982
- EIS No. 820641, Final, EPA, TX, Pirkey Power Plant/Hallsville Lignite Mine, NPDES Permit, Harrison Co., Due: Nov. 1, 1982
- EIS No. 820624, Final, EPA, IA, Des Moines, Sludge Disposal Mgmt. Facilities, Grant, Polk & Warren Cos., Due: Nov. 1, 1982

Department of Housing and Urban Development:
- EIS No. 820636, Draft, HUD, HI, Mililani Town Expansion, Mortgage Insurance, Honolulu County, Due: Nov. 15, 1982
- EIS No. 820639, Draft, HUD, TX, Brownsville Northeast Growth Areawide Study, Cameron County, Due: Nov. 15, 1982
- EIS No. 820633, Draft, CDB, MI, Near East Riverfront Development #2, UDAG, Wayne County, Due: Nov. 15, 1982
- EIS No. 820634, Draft, CDB, MI, Chene Street Park/Near East Riverfront Development #3, UDAG, Wayne Co., Due: Nov. 15, 1982
- EIS No. 820635, Draft, CDB, MI, American Natural Resources/Near East Riverfront #1, UDAG, Wayne Co., Due: Nov. 15, 1982

Nuclear Regulatory Commission:
- EIS No. 820629, Final, NRC, SD, Edgemont Uranium Mill Decommissioning, Licensing Amendment, Due: Nov. 1, 1982

Department of Agriculture:
- EIS No. 820596, Final, AFS, ID, Moyie Wild and Scenic River Study, Kaniksu Nat'l Forest, Boundary Co., Due: Nov. 1, 1982
- EIS No. 820597, Final, AFS, CO, Conejos Wild and Scenic River Study, Routt Nat'l Forest, Routt County, Due: Nov. 1, 1982

Veterans Administration:
- EIS No. 820638, Final, VAD, FL, Florida Veterans National Cemetery Development, Marion & Sumter Cos., Due: Nov. 15, 1982

Amended Notices:
- EIS No. 820617, Final, REA, SEV, IL, MO Pike County Generating Facility/Associated Transmission Line, Due: Oct. 18, 1982—Published FR Sept. 24, 1982—Review waived
- EIS No. 820608, Final, BLM, OR, Brothers Area Grazing Mgmt. Plan, Crook, Harney, Lake & Deschutes Cos, Due: Oct. 30, 1982—Published FR Sept. 24, 1982—Review extended
- EIS No. 820519, Draft, BLM, SEV, ND MT Fort Union Region Coal Development, Leasing, Due: Oct. 19, 1982—Published FR Aug. 13, 1982—Review extended
- EIS No. 820460, Draft, FRC, SEV, CT MA NH NJ PA Tennessee/Boundary Looping Project, Certificate, Due: Oct. 22, 1982—Published FR July 16, 1982—Review extended

Dated: September 28, 1982.

Paul C. Cahill,

Director, Office of Federal Activities.

[FR Doc. 82–27133 Filed 9–30–82; 8:45 am]

BILLING CODE 6560–50–M

[A–10–FRL 2219–2]

Standards of Performance for New Stationary Sources; Delegation to the Energy Facility Site Evaluation Council (State of Washington)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing approval of a request dated August 5, 1982 from the Energy Facility Site Evaluation Council of Washington for delegation of authority for source categories under the New Source Performance Standards (NSPS) as adopted in their WAC 463, Washington Administrative Code. The source categories are: fossil fuel-fired steam generators, electric utility steam generating units, stationary gas turbines, petroleum refineries, storage vessels for petroleum liquids and coal preparation plants.

DATE: Effective September 3, 1982.

ADDRESSES: The related material in support of this delegation may be examined during normal business hours at the following locations:

Central Docket Section (10A–82–12), Environmental Protection Agency, West Tower Lobby, Gallery I 401 M Street, SW Washington, D.C. 20460

Air Programs Branch, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101

Energy Facility Site Evaluation Council, 4224 Sixth Ave., PY–11 Lacey, Washington 98503

FOR FURTHER INFORMATION CONTACT: Mark H. Hooper, Air Programs Branch M/S 532, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone No.: (206) 442–1949, FTS: 399–1949.

SUPPLEMENTARY INFORMATION: The Energy Facility Site Evaluation Council (EFSEC) in a letter dated August 5, 1982 requested delegation of source categories under NSPS. The letter granting this delegation of authority to EFSEC was dated September 3, 1982 and is as follows:

Honorable John Spellman,
Governor of Washington, Olympia, Washington 98504.

Dear Governor Spellman: On August 5, 1982 the Energy Facility Site Evaluation Council (EFSEC) requested that EPA grant delegation of authority to enforce source categories under New Source Performance Standards (NSPS) as they may apply to energy sources. We have reviewed that request and hereby delegate to EFSEC the authority to enforce the source categories listed as follows:

Fossil-fuel Fired Steam Generators

Electricity Utility Steam Generating Units
Stationary Gas Turbines
Petroleum Refineries
Storage Vessels for Petroleum Refineries
Coal Preparation Plants

In addition to the delegation, EFSEC has the authority to enforce revisions to the NSPS source categories which have been promulgated through May 1, 1982.

The DOE and EFSEC have overlapping responsibility for those sources; their jurisdiction depending on the size of the facilities. This delegation pertains only to those sources within the exclusive jurisdiction of EFSEC.

The conditions for delegating NSPS to the Washington State Department of Ecology (DOE) as specified in the February 25, 1975 notice from the Regional Administrator to the Governor of Washington apply as they relate to EFSEC. They are not listed here as DOE will be involved with this program according to terms of a DOE/EFSEC agreement dated May 27, 1980.

A Notice announcing this delegation will be published in the **Federal Register** in the future. The Notice will state, among other things, that effective immediately, all reports required pursuant to the Federal NSPS from energy sources located in the State which were previously sent to EPA will now be sent to the EFSEC.

Since this delegation is effective immediately, there is no requirement that EFSEC notify EPA of its acceptance. Unless EPA receives from the EFSEC written notice of objections within 10 days of the date of receipt of this letter, EFSEC will be deemed to have accepted all the terms of the delegation.

An advance copy of this **Register** is enclosed for your information.

Sincerely,

John R. Spencer,

Regional Administrator.

(Sec. 111, Clean Air Act)

Dated: September 3, 1982.

John R. Spencer,

Regional Administrator.

[FR Doc. 82-27126 Filed 9-30-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1377]

Petitions for Reconsideration, Clarification and Stay of Actions in Rule Making Proceedings

September 27, 1982.

The following listings of petitions for reconsideration, clarification and stay filed in Commission rulemaking proceedings is published pursuant to CFR 1.429(e). Oppositions to such petitions for reconsideration, clarification and stay must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations. (Docket No. 21136)

Filed by: Daniel W. Toohey, Attorney for KQED, Inc., State of Wisconsin—Educational Communications Board & The Ohio State University on 8–25–82. (Petition for Clarification)

Frank Mankiewicz, President, Bruce Wolpe, Director, National Affairs & Donald Martin, Regulatory Affairs Counsel on 9–16–82. (Petitions for Reconsideration & Stay)

Louis Schwartz, Robert A. Woods & Lawrence M. Miller for Schwartz, Woods & Miller on 9–20–82. (Petition for Reconsideration)

Theodore D. Frank & Marilyn D. Sonn, Attorneys for National Association of Public Television Stations & Public Broadcasting Service on 9–20–82. (Petition for Clarification or Reconsideration)

Subject: Amendment of Section 22.501(a) of the Rules to allow the 35 MHz frequency band to be used for one-way signaling on an exclusive basis in the Domestic Public Land Mobile Radio Service. (CC Docket No. 80–189)

Filed by: Robert S. Snyder, Attorney for Whidbey Telephone Company on 9–9–82.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82-27046 Filed 9-30-82; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82F-0267]

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 4-[[4,6-bis(octylthio)-*s*-triazin-2-yl]amino]-2,6-di-*tert*-butylphenol as a component of adhesives and pressure-sensitive adhesives.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B3644) has been filed by the Ciba-Geigy Corp., Hawthorne, NY 10532, proposing that § 175.105 *Adhesives* (21 CFR 175.105), § 175.125 *Pressure-sensitive adhesives* (21 CFR 175.125), and § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of 4-[[4,6-bis(octylthio)-*s*-triazin-2-yl]amino]-2,6-di-*tert*-butylphenol as a component of adhesives and pressure-sensitive adhesives.

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

Dated: September 17, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82-26849 Filed 9-30-82; 8:45 am]

BILLING CODE 4160-01-M

[FDA-225-82-6001]

Memorandum of Understanding With the National Library of Medicine

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed a memorandum of understanding with the National Library of Medicine. The purpose of the understanding is to define the respective responsibilities of the National Library of Medicine and FDA to produce a master video disc containing images of approximately 40 radiographs selected from the Radiological Health Sciences Learning File.

EFFECTIVE DATE: The agreement became effective July 27, 1982.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

SUPPLEMENTARY INFORMATION: In accordance with § 20.108(c) (21 CFR 20.108(c)) stating that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register,** the agency is publishing the following memorandum of understanding:

Memorandum of Understanding Between the National Library of Medicine and the Food and Drug Administration

I. Purpose

This agreement defines the respective responsibilities of the National Library of Medicine (NLM) and the Food and Drug Administration (FDA) to produce a master video disc containing images of approximately 40 radiographs selected from the Radiological Health Sciences Learning File.

II. Background

The Radiological Health Sciences Learning Laboratory (referred to as the Learning Laboratory) is a comprehensive approach to teaching the basic skills required in all phases of the radiological process. The Learning Laboratory was developed, with the support of FDA's Bureau of Radiological Health (BRH) at the Radiological Health Sciences Educational Project, University of California, San Francisco, under the direction of Dr. Reynold F. Brown. One component of this system, the Learning File, is perhaps best known. It is a collection of 1,400 individual cases grouped in 6 categories representing the major body organ systems. Each case consists of 3 to 4 radiographs filed in heavy-duty, color coded film jackets. Hence, the entire file consists of approximately 5,000 clinical X-ray films. The user selects those cases of interest from a file index and then physically pulls the cases from the file cabinet and places the radiographs on a viewing box for study. The radiographs must be returned to their jackets and refiled for the convenience of the next user. Each jacket contains a carefully prepared teaching discussion of the case (printed upside down) which a student consults after attempting an independent interpretation.

The National Medical Audio Visual Center's (NMAC) Learning Resources Laboratory of the NLM has produced a video disc containing approximately 20 radiographs taken from the Learning File. A simple computer program has been written to manipulate the stored images. Several radiologists have reviewed the video images of the radiographs and believe they may be satisfactory for instructional purposes. If this proves to be the case, the entire Learning File could be stored on 1 or 2 video discs, reducing purchasing costs and storage requirements.

III. Substance of Agreement

FDA/BRH and NLM/NMAC agree to mutually develop a video disc with sound narration of approximately 10 cases (35 to 40 radiographs) selected from the Learning File. This concept (computer controlled video disc) will be demonstrated at the annual meeting of the Radiological Society of North America in November 1982. A survey will be taken of the radiologists who visit the exhibition to determine if they think the images are useful for instructional purposes and could replace or supplement the present Learning File.

A. FDA/BRH will:

1. Supply a radiologist to serve as a consultant to the project and direct the recording session(s).

2. Supply the radiographs which are to be video taped.

3. Supply 2 single-view boxes with masking devices.

4. Supply an assistant to the radiologist.

5. Supply a 1-inch video tape, Ampex High Energy #196 for recording and editing.

6. Supply 1 2-inch Ampex video tape, if required.

7. Supply script for sound narration.

8. Provide funds for video disc mastering service.

9. Provide NMAC with 5 copies of final video disc.

B. NLM/NMAC will:

1. Provide all video production apparatus (TV cameras, tape recorders, switchers, signal processing equipment, character generators, etc.).

2. Provide a producer/director.

3. Provide camera operator(s).

4. Provide a video engineer.

5. Provide video and audio technician(s).

6. Provide console operator(s).

7. Cooperate in development of the survey instrument.

8. Develop computer coding to manipulate images on video disc player.

c. NLM and FDA will attempt to hold to the following production schedule:

1. FDA submits audio script to producer/director at NMAC by July 1.

2. NLM returns audio script to FDA by July 9.

3. FDA delivers light boxes and selected radiographs to NLM by July 14.

4. NLM and FDA jointly record sound narration and shoot pre-master tape July 20 through 30.

5. NLM and FDA jointly edit pre-master tape August 2 through 6.

6. FDA submits pre-master tape to mastering facility by August 6 (maximum turn-around time is 6 weeks).

7. FDA inspects check disc and returns check disc to mastering facility by September 24.

8. NLM and FDA jointly develop computer coding to manipulate images on video disc player by October 15.

IV. Name and Address of Participating Agencies

A. National Library of Medicine, Lister Hill National Center for Biomedical Communications, 8600 Rockville Pike, Bethesda, MD 20209.

B. Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

V. Liaison Officers

A. Director, Learning Resources Laboratory (currently James W. Woods, Ph. D.), Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20209, 301–496–6280.

B. Director, Division of Training and Medical Applications (currently William S. Properzio, Ph. D.), Bureau of Radiological Health, Food and Drug Administration, 5600 Fishers Lane (HFX–70), Rockville, MD 20857, 301–443–2845.

VI. Period of Agreement

This agreement, when accepted by both parties, will be effective for 6 months thereafter. It may be modified by mutual consent or terminated by either party upon a 30-day advance written notice.

Approved and Accepted for the National Library of Medicine.

By: Kenneth G. Carney,

Title: Executive Officer.

Dated: July 27, 1982.

Approved and Accepted for the Food and Drug Administration.

By: Joseph P. Hile,

Title: Associate Commissioner for Regulatory Affairs.

Dated: July 16, 1982.

Effective date. This Memorandum of Understanding became effective July 27, 1982.

Dated: September 23, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–26850 Filed 9–30–82; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 82F–0287]

ICI Americas, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces that ICI Americas, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of styrene-maleic anhydride resin, partial 2-butoxyethyl ester, ammonium salt, in coatings for polyethylene phthalate polymers intended for use in contact with food.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B3646) has been filed by ICI Americas, Inc., Wilmington, DE 19897, proposing that § 177.1630 *Polyethylene phthalate polymers* (21 CFR 177.1630) be amended to provide for the safe use of styrene-maleic anhydride resin, partial 2-butoxyethyl ester, ammonium salt, in coatings for polyethylene phthalate polymers.

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: September 20, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82-26670 Filed 9-30-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82F-0288]

American Cyanamid Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces that the American Cyanamid Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of hexadecyl 3,5-di-*tert*-butyl-4-hydroxybenzoate as a light stabilizer in olefin polymers intended for use in contact with food.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B3648) has been filed by the American Cyanamid Co., Wayne, NJ 07470, proposing that § 178.2010 (21 CFR 178.2010) be amended to provide for the safe use of hexadecyl 3,5-di-*tert*-butyl-4-hydroxybenzoate as a light stabilizer at levels not to exceed 0.5 percent by weight of olefin polymers complying with § 177.1520 (21 CFR 177.1520).

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: September 20, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82-26671 Filed 9-30-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82M-0302]

Biochem International, Inc.; Premarket Approval of Lifespan™ 100 $tcPCO_2$ Monitor

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 Lifespan™ 100 $tcPCO_2$ Monitor sponsored by Biochem International, Inc., Waukesha, WI. After reviewing the recommendation of the Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel (the Section), FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use in neonates as recommended in the submitted labeling.

DATE: Petitions for administrative review by November 1, 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 H. Kyper, Bureau of Medical Devices (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910; 301-427-7445.

SUPPLEMENTARY INFORMATION: On March 30, 1982, Biochem International, Inc., Waukesha, WI, submitted to FDA an application for premarket approval of the Lifespan 100™ $tcPCO_2$ Monitor, a trend monitor for carbon dioxide tension at the skin surface of neonates. The application was reviewed by the Anesthesiology Device Section of the Respiratory and Nervous System Devices Panel, an FDA advisory committee, which recommended approval of the application for the use of this device on neonates. On September 9, 1982, FDA approved the application by a letter to the sponsor from the Acting Associate Director for Device Evaluation of the Bureau of Medical Devices.

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 a 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 the 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 November 1, 1982, file with the Dockets Management Branch (HFA-305), (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: September 27, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-27067 Filed 9-30-82; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

Detroit District Office, Chaired by Alan L. Hoeting, District Director

DATE: Tuesday, October 12, 1982, 9:30 a.m.

ADDRESS: George Potter Larrick Bldg., Conference Room, 1560 E. Jefferson St., Detroit, MI 48207.

FOR FURTHER INFORMATION CONTACT:

Diane M. Place, Consumer Affairs Officer, Food and Drug Administration, 1560 E. Jefferson St., Detroit, MI 48207; 313–226–6260.

Detroit District Office, Indianapolis Resident Post, Chaired by John R. Dempster, Acting District Director.

DATE: Wednesday, October 13, 1982, 9 a.m. to 11 a.m.

ADDRESS: Indianapolis Convention-Exposition Center, 100 S. Capitol Ave., Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT:

Lilyan M. Gossens, Consumer Affairs Officer, Food and Drug Administration, 575 N. Pennsylvania St., Rm. 693, Indianapolis, IN 46204; 317–269–6500.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance understanding and exchange information between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: September 27, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–27065 Filed 9–30–82; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 82F–0282]

De Danske Sukkerfabrikker; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that De Danske Sukkerfabrikker has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a copolymer of *m*-phenylenediamine and benzene-1, 3, 5-tricarboxylic acid chloride as a component of an ultrafiltration membrane intended for use in food-processing applications.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B3645) has been filed by De Danske Sukkerfabrikker through its U.S. representative, General Dairy Equipment Co., 660 Taft St. NE., Minneapolis, MN 55413, proposing that the food additive regulations be amended to provide for the safe use of a copolymer of *m*-phenylenediamine and benzene-1, 3, 5-tricarboxylic acid chloride as a component of an ultrafiltration membrane intended for use in food-processing applications.

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: September 20, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82–26669 Filed 9–30–82; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 82F–0284]

Economics Laboratory, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Economics Laboratory, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of decanoic acid, octanoic acid, sodium 1-octanesulfonate, and isopropyl alcohol as components of sanitizing solutions to be used on food-contact surfaces.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B3647) has been filed by Economics Laboratory, Inc., St. Paul, MN 55102, proposing that the food additive regulations be amended to provide for the safe use of decanoic acid, octanoic acid, sodium 1-octanesulfonate, and isopropyl alcohol as components of sanitizing solutions to be used on food-contact surfaces.

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: September 20, 1982.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 82–26672 Filed 9–30–82; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 82M–0294]

Radionics, Inc.; Premarket Approval of ICP Tele-Sensor® and ICP Tele-Monitor® System

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 ICP Tele-Sensor® and ICP Tele-Monitor® System, sponsored by Radionics, Inc., Burlington, MA. After reviewing the recommendation of the Neurological Device Section of the Respiratory and Nervous System Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by November 1, 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 H. Kyper, Bureau of Medical Devices (HFK–402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7445.

SUPPLEMENTARY INFORMATION: On March 2, 1982, Radionics, Inc., Burlington, MA 01803, submitted to FDA an application for premarket approval of the ICP Tele-Sensor® and ICP Tele-Monitor® System that is used to aid in diagnosing the functional status of cerebrospinal fluid shunts in patients with hydrocephalus. The application was reviewed by the Neurological

Device Section of the Respiratory and Nervous System Devices Panel, an FDA advisory committee, which recommended approval of the application. On September 2, 1982, by letter to the sponsor from the Acting Associate Director for Device Evaluation of the Bureau of Medical Devices, FDA approved the application for use of the device in patients 2 years of age and older who have implanted CSF shunts. Use of the device in patients under 2 years of age remains investigational.

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 H. 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 a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issues to be reviewed, the form of the 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 November 1, 1982, file with the Dockets Management Branch 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: September 22, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–26668 Filed 9–30–82; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of establishment of a new Privacy Act system of records: 09–25–0152, "Biomedical Research: Records of Subjects in National Institute of Dental Research Contracted Epidemiological and Biometric Studies," HHS/NIH/NIDR.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing notice of a proposal to establish a new Privacy Act system of records: 09–25–0152, "Biomedical Research: Records of Subjects in National Institute of Dental Research Contracted Epidemiological and Biometric Studies," HHS/NIH/NIDR. We are also proposing routine uses for this system.

This system will be used to support research on diseases and disorders of the oral cavity (teeth and their supporting structures); their causes and treatment; the incidence and prevalence of these diseases and disorders; familial, demographic and behavioral factors related to their causes and treatment; and to provide data for program review, evaluation, planning, and administrative accountability.

PHS invites interested persons to submit comments on the proposed routine uses on or before November 1, 1982.

DATE: PHS has sent a report of New System to the Congress and to the Office of Management and Budget on September 20, 1982. The system of records will be effective 60 days from the date submitted to OMB unless PHS receives comments on the routine uses which would result in a contrary determination.

ADDRESS: Comments should be addressed to the National Institutes of Health (NIH) Privacy Act Coordinator at the address listed below. Comments received will be available for inspection Monday through Friday, between 9 a.m. and 3 p.m., in Room 3B03, Building 31, at that address.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth Thibodeau, NIH Privacy Act Coordinator, Building 31, Room 3B07, 9000 Rockville Pike, Bethesda, MD 20205 or call 301–496–4606.

SUPPLEMENTARY INFORMATION: The proposed system of records will comprise records generated in research projects supported by the National Institute of Dental Research (NIDR) in fulfilling its congressionally mandated responsibility for biomedical research on diseases and disorders of the oral cavity; their cause and treatment; the incidence and prevalence of these diseases and disorders; and familial, demographic and behavioral factors related to their causes and treatment. NIDR will use the records maintained in this system exclusively for biomedical research and for planning and administration of such research.

Such research will involve both scientists on the staff of NIDR and other scientists working under contracts awarded competitively by NIDR. NIDR may award research contracts to hospitals and clinics, to educational and research institutions, to Federal, State or local government agencies, or to commercial enterprises.

Records collected under this system will be organized and maintained according to the particular study in which they are collected. Records will not be entered into a general or comprehensive data base, nor will there be any general index identifying all persons who are subjects of records in the separate studies covered by this system. However, NIDR is treating the separate sets of records as a single system under the Privacy Act (1) because all of the sets of records serve the same biomedical research purposes and contain similar types of data, (2) in order to apply consistent policies and practices in the maintenance of such records, and (3) to make it easier for subject individuals to obtain notification of, or access to, their records.

The records in this system will be maintained in a secure manner compatible with their content and use. Contractors will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act Regulation. The Project Director, the NIDR Project Officer, and/or the System Manager will control access to the data. Only contractor personnel, consultants to the contractor, the NIDR project officer, and NIDR employees whose duties require

the use of such information will have regular access to records in this system. Records will be stored in locked files or secured areas. Computer terminals will be in secured areas. Names and other identifying particulars will be deleted when data from original records is encoded for analysis.

Encoded data will be indexed by code numbers. Tables linking these code numbers with actual identifiers will be maintained separately. Code numbers and identifiers will be linked only if there is a specific need. Data stored in computers will be accessed through the use of keywords known only to the principal investigators or authorized personnel. These keywords will be changed frequently.

The particular safeguards implemented in each project will be developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS hf. 45–13, and part 6, "ADP Systems Security," of the HHS ADP Systems Manual and the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

The routine uses proposed for this system are consistent with the stated purposes of the system. The first two of the proposed routine uses are essential to the achievement of the basic research purpose of the system. The first proposed routine use will allow for disclosure to contractors and collaborators working on the research projects, as explained above. The second proposed routine use, which provides for audits of the research activities, will allow the Department to ensure that these research activities are properly conducted.

A routine use for disclosure to independent researchers outside of the Department is proposed to serve the same public good—improving the health of the American people through biomedical research—as motivates the establishment of this system.

A routine use allowing disclosure to contractors for the purpose of processing the records is proposed in order to facilitate encoding of original records for the subsequent analysis.

A routine use permitting disclosure to a congressional office is proposed to allow subject individuals to obtain assistance from their representatives in Congress, should they so desire. Such disclosure would be made only pursuant to a request of the individual.

The possibility of lawsuits in which individuals may claim to have been harmed mentally, physically or financially as a result of the research activities supported by this system motivates the proposal of a routine use to allow the Department of Justice to defend the Federal Government, the Department, or employees of the Department in case of such lawsuits.

Dated: September 23, 1982.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management, PHS.

09–25–0152

SYSTEM NAME:

Biomedical Research: Records of Subject in National Institute of Dental Research Contracted Epidemiological and Biometric Studies, HHS/NIH/NIDR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records included in this system are collected by contractors and are located in hospitals and clinics, research centers, educational institutions, commercial organizations, local, State and Federal government agencies, and in National Institute of Dental Research (NIDR) facilities. Inactive records may be stored at Federal Records Centers. A list of locations and contracts is available upon request from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Voluntary participants in epidemiological and biometric studies sponsored by NIDR, including adults and minors, both male and female, with known or suspected diseases or disorders of the teeth and supporting structures, as well as normal or nonsuspect individuals in control or study groups for purposes of comparison.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of medical and dental records and information resulting from personal interviews, questionnaires, or direct observation. The system may also include current addresses of study participants, radiographs, records on biological specimens (e.g., teeth, plaque, etc.), study models, computerized epidemiological data and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 301, Research and Investigation, and 422, National Institute of Dental Research, of the Public Health Service Act (42 U.S.C. 241, 388a).

PURPOSE(S):

This system is used to:

1. Support research on diseases and disorders of the oral cavity (teeth and their supporting structures); their causes and treatment; the incidence and prevalence of these diseases and disorders; and familial, demographic and behavioral factors related to their causes and treatment.

2. Provide data for program review, evaluation, planning, and administrative accountability.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff for the purpose of analyzing data and preparing scientific reports and articles in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to such records.

2. Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessment, medical audits or utilization review.

3. A record may be disclosed for a research purpose, when the Department:

(A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(B) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(C) Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;

(D) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

4. The Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor will be required to maintain Privacy Act safeguards with respect to such record.

5. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

6. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Depatment in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, magnetic tapes or disks, punched cards, or bound notebooks.

RETRIEVABILITY:

Information is retrieved by name and/or a participant identification number.

SAFEGUARDS:

(1) *Authorized Users:* Employees who maintain records in this system are instructed to grant regular access only to contractor personnel; consultants to the contractor; the NIDR project officer; and

NIDR employees whose duties require the use of such information. Access to the data is controlled by the Project Director, the NIDR Project Officer, and/or the System Manager.

(2) *Physical Safeguards:* Records are stored in locked files or secured areas. Computer terminals are in secured areas.

(3) *Procedural Safeguards:* Names and other identifying particulars are deleted when data from original records is encoded for analysis. Encoded data is indexed by code numbers. Tables linking these code numbers with actual identifiers are maintained separately. Code numbers and identifiers are linked only if there is a specific need. Data stored in computers is accessed through the use of keywords known only to the principal investigators or authorized personnel. These keywords are changed frequently.

The particular safeguards implemented in each project will be developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS hf. 45–13, Part 6, "ADP Systems Security," of the HHS ADP Systems Manual, and the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records at contractor facilities are retained and disposed of under the authority of the institutional records control schedule. Records at NIDR facilities are retained and disposed of under the authority of the NIH Records Control Schedule (DHHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research.

Disposal methods include burning or shredding hard copy and erasing computer tapes and discs.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Contract Management Section, Extramural Program, National Institute of Dental Research, Westwood Building, Room 537, 5333 Westbard Avenue, Bethesda, MD 20205.

NOTIFICATION PROCEDURE:

Write to: Privacy Act Coordinator, National Institute of Dental Research, Westwood Building Room 535, 5333 Westbard Avenue, Bethesda, MD 20205, and provide the following information in writing:

1. Full name at time of participation in the study.
2. Name or description of the study.
3. Location and approximate dates of participation.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of, or access to, a medical or dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, the medical record of a child or incompetent person shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURES:

Same as notification. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address above. The contestor must reasonably identify the record, specify in writing the information being contested, and state the corrective action sought, and the reason(s) for the corrective action, with supporting justification.

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants and from medical/dental and clinical research observations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 82–27102 Filed 9–30–82; 8:45 am]
BILLING CODE 4140–01–M

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 September 24.

Public Health Service

Food and Drug Administration

Subject: Resource Data for State Food and Drug Programs (0910–0020)—REVISION (Appeal of OMB disapproval action of July 7, 1982)
Respondents: State Food and Drug Control Agencies
OMB Desk Officer: Fay S. Iudicello

National Institutes of Health

Subject: Industry Survey of Biotechnology Research Personnel Needs—NEW
Respondents: Biotechnology firms
OMB Desk Officer: Richard Eisinger

Health Care Financing Administration

Subject: Documentation to Justify an Extended Repayment Schedule: Medicare Program (HCFA–9004)—Extension
Respondents: Providers of Medicare services
Subject: Medicare and Medicaid Program Validation Reviews of State Medicaid Agencies and Service Providers (HCFA–9012)—Extension
Respondents: State Medicaid Agencies and Providers of Medicare and Medicaid Services
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Application for Social Security Retirement Insurance Benefits (SSA–1–F6)—REVISION
Respondents: Individuals or households
Subject: Application for Wife's or Husband's Social Security Insurance Benefits (SSA–2–F6)—REVISION
Respondents: Individuals or households
Subject: Request to be Selected as Representative Payee for a Social Security Beneficiary (SSA–11–BK)—REVISION
Respondents: Individuals or households/businesses or other institutions
Subject: Application for Mother's or Father's Social Security Insurance Benefits (SSA–5–F6)—REVISION
Respondents: Individuals or households
OMB 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 Building, Room 3208, Washington, D.C. 20503, ATTN: (name of OMB Desk Officer)

Dated: September 24, 1982.

Dale W. Sopper,

Assistant Secretary for Management and Budget.

[FR Doc. 82-26936 Filed 9-30-82; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[INT DES 82-60]

Availability of the Draft Environmental Impact Statement for the Proposed Construction of a Railroad on the Navajo Indian Reservation in McKinley and San Juan Counties in Northwestern New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Availability of a Draft Environmental Impact Statement (DEIS)

SUMMARY: This Notice advises the public that the Draft Environmental Impact Statement for the proposed construction of the Navajo Railroad on the Navajo Indian Reservation in McKinley and San Juan Counties in northwestern New Mexico is available for public review.

DATES: Written comments shall be received no later than November 30, 1982.

Hearings will be held to receive public comments regarding the environmental impacts portrayed in the Draft Environmental Impact Statement for the Proposed Navajo Railroad Project (CONSOL).

Hearings are scheduled as follows:

October 18, 1982, 7:00 pm to 10:00 pm, Gallup Council Chambers—City Hall, Gallup, New Mexico

October 19, 1982, 6:00 pm to 10:00 pm, Twin Lakes Elementary School Auditorium, Twin Lakes, New Mexico

October 20, 1982, 6:00 pm to 10:00 pm, Newcomb Elementary School Cafeteria, Newcomb, New Mexico

October 21, 1982, 6:00 pm to 10:00 pm, Shiprock High School Gymnasium, Shiprock, New Mexico

Address: Written comments should be addressed to: Area Director, Navajo Area Office, Post Office Box M, Window Rock, Arizona 86515, Attention: Branch of Environmental Quality Services, Mail Code 305.

Note.—See above for public hearing dates and sites.

FOR FURTHER INFORMATION CONTACT: Jim R. Analla, Environmental Protection Specialist, Navajo Area Office, Bureau of Indian Affairs, Post Office Box M, Window Rock, Arizona 86515—Mail Code 305. Telephone (606) 871-5151, Extension 5314.

Individuals wishing copies of the draft environmental impact statement should immediately contact the above individual.

Copies have been sent to all agencies and individuals who participated in the scoping process and all others who have already requested copies. The number of available copies is limited.

Copies of the draft environmental impact statement are available for inspection at the following locations:

Bureau of Indian Affairs, Environmental Quality Services, Room 4518, Department of the Interior, Washington, D.C. 20245, Telephone: (202) 343-4541

Bureau of Indian Affairs, Environmental Quality Services, Window Rock, Arizona 86515, Telephone (602) 871-5151, Extension 5314

U.S. Department of the Interior, Office of the Secretary, Southwest Region, Room 1400, First National Bank Building, 5301 Central Avenue, NE, Albuquerque, New Mexico 87108, Telephone: (505) 766-3565.

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs (BIA), Department of the Interior (DOI), has prepared a draft environmental impact statement for a proposed railroad to be constructed from Gallup, New Mexico, approximately 136 miles north to the San Juan River, east of Shiprock, New Mexico.

The proposed action is primarily for transporting coal from the Consolidation Coal Company (CONSOL) coal lease in the Burnham-Bisti area on the Navajo Indian Reservation. A possibility exists that if constructed, the railroad may also operate as a common carrier should sufficient need develop.

Primary impacts of the proposed project would be on the area's economics, land use, Navajo socioculture, archeology, localized visual resources, and noise. The socioeconomic impacts would be largely positive, resulting in new job opportunities and additional tax and royalty revenues for state, local and Navajo governments. Mitigating measures will be taken to minimize adverse impacts. Minor impacts may be expected on geology, water resources, terrestrial ecology, aquatic ecology, climatology, and air quality.

The alternatives considered in the DEIS were: No Action; Connection with the Star Lake Railroad; Coal slurry pipeline; Conveyor belt system; Truck haul system; and Alternative routes.

Other government agencies and members of the public contributed to the planning and evaluation of the proposal and preparation of this EIS.

The Notice of Intent to prepare this DEIS was published in the March 9, 1982 **Federal Register.**

Since the proposed railroad corridor is located almost entirely on Navajo lands, the exception being less than four miles across private land, the primary focus of public involvement meetings has been Navajo chapter meetings. Over 30 public meetings have been held at chapter houses along the project corridor. These meetings consisted of explaining of the project, its alignment, and potential impacts and benefits to the Navajo Nation and local inhabitants. Comments on concerns with the project were also received. The proposed project has been described to the public at meetings in Farmington, New Mexico on December 15, 1981 and in Gallup, New Mexico on January 12, 1982.

The Navajo Tribe, Interstate Commerce Commission, and Federal Railroad Administration have served as cooperating agencies in the development of the EIS.

Dated: September 28, 1982.

John H. Farrell,

Acting Director, Environmental Project Review.

[FR Doc. 82-27124 Filed 9-30-82; 8:45 am]

BILLING CODE 4310-02-M

Fish and Wildlife Service

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the Office of Management and Budget reviewing official, Mr. Jeff Hill, at 202-395-7340.

Title: Master Planning Questionnaire, to gather public input for national wildlife refuge master planning

Bureau Form Number: N/A

Frequency: Nonrecurring

Description of Respondents: Individuals, state or local governments, farms, businesses or other institutions

Annual Responses: 2,000

Annual Burden Hours: 1,000
Service Clearance Officer: Arthur J. Ferguson, 202–653–8770

Robert E. Gilmore,

Acting Associate Director—Wildlife Resources.

[FR Doc. 82–27091 Filed 9–30–82; 8:45 am]
BILLING CODE 4310–55–M

Bureau of Land Management

[F–14887–A]

Alaska Native Claims Selection

On November 12, 1974, Lime Village Company, for the Native village of Lime Village, filed selection application F–14887–A under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611 (1976)) (ANCSA), as amended, for the surface estate of certain lands in the vicinity of Lime Village, Alaska.

In application F–14887–A, Lime Village Company, excluded several bodies of water. Because certain of those water bodies have been determined to be nonnavigable, they are considered to be public lands withdrawn by Sec. 11(a)(1) of ANCSA and available for selection by the village pursuant to Sec. 12(a) of ANCSA. Section 12(a) of ANCSA and Departmental regulation 43 CFR 2651.4 (b) and (c) provide that a village corporation must, to the extent necessary to obtain its entitlement, select all available lands within the township or townships within which the village is located, and that the selection shall be compact and in whole sections, except as provided for in Pub. L. 96–487. For these reasons, the water bodies which were improperly excluded in application F–14887–A are considered selected by Lime Village Company.

As to the lands described below, selection application F–14887–A, as amended, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, aggregating approximately 63,196 acres, is considered proper for acquisition by Lime Village Company and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA.

Seward Meridian, Alaska (Surveyed)

T. 14 N., R. 33 W.
Secs. 7, 17, and 18;
Secs. 20, 21, 22, and 27;
Secs. 34 and 35.
Containing 5,269.8 acres.

T. 14 N., R. 34 W.
Secs. 1 to 7, inclusive;
Secs. 10, 11, and 12;
Secs. 18, 19, and 30.
Containing 7,821.4 acres.

T. 15 N., R. 34 W.
Secs. 1 to 13, inclusive;
Sec. 14, excluding Native allotment F–17868;
Secs. 15 to 29, inclusive;
Sec. 30, excluding Native allotments F–17866 and F–17872;
Secs. 31 to 36, inclusive.
Containing approximately 22,224 acres.

T. 16 N., R. 34 W.
Secs. 21 and 22;
Secs. 26, 27, and 28;
Secs. 33, 34, and 35.
Containing 5,120 acres.

T. 13 N., R. 35 W.
Secs. 3 to 9, inclusive;
Secs. 17 and 18.
Containing 5,736.24 acres.

T. 14 N., R. 35 W.
Secs. 13, 22, and 23;
Secs. 24, excluding Native allotment F–17864;
Secs. 25, 26, and 27;
Sec 28, excluding Native allotment F–17871;
Secs. 32 to 35, inclusive.
Containing approximately 5,941 acres.

T. 15 N., R. 35 W.
Secs. 5 to 10, inclusive;
Secs. 14, 15, and 16;
Secs. 23, 24, and 25.
Containing approximately 6,784.16 acres.

T. 13 N., R. 36 W.
Sec. 1;
Sec. 11, excluding Native allotment F–16757 Parcel B;
Sec. 12;
Secs. 13 and 14, excluding Native allotment F–17867;
Secs. 22 and 23.
Containing approximately 4,300 acres.

Aggregating approximately 63,196 acres.

Excluded from the above-described lands herein conveyed are the submerged lands, up to the ordinary high water mark, beneath all water bodies determined by the Bureau of Land Management to be navigable because they have been or could be used in connection with travel, trade and commerce. Those water bodies are identified on the attached navigability maps, the original or which will be found in easement case file F–14887–EE.

All other water bodies not depicted as navigable on the attached maps within the lands to be conveyed were reviewed. Based on existing evidence, they were determined to be nonnavigable.

The lands excluded in the above description are not being approved for conveyance at this time and have been excluded for the following reason: Lands are under applications pending further adjudication. These exclusions *do not* constitute a rejection of the selection application, unless specifically so stated.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(f)); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F–14887–EE, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, track vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

One Acre Site—The uses allowed on a site easement are: vehicle parking (e.g., aircraft, boats, ATV's snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading, or unloading shall be limited to 24 hours.

a. (EIN 1 C4, D9) A one (1) acre site easement upland of the ordinary high water mark in Sec. 31, T. 15 N., R. 34 W., Seward Meridian, on the left bank of the Stony River. The uses allowed are those listed for a one (1) acre site easement.

b. (EIN 1b C4) An easement twenty-five (25) feet in width for a proposed access trail from site EIN 1 C4, D9 in Sec. 31, T. 15 N., R. 34 W., Seward Meridian, westerly to trail EIN 3 C3, D1, D9, in Sec. 31, T. 15 N., R. 34 W., Seward Meridian. The uses allowed are those listed for a twenty-five (25) foot wide trail easement.

c. (EIN 3 C3, D1, D9) An easement twenty-five (25) feet in width for an existing access trail from Lime Village in Sec. 30, T. 15 N., R. 34 W., Seward Meridian, southerly to public land in Sec. 12, T. 14 N., R. 35 W., Seward Meridian. The uses allowed are those

listed for a twenty-five (25) foot wide trail easement.

d. (EIN 3b C5) An easement twenty-five (25) feet in width for a proposed access trail from existing trail EIN 3 C3, D1, D9 in Sec. 30, T. 15 N., R. 34 W., Seward Meridian, northerly to the airport (airport lease AA–12763). The uses allowed are those listed for a twenty-five (25) foot wide trail easement.

e. (EIN 3c C4) An easement twenty-five (25) feet in width for a proposed access trail from site easement EIN 3d C4 in Sec. 32, T. 14 N., R. 35 W., Seward Meridian, northerly to public land. The uses allowed are those listed for a twenty-five (25) foot wide trail easement.

f. (EIN 3d C4) A one (1) acre site easement upland of the ordinary high water mark in Sec. 32, T. 14 N., R. 35 W., Seward Meridian, on the southwest shore of Kutokbuna Lake. The uses allowed are those listed for a one (1) acre site easement.

g. (EIN 3e C4) An easement twenty-five (25) feet in width for a proposed access trail from site easement EIN 3f C4 in Sec. 7, T. 14 N., R. 34 W., Seward Meridian, easterly to public land. The uses allowed are those listed for a twenty-five (25) foot wide trail easement.

h. (EIN 3f C4) A one (1) acre site easement upland of the ordinary high water mark in Sec. 7, T. 14 N., R. 34 W., Seward Meridian, on the right bank of Hungry Creek. The uses allowed are those listed for a one (1) acre site easement.

i. (EIN 3g C4) A one (1) acre site easement upland of the ordinary high water mark in Sec. 33, T. 14 N., R. 35 W., Seward Meridian, on the southeast shore of Kutokbuna Lake. The uses allowed are those listed for a one (1) acre site easement.

j. (EIN 3h C4) An easement twenty-five (25) feet in width for a proposed access trail from site easement EIN 3g C4, southeasterly to public land. The uses allowed are those listed for a twenty-five (25) foot wide trail easement.

k. (EIN 7 C4) A one (1) acre site easement upland of the ordinary high water mark in Sec. 22, T. 14 N., R. 33 W., Seward Meridian, on the left bank of the Stony River. The uses allowed are those listed for a one (1) acre site easement.

l. (EIN 7a C4) An easement twenty-five (25) feet in width for a proposed access trail from site EIN 7 C4 in Sec. 22, T. 14 N., R. 33 W., Seward Meridian, Southwesterly to public land. The uses allowed are those listed for a twenty-five (25) foot wide trail easement.

m. (EIN 7b C4) An easement twenty-five (25) feet in width for a proposed access trail from site EIN 7c C4 in Sec. 22, T. 14 N., R. 33 W., Seward Meridian, northeasterly to public land. The uses allowed are those listed for a twenty-five (25) foot wide trail easement.

n. (EIN 7c C4) A one (1) acre site easement upland of the ordinary high water mark in Sec. 22, T. 14 N., R. 33 W., Seward Meridian, on the right bank of the Stony River. The uses allowed are those listed for a one (1) acre site easement.

o. (EIN 12 C4, E) A one (1) acre site easement upland of the ordinary high water mark in Sec. 23, T. 15 N., R. 35 W., Seward Meridian, on the left bank of the Stony River. The uses allowed are those listed for a one (1) acre site easement.

p. (EIN 12a C4, E) An easement twenty-five (25) feet in width for a proposed access trail from site EIN 12 C4, E in Sec. 23, T. 15 N., R. 35 W., Seward Meridian, southerly to public land. The uses allowed are those listed for a twenty-five (25) foot wide trail easement.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official supplemental plat of survey confirming the boundary description and acreage of the lands hereinabove granted;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. Airport lease, AA–12763, located in Sec. 30, T. 15 N., R. 34 W., Seward Meridian issued to the State of Alaska, Department of Transportation and Public Facilities under the provisions of the act of May 24, 1928 (49 U.S.C. 211–214); and

4. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(c)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Lime Village is entitled to conveyance of 69,120 acres of land selected pursuant to Sec. 12(a) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is approximately 63,196 acres. The remaining entitlement of approximately 5,924 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA and Departmental regulation 43 CFR 2652.4, conveyance of the subsurface estate shall be issued to Calista Corporation when the surface estate is conveyed to Lime Village Company, and shall be to the same conditions as the surface conveyance, except for those provisions under Sec. 14(c) of ANCSA; also the right to explore, develop or remove mineral materials from the subsurface estate in lands within the boundaries of the Native Village shall be subject to the consent of Lime Village Company.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the Tundra Drums.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 Code of Federal Regulations (CFR) Part 4, Subpart E, as revised. However, pursuant to Pub. L. 96–487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, Office of the Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return

receipt shall have until November 1, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Lime Village Company, Lime Village, Via, Sleetmute, Alaska 99668
Calista Corporation, 516 Denali Street, Anchorage, Alaska 99501

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82-27113 Filed 9-30-82; 8:45 am]
BILLING CODE 4310-84-M

[F-1490.9-A]

Alaska Native Claims Selection

On November 15, 1973, Kuugpik Corporation, Inc., for the Native village of Nooiksut, filed selection application F-14909-A under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971 (43 U.S.C. 1601, 1611 (1976)), as amended, for the surface estate of certain lands in the vicinity of Nooiksut which were withdrawn by Secs. 11(a)(1) and 11(a)(2) of ANCSA. Section 11(a)(2) specifically withdrew, subject to valid existing rights, all lands within the townships withdrawn by Sec. 11(a)(1) that had been selected by, or tentatively approved to, but not yet patented to the State of Alaska under the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(b)).

Section 12(a)(1) of ANCSA provides that village selections shall be made from lands withdrawn by Sec. 11(a). Section 12(a)(1) further provides that no village corporation may select more than 69,120 acres from lands withdrawn by Sec. 11(a)(2).

As to the lands described below, the application, as amended, is properly filed and meets the requirements of ANCSA and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, aggregating approximately 49,600 acres, is considered proper for acquisition by Kuugpik Corporation, Inc., and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA.

Part I.—Lands Outside Naval Petroleum Reserve No. 4

Umiat Meridian, Alaska (Surveyed)

T. 10 N., R. 4 E.

Those portions of Tract A more particularly described as (protracted):

Sec. 1, all land lying above the line of the highest high water mark east of the west bank of the Nechelik Channel of the Colville River;
Sec. 12, all land lying above the line of the highest high water mark north and east of the west bank of the Nechelik Channel of the Colville River.

Containing approximately 555 acres.

T. 11 N., R. 4 E.

Those portions of Tract A more particularly described as (protracted):

Sec. 1 and 2, all land lying above the line of highest high water mark north and east of the west bank of the Nechelik Channel of the Colville River;
Sec. 11, 12, and 13, all land lying above the line of the highest high water mark north and east of the west bank of the Nechelik Channel of the Colville River;
Secs. 24 and 36, all land lying above the line of the highest high water mark east of the west bank of the Nechelik Channel of the Colville River.

Containing approximately 2,784 acres.

T. 12 N., R. 4 E.

Those portions of Tract A more particularly described as (protracted):

Sec. 1;
Secs. 2, 3, and 4, all land lying above the line of the highest high water mark north and east of the south and west banks of the Nechelik Channel of the Colville River;
Secs. 10 and 11, all land lying above the line of the highest high water mark east of the west bank of the Nechelik Channel of the Colville River, excluding Native allotment F-11949;
Secs. 12 and 13;
Sec. 14, excluding Native allotments F-11951 and F-11949;
Sec. 15, all land lying above the line of the highest high water mark east of the west bank of the Nechelik Channel of the Colville River, excluding Native allotments F-11949 and F-11951;
Secs. 22 and 23, all land lying above the line of the highest high water mark east of the west bank of the Nechelik Channel of the Colville River;
Secs. 24 and 25;
Secs. 26 and 35, all land lying above the line of the highest high water mark east of the west bank of the Neachelik Channel of the Colville River;
Sec. 36.

Containing approximately 7,363 acres.

T. 10 N., R. 5 E.

Those portions of Tract A more particularly described as (protracted):

Secs. 2 to 6 inclusive;
Sec. 7, all land lying above the line of the highest high water mark east of the west bank of the Nechelik Channel of the Colville River;
Secs. 8 and 9;
Sec. 10, all land lying above the line of the highest high water mark west of the west bank of the Colville River and all land lying above the line of highest high water mark north of the south bank of the Nechelik Channel of the Colville River;
Secs. 15 and 16, all land lying above the line of highest high water mark north of the south bank of the Nechelik Channel of the Colville River.

Containing approximately 5,072 acres.

T. 11 N., R. 5 E.

That portion of the surveyed township more particularly described as (protracted):

Sec. 13;
Secs. 22 to 29, inclusive;
Secs. 31 to 35, inclusive.

Containing approximately 7,484 acres.

T. 11 N., R. 6 E.

That portion of the surveyed township more particularly described as (protracted):

Sec. 3;
Secs. 5, 6, 7, and 18.

Containing approximately 2,441 acres.

T. 12 N., R. 6 E.

That portion of the surveyed township more particularly described as (protracted):

Secs. 1 to 4, inclusive;
Secs. 9 to 16, inclusive;
Secs. 20 to 29, inclusive;
Secs. 32 to 36, inclusive.

Containing approximately 12,354 acres.

Aggregating approximately 38,053 acres.

Part II.—Lands Within or Outside Naval Petroleum Reserve No. 4

Umiat Meridian, Alaska (Surveyed)

T. 10 N., R. 4 E.

That portion of Tract A more particularly described as (protracted):

Sec. 1, all land lying above the line of the highest high water mark west of the west bank of the Nechelik Channel of the Colville River.

Containing approximately 35 acres.

T. 11 N., R. 4 E.

Those portions of Tract A more particularly described as (protracted):

Secs. 11, 13, 24, and 36, all land lying above the line of the highest high water mark west of the west bank of the Nechelik Channel of the Colville River;

That portion of Tract B more particularly described as (protracted):

Sec. 11, all land lying above the line of the highest high water mark west of the west bank of the Nechelik Channel of the Colville River.

Containing approximately 511 acres.

T. 12 N., R. 4 E.

Those portions of Tract A more particulary described as (protracted):

Secs. 3, 4, 10, and 15, all land lying above the line of the highest high water mark south and west of the west bank of the Nechelik Channel of the Colville River;

Those portions of Tract B more particulary described as (protracted):

Sec. 15, all land lying above the line of the highest high water mark west of the west bank of the Nechelik Channel of the Colville River, excluding Native allotments F–11943 and F–11947;

Sec. 22, all land lying above the line of the highest high water mark west of the west bank of the Nechelik Channel of the Colville River, excluding Native allotments F–11943;

Secs. 26, 27, and 35, all land lying above the line of the highest high water mark west of the west bank of the Nechelik Channel of the Colville River.

Containing approximately 1,665 acres.

T. 10 N., R. 5 E.

Those portions of Tract A more particulary described as (protracted):

Sec. 10, all land lying above the line of the highest high water mark east of the west bank of the Colville River and all land lying above the line of the highest high water mark west of the Colville River and southeast of the southeastern bank of the Nechelik Channel of the Colville River;

Secs. 11 and 14;

Sec. 15, all land lying above the line of the highest high water mark southeast of the southeastern bank of the Nechelik Channel of the Colville River.

Sec. 16, all land lying above the line of the highest high water mark south of the southeastern bank of the Nechelik Channel of the Colville River and east of the highest high water mark of the western bank of the Nechelik Channel of the Colville River;

Secs. 21, 22, and 23;

Secs. 27 and 28;

Sec. 32, all land lying above the line of the highest high water mark east of the west bank of the Nechelik Channel of the Colville River, excluding Native allotment F–14607;

Sec. 33, excluding Native allotment F–14607;

That portion of Tract B more particularly described as (protracted):

Sec. 32, all land lying above the line of the highest high water mark west of the west bank of the Nechelik Channel of the Colville River.

Containing approximately 5,199 acres.

Aggregating approximately 7,410 acres.

Part III.—Lands Within Naval Petroleum Reserve No. 4

Umiat Meridian, Alaska (Surveyed)

T. 10 N., R. 4 E.

Those portions of Tract B more particularly described as (protracted):

Sec. 12.

Containing approximately 335 acres.

T. 11 N., R. 4 E.

That portion of Tract B more particularly described as (protracted):

Sec. 5;

Secs. 7 and 8;

Secs. 21, 28, and 33.

Containing approximately 3,796 acres.

T. 10 N., R. 5 E.

Tract C.

Containing 5.53 acres.

Aggregating approximately 4,137 acres.

Total aggregated acreage approximately 49,600 acres.

Excluded from the above-described lands herein approved for conveyance are the submerged lands in the bed of the Colville River and in the beds of the Nechelik Channel, Kupigruak Channel, Elaktoveach Channels, Tamayayak Channel, and Sakoonang Channel; these lands are reserved in public ownership, pursuant to Sec. 1431(n), Pub. L. 96–487 of December 2, 1980.

Also excluded from the above-described lands herein approved for conveyance are the following water bodies for which a final determination as to tidal influence has been made:

a. The Kachemach River from its confluence with the Colville River to the northeast boundary of Sec. 29, T. 11 N., R. 6 E., Umiat Meridian, and the unnamed slough from its confluence with the Kachemach River to the unnamed lake in Sec. 5, T. 11 N., R. 6 E., Umiat Meridian; and

b. The Miluveach River from its confluence with the Colville River to the north boundary of Sec. 36, T. 12 N., R. 6 E., Umiat Meridian.

The lands excluded in the above description are not being approved for conveyance at this time and have been excluded as the lands are under applications pending further adjudication. These exclusions *do not* constitute a rejection of the selection applications, unless specifically so stated.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(f));

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F–14909–EE, are reserved to the United States. All easements are subject to applicable Federal, State, or municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

One Acre Site—The uses allowed for a site easement are: vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading, or unloading shall be limited to 24 hours.

a. (EIN 7a C5) A one (1) acre site easement upland of the ordinary high water mark located in Sec. 24, T. 11 N., R. 5 E., Umiat Meridian, on the right bank of the Colville River. The uses allowed are those listed above for a one (1) acre site.

b. (EIN 8 M) A one (1) acre site easement upland of the ordinary high water mark located in Sec. 11, T. 11 N., R. 4 E., Umiat Meridian, on the left bank of the Nechelik Channel of the Colville River. The uses allowed are those listed above for a one (1) acre site.

3. In addition to the foregoing, the United States incorporates by reference the agreement of May 14, 1974, between the United States Department of the Navy, Arctic Slope Regional Corporation, Kuugpik Corporation Inc., and three other Native village corporations, to reserve those easements necessary to implement said agreement. A copy of the agreement is located in Bureau of Land Management case file F–14909–EE.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official plats or supplemental plats of survey confirming the boundary description and acreage of the lands hereinabove granted;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. The following third-party interests, if valid, created and identified by the

State of Alaska, Department of Natural Resources, Division of Lands, as provided by Sec. 14(g) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(g)):

a. Oil and gas lease, ADL 25526, issued February 1, 1965, located in Secs. 10, 11, 12, and 13, T. 12 N., R. 4 E. Umiat Meridian.

b. Oil and gas lease, ADL 25529, issued February 1, 1965, located in Secs. 14, 15, 22, and 23, T. 12 N., R. 4 E., Umiat Meridian.

c. Oil and gas lease, ADL 25530, issued February 1, 1965, located in Secs. 24, 25, 26, 27, and 35, T. 12 N., R. 4 E., Umiat Meridian.

d. Oil and gas lease, ADL 25561, issued February 1, 1965, located in Secs. 5, 6, and 7, T. 11 N., R. 6 E., Umiat Meridian.

e. Oil and gas lease, ADL 25562, issued February 1, 1965, located in Sec. 3, T. 11 N., R. 6 E., Umiat Meridian.

f. Oil and gas lease, ADL 25578, issued February 1, 1965, located in Sec. 18, T. 11 N., R. 6 E., Umiat Meridian.

g. Oil and gas lease, ADL 25535, issued February 1, 1965, located in Secs. 1, 2, 11, and 12, T. 12 N., R. 6 E., Umiat Meridian.

h. Oil and gas lease, ADL 25536, issued February 1, 1965, located in Secs. 3, 4, 9, and 10, T. 12 N., R. 6 E., Umiat Meridian.

i. Oil and gas lease, ADL 25539, issued February 1, 1965, located in Sec. 20, T. 12 N., R. 6 E., Umiat Meridian.

j. Oil and gas lease, ADL 25540, issued February 1, 1965, located in Secs. 15, 16, 21, and 22, T. 12 N., R. 6 E., Umiat Meridian.

k. Oil and gas lease, ADL 25529, issued February 1, 1965, located in Secs. 13, 14, 23, and 24, T. 12 N., R. 6 E., Umiat Meridian.

l. Oil and gas lease, ADL 25554, issued February 1, 1965, located in Secs. 25, 26, 35, and 36, T. 12 N., R. 6 E., Umiat Meridian.

m. Oil and gas lease, ADL 25555, issued February 1, 1965, located in Secs. 27, 28, 33, and 34, T. 12 N., R. 6 E., Umiat Meridian.

n. Oil and gas lease, ADL 25556, issued February 1, 1965, located in Secs. 29 and 32, T. 12 N., R. 6 E., Umiat Meridian.

4. Paragraph IX of the Terms and Conditions for Land Exchanges and Resolution of Conveyancing Issues in Arctic Slope Region between the Department of the Interior and Arctic Slope Regional Corporation, entered into on the 29th day of June, 1979, copy of which will be found in case file F–14909–A; and

5. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(c)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Kuugpik Corporation, Inc., is entitled to conveyance of 115,200 acres of land selected pursuant to Sec. 12(a) of the Alaska Native Claims Settlement Act. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is approximately 92,341 acres. The remaining entitlement of approximately 22,859 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA and Departmental regulation 43 CFR 2652.4, conveyance of the subsurface estate of Part I of the above-described lands shall be issued to Arctic Slope Regional Corporation when the surface estate is conveyed to Kuugpik Corporation, Inc., and shall be subject to the same conditions as the surface conveyance, except for those provisions under Sec. 14(c) of ANCSA; also the right to explore, develop or remove mineral materials from the subsurface estate in lands within the boundaries of the Native Village shall be subject to the consent of Kuugpik Corporation, Inc.

Part II of the above-described lands are involved in the National Petroleum Reserve in Alaska (NPR–A) boundary dispute (*State of Alaska* v. *Warner et al.*, Civil Action No. J75–13, United States District Court for the District of Alaska); conveyance of the subsurface estate of portions of these lands, if any, which actually lie outside of NPR–A will be issued to Arctic Slope Regional Corporation pursuant to Sec. 14(f) of ANCSA, when a final determination of the boundary has been made. No conveyance will be made of the subsurface estate of any lands determined to lie within NPR–A, or in lands described in Part III.

Section 12(a)(1) of ANCSA provides that when a village corporation selects the surface estate of lands within this reserve, the regional corporation may make in-lieu selections of subsurface estate, in an equal acreage, from other lands withdrawn by subsection 11(a) of the act; therefore, Arctic Slope Regional Corporation is entitled to approximately 31,575 acres in-lieu subsurface estate, which equals the cumulative total of the acreage in Part III, and the lands within NPR–A previously conveyed to Kuugpik Corporation, Inc. Additional in-lieu subsurface estate equal in acreage to those in Part II, if any, which are determined to lie within NPR–A will also be conveyed to Arctic Slope Regional Corporation at a later date.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the Tundra Times.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised. However, pursuant to Pub. L. 96–487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed to refused to sign the return receipt shall have until November 1, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 34, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Kuugpik Corporation, Inc., Nooiksut (Nuiqsut), Alaska 99724

Arctic Slope Regional Corporation, P.O. Box 129, Barrow, Alaska 99723
State of Alaska, Department of Natural Resources, Division of Research and Development, Pouch 7–005, Anchorage, Alaska 99510

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82–27114 Filed 9–30–82; 8:45 am]
BILLING CODE 4310–84–M

[F–14925–A, F–14925–B]

Alaska Native Claims Selection

On August 30, 1974, and December 3, 1974, Dineega, Corporation, for the Native village of Ruby, filed selection applications F–14925–A and F–14925–B, respectively, under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611 (1976)) (ANCSA), as amended, for the surface estate of certain lands in the vicinity of Ruby.

Dineega, Corporation, in its applications, excluded all of the Melozitna River, Big Creek, and Deer Creek as being navigable.

Because Big Creek, Deer Creek, and a portion of the Melozitna River have been determined to be nonnavigable, they are considered to be public lands withdrawn under Sec. 11(a)(1) and available for selection by the village pursuant to Sec. 12(a) of ANCSA.

Section 12(a) of ANCSA and Departmental regulation 43 CFR 2651.4(b) and (c) provide that the village corporation shall select all available lands within the township or townships within which the village is located. The regulations also provide that the area selected will not be considered to be reasonably compact if it excludes other lands available for selection within its exterior boundaries.

For these reasons, the water bodies which are improperly excluded in the applications of Dineega, Corporation are considered selected.

As to the lands described below, the applications, as amended, are properly filed and meet the requirements of the Alaska Native Claims Settlement Act, as amended, and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, as amended, aggregating approximately 109,212 acres, is considered proper for acquisition by Dineega, Corporation and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA.

Tract H of U.S. Survey No. 5088, Alaska, situated on the left bank of the Yukon River at Ruby, Alaska.

Containing 10.61 acres.

Kateel River Meridian, Alaska (Surveyed)

T. 8 S., R. 15 E.
Secs. 23 and 24;
Secs. 25 and 26, excluding Native allotment F–14805;
Secs. 27, 28, and 29;
Secs. 31 to 36, inclusive.

Containing approximately 6,299 acres.

T. 9 S., R. 15 E.
Secs. 1 to 18, inclusive.

Containing approximately 8,823 acres.

T. 7 S., R. 16 E.
Secs. 25 and 26;
Secs. 34 and 35.

Containing 2,560 acres.

T. 8 S., R. 16 E.
Sec. 2;
Sec. 3, excluding Native allotments F–14469 Parcel A and F–14475;
Secs. 10 to 14, inclusive;
Sec. 19, excluding Native allotment F–14464 Parcel A;
Secs. 20 and 21;
Secs. 24 to 29, inclusive;
Sec. 30, excluding Native allotment F–14464 Parcel A;
Secs. 31 and 32;
Sec. 33, excluding Native allotment F–14804 Parcel A;
Sec. 34, excluding Native allotments F–14804 Parcel A and F–14768;
Sec. 35, excluding Native allotments F–14768 and F–17641;
Sec. 36.

Containing approximately 11,571 acres.

T. 9 S., R. 16 E.
Sec. 1, excluding Native allotments F–17641 and F–14768;
Sec. 2, excluding Native allotment F–14768;
Secs. 3 to 12, inclusive;
Sec. 17 and 18.

Containing approximately 7,562 acres.

T. 7 S., R. 17 E.
Secs. 1 and 2;
Secs. 11 and 12;
Secs. 14 and 15;
Secs. 20, 21, and 22;
Secs. 28, 29, and 30;
Sec. 32.

Containing 8,304.60 acres.

T. 8 S., R. 17 E.
Sec. 1;
Secs. 9, 10, and 11;
Sec. 12, excluding Native allotment F–14469 Parcel B;
Sec. 13, excluding Native allotment F–17145 Parcel B;
Sec. 14;
Sec. 15, excluding Native allotment F–14804 Parcel B;
Sec. 16, excluding Native allotments F–14804 Parcel B and F–13753;
Secs. 17, 18, and 19;
Sec. 20, excluding Native allotments F–14575 and F–17645;
Sec. 21, excluding Native allotments F–14575 and F–14670;
Sec. 22, excluding Native allotment F–17134;
Sec. 23;
Sec. 24, excluding Native allotment F–17145 Parcel C;
Secs. 25 and 26;
Sec. 27, excluding Native allotments F–17134 and F–14795;
Sec. 28, excluding Native allotments F–14795, F–14575, and F–17645;
Sec. 29, excluding Native allotments F–17645 and F–14794;
Secs. 30 and 31;
Sec. 32, excluding Native allotment F–14794;
Sec. 33, excluding U.S. Survey No. 5031;
Secs. 34, 35, and 36.

Containing approximately 13,087 acres.

T. 9 S., R. 17 E.
Secs. 1 and 2;
Sec. 3, including ANS 151;
Sec. 4, excluding U.S. Survey No. 5088 and U.S. Survey No. 4022 and including ANS 151;
Sec. 5, excluding U.S. Survey No. 5088 and Native allotment F–14806;
Secs. 6 and 7;
Sec. 8, excluding Native allotment F–14806;
Secs. 9 and 10, including ANS 151;
Secs. 11 to 18, inclusive;
Secs. 19 and 20, excluding Native allotment F–14464 Parcel C;
Secs. 21 to 28, inclusive;
Sec. 29, excluding Native allotment F–17103;
Sec. 30;
Sec. 31, excluding Native allotments F–16423 and F–15559;
Sec. 32, excluding Native allotments F–17103, F–16423, F–15559, and F–17877;
Sec. 33, excluding Native allotment F–17877;
Secs. 34, 35, and 36.

Containing approximately 21,001 acres.

T. 10 S., R. 17 E.
Sec. 3;
Sec. 4, excluding Native allotments F–17877 and F–14474;
Sec. 5, excluding Native allotments F–14474, F–14812, F–15066, F–16446, and F–17877;
Sec. 6, excluding Native allotment F–15066;
Secs. 9, 10, and 11;
Secs. 14, 15, 22, and 23;
Secs. 26, 27, 34, and 35.

Containing approximately 8,920 acres.

T. 11 S., R. 17 E.
Secs. 3 and 4;
Secs. 7, 8, and 9;
Secs. 17 and 18, excluding Native allotment F–16427 Parcel A;
Secs. 19 and 20;
Secs. 29 to 32, inclusive.

Containing approximately 8,194 acres.

T. 7 S., R. 18 E.
Secs. 13 and 14;
Secs. 21 and 22;
Sec. 23, excluding U.S. Survey No. 1479;
Sec. 24, excluding U.S. Survey No. 1479 and Native allotment F–14576 Parcel A;
Sec. 25;
Sec. 26, excluding U.S. Survey No. 1479;
Sec. 27;
Sec. 28, excluding Native allotment F–13703;
Secs. 29, 30, and 31;

Sec. 32, excluding Native allotment F–13715 Parcel A;
Sec. 33, excluding Native allotment F–13703;
Secs. 34, 35, and 36.
Containing approximately 8,680 acres.
T. 8 S., R. 18 E.
Secs. 3 and 4;
Sec. 5, excluding Native allotment F–13715 Parcel A;
Sec. 6;
Secs. 7 and 8, excluding Native allotment F–13714;
Sec. 18, excluding Native allotment F–17145 Parcel B;
Secs. 19 and 30.
Containing approximately 4,199 acres.
Aggregating approximately 109,201 acres.
Total aggregated acreage approximately 109,212 acres.

Excluded from the above-described lands herein approved for conveyance are the submerged lands, up to the ordinary high water mark, beneath all water bodies determined by the Bureau of Land Management to be navigable because they have been or coud be used in connection with travel, trade and commerce. Those water bodies are identified on the attached navigability maps, the original of which will be found in easement case file F–14925–EE.

All other water bodies not depicted as navigable on the attached maps within the lands to be conveyed were reviewed. Based on existing evidence, they were determined to be nonnavigable.

The lands excluded in the above description are not being approved for conveyance at this time and have been excluded for the following reasons: Lands are no longer under Federal jurisdiction or lands are under applications pending further adjudication. Lands within U.S. surveys which are excluded are described separately in this decision if they are available for conveyance. These exclusions *do not* constitute a rejection of the selection application, unless specifically so stated.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(f)), as amended; and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement act of December 18, 1971 (43 U.S.C. 1601, 1616(b)), as amended, the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F–14925–EE, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, and small all-terrain vehicles (ATV's) (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

50 Foot Trail—The uses allowed on a fifty (50) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, small and large all-terrain vehicles, track vehicles and four-wheel drive vehicles.

60 Foot Road—The uses allowed on a sixty (60) foot wide road easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, small and large all-terrain vehicles, track vehicles, four-wheel drive vehicles, automobiles, and trucks.

One Acre Site—The uses allowed for a site easement are: vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading, or unloading shall be limited to 24 hours.

a. (EIN 6 C5) A site easement upland of the ordinary high water mark in Sec. 25, T. 7 S., R. 16 E., Kateel River Meridian, on the right bank of the Melozitna River. This site is one (1) acre in size with an additional twenty-five (25) foot wide easement on the bed of the stream along the entire waterfront of the site. The uses allowed are those listed for a one (1) acre site.

b. (EIN 7 C5) An easement of fifty (50) feet in width for a proposed access trail from site EIN 6 C5 in Sec. 25, T. 7 S., R. 16 E., Kateel River Meridian, northwesterly to public land. The uses allowed are those listed for a fifty (50) foot wide trail easement. Large all-terrain vehicles (greater than 3,000 lbs. gross vehicle weight), track vehicles, and four-wheel drive vehicles will be limited to winter use only.

c. (EIN 11b C5, L) An easement of fifty (50) feet in width for an existing in-part and proposed in-part access trail from Federal Aid Secondary (FAS) Route No. 271 (Ruby-Poorman Road) in Sec. 27, T. 10 S., R. 17 E., Kateel River Meridian, easterly to public land. The uses allowed are those listed for a fifty (50) foot wide trail easement.

d. (EIN 11c C5, L) An easement of sixty (60) feet in width for an existing road from the village airstrip in Sec. 9, T. 9 S., R. 17 E., Kateel River Meridian, southwesterly to Federal Aid Secondary (FAS) Route No. 271 (Ruby-Poorman Road).

e. (EIN 11d E) An easement of twenty-five (25) feet in width for a proposed access trail from the northern end of the Ruby airstrip in Sec. 4, T. 9 S., R. 17 E., Kateel River Meridian, generally easterly, then southerly to public land. The uses allowed are those listed for a twenty-five (25) foot wide trail easement.

f. (EIN 12a C5) An easement of fifty (50) feet in width for a proposed access trail from Federal Aid Secondary (FAS) Route No. 271 (Ruby-Poorman Road) in Sec. 29, T. 9 S., R. 17 E., Kateel River Meridian, westerly to public land. The uses allowed are those listed for a fifty (50) foot wide trail easement.

g. (EIN 26 C5) An easement of fifty (50) feet in width for a proposed access trail from Federal Aid Secondary (FAS) Route No. 271 (Ruby-Poorman Road) in Sec. 15, T. 10 S., R. 17 E., Kateel River Meridian, southwesterly to public land. The uses allowed are those listed for a fifty (50) foot wide trail easement.

h. (EIN 31 D1) An easement of fifty (50) feet in width for a proposed access trail from the left bank of the Melozitna River in Sec. 13, T. 8 S., R. 16 E., Kateel River Meridian, northerly to public land. The uses allowed are those listed for a fifty (50) foot wide trail easement. Large all-terrain vehicles (greater than 3,000 lbs. gross vehicle weight), track vehicles, and four-wheel drive vehicles will be limited to winter use only.

i. (EIN 31a D1) A one (1) acre site easement upland of the ordinary high water mark in Sec. 13, T. 8 S., R. 16 E., Kateel River Meridian, on the left bank of the Melozitna River. The uses allowed are those listed for a one (1) acre site.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official supplemental plat of survey confirming the boundary description and acreage of the lands hereinabove granted:

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)((2) of the Alaska Native Claims

Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), as amended, any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. Any right-of-way interest in the Ruby-Poorman Road (FAS Route No. 271) transferred to the State of Alaska by the Quitclaim Deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Pub. L. 86–70 (73 Stat. 141) as to: Secs. 4, 5, 8, 9, 16, 17, 20, 29, and 32, T. 9 S., R. 17 E.; Secs. 4, 5, 9, 10, 15, 22, 26, 27, and 34, T. 10 S., R. 17 E.; and Secs. 3, 4, 8, 9, 17, 18, 20, 29, 31, and 32, T. 11 S., R. 17 E., Kateel River Meridian;

4. Any right-of-way interest in the Ruby Airfield Road (FAS Route No. 2711) transferred to the State of Alaska by the Quitclaim Deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Public Law 86–70 (73 Stat. 141) as to: Sec. 4, T. 9 S., R. 17 E., Kateel River Meridian; and

5. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(c)), as amended, that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

School site lease, F–24224, located in Sec. 4, T. 9 S., R. 17 E., Kateel River Meridian, was granted to the State of Alaska, pursuant to and subject to the terms and conditions of Sec. 302 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2743) and the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. Sec 1622(i)). According to the terms of the lease, it is to terminate upon conveyance of title of said land out of United States ownership.

Dineega, Corporation is entitled to conveyance of 115,200 acres of land selected pursuant to Sec. 12(a) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is approximately 109,212 acres. The remaining entitlement of approximately 5,988 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA and Departmental regulation 43 CFR 2652.4, conveyance of the subsurface estate shall be issued to Doyon, Limited when the surface estate is conveyed to Dineega, Corporation, and shall be subject to the same conditions as the surface conveyance, except for those provisions under Sec. 14(c) of ANCSA; also the right to explore, develop, or remove mineral materials from the subsurface estate in lands within the boundaries of the Native village of Ruby shall be subject to the consent of Dineega, Corporation.

In accordance with Departmental regulation 43 CFR 2650.6(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E as revised. However, pursuant to Pub. L. 96–487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until November 1, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of the requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

State of Alaska, Department of Natural Resources, Division of Research and Development, Pouch 7–005, Anchorage, Alaska 99510

Dineega, Corporation, Ruby, Alaska 99768

Doyon, Limited, Land Department, Doyon Building, 201 First Avenue, Fairbanks, Alaska 99701

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82–27115 Filed 9–30–82; 8:45 am]

BILLING CODE 4310–84–M

[F–14871–A]

Alaska Native Claims Selection

On November 15, 1974, Upper Kalskag Incorporated, for the Native village of Upper Kalskag, filed selection application F–14871–A, as amended, under the provisions of Sec. 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1611 (1976)(ANCSA), for the surface estate of certain lands in the vicinity of Upper Kalskag.

On April 25, 1977, in accordance with Title 10, Chapter 05, Secs. 396 and 399 of the Alaska Business Corporation Act, and as authorized by 43 U.S.C. 1627, Georgetown Incorporated, a domestic corporation, merged with Aniak Limited, Chuathbaluk Company, Kipchaughpuk Limited, Lower Kalskag Incorporated, Napamute Limited, Red Devil Incorporated, Sleetmute Limited, Stony River Ltd., and Upper Kalskag Incorporated, all domestic corporations, into Georgetown Incorporated, which consolidated individual village interests into one single constituent corporation whose name was changed to The Kuskokwim Corporation. The surviving corporation, The Kuskokwim Corporation, is entitled to all rights, privileges, and benefits of the Alaska Native Claims Settlement Act.

As to the lands described below, selection application F–14871–A, as amended, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, aggregating approximately 81,292 acres, is considered proper for acquisition by The Kuskokwim Corporation (for the village of Upper Kalskag) and is hereby approved for

conveyance pursuant to Sec. 14(a) of ANCSA:

Seward Meridian, Alaska (Surveyed)

T. 17 N., R. 60 W.
Secs. 1 to 8, inclusive;
Sec. 9, excluding Native allotments F–15595 and F–15596;
Sec. 10, excluding Native allotments F–15596 and F–17343 Parcel A;
Secs. 11 and 12;
Sec. 13, excluding Native allotment F–16849;
Sec. 14, excluding Native allotment F–02976;
Sec. 15, excluding Native allotments F–029276, F–15596, and F–17343 Parcel A;
Sec. 16, excluding Native allotments F–15595 and F–15596;
Sec. 17, excluding Native allotment F–16206 Parcel A;
Sec. 18, excluding Native allotment F–15590;
Sec. 19, excluding U.S. Survey No. 871 and Native allotment F–15590;
Sec. 20, excluding U.S. Survey No. 871 and U.S. Survey No. 4136 and Native allotments F–029277, F–16206 Parcel A and F–17347 Parcel A;
Sec. 21, excluding Native allotment F–17347 Parcel B;
Sec. 22, excluding Native allotments F–029276 and F–17345 Parcel A;
Sec. 23, excluding U.S. Survey No. 4166 and Native allotments F–029276, F–16020 Parcel B and F–16351 Parcel A;
Sec. 24, excluding Native allotment F–16020 Parcel B;
Sec. 28, excluding Native allotment F–15600;
Sec. 29, excluding U.S. Survey No. 871 and Native allotments F–15600 and F–17347 Parcel A;
Sec. 30, excluding U.S. Survey No. 871.
Containing approximately 13,819 acres.

T. 18 N., R. 60 W.
Secs. 3 to 11, inclusive;
Secs. 14 to 36, inclusive.
Containing approximately 20,384 acres.

T. 19 N., R. 60 W.
Sec. 31, excluding Native allotment F–15653;
Secs. 32, 33 and 34.
Containing approximately 2,378 acres.

T. 17 N., R. 61 W.
Secs. 1, 2 and 3;
Secs. 4 and 5, excluding Native allotment F–17346;
Secs. 6 and 7;
Secs. 8 and 9, excluding Native allotment F–17346;
Secs. 10 to 21, inclusive;
Sec. 22, excluding Native allotment F–029271;
Sec. 23, excluding Native allotment F–13113;
Sec. 24;
Sec. 25, excluding Native allotment F–029261;
Sec. 26, excluding U.S. Survey No. 4165 and Native allotments F–029261, F–029280 and F–13113;
Sec. 27, excluding U.S. Survey No. 3777 and U.S. Survey No. 4413 and Native allotments F–029271, F–17344 and F–17382;
Sec. 28, excluding U.S. Survey No. 3777 and U.S. Survey No. 4413;
Secs. 29 and 30;
Sec. 31, excluding Native allotment F–17376;
Sec. 32, excluding U.S. Survey No. 4409 and U.S. Survey No. 4414;
Sec. 33, excluding U.S. Survey No. 4409, U.S. Survey No. 4413 and U.S. Survey No. 4414 and Native allotments F–029405, F–17378, F–17381 and F–17383;
Sec. 34, excluding Native allotments F–17344, F–17378, F–17381, F–17382 and F–17383;
Secs. 35 and 36.
Containing approximately 18,212 acres.

T. 18 N., R. 61 W.
Sec. 1, excluding Native allotment F–15589;
Sec. 2, excluding Native allotments F–15589 and F–17385 Parcel A;
Sec. 11, excluding Native allotment F–15589;
Sec. 12, excluding Native allotments F–029260, F–029275 Parcel B and F–15589;
Secs. 13 and 24;
Sec. 25, excluding Native allotment F–15599;
Secs. 33 and 34;
Sec. 35, excluding Native allotment F–15599;
Sec. 36.
Containing approximately 4,362 acres.

T. 19 N., R. 61 W.
Sec. 35, excluding Native allotment F–17385 Parcel A;
Sec. 36.
Containing approximately 1,230 acres.

T. 17 N., R. 62 W.
Sec. 1, excluding Native allotment F–17303 Parcel B;
Sec. 2, excluding Native allotments F–17303 Parcel B, F–17379 Parcel B and F–17385 Parcel B;
Secs. 11 to 17, inclusive;
Secs. 20 and 21;
Sec. 22, excluding Native allotment F–17380 Parcel B;
Secs. 23 to 26, inclusive.
Sec. 27, excluding Native allotment F–17380 Parcel B;
Sec. 28;
Secs. 33 to 36, inclusive.
Containing approximately 12,960 acres.

Seward Meridian, Alaska (Unsurveyed)

T. 17 N., R. 58 W.
Secs. 5 and 6;
Sec. 7, excluding Native allotment F–16848;
Sec. 8;
Sec. 9, excluding U.S. Survey No. 6479 and Native allotment F–17377 Parcel A and F–17952 Parcel A;
Sec. 10, excluding U.S. Survey No. 6479 and Native allotment F–17952 Parcel A;
Secs. 11 to 14, inclusive;
Sec. 15, excluding U.S. Survey No. 6479 and Native allotment F–17952 Parcel A;
Sec. 16, excluding U.S. Survey No. 6479 and Native allotments F–029262 Parcel B, F–16851, F–17377 Parcel A and F–17952 Parcel A;
Sec. 17, excluding U.S. Survey No. 4142 and Native allotments F–029262 Parcel A, F–15701 Parcel B and F–16190 Parcel A;
Sec. 18, excluding Native allotments F–16848 and F–16919;
Sec. 19, excluding Native allotment F–16847;
Sec. 20, excluding Native allotment F–029262 Parcel A and F–15701 Parcel A;
Sec. 21, excluding Native allotments F–029262 Parcel B, F–16205 Parcel A and F–16851;
Sec. 22.
Containing approximately 7,547 acres.

T. 18 N., R. 62 W.
Sec. 35.
Containing approximately 400 acres.
Aggregating approximately 81,292 acres.

Excluded from the above-described lands herein approved for conveyance are the submerged lands, up to the ordinary high water mark, beneath all water bodies determined by the Bureau of Land Management to be navigable because they have been or could be used in connection with travel, trade and commerce. The following named water bodies, together with any unnamed water bodies, are identified on the attached navigability maps, the original of which will be found in easement case file F–14871–EE.

Kuskokwim River
Mud Creek
Crooked Creek
Arhymot Lake

All other water bodies not depicted as navigable on the attached maps within the lands to be conveyed were reviewed. Based on existing evidence, they were determined to be nonnavigable.

The lands excluded in the above description are not being approved for conveyance at this time and have been excluded for one or more of the following reasons: Lands are no longer under Federal jurisdiction; lands are under applications pending further adjudication; lands are pending a determination under Sec. 3(e) of ANCSA; or lands were previously rejected by decision. Lands within U.S. Surveys which are excluded are described separately in this decision if they are available for conveyance. These exclusions *do not* constitute a rejection of the selection application, unless specifically so stated.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of

December 18, 1971, 43 U.S.C. 1601, 1613(f); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1616(b), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F–14871–EE, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of used allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, and small all-terrain vehicles (ATV's) (less than 3,000 lbs. Gross Vehicles Weight (GVW)).

50 Foot Trail—The uses allowed on a fifty (50) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, small and large all-terrain vehicles, track vehicles and four-wheel drive vehicles.

One Acre Site—The uses allowed on a one (1) acre site easement are: vehicle parking (e.g., aircraft, boats, ATVs, snowmobiles, cars trucks), temporary camping, and loading or unloading. Temporary camping, loading or unloading shall be limited to 24 hours.

a. (EIN 2 C3, D1, D9) An easement twenty-five (25) feet in width for an existing access trail from the village of Upper Kalskag northerly to public land. The uses allowed are those listed for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter.

b. (EIN 4 C5) An easement fifty (50) feet in width for an existing in part, proposed in part access trail from Mud Creek in the SE¼ Sec. 27, T. 17 N., R. 62 W., Seward Meridian, northwesterly to Crooked Creek in the SW¼, Sec. 22, T. 17 N., R. 62 W., Seward Meridian. The uses allowed ar those listed for fifty (50) foot wide trail easement.

c. (EIN 4a C4) A one (1) acre site easement upland of the ordinary high water mark on the right bank of Mud Creek in the SE¼, Sec. 27, T. 17 N., R. 62 W., Seward Meridian. The uses allowed are those listed for a one (1) acre site easement.

d. (EIN 4b C4) A one (1) acre site easement upland of the ordinary high water mark on the left bank of Crooked Creek in the SW¼, Sec. 22, T. 17 N., R. 62 W., Seward Meridian. The uses allowed are those listed for a one (1) acre site easement.

e. (EIN 8 C5) A one (1) acre site easement upland of the ordinary high water mark on the downriver end of the unnamed island in the Kuskokwim River in the S½, Sec. 12, T. 17 N., R. 59 W., Seward Meridian. The uses allowed are those listed for a one (1) acre site easement.

f. (EIN 8b C4, C5) A one (1) acre site easement upland of the ordinary high water mark on the downstream end of a small unnamed island in the Kuskokwim River in the NE¼, Sec. 20, T. 17 N., R. 60 W., Seward Meridian. The uses allowed are those listed for a one (1) acre site easement.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official plat, or supplemental plat, of survey confirming the boundary description and acreage of the lands hereinabove granted;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. Ch. 2, Sec. 6(g)), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1616(b)(2) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. The following third-party interest identified by the U.S. Department of the Interior, Fish and Wildlife Service, as provided by Sec. 14(g) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(g).

Right-of-way grant, T–130–YD issued to ALASCOM (formerly known as RCA Alaska Communications, Inc.), located in Sec. 22, T. 17 N., R. 61 W., Seward Meridian, for communication facilities, pursuant to the act of March 4, 1911, 43 U.S.C. 961. Formerly Right-of-way F–19246 issued under the provisions of March 4, 1911 (43 U.S.C. 1961) as amended; and

4. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(c), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

The Kuskokwim Corporation (for the village of Upper Kalskag) is entitled to conveyance of 92,160 acres of land selected pursuant to Sec. 12(a) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is approximately 81,292 acres. The remaining entitlement of approximately 10,868 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA and Departmental regulation 43 CFR 2652.4, conveyance of the subsurface estate of the lands described above shall be issued to Calista Corporation when the surface estate is conveyed to The Kuskokwim Corporation, (for the village of Upper Kalskag) and shall be subject to the same conditions as the surface conveyance, except for those provisions under Sec. 14(c) of ANCSA; also the right to explore, develop or remove mineral materials from the subsurface estate in lands within the boundaries of the Native Village shall be subject to the consent of The Kuskokwim Corporation.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week for four (4) consecutive weeks, in the Tundra Drums.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised. However, pursuant to Pub. L. 96–487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return

receipt shall have until November 1, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

The Kuskokwim Corporation, 429 D Street, Suite 307, Anchorage, Alaska 99501

Calista Corporation, 516 Denali Street, Anchorage, Alaska 99501

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82-27116 Filed 9-30-82; 8:45 am]

BILLING CODE 4310-84-M

[F-14900-A]

Alaska Native Claims Selection

On November 18, 1974, Napamute Limited, for the Native village of Napaimute, filed selection application F-14900-A, as amended, under the provisions of Sec. 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1611 (1976) (ANCSA), for the surface estate of certain lands in the vicinity of Napaimute.

On April 25, 1977, in accordance with Title 10, Chapter 05, Secs. 396 and 399 of the Alaska Business Corporation Act, and as authorized by 43 U.S.C. 1627, Georgetown Incorporated, a domestic corporation, merged with Aniak Limited, Chuathbaluk Company, Kipchaughpuk Limited, Lower Kalskag Incorporated, Napamute Limited, Red Devil Incorporated, Sleetmute Limited, Stony River Ltd., and Upper Kalskag Incorporated, all domestic corporations, into Georgtown Incorporated, which consolidated individual village interests into one single constitutent corporation whose name was changed to The Kuskokwim Corporation. The surviving corporation, The Kuskokwim Corporation, is entitled to all rights, privileges, and benefits of the Alaska Native Claims Settlement Act.

As to the lands described below, selection application F-14900-A, as amended, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, aggregating approximately 60,109 acres, is considered proper for acquisition by The Kuskokwim Corporation (for the village of Napaimute) and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA:

Seward Meridian, Alaska (Unsurveyed)

T. 17 N., R. 50 W.
- Sec. 5, excluding Native allotment F-18212 Parcel B;
- Sec. 6.

Containing approximately 995 acres.

T. 18 N., R. 50 W.
- Secs. 1, 12, 13 and 14;
- Sec. 23, excluding Native allotment F-16986 Parcel A;
- Sec. 24;
- Secs. 26 and 27, excluding Native allotment F-16823;
- Secs. 32 and 33;
- Sec. 34, excluding Native allotments F-16823, F-16982 Parcel A and F-17409 Parcel B;
- Sec. 35, excluding Native allotments F-16823 and F-17409 Parcel B.

Containing approximately 5,570 acres.

T. 17 N., R. 51 W.
- Secs. 1, 10, 11 and 12;
- Secs. 14 and 15;
- Sec. 16, excluding Native allotment F-16757 Parcel C;
- Secs. 21, 28, 29 and 30;
- Sec. 33.

Containing approximately 6,582 acres.

T. 19 N., R. 51 W.
- Secs. 13, 14 and 15;
- Secs. 22 to 30, inclusive;
- Secs. 34, 35 and 36.

Containing approximately 9,576 acres.

T. 15 N., R. 52 W.
- Secs. 5 to 8, inclusive;
- Secs. 17 and 18.

Containing approximately 3,753 acres.

T. 17 N., R. 52 W.
- Secs. 2 to 11, inclusive;
- Sec. 14, excluding Native allotment F-16982 Parcel B;
- Secs. 15, 16 and 17;
- Sec. 18, excluding Native allotment F-16952 Parcel A;
- Secs. 19 and 20;
- Sec. 21, excluding Native allotment F-16123 Parcel B;
- Sec. 22, excluding Native allotments F-15662, F-16123 Parcel B, F-16952 Parcel B and F-16978;
- Sec. 23, excluding Native allotments F-16978 and F-16982 Parcel B;
- Sec. 26, excluding Native allotments F-16979 Parcel A and F-16980;
- Sec. 27, excluding Native allotments F-15662, F-16123 Parcel B, F-16952 Parcel B and F-16980;
- Sec. 28, excluding Native allotments F-16123 Parcels A and B and F-16953;
- Sec. 29, excluding Native allotment F-15663;
- Secs. 30 to 34, inclusive;
- Sec. 35, excluding Native allotment F-16979 Parcel A;
- Sec. 36.

Containing approximately 17,843 acres.

T. 18 N., R. 52 W.
- Secs. 4, 9, 16 and 21;
- Secs. 28 and 33.

Containing approximately 3,840 acres.

T. 19 N., R. 52 W.
- Sec. 25;
- Secs. 33 to 36, inclusive.

Containing approximately 3,200 acres.

T. 15 N., R. 53 W.
- Secs. 1, 12, and 13.

Containing approximately 1,920 acres.

T. 16 N., R. 53 W.
- Secs. 1, 12, 13 and 24;
- Secs. 25 and 36.

Containing approximately 3,840 acres.

T. 17 N., R. 53 W.
- Sec. 10, excluding Native allotments F-16955 Parcel A and F-17409 Parcel A;
- Sec. 13, excluding Native allotments F-15685 Parcel A, F-16951, F-16952 Parcel A and F-18212 Parcel A;
- Sec. 14, excluding Native allotment F-16951;
- Sec. 15, excluding Native allotments F-15685 Parcel B and F-17409 Parcel A;
- Secs. 16, 17 and 24.

Containing approximately 2,990 acres.

Aggregating approximately 60,109 acres.

Excluded from the above-described lands herein approved for conveyance are the submerged lands, up to the ordinary high water mark, beneath all water bodies determined by the Bureau of Land Management to be navigable because they have been or could be used in connection with travel, trade and commerce. The following named water bodies, together with any unnamed water bodies, are identified on the attached navigability maps, the original of which will be found in easement case file F-14900-EE:

Kuskokwim River
Holokuk River
Kolmakof River

All other water bodies not depicted as navigable on the attached maps within the lands to be conveyed were reviewed. Based on existing evidence, they were determined to be nonnavigable.

The lands excluded in the above description are not being approved for conveyance at this time and have been excluded for one or more of the

following reasons: Lands are no longer under Federal jurisdiction; lands are under applications pending further adjudication; lands are pending a determination under Sec. 3(e) of ANCSA; or lands were previously rejected by decision. Lands within U.S. Surveys which are excluded are described separately in this decision if they are available for conveyance. These exclusions *do not* constitute a rejection of the selection application, unless specifically so stated.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, or whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(f); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1616(b), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F–14900–EE, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsleds, animals, snowmobiles, two- and three-wheel vehicles, and small all-terrain vehicles (ATV's) (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

One Acre Site—The uses allowed on a one (1) acre site easement are: vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, loading or unloading. Temporary camping, loading or unloading shall be limited to 24 hours.

a. (EIN 3 C4, C5) A one (1) acre site easement upland of the ordinary high water mark on an unnamed island at the mouth of the Holokuk River in Sec. 30, T. 17 N., R. 51 W., Seward Meridian. The uses allowed are those listed for a one (1) acre site easement.

b. (EIN 11 C4, C5) A one (1) acre site easement upland of the ordinary high water mark on the southern end of an unnamed island in the Kuskokwim River in Sec. 13, T. 18 N., R. 50 W., Seward Meridian. The uses allowed are those listed for a one (1) acre site easement.

c. (EIN 18, C4, C5) An easement twenty-five (25) feet in width for a proposed access trail from public land in Sec. 27, T. 19 N., R. 52W., Seward Meridian, southerly to public land. The uses allowed are those listed for a twenty-five (25) foot wide trail easement.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official plat of survey confirming the boundary description and acreage of the lands hereinabove granted;

2. Valid existing rights herein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. Ch. 2, Sec. 6(g)), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1616(b)(2) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law; and

3. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(c), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

The Kuskokwim Corporation (for the village of Napaimute) is entitled to conveyance of 69,120 acres of land selected pursuant to Sec. 12(a) of ANCSA.Together with the lands herein approved, the total acreage conveyed or approved for conveyance is approximately 60,109 acres. The remaining entitlement of approximately 9,011 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA and Departmental regulation 43 CFR 2652.4, conveyance of the subsurface estate of the land described above shall be issued to Calista Corporation when the surface estate is conveyed to the Kuskokwim Corporation, and shall be subject to the same conditions as the surface conveyance, except for those provisions under Sec. 14(c) of ANCSA; also the right to explore, develop or remove mineral materials from the subsurface estate in lands within the boundaries of the Native village shall be subject to the consent of The Kuskokwim Corporation.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the Tundra Drums.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised. However, pursuant to Pub. L. 96–487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances, (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until November 1, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

The Kuskokwim Corporation, 429 D Street, Suite 307, Anchorage, Alaska 99501

Calista Corporation, 516 Denali Street, Anchorage, Alaska 99501

State of Alaska, Department of Natural Resources, Division of Research and

Development, Pouch 7–005, Anchorage, Alaska 99510

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82–27117 Filed 9–30–82; 8:45 am]

BILLING CODE 4310–84–M

[F–14908–A, F–14908–B]

Alaska Native Claims Selection

On June 17 and October 11, 1974, Sitnasuak Native Corporation, for the Native village of Nome, filed selection applications F–14908–A and F–14908–B under the provisions of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611) (1976) (ANCSA), for the surface estate of certain lands in the vicinity of Nome.

As to the lands described below, the applications submitted by Sitnasuak Native Corporation, as amended, are properly filed, and meet the requirement of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a), aggregating approximately 73,148 acres, is considered proper for acquisition by Sitnasuak Native Corporation and is hereby approved for conveyance pursuant to Sec. 14(a) of the Alaska Native Claims Settlement Act.

U.S. Survey No. 3642, Alaska, lot 2, situated on the right bank of the Nome River two miles upstream from the confluence of Dexter Creek an Nome River. (Containing 1.31 acres.)

U.S. Survey No. 3646, Alaska, lot 2, situated along the right bank of the Nome River approximately 7,000 feet upstream from the confluence of Dexter Creek and Nome River. (Containing 0.21 acre.)

Mineral Survey No. 335 known as the Yellowstone Association Placer excluding that portion within Mineral Survey No. 1131, in Nome Mining District, District of Alaska. (Containing approximately 40 acres.)

Mineral Survey No. 403 known as the Columbia Mine and Bench Claim No. 1 above Snow Gulch in Cape Nome Mining District, District of Alaska. (Containing 31.799 acres.)

Mineral Survey No. 427 known as the Oakdale Association—Sunrise Bench—Sunset Bench—Gold Beach Fraction—All Gold Fraction—No. 2 Below Discovery on Sunset and Silver Fraction, Placer Claims, in Nome Mining District, District of Alaska. (Containing 229.544 acres.)

Mineral Survey No. 429 known as the Adelaide K Placer on New Year Gulch excluding that portion within Mineral Survey No. 1149 in Nome Mining District, District of Alaska. (Containing approximately 1 acre.)

Mineral Survey No. 432 known as the Katie H Placer Claim in Cape Nome Mining District, District of Alaska. (Containing 9.88 acres.)

Mineral Survey No. 437 known as the No. 1 Right Fork Dexter Creek Placer excluding that portion within Mineral Survey No. 478, Mineral Survey No. 523, Mineral Survey No. 1246, Mineral Survey No. 1293, and Mineral Survey No. 1362, in Cape Nome Mining District, District of Alaska. (Containing approximately 3 acres.)

Mineral Survey No. 466 known as the No. 7 Below Discovery on Anvil Creek in Nome mining District, District of Alaska. (Containing 18.925 acres.)

Mineral Survey No. 703 known as the Anvil Association Placer Claim excluding those portions within Mineral Survey No. 758, Mineral Survey No. 1119, Mineral Survey No. 1284, Mineral Survey No. 1803, and Mineral Survey No. 1878 in Cape Nome Mining District, District of Alaska. (Containing approximately 55 acres.)

Mineral Survey No. 704 known as the Glacier, Fraction, and Mountain Association Placer Claims excluding those portions within Mineral Survey No. 1110 and Mineral Survey No. 1857 in the Cape Nome Mining District, District of Alaska. (Containing approximately 207 acres.)

Mineral Survey No. 721 known as Bench Claim No. 4½ Above Placer in Cape Nome Mining District, District of Alaska. (Containing 2.687 acres.)

Mineral Survey No. 755 known as the Blazing Star Association Placer Mining Claim, in Cape Nome Mining District, District of Alaska. (Containing 30.407 acres.)

Mineral Survey No. 759 known as the Gadfly Placer in Cape Nome Mining District, District of Alaska. (Containing 13.599 acres.)

Mineral Survey No. 775 known as the Anvil, Watershed, Holy Fright, Holy Fright No. 1, Holy Fright No. 2, Maxwell, Dream, Dream No. 1, Dream No. 2, Manhattan, Bernice, Bernice No. 1, Bernice No. 2, Norton, First Avenue, and Mother Lode Claims excluding those portions within Mineral Survey No. 710 and Mineral Survey No. 715 in Cape Nome Mining District, District of Alaska. (Containing approximately 290 acres.)

Mineral Survey No. 1393 known as the Sliver Fraction Placer in Nome Mining District, Territory of Alaska. (Containing 1.326 acres.)

Mineral Survey No. 1809 known as the No. 1 Below Discovery on Banner Creek Placer, excluding Native allotment F–19496, in Nome Mining District, Territory of Alaska. (Containing approximately 3.427 acres.)

Mineral Survey No. 1810 known as the Freezeout, Flora, and Vivian, Placers, excluding that portion within Mineral Survey No. 1819, in Nome Mining District, Territory of Alaska. (Containing approximately 85 acres.)

Mineral Survey No. 1823 known ass the Alpha Group Association Placer, in Nome Mining District, Territory of Alaska. (Containing 25.605 acres.)

Mineral Survey No. 1827 known as the Democrat, Independent, Treves, and Nurpur Association Placers, in Nome Mining District, Territory of Alaska. (Containing 150.391 acres.)

Mineral Survey No. 1828 known as the Summerset, Polk, and Winterset Association Placers, in Nome Mining District, Territory of Alaska. (Containing 477.830 acres.)

Mineral Survey No. 1851 known as the Bowery Claim or No. 2 on Grouse Creek, placer, in Cape Nome Mining District, Alaska. (Containing 11.937 acres.)

Mineral Survey No. 1862 known as the Bertha-Lucky Stone-Myra and Rebecca placers in Cape Nome Recording Prec. Mining District, Territory of Alaska. (Containing 75.917 acres.)

Mineral Survey No. 1863 known as the Grace Association Placer Mining Claim in Cape Nome Mining District, Territory of Alaska. (Containing 40.858 acres.)

Mineral Survey No. 1886 known as the 1 Below Shallits 1 (Placer) in Cape Nome Mining District, Alaska. (Containing 39.839 acres.)

Mineral Survey No. 2270 Alaska known as the Terri Claim situate in T. 10 S., R. 34 W., Kateel River Meridian, Nome Mining District (unsurveyed). (Containing 19.991 acres.)

Mineral Survey No. 2271 Alaska known as Judy Bench and Deb Bench situate in T. 10 S., R. 34 W., Kateel River Meridian, Nome Mining District (unsurveyed). (Containing 39.679 acres.)

Mineral Survey No. 2380 Alaska known as Calkins-White situate in T. 10 S., R. 33 W., Kateel River Meridian Cape Nome Mining District (unsurveyed). (Containing 39.993 acres.)

Aggregating approximately 1,946 acres.

Kateel River Meridian, Alaska (Unsurveyed)

T. 9 S., R. 33 W.
- Sec. 2, excluding Native allotment F–19305 Parcel B;
- Sec. 3;
- Sec. 2, excluding Mineral Survey (M.S.) No. 1128;
- Sec. 8;
- Sec. 2, excluding Native allotment F–13188;
- Sec. 10;
- Sec. 16, excluding Native allotment F–13188;
- Secs. 17, 20, and 21;
- Secs. 28 and 29, excluding M.S. 2264;
- Secs. 32, 33, and 34.

Containing approximately 9,257 acres.

T. 10 S., R. 33 W.
- Sec. 3;
- Sec. 4, excluding M.S. 1140, Native allotments F–18399 and F–19305 Parcel A;
- Sec. 5, excluding M.S. 1809, Native allotments F–18399 and F–19496;
- Sec. 8, excluding Mineral Survey application F–23144, M.S. 1140, and Native allotment F–22422;
- Sec. 9, excluding M.S. 1140 and Native allotment F–19305 Parcel A;
- Secs. 10 and 15;
- Secs. 16 and 17, excluding U.S. Survey No. 3642, U.S. Survey No. 5055, U.S. Survey No. 5364, and M.S. 1140;
- Sec. 19;
- Sec. 20, excluding U.S. Survey No. 3645 and U.S. Survey No. 3646;
- Sec. 21, excluding U.S. Survey No. 3645 and U.S. Survey No. 3646, and M.S. 1140;
- Sec. 22, excluding M.S. 2396;
- Sec. 27, excluding M.S. 1140 and M.S. 2396;

Sec. 28, excluding U.S. Survey No. 5056, M.S. 509, M.S. 1114, M.S. 1140 and M.S. 1394;
Sec. 29, excluding M.S. 673;
Sec. 30, excluding M.S. 491, M.S. 596, M.S. 672, M.S. 673, M.S. 1121, M.S. 1126, M.S. 1181, M.S. 1195, M.S. 1196, M.S. 1221, M.S. 1254, and M.S. 1386;
Sec. 31, excluding M.S. 331, M.S. 346, M.S. 417, M.S. 418, M.S. 437, M.S. 472, M.S. 476, M.S. 478, M.S. 523, M.S. 596, M.S. 719, M.S. 1157, M.S. 1179, M.S. 1181, M.S. 1191, M.S. 1246, M.S. 1254, M.S. 1255, M.S. 1293, M.S. 1341, M.S. 1342, M.S. 1357, M.S. 1362, M.S. 1802, M.S. 1816, M.S. 1851, M.S. 2125, and M.S. 2126;
Sec. 32, excluding M.S. 331, M.S. 476, M.S. 477, M.S. 510, M.S. 511, M.S. 712, M.S. 713, M.S. 1394, and M.S. 1802;
Sec. 33, excluding U.S. Survey No. 5007, M.S. 509, M.S. 510, M.S. 711, M.S. 1140, M.S. 1161, M.S. 1394, and M.S. 2380;
Sec. 34, excluding M.S. 1140, M.S. 1161, and M.S. 2380.

Containing approximately 10,732 acres.

T. 11 S., R. 33 W.
Sec. 1;
Secs. 2 and 3, excluding M.S. 1161 and Native allotment F–13431 Parcel B;
Sec. 4;
Sec. 5, excluding M.S. 1815;
Sec. 6, excluding M.S. 719, M.S. 720, M.S. 1214, M.S. 1222, M.S. 1226, M.S. 1255, M.S. 1815, M.S. 1849, and M.S. 2126;
Sec. 7, excluding M.S. 462, M.S. 464, M.S. 465, M.S. 492, M.S. 720, M.S. 1177, M.S. 1180, M.S. 1210, M.S. 1222, M.S. 1228, M.S. 1240, M.S. 1258, M.S. 1294, M.S. 1310, M.S. 1312, M.S. 1813, M.S. 1876, M.S. 2119, and M.S. 2124;
Sec. 8, excluding M.S. 716, M.S. 1310, and M.S. 1335;
Sec. 9;
Sec. 10, excluding Native allotments F–13431 Parcel B and F–15013 Parcel B;
Sec. 11, excluding U.S. Survey No. 4349, M.S. 1161, Native allotments F–13431 Parcels A and B, F–13432, F–14708 Parcel A, F–15013 Parcels A and C, and F–18262;
Sec. 12, excluding Native allotment F–15013 Parcel C;
Sec. 13, excluding Native allotment F–14708 Parcel B;
Sec. 14, excluding M.S. 1146, M.S. 1161, M.S. 1880, and Native allotment F–14708 Parcel A;
Sec. 15, excluding M.S. 1138, M.S. 1145, M.S. 1146, M.S. 1170, M.S. 1289, M.S. 1346, M.S. 1880, and Native allotment F–15013 Parcel B;
Sec. 16, excluding M.S. 498, M.S. 1113, M.S. 1138, M.S. 1216, and M.S. 1880;
Sec. 17, excluding M.S. 461, M.S. 498, M.S. 716, M.S. 1166, M.S. 1178, M.S. 1182, M.S. 1209, M.S. 1233, M.S. 1296, M.S. 1310, M.S. 1334, M.S. 1335, M.S. 1349, M.S. 1351, and M.S. 1890;
Sec. 18, excluding M.S. 328, M.S. 334, M.S. 411, M.S. 464, M.S. 492, M.S. 670, M.S. 675, M.S. 697, M.S. 746, M.S. 756, M.S. 784, M.S. 1111, M.S. 1160, M.S. 1178, M.S. 1180, M.S. 1197, M.S. 1199, M.S. 1210, M.S. 1241, M.S. 1250, M.S. 1268, M.S. 1294, M.S. 1296, M.S. 1310, M.S. 1312, M.S. 1316, M.S. 1349, M.S. 1350, M.S. 1352, M.S. 1353, M.S. 1393, M.S. 1811, M.S. 1817, M.S. 1821, and M.S. 2119;
Sec. 20, excluding M.S. 498, M.S. 500, M.S. 1113, M.S. 1202, M.S. 1203, M.S. 1206, M.S. 1209, M.S. 1215, M.S. 1219, M.S. 1232, M.S. 1334, M.S. 1337, M.S. 1354, M.S. 1363, and M.S. 2278;
Sec. 21, excluding M.S. 327, M.S. 498, M.S. 500, M.S. 502, M.S. 1113, M.S. 1138, M.S. 1202, M.S. 1206, M.S. 1216, M.S. 1217, M.S. 1354, and M.S. 1819;
Sec. 22, excluding M.S. 499, M.S. 1138, M.S. 1145, M.S. 1146, M.S. 1289, M.S. 1810, M.S. 1819, and M.S. 1880;
Sec. 23, excluding M.S. 1145, M.S. 1146, M.S. 1161, and M.S. 1880;
Secs. 24 and 25;
Sec. 26, excluding M.S. 1161, M.S. 1372, and M.S. 1880;
Sec. 27, excluding M.S. 1372, M.S. 1810, M.S. 1819, and M.S. 1880;
Sec. 28, excluding M.S. 500, M.S. 502, M.S. 1323, and M.S. 1819;
Sec. 29, excluding M.S. 500, M.S. 1208, M.S. 1220, M.S. 1323, M.S. 1337, M.S. 1363, and M.S. 2278;
Sec. 30, excluding M.S. 504, M.S. 506, M.S. 651, M.S. 780, M.S. 1208, M.S. 1220, M.S. 1225, M.S. 1230, M.S. 1297, M.S. 1304, M.S. 1315, M.S. 1356, M.S. 1382, M.S. 1399, M.S. 1800, M.S. 2278, and M.S. 2315;
Sec. 31 (fractional), excluding M.S. 501, M.S. 651, M.S. 1239, M.S. 1299, M.S. 1300, M.S. 1382, M.S. 1399, M.S. 2115, M.S. 2316, and M.S. 2328;
Sec. 32 (fractional), excluding U.S. Survey No. 3791, U.S. Survey No. 5270, M.S. 440, M.S. 1208, M.S. 1239, M.S. 1259, M.S. 1299, M.S. 1300, and the tidal portion of the Nome River;
Sec. 33 (fractional), excluding M.S. 1295, Native allotment F–1267 and the tidal portion of the Nome River;
Sec. 34, excluding U.S. Survey No. 5270, M.S. 1130, and M.S. 1295;
Sec. 35, excluding M.S. 1130 and M.S. 1131;
Sec. 36, excluding M.S. 335 and M.S. 1131.

Containing approximately 13,866 acres.

T. 12 S., R. 33 W.
Sec. 1, excluding M.S. 1131, M.S. 1257, and M.S. 1267;
Sec. 2 (fractional), excluding M.S. 1131, M.S. 1267, and M.S. 1295;
Sec. 3 (fractional), excluding U.S. Survey No. 5270, lot 3 and lot 4, and M.S. 1295;
Sec. 4 (fractional), excluding M.S. 1295, and Native allotments F–029970, F–031351, F–031352, F–031425, F–031450, F–031455, F–031519, F–031615, F–560, F–2680, F–12292 Parcel A, F–13849, F–16926, F–18442, F–18766, and F–19740;
Sec. 5 (fractional), excluding U.S. Survey No. 3791, Native allotments F–029970, F–031352, F–031440, F–13072, and the tidal portion of the Nome River;
Sec. 12 (fractional), excluding M.S. 348, M.S. 1131, and M.S. 1257.

Containing approximately 715 acres.

T. 10 S., R. 34 W.
Sec. 2;
Sec. 3, excluding M.S. 1852;
Secs. 4 and 9, excluding M.S. 1159;
Sec. 10, excluding M.S. 2270 and Native allotment F–16511;
Sec. 14, excluding M.S. 332 and M.S. 721;
Sec. 15, excluding M.S. 1835;
Sec. 16;
Sec. 21, excluding M.S. 704 and M.S. 1110;
Sec. 22, excluding M.S. 447, M.S. 704, M.S. 721, and M.S. 1835;
Sec. 23, excluding M.S. 403, M.S. 447, M.S. 715, M.S. 721, and M.S. 2271;
Sec. 24, excluding M.S. 432, M.S. 715, and M.S. 2271;
Sec. 25, excluding M.S. 385, M.S. 429, M.S. 715, M.S. 775, M.S. 1126, M.S. 1149, M.S. 1221, and M.S. 2115;
Sec. 26, excluding M.S. 403, M.S. 447, M.S. 473, M.S. 710, M.S. 715, and M.S. 775;
Sec. 27, excluding M.S. 447, M.S. 473, M.S. 704, M.S. 781, and M.S. 1110;
Sec. 28, excluding M.S. 704, M.S. 1110, and M.S. 1857;
Sec. 31, excluding M.S. 427 and M.S. 1883;
Sec. 32, excluding M.S. 757, M.S. 1857, and Native allotment F–13850 Parcel A;
Sec. 33, excluding M.S. 704, M.S. 1110, and M.S. 1857;
Sec. 34, excluding M.S. 704, M.S. 781, M.S. 1110, M.S. 1862, and M.S. 1886;
Sec. 35, excluding M.S. 347, M.S. 710, M.S. 714, M.S. 775, M.S. 1184, M.S. 1192, M.S. 1205, M.S. 1247, and M.S. 1287;
Sec. 36, excluding M.S. 347, M.S. 385, M.S. 428, M.S. 459, M.S. 714, M.S. 750, M.S. 775, M.S. 1183, M.S. 1184, M.S. 1223, M.S. 1253, M.S. 1287, M.S. 1321, M.S. 1326, M.S. 1342, M.S. 1376, M.S. 1867, M.S. 2115, M.S. 2117, M.S. 2118, and M.S. 2125.

Containing approximately 10,879 acres.

T. 11 S. R. 34 W.
Sec. 1, excluding U.S. Survey No. 5270 (Public Land Order 1622), M.S. 1184, M.S. 1253, M.S. 1287 and M.S. 2113;
Sec. 2, excluding M.S. 345, M.S. 433, M.S. 434, M.S. 435, M.S. 513, M.S. 621, M.S. 722, M.S. 1118, M.S. 1192, M.S. 1205, M.S. 1247, M.S. 1253, M.S. 1287, M.S. 1368, M.S. 2113, and M.S. 2114;
Sec. 3, excluding M.S. 1118, M.S. 1862, and M.S. 1886;
Sec. 4, excluding M.S. 1857 and M.S. 1886;
Sec. 5, excluding M.S. 1244, M.S. 1314, M.S. 1857, and Native allotment F–13850 Parcel A;
Sec. 6, excluding M.S. 427, M.S. 1107, M.S. 1108, M.S. 1213, M.S. 1314, and M.S. 1320;
Sec. 7, excluding M.S. 1314, M.S. 1320, M.S. 1828, and M.S. 1879;
Sec. 8, excluding M.S. 1244, M.S. 1314, and M.S. 1879;
Sec. 9, excluding M.S. 466, M.S. 1857, and M.S. 1858;
Sec. 10, excluding M.S. 466, M.S. 505, M.S. 1118, M.S. 1286, M.S. 1345, and M.S. 1858;
Sec. 11, excluding M.S. 325, M.S. 329, M.S. 436, M.S. 466, M.S. 485, M.S. 505, M.S. 513, M.S. 607, M.S. 608, M.S. 621, M.S. 707, M.S. 722, M.S. 1115, M.S. 1118, M.S. 1153, M.S. 1163, M.S. 1167, M.S. 1186, M.S. 1211, M.S. 1249, M.S. 1251, M.S. 1285, M.S. 1303, M.S. 1330, M.S. 1368, and M.S. 1371;
Sec. 12,excluding M.S. 325, M.S. 329, M.S. 443, M.S. 445, M.S. 492, M.S. 493, M.S. 695, M.S. 696, M.S. 697, M.S. 698, M.S. 699, M.S. 707, M.S. 747, M.S. 755, M.S. 759, M.S. 1117, M.S. 1175, M.S. 1189, M.S. 1193, M.S. 1198, M.S. 1212, M.S. 1224, M.S. 1228, M.S. 1249, M.S. 1252, M.S. 1264, M.S. 1285, M.S. 1364, M.S. 1371,

M.S. 1813, M.S. 1864, M.S. 1865, M.S. 1887, and M.S. 1889;
Sec. 14, excluding M.S. 326, M.S. 329, M.S. 444, M.S. 505, M.S. 699, M.S. 1105, M.S. 1112, M.S. 1115, M.S. 1123, M.S. 1127, M.S. 1158, M.S. 1163, M.S. 1164, M.S. 1167, M.S. 1248, M.S. 1249, M.S. 1261, M.S. 1333, M.S. 1360, M.S. 1861, and M.S. 1884;
Sec. 15, excluding M.S. 326, M.S. 505, M.S. 1158, M.S. 1285, M.S. 1286, and M.S. 1360;
Sec. 16, excluding M.S. 326, M.S. 740, M.S. 741, M.S. 742, and M.S. 1285;
Sec. 17, excluding M.S. 703, M.S. 1827, M.S. 1878, and M.S. 1879;
Sec. 18, excluding M.S. 1827, M.S. 1828, M.S. 1846, and M.S. 1879;
Sec. 19 (fractional), excluding M.S. 512, M.S. 1318, M.S. 1823, M.S. 1826, M.S. 1827, and M.S. 1846;
Sec. 20, excluding M.S. 344, M.S. 512, M.S. 703, M.S. 758, M.S. 1355, M.S. 1367, M.S. 1387, M.S. 1823, M.S. 1824, M.S. 1825, M.S. 1826, M.S. 1827, M.S. 1860, and M.S. 1878;
Sec. 21, excluding M.S. 326, M.S. 338, M.S. 344, M.S. 703, M.S. 740, M.S. 741, M.S. 742, M.S. 758, M.S. 1119, M.S. 1284, M.S. 1285, M.S. 1344, M.S. 1358, M.S. 1803, and M.S. 2121;
Sec. 22, excluding M.S. 326, M.S. 338, M.S. 494, M.S. 674, M.S. 1119, M.S. 1133, M.S. 1139, M.S. 1142, M.S. 1154, M.S. 1158, M.S. 1284, M.S. 1285, M.S. 1324, M.S. 1338, M.S. 1360, M.S. 1801, M.S. 1863, M.S. 2121, and M.S. 2122;
Sec. 23, excluding M.S. 330, M.S. 444, M.S. 488, M.S. 494, M.S. 717, M.S. 1127, M.S. 1137, M.S. 1142, M.S. 1154, M.S. 1155, M.S. 1156, M.S. 1158, M.S. 1190, M.S. 1288, M.S. 1333, M.S. 1373, M.S. 1801, M.S. 1848, M.S. 1861, M.S. 1863, M.S. 1868, M.S. 1884, M.S. 1885, M.S. 1899, and M.S. 2116;
Sec. 25, excluding U.S. Survey No. 451, M.S. 454, M.S. 455, M.S. 457, M.S. 496, M.S. 504, M.S. 529, M.S. 685, M.S. 686, M.S. 709, M.S. 1103, M.S. 1104, M.S. 1136, M.S. 1173, M.S. 1190, M.S. 1230, M.S. 1263, M.S. 1282, M.S. 1298, M.S. 1311, M.S. 1315, M.S. 1378, M.S. 1379, M.S. 1800, M.S. 1893, Executive Order 1036, Quitclaim Deed F-1283, Quitclaim Deed to the United States dated September 13, 1943, Quitclaim Deed to the United States dated April 10, 1944, and Quitclaim Deed F-74014;
Sec. 26 (fractional), excluding U.S. Survey No. 451, M.S. 410, M.S. 454, M.S. 529, M.S. 685, M.S. 1103, M.S. 1122, M.S. 1136, M.S. 1137, M.S. 1142, M.S. 1154, M.S. 1173, M.S. 1190, M.S. 1194, M.S. 1282, M.S. 1325, M.S. 1339, M.S. 1373, M.S. 1374, M.S. 1806, M.S. 1814, M.S. 1891, M.S. 1892, M.S. 1899, M.S. 2276, ANCSA Section 3(e) applications F-54187, F-54189, F-73070, and the tidal portion of the Snake River;
Sec. 27 (fractional), excluding U.S. Survey No. 451, M.S. 410, M.S. 494, M.S. 508, M.S. 671, M.S. 674, M.S. 739, M.S. 1119, M.S. 1133, M.S. 1139, M.S. 1154, M.S. 1301, M.S. 1324, M.S. 1338, M.S. 1339, M.S. 1344, M.S. 1347, M.S. 1348, M.S. 1358, M.S. 1374, M.S. 1877, and Public Land Order 1439;
Sec. 28 (franctional), excluding M.S. 344, M.S. 508, M.S. 1119, M.S. 1301, M.S. 1344, M.S. 1358, M.S. 1359, and M.S. 1367;
Sec. 29 (fractional), excluding M.S. 512, M.S. 1318, M.S. 1355, M.S. 1367, and M.S. 1387;
Sec. 35 (franctional), excluding U.S. Survey No. 451, M.S. 529, ANCSA Sec. 3(e) applications F-54186, F-54187, F-54188, and Executive Order dated April 16, 1903;
Sec. 36 (fractional), excluding U.S. Survey No. 450, U.S. Survey No. 451, M.S. 496, M.S. 501, M.S. 529, M.S. 1298, M.S. 1311, M.S. 1893, M.S. 2318, Quitclaim Deed to the United States dated September 13, 1943, and Quitclaim Deed to the United States dated April 10, 1944.

Containing approximately 5,968 acres.

T. 10 S., R. 35 W.
Secs. 5 and 6;
Sec. 7, excluding M.S. 1332;
Secs. 8 and 16;
Sec. 17 and 18, excluding M.S. 1332;
Sec. 19;
Secs. 20 and 21, excluding M.S. 1866;
Sec. 27, excluding M.S. 1308 and M.S. 1381;
Sec. 28, excluding M.S. 1308 and M.S. 1866;
Secs. 29, 30, 31, and 32;
Secs. 33 and 34, excluding M.S. 1292 and M.S. 1308;
Sec. 35, excluding M.S. 1320;
Sec. 36, excluding M.S. 427, M.S. 482, M.S. 1291, M.S. 1313, M.S. 1832, and M.S. 1883.

Containing approximately 11,750 acres.

T. 11 S., R. 35 W.
Sec. 1, excluding M.S. 427, M.S. 482, M.S. 1107, M.S. 1108, M.S. 1313, M.S. 1314, M.S. 1320, M.S. 1832, and M.S. 1883;
Sec. 2, excluding M.S. 1320;
Sec. 3, excluding M.S. 1292;
Sec. 4, excluding M.S. 1292 and M.S. 1309;
Secs. 5 and 6;
Sec. 7, excluding M.S. 1102;
Sec. 8;
Sec. 9, excluding M.S. 1309 and M.S. 1319;
Sec. 10, excluding M.S. 1319;
Sec. 11, excluding M.S. 1320;
Sec. 12, excluding M.S. 1320 and M.S. 1828;
Sec. 13, excluding M.S. 1828, M.S. 1845, M.S. 1846, and M.S. 2280;
Sec. 14, excluding M.S. 1319, M.S. 1845, and M.S. 2280;
Sec. 15 (fractional), excluding M.S. 1319 and M.S. 2280;
Sec. 16 (fractional), excluding M.S. 1319;
Secs. 17 and 18 (fractional);
Sec. 22 (fractional), excluding M.S. 1319;
Sec. 23 (fractional), excluding M.S. 1317, M.S. 1319, M.S. 1336, M.S. 1842, M.S. 1846, and M.S. 2280;
Sec. 24 (fractional), excluding M.S. 512, M.S. 1318, M.S. 1336, M.S. 1846, and M.S. 2280.

Containing approximately 8,035 acres.

Aggregating approximately 71,202 acres.

Total aggregated acreage, approximately 73,148 acres.

All named and unnamed water bodies within the above-described lands were reviewed and, based on existing evidence, they were determined to be nonnavigable.

Excluded from the above-described lands herein approved for conveyance are the following water bodies which are pending a determination as to tidal influence:

The Snake River has tidal influence from its mouth to the southern boundary of Mineral Survey 1892 in Sec. 26, T. 11 S., R. 34 W., Kateel River Meridian; and

The Nome River has tidal influence from its mouth to where the river is crossed by the Nome-Council Road in Sec. 33, T. 11 S., R. 33 W., Kateel River Meridian.

Actual limits of tidal influence, for water bodies listed above and for other water bodies within the lands to be conveyed, if any, will be determined at the time of survey.

The lands excluded in the above description are not being approved for conveyance at this time and have been excluded for one or more of the following reasons: Lands are no longer under Federal jurisdiction; lands are under applications pending further adjudication; lands are pending a determination under Sec. 3(e) of ANCSA; or lands were previously rejected by decision. Lands within U.S. Surveys or Mineral Surveys which are excluded are described separately in this decision if they are available for conveyance. These exclusions *do not* constitute a rejection of the selection application, unless specifically so stated.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(f)); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F-14908-EE, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25-Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel

vehicles, and small all-terrain vehicles (less than 3,000 lbs Gross Vehicle Weight (GVW)).

50-Foot Trail—The uses allowed on a fifty (50) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, small and large all-terrain vehicles, track vehicles and four-wheel drive vehicles.

60-Foot Road—The uses allowed on a sity (60) foot wide road easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, small and large all-terrain vehicles, track vehicles, four-wheel drive vehicles, automobiles, and trucks.

a. (EIN 10 D9) An easement for a proposed access trail fifty (50) feet in width from the Nome-Teller Road in Sec. 28, T. 10 S., R. 35 W., Kateel River Meridian, northeasterly to public lands. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

b. (EIN 14 C3, D1, L) An easement for an existing access trail fifty (50) feet in width from the Nome-Teller Road in Sec. 6, T. 11 S., R. 34 W., Kateel River Meridian, northeasterly to public lands. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

c. (EIN 22 D1, L) An easement for an existing access trail fifty (50) feet in width from the Jensen's Camp Road in Sec. 10, T. 10 S., R. 34 W., Kateel River Meridian, northwesterly to public lands. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

d. (EIN 35 B, D1, K, L) An easement twenty (20) feet in width for an existing road from the Nome-Taylor Road in Sec. 7, T. 11 S., R. 33 W., Kateel River Meridian, northerly to lands withdrawn by PLO 1534 and PLO 1622. The uses allowed are those listed above for a sixty (60) foot wide road easement. Use is limited to the United States Government and its authorized agents and assignees.

e. (EIN 35a B, D1, K) An easement ten (10) feet in width for an existing communications cable from Sec. 7, T. 11 S., R. 33 W., Kateel River Meridian, northerly to lands withdrawn by PLO 1534 and PLO 1622. The uses allowed are those activities associated with the construction, operation, and maintenance of the communications cable. Use is limited to the United States Government and its authorized agents and assignees.

f. (EIN 45 D1, L) An easement for an existing access trail twenty-five (25) feet in width from Nome in Sec. 36, T. 11 S., R. 34 W., Kateel River Meridian, southeasterly to Solomon. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter.

g. (EIN 48 C1, C5, D1, L) An easement sixty (60) feet in width for an existing road from the Nome-Council Road in Sec. 4, T. 12 S., R. 33 W, Kateel River Meridian, westerly to the community of Fort Davis. The uses allowed are the listed above for a sixty (60) foot wide road easement.

h. (EIN 72 D1, D9, L) An easement for an existing access trail twenty-five (25) feet in width from Nome in Sec. 27, T. 11 S., R. 34 W., Kateel River Meridian, westerly to Teller. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter.

i. (EIN 125 D1) An easement for a proposed access trail twenty-five (25) feet in width from the mean high-tide line in Sec. 12, T. 12 S., R. 33 W., Kateel River Meridian, northeasterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

j. (EIN 126 D1, I) An easement twenty-five (25) feet in width for an existing powerline from Sec. 32, T. 11 S., R. 33 W., Kateel River Meridian, southeasterly to the Nome VOR site access road in Sec. 4, T. 12 S., R. 33 W., Kateel River Meridian. The uses allowed are those activities accociated with the operation and maintenance of a powerline facility.

k. (EIN 127 D1, I) An easement one hundred (100) feet in width for an existing road and powerline from the Nome-Council Road in Sec. 4, T. 12 S., R. 33 W., Kateel River Meridian, northeasterly to the Nome VOR site. The uses allowed are those listed above for a sixty (60) foot wide road easement and those activities associated with the operation and maintenance of a powerline facility. Use is limited to the United States Government and its authorized agents and assigns.

l. (EIN 132 D1) An easement for a proposed access trail fifty (50) feet in width from the Nome-Taylor Road in Sec. 5, T. 10 S., R. 33 W., Kateel River Meridian, westerly to public lands. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

m. (EIN 133 C4, I) An easement twenty-five (25) feet in width for an existing powerline from the Nome townsite in Sec. 36, T. 11 S., R. 34 W., Kateel River Meridian southeasterly to EIN 126 D1, I in Sec. 32, T. 11 S., R. 33 W., Kateel River Meridian. The uses allowed are those activities associated with the construction, operation and maintenance of a powerline facility.

n. (EIN 133a C4, I) An easement twenty-five (25) feet in width for and existing powerline from powerline EIN 133 C4, I in Sec. 32, T. 11 S., R. 33 W., Kateel River Meridian, northeasterly to the FAA site (PLO 2642) in Sec. 32, T. 11 S., R. 33 W., Kateel River Meridian. The uses allowed are those activities associated with the construction, operation and maintenance of a powerline facility.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official plat of survey confirming the boundary description and acreage of the lands hereinabove granted;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. A right-of-way, F–160, located within Sec. 31, Sec. 32, and Sec. 33, T. 11 S., R. 33 W., Sec. 4, T. 12 S., R. 33 W., and Sec. 36, T. 11 S., R. 34 W., Kateel River Meridian, 200 feet in width, for a Federal Aid Highway. Act of August 27, 1958, as amended (23 U.S.C. 317);

4. A right-of-way, F–957, containing approximately 17 acres, located within Sec. 32 and Sec. 33, T. 11 S., R. 33 W., Kateel River Meridian, for a communication site. Act of March 4, 1911 (43 U.S.C. 961);

5. A right-of-way, F–7555, containing approximately 8 acres, located within Sec. 32, T. 11 S., R. 33 W., and Sec. 5, T. 12 S., R. 33 W., Kateel River Meridian, for a Federal Aid material site. Act of August 27, 1958, as amended (23 U.S.C. 317);

6. A right-of-way, F–09113, located within Tps. 9 and 10 S., R. 33 W., and T. 10 S., R. 34 W., Kateel River Meridian, 125 feet in width, for canal and ditches, with feeders and laterals, known as the Miocene Ditch System, for mining purposes, issued to United States Smelting, Refining and Mining Company under the provisions of the act of February 15, 1901 (43 U.S.C. 959);

7. A right-of-way, F–09118, located within Tps. 9, 10, and 11 S., R. 33 W., and T. 11 S., R. 34 W., Kateel River Meridian, 120 feet in width, for the construction, operation and maintenance of ditches, issued to United

States Smelting, Refining and Mining Company under the provisions of the act of February 15, 1901 (43 U.S.C. 959);

8. A right-of-way, F–12414, located within Sec. 32, T. 11 S., R. 33 W., Kateel River Meridian, 200 feet in width, for a Federal Aid Highway. Act of August 27, 1958, as amended (23 U.S.C. 317);

9. A right-of-way, F–12416, located within Sec. 29, T. 11 S., R. 33 W., Kateel River Meridian, 200 feet in width, for a Federal Aid Highway. Act of August 27, 1958, as amended (23 U.S.C. 317);

10. A right-of-way, F–12417, located within Sec. 28 and Sec. 29, T. 11 S., R. 33 W., Kateel River Meridian, 200 feet in width, for a Federal Aid Highway. Act of August 27, 1958, as amended (23 U.S.C. 317);

11. A right-of-way, F–12418, located within Sec. 21, T. 11 S., R. 33 W., Kateel River Meridian, 200 feet in width, for a Federal Aid Highway. Act of August 27, 1958, as amended (23 U.S.C. 317);

12. A right-of-way, F–12419, located within Sec. 33, T. 10 S., R. 33 W., and Secs. 2, 3, 4, 10, 11, and 15, T. 11 S., R. 33 W., Kateel River Meridian, 200 feet in width, for a Federal Aid Highway. Act of August 27, 1958, as amended (23 U.S.C. 317);

13. A right-of-way, F–12420, located within Sec. 33, T. 10 S., R. 33 W., Kateel River Meridian, 38.48 to 200 feet in width, for a Federal Aid Highway. Act of August 27, 1958, as amended (23 U.S.C. 317);

14. A right-of-way, F–12421, located within Sec. 33, T. 10 S., R. 33 W., Kateel River Meridian, 200 feet in width, for a Federal Aid Highway. Act of August 27, 1958, as amended (23 U.S.C. 317);

15. A right-of-way, F–12422, located within Sec. 33 and Sec. 34, T. 10 S., R. 33 W., Kateel River Meridian, containing approximately 7 acres, for a Federal Aid material site. Act of August 27, 1958, as amended (23 U.S.C. 317);

16. A right-of-way, F–12424, located within Sec. 33, T. 10 S., R. 33 W., Kateel River Meridian, 100 feet in width, for a Federal Aid Highway. Act of August 27, 1958, as amended (23 U.S.C. 317);

17. A right-of-way, F–12429, located within Sec. 11, T. 11 S., R. 33 W., Kateel River Meridian, 100 feet in width, for a Federal Aid Highway. Act of August 27, 1958, as amended (23 U.S.C. 317);

18. A right-of-way, F–12545, located within Sec. 32, T. 11 S., R. 33 W., Kateel River Meridian, containing approximately 4.196 acres, for a Federal Aid material site. Act of August 27, 1958, as amended (23 U.S.C. 317);

19. A right-of-way, F–14971, located within Sec. 32, T. 10 S., R. 33 W., Kateel River Meridian, containing approximately 6.835 acres, for a Federal Aid material site. Act of August 27, 1958, as amended (23 U.S.C. 317);

20. A right-of-way, F–15019, located within Sec. 4 and Sec. 9, T. 10 S., R. 33 W., Kateel River Meridian, for varying widths, containing approximately 10.240 acres, for a Federal Aid Highway. Act of August 27, 1958, as amended (23 U.S.C. 317);

21. A right-of-way, F–15020, located within Sec. 4, T. 10 S., R. 33 W., Kateel River Meridian, for varying widths, containing approximately 12.365 acres, for a Federal Aid Highway. Act of August 27, 1958, as amended (23 U.S.C. 317);

22. A right-of-way, F–19177, located within Sec. 17 and Sec. 20, T. 10 S., R. 33 W., Kateel River Meridian, containing approximately 2.594 acres, for a Federal Aid Highway. Act of August 27, 1958, as amended (23 U.S.C. 317);

23. A right-of-way, F–026023, located within Sec. 8 and Sec. 17, T. 10 S., R. 35 W., Kateel River Meridian, containing approximately 7.34 acres, for a Federal Aid material site. Act of August 27, 1958, as amended (23 U.S.C. 317);

24. A right-of-way, F–031747, Parcels No. 2, 4, 7, 9, 13, and 17, located within Sec. 31, T. 10 S., R. 34 W., Secs. 3, 4, 5, 6, and 10, T. Secs. 34, 35, and 36, T. 10 S., R. 35 W., and Secs. 1 and 2, T. 11 S., R. 35 W., and 11 S., R. 34 W., Kateel River Meridian, 200 feet in width, for a Federal Aid Highway. Act of August 27, 1958, as amended (23 U.S.C. 317);

25. A right-of-way, F–032075, Parcels No. 1 and 2, located within Sec. 10, T. 11 S., R. 34 W., Kateel River Meridian, containing approximately .407 acre, for a Federal Aid Highway. Act of August 27, 1958, as amended (23 U.S.C. 317);

26. A right-of-way, F–033602, Parcel No. 4, located within Secs. 5, 8, 16, 17, 21, 27, and 28, T. 10 S., R. 35 W., Kateel River Meridian, 200 feet in width, for a Federal Aid Highway. Act of August 27, 1958, as amended (23 U.S.C. 317);

27. Any right-of-way interest in Federal Aid Secondary (FAS) Route No. 130 (Nome-Council Road) from Nome FAA Airfield east through Nome and Solomon to FAS Route 1304 at Council transferred to the State of Alaska by the quitclaim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Pub. L. 86–70 (73 Stat. 141) as to Tps. 11 S., Rs. 33 and 34 W., and T. 12 S., R. 33 W., Kateel River Meridian;

28. Any right-of-way interest in Federal Secondary (FAS) Route No. 131 (Nome-Teller Road) from FAS Route 141 near Nome northwest to Teller transferred to the State of Alaska by the quitclaim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Pub. L. 86–70 (73 Stat. 141) as to T. 11 S., R. 34 W., and Tps. 10 and 11 S., Rs. 35 W., Kateel River Meridian;

29. Any right-of-way interest in Federal Aid Secondary (FAS) Route No. 141 (Nome-Taylor Road) from FAS Route 130 in Nome, north to FAS Route 1451 at Coffee Creek transferred to the State of Alaska by the quitclaim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Pub. L. 86–70 (73 Stat. 141) as to Tps. 9, 10, and 11 S., Rs. 33 W., and T. 11 S., R. 34 W., Kateel River Meridian;

30. Any right-of-way interest in Federal Aid Secondary (FAS) Route No. 1311 (Snake River Road) from FAS Route 131 near Nome, northerly to Jensen's Mining and Recreation area transferred to the State of Alaska by the quitclaim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Pub. L. 86–70 (73 Stat. 141) as to Tps. 10 and 11 S., Rs. 34 W., Kateel River Meridian;

31. Any right-of-way interest in Federal Aid Secondary (FAS) Route No. 1312 (Little Creek Road) from FAS Route No. 131 south to FAS Route 1411 transferred to the State of Alaska by the quitclaim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Pub. L. 86–70 (73 Stat. 141) as to T. 11 S., R. 34 W., Kateel River Meridian;

32. Any right-of-way interest in Federal Aid Secondary (FAS) Route No. 1321 (Submarine-Pavstreak) from Nome Municipal Airport westerly to Submarine Mining area transferred to the State of Alaska by the quitclaim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Pub. L. 86–70 (73 Stat. 141) as to T. 11 S., R. 34 W., Kateel River Meridian;

33. Any right-of-way interest in Federal Aid Secondary (FAS) Route No. 1411 (Center Creek Road and Depot Spur) from Route 130 within Nome looping westerly through the Center Creek mining area and thence northeasterly to Route 141, and a spur westerly to highway maintenance depot transferred to the State of Alaska by the quitclaim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Pub. L. 86–70 (73 Stat. 141) as to T. 11 S., R. 34 W., Kateel River Meridian;

34. Any right-of-way interest in Federal Aid Secondary (FAS) Route No. 1412 (Osborne Road) from Route 141 near Nome, northeasterly through

Osborne Recreation area to the Osborne Creek Mining area transferred to the State of Alaska by the quitclaim deed dated June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Pub. L. 86–70 (73 Stat. 141) as to Tps. 11 S., Rs. 33 and 34 W., Kateel River Meridian;

35. Any right-of-way interest in Federal Aid Secondary (FAS) Route No. 1413 (Buster Road) from FAS Route 141 near Nome, northeasterly through Busterville to the Buster Creek mining area transferred to the State of Alaska by the quitclaim deed June 30, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, Pub. L. 86–70 (73 Stat. 141) as to Tps. 10 and 11 S., Rs. 33 W., Kateel River Meridian; and

36. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(c)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Reindeer Grazing Permit, F–23293, issued to Sitnasuak Native Corporation, on January 1, 1982, located within lands herein approved for conveyance, will terminate upon conveyance of these lands in accordance with Sec. 9, Additional Condition or Stipulation No. 1 of the permit.

Reindeer Grazing Permit, F–035186, issued to Lawrence T. Davis, on January 1, 1982, located within the lands herein approved for conveyance, will terminate upon conveyance of these lands in accordance with Sec. 9, Additional Condition or Stipulation No. 1 of the permit.

Sitnasuak Native Corporation is entitled to conveyance of 161,280 acres of land selected pursuant to Sec. 12(a) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is approximately 152,211 acres. The remaining entitlement of approximately 9,069 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA and Departmental regulation 43 CFR 2652.4, conveyance of the subsurface estate shall be issued to Bering Straits Native Corporation when the surface estate is conveyed to Sitnasuak Native Corporation, and shall be subject to the same conditions as the surface conveyance, except for those provisions under Sec. 14(c) of ANCSA; also the right to explore, develop, or remove mineral materials from the subsurface estate in lands within the boundaries of the Native village shall be subject to the consent of Sitnasuak Native Corporation.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the Nome Nugget.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised. However, pursuant to Pub. L. 96–487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until November 1, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

State of Alaska, Department of Natural Resources, Division of Research and Development, Pouch 7–005, Anchorage, Alaska 99510

Sitnasuak Native Corporation, P.O. Box 905, Nome, Alaska 99762

Bering Straits Native Corporation, P.O. Box 1008, Nome, Alaska 99762

Barbara A. Lange,

Acting Chief, Branch of ANCSA Adjudication.

[FR Doc. 82–27118 Filed 9–30–82; 8:45 am]

BILLING CODE 4310–84–M

[F–14936–A]

Alaska Native Claims Selection

On November 18, 1974, Sleetmute Limited, for the Native village of Sleetmute, filed selection application F–14936–A, as amended, under the provisions of Sec. 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1611 (1976) (ANCSA), for the surface estate of certain lands in the vicinity of Sleetmute.

On April 25, 1977, in accordance with Title 10, Chapter 05, Secs. 396 and 399 of the Alaska Business Corporation Act, and as authorized by 43 U.S.C. 1627, Georgetown Incorporated, a domestic corporation, merged with Aniak Limited, Chuathbaluk Company, Kipchaughpuk Limited, Lower Kalskag Incorporated, Napamute Limited, Red Devil Incorporated, Sleetmute Limited, Stony River Ltd., and Upper Kalskag Incorporated, all domestic corporations, into Georgetown Incorporated, which consolidated individual village interests into one single constituent corporation whose name was changed to The Kuskokwim Corporation. The surviving corporation, The Kuskokwim Corporation, is entitled to all rights, privileges, and benefits of the Alaska Native Claims Settlement Act.

As to the lands described below, selection application F–14936–A, as amended, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, aggregating approximately 85,487 acres, is considered proper for acquisition by The Kuskokwim Corporation (for the village of Sleetmute) and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA:

U.S. Survey No. 2048, situated on the right bank of the Kuskokwim River in the village of Sleetmute, Alaska, lots 2, 3, 4 and 6 to 12, inclusive. (Containing 10.17 acres.)

Seward Meridian, Alaska (Surveyed)

T. 18 N., R. 42 W.
Secs. 4, 5 and 6.
Containing approximately 1,865 acres.

T. 19 N., R. 42 W.
Secs. 14 to 18, inclusive;
Sec. 19, excluding Native allotment F–17916;
Sec. 20, excluding Native allotment F–18053 Parcel A;
Secs. 21, 22 and 23;
Sec. 24, excluding Native allotment F–17921 Parcel B;
Secs. 25 to 28, inclusive;
Sec. 29, excluding Native allotment F–17918 Parcel B;
Sec. 30;
Sec. 31, excluding Native allotment F–17921 Parcel A;
Secs. 32, 33 and 34.
Containing approximately 11,072 acres.

T. 17 N., R. 43 W.
Secs. 1, 2 and 3;
Secs. 10, 11 and 12;
Sec. 14, excluding Native allotment F–18052 Parcel C;
Sec. 15;
Secs. 22, 27 and 28;
Sec. 29, excluding Native allotments F–16524 Parcel A, F–16525 Parcel D and F–17175 Parcel C;
Secs. 32, 33 and 34;
Sec. 35, excluding Native allotments F–17920 Parcel C and F–17964 Parcel B;
Sec. 36.
Containing approximately 9,244 acres.

T. 18 N., R. 43 W.
Secs. 1 and 2, excluding Native allotment F–16523 Parcel C;
Sec. 3;
Sec. 4, excluding Native allotment F–17915;
Sec. 5, excluding Native allotment F–17920 Parcel B;
Sec. 6;
Sec. 7, excluding Native allotments F–13972 Parcel B, F–16525 Parcel B, F–17024, F–17029 Parcel B, F–18052 Parcel A and F–18053 Parcel B;
Sec. 8, excluding Native allotment F–17024;
Secs. 9 and 10;
Secs. 11 and 12, excluding Native allotment F–18052 Parcel B;
Sec. 13;
Sec. 14, excluding Native allotment F–16531 Parcel A;
Secs. 15 and 16;
Sec. 17, excluding Native allotment F–13765 Parcel A;
Sec. 18, excluding Native allotments F–16525 Parcel B, F–17175 Parcels A and B, F–17918 Parcel A and F–18052 Parcel A;
Sec. 19, excluding Native allotments F–17965 Parcel B and F–18054 Parcel C;
Sec. 20, excluding Native allotments F–13765 Parcel A and F–17917 Parcel A;
Sec. 21, excluding Native allotments F–13973 Parcel A and F–16524 Parcel B;
Sec. 22, excluding Native allotments F–17029 Parcel C and F–17967 Parcel B;
Sec. 23, excluding Native allotments F–16524 Parcel C, F–16525 Parcel C and F–17917 Parcel B;
Sec. 24, excluding Native allotment F–13786 Parcel A;
Sec. 25, excluding Native allotments F–13765 Parcel B and F–13972 Parcel A;
Secs. 26 and 27;
Sec. 28, excluding Native allotment F–16526 Parcel A;
Sec. 29;
Secs. 33, 34 and 35.
Containing approximately 15,945 acres.

T. 19 N., R. 43 W.
Sec. 19, excluding Native allotments F–16523 Parcel A and F–18056 Parcel A;
Sec. 30;
Sec. 31, excluding Native allotment F–16530 Parcel B;
Secs. 32, 35 and 36.
Containing approximately 3,306 acres.

T. 17 N., R. 44 W.
Secs. 5 to 8, inclusive.
Containing approximately 2,542 acres.

T. 18 N., R. 44 W.
Sec. 1, excluding Native allotments F–029354, F–16525 Parcel A, F–16527, F–17919 Parcel B and F–17964 Parcel C;
Sec. 2, excluding Native allotments F–029354, F–033603 Parcel A, F–16527 and F–17919 Parcel B;
Secs. 3 and 4;
Secs. 9, 10 and 11;
Sec. 12, excluding Native allotments F–11959 and F–16532 Parcel A;
Sec. 13, excluding Native allotment F–17175 Parcel A;
Secs. 14, 15 and 16;
Secs. 19 to 24, inclusive;
Secs. 26 to 35, inclusive.
Containing approximately 17,035 acres.

T. 19 N., R. 44 W.
Secs. 1 to 4, inclusive;
Sec. 9, excluding Native allotment F–17967 Parcel A;
Secs. 10, 11 and 12;
Sec. 13, excluding Native allotments F–16528 Parcel A and F–18051 Parcel B;
Sec. 14, excluding Native allotments F–17963 Parcel C and F–18054 Parcel A;
Sec. 15, excluding Native allotment F–18051 Parcel C and Litigation AA–42450;
Secs. 16 to 22, inclusive;
Sec. 23, excluding Native allotments F–16532 Parcel B, F–17917 Parcel C and F–18055 Parcel A;
Sec. 24, excluding Native allotments F–13786 Parcel B, F–16528 Parcel B, F–16532 Parcel B, F–17917 Parcel C and F–18055 Parcel A;
Sec. 25, excluding U.S. Survey No. 2048 and Native allotments F–13867, F–16529 Parcel B, F–16532 Parcel B, F–18051 Parcel A and F–18201;
Sec. 26, excluding Native allotments F–13867, F–16529 Parcel B, F–16532 Parcel B and F–18201;
Sec. 27, excluding Native allotment F–16528 Parcel C;
Secs. 28 to 34, inclusive;
Secs. 35 and 36, excluding Native allotments F–029365, F–033603 Parcel B and F–16527.
Containing approximately 17,428 acres.

T. 17 N., R. 45 W.
Secs. 1 to 4, inclusive;
Secs. 9 to 12, inclusive.
Containing approximately 5,120 acres.

T. 18 N., R. 45 *W.*
Secs. 25, 35 and 36.
Containing appproximately 1,920 acres.
Aggregating approximately 85,648 acres.

Excluded from the above-described lands herein approved for conveyance are the submerged lands, up to the ordinary high water mark, beneath all water bodies determined by the Bureau of Land Management to be anvigable because they have been or could be used in connection with travel, trade and commerce. The following named water bodies, together with any unnamed water bodies, are identified on the attached navigability maps, the original of which will be found in easement case file F–14936–EE.

Kuskokwim River
Holitna River
Barge Slough
Johnny Slough
Inowak Creek

All other water bodies not depicted as navigable on the attached maps within the lands to be conveyed were reviewed. Based on existing evidence, they were determined to be nonnavigable.

The lands excluded in the above description are not being approved for conveyance at this time and have been excluded for one or more of the following reasons: Lands are no longer under Federal jurisdiction; lands are under applications pending further adjudication; lands are pending a determination under Sec. 3(e) of ANCSA; or lands were previously rejected by decision. Lands within U.S. Surveys which are excluded are described separately in this decision if they are available for conveyance. These exclusions *do not* constitute a rejection of the selection application, unless specifically so stated.

The convenyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(f); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1616(b), the following public easements, referenced by easement identification number (EIN) on the easement maps

attached to this document, copies of which will be found in case file F–14936–EE, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two-and three-wheel vehicles, and small all-terrain vehicles (ATV's) (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

50 Foot Trail—The uses allowed on a fifty (50) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two-and three-wheel vehicles, small and large all-terrain vehicles, track vehicles and four-wheel drive vehicles.

One Acre Site—The uses allowed on a one (1) Acre Site easement are: vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading, or unloading shall be limited to 24 hours.

a. (EIN 1 D9) A one (1) acre site easement upland of the ordinary high water mark located in Sec. 25, T. 19 N., R. 44 W., Seward Meridian, on the right bank of the Kuskokwim river near the north end of the airstrip. The uses allowed are those listed above for a one (1) acre site easement.

b. (EIN 5 C3) An easement fifty (50) feet in width for an existing access trail from Sleetmute in Sec. 25, T. 19 N., R. 44 W., Seward Meridian, northeasterly to public lands. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

c. (EIN 14 C4) A one (1) acre site easement upland of the ordinary high water mark in Sec. 21, T. 19 N., R. 42 W., Seward Meridian, on the right bank of the Kuskokwim River. The uses allowed are those listed above for a one (1) acre site easement.

d. (EIN 14a C4) An easement twenty-five (25) feet in width for a proposed access trail from site EIN 14 C4, in Sec. 21, T. 19 N., R. 42 W., Seward Meridian, northerly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

e. (EIN 15 C4) A one (1) acre site easement upland of the ordinary high water mark in Sec. 11, T. 18 N., R. 43 W., Seward Meridian, on the left bank of the Kuskokwim River. The uses allowed are those listed above for a one (1) acre site easement.

f. (EIN 15a C4) An easement twenty-five (25) feet in width for a proposed access trail from site EIN 15 C4, in Sec. 11, T. 18 N., R. 43 W., Seward Meridian, southeasterly to public land. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

g. (EIN 17 C4) A one (1) acre site easement upland of the ordinary high water mark in Sec. 3, T. 17 N., R. 43 W., Seward Meridian, on the left bank of the Holitna River. The uses allowed are those listed above for a one (1) acre site easement.

h. (EIN 17a C4) An easement twenty-five (25) feet in width for a proposed access trail from site EIN 17 C4, Sec. 3, T. 17 N., R. 43 W., Seward Meridian, westerly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official supplemental plat of survey confirming the boundary description and acreage of the lands hereinabove granted;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. Ch. 2, Sec. 6(g)), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1616(b)(2) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law; and

3. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(c), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

The Kuskokwim Corporation (for the village of Sleetmute) is entitled to conveyance of 92,160 acres of land selected pursuant to Sec . 12(a) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is approximately 85,487 acres. The remaining entitlement of approximately 6,673 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA and Departmental regulation 43 CFR 2652.4, conveyance of the subsurface estate of the lands described above shall be issued to Calista Corporation when the surface estate is conveyed to The Kuskokwim Corporation (for the village of Sleetmute), and shall be subject to the same conditions as the surface conveyance, except for those provisions under Sec. 14(c) of ANCSA; also the right to explore, develop or remove mineral materials from the subsurface estate in lands within the boundaries of the Native village shall be subject to the consent of The Kuskokwim Corporation.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week for four (4) consecutive weeks, in the Tundra Drums.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised. However, pursuant to Pub. L. 96–487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99501.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expanded to locate, and parties who failed or refused to sign the return receipt shall have until November 1, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such

appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

The Kuskokwim Corporation, 429 D Street, Suite 307, Anchorage, Alaska 99501

Calista Corporation, 516 Denali Street, Anchorage, Alaska 99501

State of Alaska, Department of Natural Resources, Division of Research and Development, Pouch 7–005, Anchorage, Alaska 99510

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82–27119 Filed 9–30–82; 8:45 am]

BILLING CODE 4310–84–M

[F–19154–2, F–19154–20, F–19154–21]

Alaska Native Claims Selection

On July 11, and November 14, 1974, NANA Regional Corporation, Inc., filed selection applications F–19154–2, F–19154–20, and F–19154–21 under the provisions of Sec. 12(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611(c) (1976)) (ANCSA), for the surface and subsurface estates of certain lands in the vicinity of Kotzebue.

As to the lands described below, the applications submitted by NANA Regional Corporation, Inc., as amended, are properly filed and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface and subsurface estates of the following described lands selected pursuant to Sec. 12(c) of ANCSA, aggregating approximately 53,523 acres, are considered proper for acquisition by NANA Regional Corporation, Inc., and are hereby approved for conveyance pursuant to Sec. 14(e) of ANCSA.

Kateel River Meridian, Alaska

T. 17 N., R. 17 W (Partially Surveyed)
Secs. 1 to 5, inclusive;
Sec. 6, excluding Native allotments F–17673, F–17674 Parcel B, and F–17838;
Sec. 7, lots 1, 2, 3, and 4, NE¼, E½W½, SE¼, and the submerged land beneath the unnamed lake;
Secs. 8 to 17, inclusive;
Sec. 18, lots 1, 2, 3, and 4, NE¼, E½W½, SE¼, and the submerged land beneath the unnamed lake;
Sec. 19, lots 1, 2, 3, and 4, NE¼, E½W½, SE¼, and the submerged land beneath the unnamed lake;
Secs. 20 to 36, inclusive.

Containing approximately 22,876 acres.

T. 19 N., R. 17 W. (Unsurveyed)
Sec. 1, excluding Native allotment F–15998;
Sec. 2, excluding Native allotments F–15985 and F–15998;
Sec. 3, excluding Native allotments F–15982 and F–15985;
Sec. 4, excluding Native allotment F–15982;
Secs. 5 and 6;
Sec. 7, excluding Native allotment F–17593;
Secs. 8 to 16, inclusive;
Sec. 17, excluding Native allotment F–16341 Parcel A;
Sec. 18, excluding U.S. Survey No. 5295 (Native allotment F–18377 Parcel A) and Native allotment F–17588 Parcel B;
Sec. 19, excluding Native allotment F–17588 Parcel B;
Secs. 20 to 30, inclusive;
Sec. 31 (fractional);
Secs. 32 and 33;
Secs. 34 and 35, excluding Native allotment F–18589 Parcel B;
Sec. 36, excluding Native allotments F–13317 Parcel A and F–15971.

Containing approximately 19,705 acres.

T. 19 N., R. 19 W. (Unsurveyed)
Sec. 1, excluding Native allotments F–17596 and F–17602;
Sec. 2, excluding Native allotments F–17556 Parcel B;
Sec. 3, excluding Native allotment F–17583;
Secs. 4 to 11, inclusive;
Secs. 12 to 17 (fractional), inclusive;
Sec. 18 (fractional), excluding Native allotments F–16343 Parcel B and F–17577 Parcel B;
Sec. 19 (fractional), excluding Native allotments F–16456 and F–17577 Parcel B;
Secs. 20, 21, and 22 (fractional);
Secs. 24, 25, and 26 (fractional);
Secs. 28 and 29 (fractional);
Sec. 30 (fractional), excluding Native allotments F–13332 Parcel C, F–13452, F–13453, and F–16456;
Sec. 32 (fractional), excluding Native allotments F–12408, F–13097 Parcel A, F–13306, F–13307 Parcel A, F–13126, F–14656 Parcel A, F–17629 Parcel A, and F–17727;
Sec. 33 (fractional), excluding Native allotments F–12408, F–17438 Parcel B, F–17629 Parcel A, F–17727, F–18377 Parcel B, and F–18494 Parcel B;
Sec. 34 (fractional).

Containing approximately 10,942 acres.

Aggregating approximately 53,523 acres.

Excluded from the above-described lands herein conveyed are the submerged lands, up to the ordinary high water mark, beneath all water bodies determined by the Bureau of Land Management to be navigable because they have been or could be used in connection with travel, trade and commerce or are pending a tidal determination at time of survey. Those water bodies are identified on the navigability maps, the originals of which will be found in easement case files F–22361–2, F–22361–20, and F–22361–21.

All other water bodies not depicted as navigable on the attached maps within the lands to be conveyed were reviewed. Based on a available evidence, they were determined to be nonnavigable.

The lands excluded in the above description are not being approved for conveyance at this time and have been excluded because lands are under applications pending further adjudication. These exclusions *do not* constitute a rejection of the selection application, unless specifically so stated.

The coveyance issued for the surface and subsurface estates of the lands described above shall contain the following reservation to the United States:

Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)), the following public easements, referenced by easement identification number (EIN) on easement maps, copies of which will be found in easement case files F–22361–2, F–22361–20, and F–22361–21, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsleds, animals, snowmobiles, two- and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

(EIN 8 D1, D9) An easement twenty-five (25) feet in width for an existing access trail from the edge of State patented submerged lands within Sec. 11, T. 17 N., R. 18 W., Kateel River Meridian, southeasterly to Noorvik. The uses allowed are those listed for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official plat, or supplemental plat, of survey confirming the boundary description and acreage of the lands hereinabove grantee; and

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-

of-way, or easement, and the right of the lessee, contractee, permittee, or grantee, to the complete enjoyment of all rights, privileges and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law.

Reindeer grazing permit F–21633, issued to Qungniq, Inc., on January 1, 1982, located within the lands herein approved for conveyance, will terminate upon conveyance of these lands in accordance with Sec. 9, Additional Conditions or Stipulations of the permit.

NANA Regional Corporation, Inc., is entitled to conveyance of a minimum of 731,242 acres of land selected pursuant to Sec. 12(c) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is 194,733 acres. The remaining entitlement of approximately 536,469 acres will be conveyed at a later date.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week; for four (4) consecutive weeks in the Tundra Times.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E as revised. However, pursuant to Pub. L. 96–487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until November 1, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

State of Alaska, Department of Natural Resources, Division of Research and Development, Pouch 7–005, Anchorage, Alaska 99510

NANA Regional Corporation, Inc., P.O. Box 49, Kotzebue, Alaska 99752

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82–27120 Filed 9–30–82; 8:45 am]

BILLING CODE 4310–84–M

[F–14924–A]

Alaska Native Claims Selection

On November 19, 1974, Red Devil Incorporated, for the Native village of Red Devil, filed selection application F–14924–A, as amended, under the provisions of Sec. 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1611 (1976)(ANCSA), for the surface estate of certain lands in the vicinity of Red Devil.

On April 25, 1977, in accordance with Title 10, Chapter 05, Secs. 396 and 399 of the Alaska Business Corporation Act, and as authorized by 43 U.S.C. 1627, Georgetown Incorporated, a domestic corporation, merged with Aniak Limited, Chuathbaluk Company, Kipchaughpuk Limited, Lower Kalskag Incorporated, Napamute Limited, Red Devil Incorporated, Sleetmute Limited, Stony River Ltd., and Upper Kalskag Incorporated, all domestic corporations, into Georgetown Incorporated, which consolidated individual village interests into one single constituent corporation whose name was changed to The Kuskokwim Corporation. The surviving corporation, The Kuskokwim Corporation, is entitled to all rights, privileges, and benefits of the Alaska Native Claims Settlement Act.

As to the lands described below, selection application F–14924–A, as amended, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, aggregating approximately 61,271 acres, is considered proper for acquisition by The Kuskokwim Corporation (for the village of Red Devil) and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA:

Seward Meridian, Alaska (Surveyed)

T. 21 N., R. 43 W.
Secs. 6, 7 and 8;
Secs. 16 to 21, inclusive;
Secs. 28 to 33, inclusive.
Containing approximately 9,567 acres.

T. 20 N., R. 44 W.
Secs. 1 to 18, inclusive;
Secs. 20 to 29 inclusive;
Sec. 32, excluding Native allotment F–17023 Parcel A;
Secs. 33 to 36, inclusive.
Containing approximately 20,925 acres.

T. 21 N., R. 44 W.
Secs. 1 and 2;
Secs. 11, 12 and 13;
Secs. 24, 25 and 36.
Containing approximately 5,120 acres.

T. 22 N., R. 44 W.
Secs. 35 and 36.
Containing approximately 1,280 acres.

T. 20 N., R. 45 W.
Secs. 1 to 12, inclusive;
Secs. 15 to 22, inclusive;
Sec. 26, excluding U.S. Survey No. 3771;
Sec. 27, excluding Native allotment F–16360;
Secs. 28 to 33, inclusive;
Sec. 34, excluding Native allotment F–16360.
Containing approximately 17,339 acres.

T. 20 N., R. 46 W.
Secs. 22 and 23;
Secs. 25, 26 and 27;
Secs. 34, 35 and 36.
Containing approximately 5,120 acres.

Aggregating approximately 59,351 acres.

Excluded from the above-described lands herein approved for conveyance are the submerged lands, up to the ordinary high water mark, beneath all water bodies determined by the Bureau of Land Management to be navigable because they have been or could be used in connection with travel, trade and commerce. The following named

water bodies, together with any unnamed water bodies, are identified on the attached navigability maps, the original of which will be found in easement case file F–14924–EE.

Kuskokwim River

All other water bodies not depicted as navigable on the attached maps within the lands to be conveyed were reviewed. Based on existing evidence, they were determined to be nonnavigable.

The lands excluded in the above description are not being approved for conveyance at this time and have been excluded for one or more of the following reasons: Lands are no longer under Federal jurisdiction; lands are under applications pending further adjudication; lands are pending a determination under Sec. 3(e) of ANCSA; or lands were previously rejected by decision. Lands within U.S. Surveys which are excluded are described separately in this decision if they are available for conveyance. These exclusions *do not* constitute a rejection of the selection application, unless specifically so stated.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(f); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1616(b), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F–14924–EE, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

50 Foot Trail—The uses allowed on a fifty (50) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two-and three-wheel vehicles, small and large all-terrain vehicles (ATV's), track vehicles, and four-wheel drive vehicles.

One Acre Site—The uses allowed for a one (1) acre site easement are: vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading, or unloading shall be limited to 24 hours.

a. (EIN 5 C3) An easement fifty (50) feet in width for an existing access trail from public lands in Sec. 6, T. 20 N., R. 43 W., Seward Meridian, paralleling the South Fork George River in a northwesterly direction to public land. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

b. (EIN 14 C5) A one (1) acre site easement upland of the ordinary high water mark in Sec. 26, T. 20 N., R. 45 W., Seward Meridian, on the left bank of the Kuskokwim River and adjacent to the northwest boundary of U.S. Survey 3771. The uses allowed are those listed for a one (1) acre site easement.

c. (EIN 14a C5) An easement fifty (50) feet in width for an existing access trail from the southeastern boundary of U.S. Survey 3771, Sec. 31, T. 20 N., R. 44 W., Seward Meridian, and continuing in a southwesterly direction to public lands. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official supplemental plat of survey confirming the boundary description and acreage of the lands hereinabove granted;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. Ch. 2, Sec. 6(g)), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits hereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1616(b)(2) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law; and

3. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(c), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

The Kuskokwim Corporation (for the village of Red Devil) is entitled to conveyance of 69,120 acres of land selected pursuant to Sec. 12(a) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is approximately 59,351 acres. The remaining entitlement of approximately 9,769 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA and Departmental regulation 43 CFR 2652.4, conveyance of the subsurface estate of the lands described above shall be issued to Calista Corporation when the surface estate is conveyed to The Kuskokwim Corporation (for the village of Red Devil) and shall be subject to the same conditions as the surface conveyance, except for those provisions under Sec. 14(c) of ANCSA; also the right to explore, develop, or remove mineral materials from the subsurface estate in lands within the boundaries of the Native village shall be subject to the consent of The Kuskokwim Corporation.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week for four (4) consecutive weeks, in the Tundra Drums.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised. However, pursuant to Pub. L. 96–487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until November 1, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of

Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

The Kuskokwim Corporation, 429 D Street, Suite 307, Anchorage, Alaska 99501

Calista Corporation, 516 Denali Street, Anchorage, Alaska 99501

Ann Johnson,

Chief, Branch of ANCSA, Adjudication.

[FR Doc. 82-27121 Filed 9-30-82; 8:45 am]

BILLING CODE 4310-84-M

[F-52438]

Alaska Native Claims Selection

On June 8, 1979, Cook Inlet Region, Inc., filed selection application F-52438 under the provisions of Secs. 12(b)(6) of the act of Jaanuary 2, 1976 (89 Stat. 1151), and I.C.(2) of the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area, as clarified August 31, 1976 (90 Stat. 1935), for the surface and subsurface estates of a portion of Fort Wainwright, located near Fairbanks, Alaska.

Section 12(b)(6) of the act of January 2, 1976, authorizes conveyance of lands to Cook Inlet region, Inc., from a selection pool established by the Secretary of the Interior and the General Services Administrator.

The lands are located outside the boundaries of Cook Inlet Region. With the concurrence of the State of Alaska and Cook Inlet Region, Inc., the lands within selection F-52438 were placed in the pool of properties available for selection by Cook Inlet Region, Inc., subject to valid existing rights, by notice dated December 18, 1978, as amended on January 27, 1982.

The selection application of Cook Inlet Region, Inc., as to the lands described below, is properly filed and meets the requirements of the act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with Federal laws leading to acquisition of title.

In view of the foregoing, the surface and subsurface estates of the following described lands, containing approximately 27.14 acres, are considered proper for conveyance pursuant to Sec. 12(b)(6) of the act of January 2, 1976:

Fairbanks Meridian, Alaska

T. 1 S., R. 1 W.

Portion of NW¼, Sec. 24, further described as:

Beginning at the NW corner of said Section 24, said corner being on the boundary line of that certain easement dated 5 Nov 64 granted by the United States of America to the State of Alaska for a highway right-of-way, Project No. F–062–4(16) SR–2 Fairbanks SE: thence on said line, through a 2,715.00 foot radius curve to the right (whose center point bears S. 00°03'15" E.) having a central angle of 35°, an arc distance of 1,658.38 feet; thence S. 54°56'45" E. a distance of 299.54 feet; thence leaving said boundary line and continuing S. 54°56'45" E. a distance of 200.00 feet, more or less, to the east line of said W½ of the NE¼ of the NW¼; thence south on said line at distance of 300.00 feet, more or less, to the most southerly boundary line of said highway easement; said line being common to the south right-of-way line of the Old Richardson Highway; thence on said common line, N. 81°47'29" W. a distance of 1,700.00 feet, more or less, to a point being the terminus of said common line, said point being S. 81°47'29" E. a distance of 278.37 feet from the west line of said Section 24; thence continuing on the said right-of-way line of the Old Richardson Highway N. 81°47'29" W. a distance of 278.37 feet to said west line of Section 24; thence leaving said right-of-way line and on said west line N. 00°03'15" W. a distance of 795.00 feet, more or less, to said point of beginning, excluding lots 10, 11, 15, and 16.

The lands excluded in the above description are no longer under Federal jurisdiction and are not being approved for conveyance at this time.

There are no easements to be reserved to the United States pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act (ANCSA).

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official supplemental plat of survey confirming the boundary description and acreage of the lands so granted;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. An easement and right-of-way to operate, maintain, repair, and patrol an overhead open wire and underground communication line or lines, and appurtenances thereto, in, on, over, and across a strip of land forty (40) feet in width, lying twenty (20) feet on each side of the centerline of the Alaska Communications Systems open wire or pole line and/or buried communication cable line, conveyed to RCA Alaska Communications, Inc., by Easement Deed dated January 10, 1971, F–13508, pursuant to the Alaska Communications Disposal Act (81 Stat. 441, 40 U.S.C. 771 et seq.) located in NW¼, Sec. 24, T. 1 S., R. 1 W., Fairbanks Meridian, Alaska;

4. a right-of-way, F–14250, for a transmission line forty (40) feet in width, located in NW¼, Sec. 24, T. 1 S., R. 1 W., Fairbanks Meridian, Alaska, granted to Golden Valley Electric Association, Inc., under the act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961);

5. An easement for highway purposes, including appurtenant protective, scenic, and service areas, extending 150 feet each side of the centerline of the Richardson Highway, as established by Public Land Order 1613 (23 F.R. 2376), pursuant to the act of August 1, 1956 (70 Stat. 898), and transferred to the State of Alaska pursuant to the Alaska Omnibus Act, P.L. 86–70 (73 Stat. 141), as to NW¼, Sec. 24, T. 1 S., R. 1 W., Fairbanks Meridian, Alaska; and

6. The following third-party interest, if valid, created and identified by the Secretary of the Army, as provided by Sec. 14(g) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(g)):

A right-of-way, DA–95–507–eng–2053, for a controlled access highway, granted to the State of Alaska, Department of Highways, located in NW¼, Sec. 24, T. 1 S., R. 1 W., Fairbanks Meridian, Alaska.

Section 12(b)(6) of Pub. L. 94–204 provides that conveyances pursuant to this section shall be made in exchange for lands or rights to select lands outside the boundaries of Cook Inlet Region as described in Sec. 12(b)(5) of this act and on the basis of values determined by appraisal. The lands described above have been appraised at a value of $890,001. Under Sec. I.C.(2)(e) of the Terms and Conditions, this property constitutes 1,780 acre/equivalents. Upon acceptance of title to these lands, Cook Inlet Region, Inc., will relinquish its selection rights to 1,780 acres of its out-of-region entitlement.

Conveyance of the remaining entitlement to Cook Inlet Region, Inc., shall be made at a later date.

There are no inland water bodies considered to be navigable within the above-described lands.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised. However, pursuant to Pub. L. 96–487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances, (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeals and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 501 L Street, Suite 100, Anchorage, Alaska 99501.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until (30 days from the date of publication) to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Cook Inlet Region, Inc., P.O. Drawer 4–N, Anchorage, Alaska 99509

State of Alaska, Department of Natural Resources, Division of Research and Development, Pouch 7–005, Anchorage, Alaska 99510

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82–27122 Filed 9–30–82; 8:45 am]

BILLING CODE 4310–84–M

Availability of the Final Environmental Impact Statement, Grazing Management in the Reno Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement (FEIS) on the Proposed Grazing Management Program in the Reno EIS Area.

SUMMARY: Pursuant to Section 102(2) of the National Environmental Policy Act of 1969, the BLM Carson City District has prepared an FEIS on a proposed livestock grazing management program for the Reno EIS area. The final document consists of a summary of impacts, public comments received, and Bureau responses to issues raised.

SUPPLEMENTARY INFORMATION: The Reno Grazing EIS analyzes the effects of the proposed grazing management program, which includes the use of vegetation by livestock, big game, and wild horses. Three alternatives also considered were no action, maximizing livestock production, and resource protection.

FOR FURTHER INFORMATION CONTACT: Tom Owen, District Manager, Attention: EIS Team Leader, 1050 E. William St., Suite 335, Carson City, NV 89701, Phone: (702) 882–1631.

Copies of the FEIS are available for review at the following locations:

Bureau of Land Management, Nevada State Office, 300 Booth Street, Reno NV 89520, (702) 784–5448

Bureau of Land Management, Elko District Office, 2002 Idaho Street, Elko, NV 89801, (702) 738–4071

Bureau of Land Management, Winnemucca District Office, 705 E. 4th Street, Winnemucca, NV 89445, (702) 623–3676

Bureau of Land Management, Carson City District Office, 1050 E. William Street, Suite 335, Carson City, NV 89701, (702) 882–1631

Bureau of Land Management, Ely District Office, Star Route 5, Box 1, Ely, NV 89301, (702) 289–4865

Bureau of land Management, Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, NV 89102, (702) 385–6403

Bureau of Land Management, Battle Mountain District Office, North 2nd & Scott Streets, Battle Mountain, NV 89820 (702) 635–5181

Bureau of Land Management, Susanville District Office, 705 Hall Street, Susanville, CA 96130, (916) 257–5385

Copies are also available for review at the following public libraries:

Churchill Public Library, 553 S. Main Street, Fallon, NV 89406

Hames Dickinson Library, University of Nevada, 4505 Maryland Parkway, Las Vegas, NV 89514

Washoe County Library 301 South Center Street, Reno, Nevada, NV 89501

Nevada State Library, Library Building, Carson City, NV 89710

Douglas County Public Library, Minden, Nevada 89423

Lassen County Public Library, Susanville, CA 96130

Government Publications Dept. University of Nevada Library, Reno, NV 89557

Alpine County Library, Markleeville, California 96120

Washoe County Library, 1125 12th Street, Sparks, Nevada 89431

Lyon County Library, 20 Nevin Way, Yerington, Nevada 89447

Washoe County Library, Mt. Charleston and Avenues, Stead, Nevada 89506

Limited copies of the Draft and Final EIS are available upon request to the District Manager at the above address.

Dated: September 24, 1982.

Roger J. McCormack,

Associate States Director, Nevada.

[FR Doc. 82–27030 Filed 9–30–82; 8:45 am]

BILLING CODE 4310–84–M

[INT FEIS 82–42]

Final Bruneau-Kuna Grazing Environmental Impact Statement; FEIS Availability

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of availability for final Bruneau-Kuna grazing EIS.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental impact statement for a proposed grazing management program for the Bruneau Resource Area and the southern portion of the Owyhee Resource Area of the Boise District, southwestern Idaho. The proposal involves changes in initial stocking rates, implementing improved grazing management and installation of range improvements. Approximately 2.4 million acres of public lands are

involved. Copies of the final environmental impact statement 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, 550 West Fort Street, Boise, Idaho 83724, Telephone: (208) 334–1770

Copies of the Final EIS have been distributed to individuals and organizations who received and/or commented on the Draft EIS. A limited number of single copies may be obtained from the Idaho State Director or the Boise District Manager, Bureau of Land Management, at the above addresses.

FOR FURTHER INFORMATION CONTACT:

Ted Milesnick, EIS Team Leader, BLM, Boise District Office,

Telephone: (208) 334– 1582.

Guy E. Baier,

Acting Idaho State Director.

[FR Doc. 82–27031 Filed 9–30–82; 8:45 am]

BILLING CODE 4310–84–M

[INT FEIS 82–40]/

Proposed Livestock Grazing Management Program for the Schell Resource Area, Ely District, Nevada; Availability of Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement (FEIS).

SUMMARY: Pursuant to Section 102(2) of the National Environmental Policy Act of 1969, the BLM Ely District has prepared an FEIS on a proposed livestock grazing management program for the Schell Resource Area.

The FEIS utilizes an abbreviated format pursuant to 40 CFR 1503.4(c) and is to be utilized in conjunction with the Draft EIS. The final document consists of a summary of impacts, errata actions, and an expanded Chapter 5 on public participation which includes public comments received and responses to the issues raised.

SUPPLEMENTARY INFORMATION: The Schell Grazing EIS analyzes the effects of allocating available vegetation to livestock, big game, and wild horses on 4.2 million acres of public lands in White Pine, Lincoln and Nye Counties, Nevada. The proposal includes recommended grazing management levels by allotment, periods-of-use, utilization levels, grazing treatments and range improvements. Four alternatives were considered along with the proposed action. They are: No Action alternative, No Livestock Grazing alternative, Resource Protection alternative, and Graze at Preference alternative.

FOR FURTHER INFORMATION CONTACT:

Merrill L. DeSpain, District Manager, Attention: EIS Team Leader, Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301, (702) 289–4865.

Copies of the FEIS are available for review at the following locations:

Bureau of Land Management, Nevada State Office, 300 Booth Street, Reno, Nevada 89520, (702) 784–5448

Bureau of Land Management, Elko District Office, 2002 Idaho Street, Elko, Nevada 89801, (702) 738–4071

Bureau of Land Management, Winnemucca District Office, 705 E. 4th Street, Winnemucca, Nevada 89445, (702) 623–3676

Bureau of Land Management, Carson City District, Office, Suite 335, 1050 E. William Street, Carson City, Nevada 89701, (702) 882–1631

Bureau of Land Management, Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301, (702) 289–4865

Bureau of Land Management, Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89102, (702) 385–6403

Bureau of Land Management, Battle Mountain District Office, North 2nd & Scott Streets, Battle Mountain, NV 89820, (702) 635–5181

Bureau of Land Management, Tonopah Resource Area, Building 102 Old Radar Base, Tonapah, NV 89049, (702) 482–6214

Also, copies are available for review at the following public libraries:

Lincoln County Library, Caliente, NV 89008

Lincoln County Library, Pioche, NV 89043

Clark County Library, 1401 E. Flamingo Road, Las Vegas, NV 89109

Nevada State Library, Library Building, Carson City, NV 89710

University of Nevada-Las Vegas, James R. Dickenson Library, 4505 Maryland Parkway, Las Vegas, NV 89154

White Pine County Library, Campton Street, Ely, NV 89301

University of Nevada, Reno, Getchell Library, Reno, NV 89507

Dated: September 24, 1982.

Roger J. McCormack,

Associate State Director, Nevada.

[FR Doc. 82–27029 Filed 9–30–82; 8:45 am]

BILLING CODE 4310–84–M

Shoshone District; Off-Road Vehicle Designation Decisions

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of off-road vehicle designation decision.

SUMMARY: The Shoshone District, Bureau of Land Management, has completed decisions to designate 245,000 acres of public land in Blaine, Camas, Butte, Custer, and Elmore counties, Idaho as open, limited, or closed to off-road vehicle use. Designations are a result of land use planning decisions made in the 1981 Sun Valley Management Framework Plan. During planning, public comment was minimal in regards to off-road vehicle (ORV) use.

The effect of the designations is to eliminate ORV use on some public lands to protect natural values or limit use subject to restrictions on seasons of use or routes of travel in areas of crucial wildlife habitat values, or important scenic, cultural, or recreation values. However, most public lands are open to all vehicle use. Thirteen areas will be affected, resulting in 9,712 acres closed to ORVs, 42,799 acres limited, and 192,489 acres open to ORVs. No private or state lands will be affected by these designations.

DATE: The subject planning decision modifications are effective October 1, 1982.

FOR FURTHER INFORMATION CONTACT:

Dick Kodeski, Outdoor Recreation Planner, Monument Resource Area, P.O. Box 2B, Shoshone, Idaho 83352, (208) 886–2206; Ervin Cowley, Area Manager, Monument Resource Area, P.O. Box 2B, Shoshone, Idaho 83352, (208) 886–2206.

SUPPLEMENTARY INFORMATION: The authority for this decision is derived from Executive Orders 11644 and 11989 and regulations contained in 43 CFR Part 8340.

Specific area designations are as follows:

I. Open Designation

Vehicle travel is permitted in the area (both on and off roads) if the vehicle is operated responsibly in a manner not causing, or unlikely to cause significant, undue damage to, or disturbance of the soil, wildlife, wildlife habitat, improvements, cultural or vegetative resources or other authorized uses. Most of the public lands in the Sun Valley Planning Unit, 192,489 acres, have been designated as open to all forms of ORV use on a year long basis.

II. Limited Designations

Vehicle travel is limited by restrictions placed on seasons of use, types of vehicles allowed, travel areas or combinations of these restrictions as necessary to protect natural resources.

A. Seasonal restrictions—closed to all motor vehicle use December 1–April 30.

1. Big/Little Beaver area located approximately 15 miles west of Bellevue, Idaho (6,520 acres).

2. Elk Mountain area located approximately 18 miles north of Carey, Idaho (8,296 acres).

3. Martin Canyon area located approximately 5 miles east of Bellevue, Idaho (5,834 acres).

4. Triumph area located just north of Triumph, Idaho (2,461 acres).

5. Deer Creek area located approximately 5 miles northwest of Hailey, Idaho (230 acres).

6. Minnie Moore area located approximately 2 miles west of Bellevue, Idaho (3,599 acres).

7. Queen's Crown area located approximately 5 miles west of Carey, Idaho (7,808 acres).

B. Seasonal restrictions (closed to all motor vehicle use December 1–April 30) and motorized travel limited to designated roads the remainder of the year.

1. Jasper Flats area located approximately 3 miles east of Gannett, Idaho (695 acres).

C. All motorized travel limited to designated roads.

1. North Ketchum area located approximately 3 miles north of Ketchum, Idaho (44 acres).

D. Travel limited to designated roads except over snow vehicles.

1. Dry Creek Springs area located approximately 5 miles north of Picabo, Idaho (230 acres).

E. Travel limited to authorized vehicles under permit.

1. Bald Mountain area located approximately 1 mile southwest of Ketchum, Idaho (1,440 acres).

III. Closed Designation

Several areas have been closed to all motor vehicle use. These areas total 9,712 acres.

A. Hemingway School Environmental Education Area located ¼ mile west of Ketchum, Idaho (70 acres).

B. Friedman area located approximately 22 miles east of Hailey, Idaho (9,535 acres).

C. North Ketchum area located approximately 3 miles north of Ketchum, Idaho (107 acres).

An environmental assessment describing the impact of these designations was completed and no significant environmental impacts were found. This document, as well as detailed maps of closed and limited areas are available for inspection at the office listed above.

Charles J. Haszier,

District Manager.

[FR Doc. 82-27100 Filed 9-30-82; 8:45 am]

BILLING CODE 4310-84-M

Arizona; Notice of Classification of Public Lands for State Indemnity Selection

[Serial Number: A 17000-M (Partial)]

1. The Arizona State Land Department has filed a letter of intent to acquire the lands described in paragraph 5 below, under the provisions of the Act of June 20, 1910 (36 Stat. 557), as amended, in lieu of certain school lands that were reacquired by the Federal Government for project purposes. This application has been assigned the serial number A 17000–M (partial).

2. The Bureau of Land Management will examine these lands for evidence of prior valid rights or other statutory constraints that would bar transfer. Those lands found suitable for transfer will be held to be classified 60 days from date of publication of this notice in the **Federal Register.** Classification is pursuant to Title 43 Code of Federal Regulations, Subpart 2400 and Section 7 of the Act of June 28, 1934.

3. Information concerning these lands and the proposed transfer to the State of Arizona may be obtained from the District Manager, Phoenix District Office, Bureau of Land Management, 2929 West Clarendon Avenue, Phoenix, Arizona 85017, (602) 241–2930.

4. For a period of 60 days from the date of publication of this notice in the **Federal Register,** all persons who wish to submit comments on the above classification may present their views in writing for consideration to the Phoenix District Manager, Bureau of Land Management 2929 West Clarendon Avenue, Phoenix, Arizona 85017. Any adverse comments will be evaluated by the Authorized Officer who will issue a notice of determination to proceed with, modify, or cancel the action. In the absence of any action by the Authorized Officer, this classification action will become the final determination of the Department of the Interior. As provided by Title 43 Code of Federal Regulations, Subpart 2462.1, a public hearing will be scheduled by the District Manager if he determines that sufficient public interest exists to warrant the time and expense of a hearing.

5. The lands included in this classification are located in Maricopa County, Arizona and are described as follows:

Application A 17000–M (Partial)

Gila and Salt River Meridian, Arizona

T. 2 N., R. 6 E.,
Sec. 33: NE¼NE¼, E½NW¼NE¼
60.00± acres.

The total acreage described above for this portion of application A 17000–M is approximately 60.00 acres.

6. The following listed agencies, corporations, and individuals are holders of or applicants for withdrawals, leases, permits, and/or rights-of-way on the lands described in paragraph 5 above.

Withdrawal

Bureau of Reclamation, 2200 Valley National Bank, Phoenix, AZ 85073; 0 12/19/1947, Temp. Wdl.—Salt River Project
Salt River Project P.O. Box 1980, Phoenix, AZ 85001

Rights-of-Way

Salt River Project, P.O. Box 1980, Phoeniz, AZ 85001; PHX 086756, Un-numbered Southern Canal
Arizona Extension Railroad, Douglas, AZ 85607; PHX 031105
Mountain State Telephone, Right-of-Way Department, 3033 North Third Street, Room 806–A, Phoenix, AZ 85012; AR 035373

Leases

Talley Industries, Inc., %Talley Realty Group, Inc., 3900 East Camelback Road, Phoenix, AZ 85018; No. 14–06–300–1246, No. 14–06–300–1247

7. Rights-of-way granted by BLM will transfer with the land.

Dated: September 24, 1982.

Tom Allen,

Acting State Director.

[FR Doc. 82-27098 Filed 9-30-82; 8:45 am]

BILLING CODE 4310-84-M

[AR-035307]

Arizona; Proposed Continuation of Withdrawal and Opportunity for Public Hearing

As a result of the review made pursuant to Section 201(1) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754; 43 U.S.C. 1714, the Bureau of Land Management, Department of the Interior, proposes to continue the existing withdrawal made by Public Land Order 4996 of January 26, 1971 for a period of 20 years on the following described lands:

Fort Bowie National Historic Site Buffer Zone

Gila and Salt River Meridian, Arizona
T. 15 S., R. 28 E.,

Section 1, SW¼SW¼, NW¼SW¼, NE¼SE¼, N½NW¼SE¼, NE¼SE¼SE¼, W½SW¼SE¼, SE¼SW¼SE¼;
Section 2, N½N½SE¼, SW¼;
Section 3, N½S½SE¼, SE¼SE¼SE¼
Section 10, S½N½NE¼;
Section 11, SW¼NW¼NW¼, SW¼NW¼, S½S½SE¼NW¼, S½S½SW¼NE¼, SW¼SE¼NE¼;
Section 12, N½N½NE¼.

The areas described aggregate 590 acres in Cochise County.

The land is segregated from operation of the public land laws, including the mining laws and the mineral leasing laws. No change in the segregative effect of the withdrawal or use of the land proposed.

Notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal continuation. All interested persons who desire to be heard on the proposal must submit a written request for a hearing to the undersigned on or before January 6, 1983. Upon determination by the State Director, Bureau of Land Management, that a public hearing will be held, a notice will be published in the **Federal Register** giving the time and place of such hearing. In lieu of or in addition to attendance at a scheduled public hearing, written comments or objection to the proposed withdrawal continuation may be filed with the undersigned officer on or before January 6, 1983.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. He will review the withdrawal rejustification to ensure that continuation would be consistent with the statutory objectives of the programs for which the land is dedicated; the area involved is the minimum essential to meet the desired needs; the maximum concurrent utilization of the land is provided for and an agreement is reached on the concurrent management of the land and its resources. He will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination of the continuation of the withdrawal will be published in the **Federal Register.** The exiting withdrawal will continue until such final determination is made.

All communications in connection with the proposed withdrawal continuation should be addressed to the undersigned officer, Bureau of Land Management, U.S. Department of the Interior, 2400 Valley Bank Center, Phoenix, Arizona 85073.

Dated: September 23, 1982.

Linda Kipp,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc 82-27096 Filed 9-30-82; 8:45 am]

BILLING CODE 4310-84-M

[M 56306]

Montana; Notice of Invitation; Coal Exploration License Application

September 23, 1982.

Members of the public are hereby invited to participate with Tenneco Coal Company in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in Wibaux County, Montana:

T. 13 N., R. 60 E., P.M.M.
Sec. 4: Lots 3, 4, S½NW¼
Sec. 10: NE¼, S½
Sec. 12: W½
Sec. 14: SE¼
Sec. 24: SW¼
T. 14 N., R. 60 E., P.M.M.
Sec. 28: NW¼
Sec. 34: NW¼
T. 12 N., R. 61 E., P.M.M.
Sec. 4: Lots 1, 2, 3, 4, S½NW¼, NW¼SW¼
Sec. 8: W½
Sec. 20: S½NW¼
T. 13 N., R. 61 E., P.M.M.
Sec. 6: Lots 1, 2
Sec. 18: Lots 1, 4
Sec. 30: Lots 1, 2, 3,4
2,598.70 acres.

Any party electing to participate in this exploration program shall notify, in writing, both the State Director, Bureau of Land Management, P. O. Box 30157, Billings, Montana 59107; and Tenneco Coal Company, P. O. Box 2511, Houston, Texas 77001. Such written notice must refer to serial number M 56306 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the Wibaux Pioneer-Gazette, whichever is later. This Notice will be published for two consecutive weeks.

This proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by Minerals Management Service, 2525 4th Avenue North, Billings, Montana, and the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana. The exploration plan is available for public inspection at either of these offices at the addresses given.

Roland F. Lee,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-27094 Filed 9-30-82; 8:45 am]

BILLING CODE 4310-84-M

Montana Off-Road Vehicle Designations

September 24, 1982.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of off-road vehicle designation decision.

DECISION: 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 Part 8340. The following described lands under the administration of the Bureau of Land Management are designated as open, limited, or closed to off-road motorized vehicle use pursuant to the provisions of 43 CFR 8342.1.

The 978,620 acre area affected by the designation is known as the Beaverhead and Madison Planning Units, which include all public lands in Beaverhead, Madison, Deer Lodge and Silver Bow Counties, Montana.

These designations are revisions to the Dillon Off-Road Vehicle Travel Plan, dated June 1981, and published in Vol. 46, No. 165, of the **Federal Register** dated Wednesday, August 26, 1981. These revisions are necessary to more efficiently manage off-road vehicles on public lands and to coordinate off-road vehicle travel management with neighboring Beaverhead National Forest lands. Comments received from eight public open houses and numerous written responses influenced the changes made in the 1981 designations. This designation order supersedes all other off-road vehicle travel designations. These designations are published as final, effective October 1, 1982, and will remain in effect until rescinded or modified by the authorized officer. Under 43 CFR 4.21, an appeal may be filed within 30 days with the Interior Board of Appeals.

A. Open Designation-Areas which are designated open comprise approximately 771,178 acres.

B. Limited Designation-Areas which are designated limited comprise approximately 197,540 acres. Limited designation was determined appropriate to protect the resources of the public lands, promote the safety of all users of the public lands, and to minimize

conflicts among various users of the public lands. The following identifies the type of restriction on motorized vehicle travel, the specific area(s) where the restriction occurs, the affected acreage, and a brief rationale for each affected area.

1. Motorized travel limited to authorized users only:

a. Bad Luck Creek (640 acres)-to protect bighorn sheep, elk, and deer.

b. Hidden Pasture (6,625 acres)-to protect bighorn sheep.

c. Mill Gulch (320 acres)-to protect elk.

d. Culver Spring (40 acres)-to protect bald eagle habitat.

e. Antone-Middle Creeks (435 acres)-to protect user safety.

2. Closed to all motorized vehicles from December 1 to May 15:

a. Davey-Idaho-Jack Creeks (12,285 acres)-to protect wintering elk and deer.

b. Wall Creek (315 acres)-to protect wintering elk and deer.

c. Dyce Creek (11,969 acres)-to protect wintering elk and deer.

d. Dickie Hills-Jimmie New Creek (10,610 acres)-to protect wintering elk and deer.

e. Price-Peet-Bean Creeks (11,137 acres)-to protect wintering elk and deer.

3. Closed to all motorized vehicles from October 15 to May 15:

a. Charcoal Gulch (1,842 acres)—to protect elk security habitat and winter range.

4. Closed to all motorized vehicles from April 1 to December 1:

a. Clark Canyon (2,280 acres)—to protect elk fall habitat and unstable soils.

5. Closed to all motorized vehicles from October 15 to December 1:

a. Maiden Rock (1,130 acres)—to protect bighorn sheep.

6. All motorized vehicles except snowmobiles restricted to designated routes yearlong:

a. Virginia City Municipal Watershed (320 acres)—to protect municipal water supply.

b. Sheridan Municipal Watershed (505 acres)—to protect municipal water supply.

c. Dillon Municipal Watershed (5,944 acres)—to protect municipal water supply.

d. Ruby Mountains (26,611 acres)—to protect wilderness suitability.

e. Bell-Limekiln Canyons (9,650 acres)—to protect wilderness suitability.

f. Henneberry Ridge (9,807 acres)—to protect wilderness suitability.

g. Bumby Mountain (540 acres)—to protect wilderness suitability.

h. Farlin Creek (1,139 acres)—to protect wilderness suitability.

i. Bannack (305 acres)—to preserve the historic townsite of Montana's first territorial capitol.

j. Centennial Mountains Tack-on (1,970 acres)—to provide primitive, nonmotorized recreation opportunities.

7. All motorized vehicles restricted to designated routes from May 15 to December 1. Entire area, including designated routes, closed to all motorized vehicles from December 1 to May 15:

a. East Fork Blacktail (6,730 acres)—to protect elk summer, fall and winter habitats.

b. Dutch Hollow (1,920 acres)—to protect elk summer, fall, and winter habitat.

c. Jake Canyon (7,180 acres)—to protect elk summer, fall, and winter habitats.

d. MacLean-Moose Creeks (4,133 acres)—to protect bighorn sheep, elk, and deer, and to provide primitive, nonmotorized recreation opportunities.

e. Muddy Creek (13,797 acres)—to protect elk summer, fall, and winter habitats and unstable soils.

8. All motorized vehicles restricted to designated routes from October 15 to December 1. Entire area, including designated routes, closed to all motorized vehicles from December 1 to May 15:

a. Soap Gulch (4,881 acres)—to protect bighorn sheep and wintering elk and deer.

9. All motorized vehicles restricted to designated routes from October 15 to December 1:

a. Camp Creek (16,868 acres)—to protect bighorn sheep.

10. Closed to all motorized vehicles except snowmobiles yearlong:

a. Madison Tack-ons (869 acres)—to protect wilderness suitability.

b. Shakey Spring (340 acres)—to protect wilderness suitability.

11. Closed to all motorized vehicles except snowmobiles from April 1 to July 1:

a. Sheep Creek (540 acres)—to protect calving elk.

b. Sheser-Bear Creeks-Bear Gulch (4,960 acres)—to protect calving elk.

c. Gibbs Creek (840 acres)—to protect calving elk.

12. All motorized vehicles restricted to designated routes yearlong, except snowmobiles which are permitted to travel off designated routes from December 1 to May 15:

a. Blacktail Ridge (10,299 acres)—to protect elk summer/fall habitats.

13. All motorized vehicles restricted to designated routes, some of which have seasonal restrictions, except snowmobiles which are permitted to travel off designated routes from December 1 to May 15. Entire area, including designated routes, closed to wheeled vehicles from April 1 to July 1:

a. Axolotl Lakes (7,804 acres)—to protect fragile, unstable soils and to protect the axolotl salamander.

C. Closed Designation—All motorized vehicle use is prohibited in the 2,861 acre Bear Trap Canyon, 7,041 acre Humbug Spires, and 21,774 acre Centennial Mountains areas to provide primitive, nonmotorized recreation opportunities. Only emergency vehicle travel will be authorized in these two areas.

Detailed maps showing the location of the above-described designations are available from the offices listed below.

ADDRESS: For further information about these designations, contact either of the following Bureau of Land Management offices:

District Manager, Butte Distric Office, P.O. Box 3388, Butte, Montana 59701, (406) 494–5059

Area Manager, Dillon Resource Area, P.O. Box 1048, Dillon, Montana 59725, (406) 683–2337

Jack McIntosh,

District Manager, Butte District Office.

[FR Doc. 82–27097 Filed 9–30–82; 8:45 am]

BILLING CODE 43104–84–M

Nevada; Notice of Filing of Plat of Survey and Order Providing for Opening of Lands

September 24, 1982.

1. The Plat of Survey of lands described below will be officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on November 8, 1982.

Mount Diablo Meridian, Nevada

T. 40 N., R. 52 E.

2. The southwest corner of the above township is located about 2 miles east of Tuscarora, Nevada and in the center of Independence Valley. Elevation varies from 5,600 to 7,000 ft. above sea level. The soil varies from sandy clay loam along the river bottom to rocky in the higher elevations. Vegetation consists of sagebrush, shadscale, meadow grass and other sparse native grass.

The township is drained by the South Fork of the Owyhee River, which flows in a northwesterly direction from the south boundary of section 32 to the north boundary of section 6.

Access to the township is provided by State Highway No. 11 and numerous improved and unimproved roads. A ranch is located in section 24 and ranch buildings are located in sections 8 and 29.

Principal users of the area are cattlemen. No mineral formations of any consequence were noted during the survey.

3. Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable law, the lands are hereby opened to such applications and petitions as may be permitted. All such valid applications received at or prior to 10:00 a.m. on November 8, 1982 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

Inquiries concerning these lands shall be addressed to the Nevada State Office, Bureau of Land Management, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520.

Lacel E. Bland,

Acting Chief, Division of Operations.

[FR Doc. 82-27099 Filed 9-30-82; 8:45 am]

BILLING CODE 4310-84-M

[M 56305 (ND)]

North Dakota; Notice of Invitation, Coal Exploration License Application

September 22, 1982.

Members of the public are hereby invited to participate with Tenneco Coal Company in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in Golden Valley, North Dakota:

T. 138 N., R. 106 W., 5th P.M.
Sec. 2: Lots 3, 4, S½NW¼, SE¼
T. 139 N., R. 106 W., 5th P.M.
Sec. 14: NW¼
Sec. 24: NE¼, S½
Sec. 26: NE¼, SW¼
Sec. 34: Lots 2, 3
T. 140 N., R. 106 W., 5th P.M.
Sec. 22: NE¼

1537.02 acres.

Any party electing to participate in this exploration program shall notify, *in writing*, both the State Director, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107; and Tenneco Coal Company, P.O. Box 2511, Houston, Texas 77001. Such written notice must refer to serial number M 56305(ND) and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the Golden Valley News, whichever is later. This Notice will be published for two consecutive weeks.

This proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by Minerals Management Service, 2525 4th Avenue North, Billings, Montana, and the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana. The exploration plan is available for public inspection at either of these offices at the addresses given.

Roland F. Lee,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-27095 Filed 9-30-82; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Delaware Water Gap National Recreation Area, Bushkill, Pennsylvania; Availability of Final Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service, U.S. Department of the Interior, has prepared a final environmental impact statement for the proposed plan for management of U.S. Highway 209, within the National Recreation Area. The proposal would totally restrict commercial truck traffic. The alternatives considered are: No Action—or minimum NPS management enforcing existing speed limits; reduce speed limits; exclude trucks during daylight hours; and exclude trucks during seasonal periods.

Public reading copies will be available for review at the following locations:

Office of Public Affairs, Department of the Interior, National Park Service, 18th and C Streets, NW., Washington, D.C. 20240; telephone (202) 343-6843

Associate Regional Director, Planning and Resource Preservation, Department of the Interior, National Park Service, Mid-Atlantic Region, 143 South Third Street, Philadelphia, Pennsylvania 19106; telephone (215) 597-7097

Superintendent, Delaware Water Gap National Recreation Area, Bushkill, Pennsylvania 18324; telephone (717) 588-6637

Dated: September 28, 1982.

Don H. Castleberry,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 82-27139 Filed 9-30-82; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Long- and Short-Haul Application for Relief (Formerly Fourth Section Application)

September 27, 1982.

This application for long- and short-haul relief has been granted by the ICC.

No. 43978, Trans-Continental Freight Bureau (No. 567), reduced rates on brandy, champagne, vermouth or wine, minimum 112,000 pounds, from Modesto Colony, CA to the East, in Supplement 345 to its tariff ICC TCFB 3002-S, effective September 19, 1982. Grounds for relief: Motor and Water Competition.

This application was received by the Commission's Suspension Board on September 10, 1982. This precluded the Board from publishing the requested relief in the **Federal Register** in order to give interested parties an opportunity to protest.

By action of September 15, 1982, the Commission, Suspension Board, Members Fitzgerald, Halvarson, and Hall—Member Fitzgerald not participating, concluded to grant the requested relief in Long-And-Short-Haul Order No. 20696, subject to the proviso that the authority will expire 45 days from September 15, 1982. This notice is to advise that the Commission's Suspension Board will reopen this proceeding on its own motion (if not protested), to consider the expiration date of this authority. Interested parties wishing to object may file their objections with the Suspension Board not later than the 10th day before the expiration date.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27086 Filed 9-30-82; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 1052(b).

1. Parent corporation and address of principal office: Campbell Taggart, Inc., 6211 Lemmon Avenue, Dallas, Texas 75209

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

Bel-Art Advertising, Inc., 6211 Lemmon Avenue, Dallas, Texas 75209

Rainbo Baking Company of Corpus Christi, P.O. Box 4207, Corpus Christi, Texas 78408
Rainbo Baking Company of El Paso, P.O. Box 9277, El Paso, Texas 79983
Rainbo Baking Company of Fort Smith, P.O. Box 64, Ft. Smith, Arkansas 72902
Rainbo Bakeries of San Joaquin Valley, Inc., P.O. Box 832, Fresno, California 93712
Colonial Baking Company of Huntsville, P.O. Box 5147, Huntsville, Alabama 35805
Rainbo Baking Company of Johnson City, P.O. Box 2387, Johnson City, Tennessee 37601
Rainbo Baking Company of Lexington, P.O. Box 86, Lexington, Kentucky 40501
Rainbo Baking Company of Lubbock, P.O. Box 459, Lubbock, Texas 79408
Rainbo Baking Company of Louisville, P.O. Box 8245, Station E, Louisville, Kentucky 40208
Evansville Colonial Baking Company, P.O. Box 1086, Owensboro, Kentucky 42301
Paducah Colonial Baking Company, P.O. Box 3100, Paducah, Kentucky 42001
Rainbo Baking Company of Sacramento Valley, P.O. Box 5387, Sacramento, California 95817
Rainbo Bread Company of Saginaw, P.O. Box 3266, Saginaw, Michigan 48605
Ramtag, Inc., Inc., 6211 Lemmon Avenue, Dallas, Texas 75209
Kilpatrick's Bakeries, Inc., 2030 Folsom Street, San Francisco, California 94110
El Chico Corporation, 1925 Valley View Lane, Farmers Branch, Texas 75234
Larry's Food Products, Inc./a Subsidiary of El Chico Corporation, 14725 S. Broadway, Gardena, California 90248
Merico, Inc., Corporate Offices, P.O. Box D, Carrollton, Texas 75006
Merico, Inc., Carrollton Division, P.O. Box 457, Carrollton, Texas 75006
Merico, Inc., Forest Park Division, P.O. Box D, Forest Park, Georgia 30050
Merico, Inc., Ft. Payne Division, P.O. Box 560, Ft. Payne, Alabama 35967
Merico, Inc., Indianapolis Division, P.O. Box 19325, Indianapolis, Indiana 46219
Merico, Inc., Little Rock Division, P.O. Box 9009, Little Rock, Arkansas 72219
Merico, Snack Food Division, P.O. Box 719, Paris, Texas 75460
Merico, Inc., Packaging Division, P.O. Box 1155, Paris, Texas 75460
Coosa Baking Company/a Division of Merico, Inc., P.O. Box 5071, Rome, Georgia 30161
Penn Dutch Cookie Co./a Division of Merico, Inc., P.O. Box 107, Fleetwood, Pennsylvania 19522
Rod's Food Products/a Division of Merico, Inc., 17380 Railroad St., City of Industry, California 91749
Royal Foods/a Division of Merico, Inc., 2222 Minnesota, Indianapolis, Indiana 46203
Herby's Food Products, Inc., 901 Santerre, Grand Prairie, Texas 75050

1. Parent corporation and address of principal office: CooSand Corp., an Oregon corporation, 4421 138th Ave., SE., Bellevue, Washington 98006.

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation: CS Trucking Co., an Oregon corporation.

1. Parent corporation and address of principal office: LADD Furniture, Inc., No. 1 Plaza Center, P.O. Box HP 3, High Point, North Carolina 27261.

2. Wholly-owned subsidiary which will participate in the operation, and address of its respective principal offices: LADD Transportation, Inc., No. 1 Plaza Center, P.O. Box HP 3, High Point, North Carolina 27261.

1. Parent corporation and address of principal office: Roy's Dairy, Inc., a Wisconsin corporation, 307 11th Street, Monroe, WI 53566.

2. Wholly-owned subsidiaries which will participate in the operations, and State(S) of incorporation:

i. Roy's Dairy, Inc., a Wisconsin corporation

ii. Lugano Cheese Co., Inc., a Wisconsin corporation

iii. R.L.D. Trucking, Inc., a Wisconsin corporation

iv. Dairyland Specialties, Inc., a Wisconsin corporation

1. Parent corporation and address of principal office: Skagway Enterprises, Inc., 358 North Pine Street, P.O. Box 1647, Grand Island, NE 68801.

2. Wholly-owned subsidiaries which will participate in the operations, and State(S) of incorporation:

1. Snyder Industries, Inc., 4700 Fremont Street, P.O. Box 4583, Lincoln, NE 68504; Incorporated in Nebraska.

2. Skagway Discount Department Stores, Inc., 620 West State Street, 5 Points, P.O. Box 1647, Grand Island, NE 68801; Incorporated in Nebraska.

1. Parent corporation and address of principal office: Transway International Corporation, 747 Third Avenue, New York, NY 10017.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

A. California Western Freight Association, 3334 San Fernando Road, Los Angeles, CA. 90054
B. Coordinated Caribbean Transport, 1533 Sunset Drive, Coral Gables, FL 33143
C. Custom Cartage Company, 351 Tenth Avenue, New York, N.Y. 10001
D. Custom Equipment Rentals, Inc., 351 Tenth Avenue, New York, N.Y. 10001
E. Freeport Cruise Liner Panama, Inc., 747 Third Avenue, New York, N.Y. 10017
F. Great Dane Trailers, Inc., P.O. Box 67 E. Lathrop Ave., Savannah, GA 31402
F.1 Great Dane Birmingham, P.O. Box 5070 Birmingham, Alabama 35214
F.2 Great Dane Charlotte, P.O. Box 33666, Charlotte, N.C. 28233
F.3 Great Dane Columbus, P.O. Box 9, Hilliard, Ohio 43026
F.4 Great Dane Trailers Indiana, Inc., P.O. Box 350, Brazil, Indiana 47834
F.5 Great Dane Indianapolis, P.O. Box 41316, Indianapolis, Ind. 46241
F.6 Great Dane Jacksonville, P.O. Box 6732, Jacksonville, FL 32205
F.7 Great Dane Knoxville, P.O. Box 22220, Knoxville, TN 37922
F.8 Great Dane Memphis, P.O. Box 94446, Memphis, TN 38109
F.9 Great Dane Miami, P.O. Box 914 Tamiami Sta., Miami, FL 33122
F.10 Great Dane Nashville, P.O. Box 100432, Nashville, TN 37210
F.11 Great Dane Orlando, P.O. Box 31, Orlando, FL 32802
F.12 Great Dane Richmond, P.O. Box 34129, Richmond, VA 23234
F.13 Great Dane Tampa, P.O. Box 11146, Tampa, FL 33680
F.14 Great Dane Springdale, P.O. Box 227, Springdale, ARK 72764
F.15 Great Dane Tennessee, P.O. Box 13066, Memphis, Tennessee 38113
F.16 Trailer Rental Company, 660 University Ave. S.W., Atlanta, GA 30310
G. Lasham Cartage Company, 3636 S. Western Ave., Chicago, IL 60609
H. Merchant Shippers, 1061 S. Western Ave., Chicago, IL 60608
I. Odecca Terminal Company, 747 Third Avenue, New York, N.Y. 10017
J. Pacific Forwarding Company, 1601 S. Western Ave., Chicago, IL 60608
K. Robertson Drayage Co., Inc., 700 16th Street, San Francisco, CA 94107
L. Stor Dor Freight System, Inc., 1601 S. Western Ave., Chicago, IL 60608
M. Transport Cartage & Distributing Co., 1039 Richmond Street, Los Angeles, CA 90005
N. Tropigas International Corp., P.O. Box 341218, Coral Gables, FL 33134
O. Tropigas, SA, P.O. Box 341218, Coral Gables, FL 33134
P. Tropigas Inc. of Florida, P.O. Box 440249, Miami, FL 33144
Q. Tropigas Inc. of North Carolina, P.O. Box 156, Pollocksville, N.C. 28573
R. Universal Carloading & Distributing Co., Inc., 345 Hudson Street, New York, N.Y. 10014

S. Universal Transcontinental Corporation, 325 Spring Street, New York, N.Y. 10013
T. Wescartage Company, Inc., 960 East Third Street, Los Angeles, CA 90013
U. Western Carloading Co., Inc., 960 East Third Street, Los Angeles, CA 90013
V. Western Freight Handlers, Inc., 650 Tenth Avenue, New York, N.Y. 10001
W. Western Terminal Company, 1601 S. Western Avenue, Chicago, IL 60608
X. Westland Freight Lines, Inc., 2727 East Vernon Avenue, Vernon, CA 90058

1. Parent corporation and address of principal office: Wolverine World Wide, Inc., 9341 Courtland Drive, Rockford, Michigan 49351.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

WWW Retail, Inc., 10901 Northland Drive, Rockford, Michigan 49341
Indianapolis Glove Company, Inc., 430 North Park Avenue, Indianapolis, Indiana 46206
Brooks Shoe, Inc., 131 Factory Street, Hanover, Pennsylvania 17331
Lustigs Inc., 125 Federal Plaza West, P.O. Box 49, Youngstown, Ohio 44503
Viner Brothers, Inc., 304 Hancock Street, P.O. Box 1388, Bangor, Maine 04401
Town & Country Shoes, 1177 North Warson Road, St. Louis, Missouri 63132

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27088 Filed 9-30-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387]

Exemptions for Contract Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notices of Provisional Exemptions.

SUMMARY: Provisional exemptions are granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the below-listed contract tariffs may become effective on one day's notice. These exemptions may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the **Federal Register.**

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Douglas Galloway, (202) 275-7278
or
Tom Smerdon, (202) 275-7277.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in these instances to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption requests meet the requirements of 49 U.S.C. 10505(a) and are granted subject to the following conditions:

These grants neither shall be constured to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) not that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfulness.

Sub-No.	Name of railroad, contract number, and specifics	Review board *	Decided date
281	Burlington Northern Railroad Co., ICC-BN-C-0035, Supplement 3, (Lumber and related articles via the Ports of Birmingham, AL, Chicago, IL, and Houston, TX).	3	9-27-82
283	Richard B. Ogilvie, Trustee for the Property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Co., ICC-MILW-C-0223, (Scrap iron or steel).	3	9-27-82
286	Union Pacific Railroad Co., ICC-UP-C-0103, (Grain).	3	9-27-82
287	Consolidated Rail Corporation, ICC-CR-C-0158, 0161, 0172, and 0175, (Boxcar commodities with exceptions).	3	9-27-82

* Review Board No. 3, Members Krock, Joyce, and Dowell. (Member Krock not participating).

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27083 Filed 9-30-82; 8:45 am]

BILLING CODE 7035-01-M

Section 5b Applications 2, 3, and 6; Western Railroads, Eastern Railroads, and Southern Railroads; Agreements

AGENCY: Interstate Commerce Commission.

ACTION: Extension of Filing Deadline to Notice of Final Decision

SUMMARY: On September 15, 1982, the Western Railroad Traffic Association (Western Railroads) and the Traffic Executive Association-Eastern Railroads (Eastern Railroads) requested a two week extension of the October 1, 1982 deadline for filing amended agreements in accordance with the Commission's July 23, 1982 dicision in Section 5b Application No. 2, *Western Railroads-Agreement,* 363 I.C.C. 918 (served August 17, 1982 and noticed at 47 Fed. Reg. 3588 August 17, 1982). The extension is granted. The deadline for filing amended agreements by the Western Railroads, the Eastern Railroads, and the Southern Freight Association (Southern Railroads) is extended until October 15, 1982. Antitrust immunity will continue as provided for in the Commission's July 23, 1982 decision.

DATES: The new deadline for filing new or amended agreements is October 15, 1982. Comments on the amended agreements are due on or before November 4, 1982.

FOR FURTHER INFORMATION CONTACT:

Tom Smerdon, (202) 275-7277.

Decided: September 24, 1982.

By the Commission, Reese H. Taylor, Jr., Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27081 Filed 9-30-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 299]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: September 24, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 F.R. 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, Williams, and Higgins.

Agatha L. Mergenovich,

Secretary.

MC 41240 (Sub-23)X, Filed September 2, 1982. Applicant: NELSON TRUCKING SERVICE, INC., Mediapolis, IA 52637. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. Lead and Subs 6, 7, 9, 11, 13, 15, 20F, 21F, and 22F: (1) broaden (a) general commodities, with the usual exceptions (lead and Subs 9, and 11), general commodities, with the usual exceptions and except drugs (lead and Sub 15), and general commodities, except those of unusual value, liquids in bulk, and classes A and B explosives (Sub 6) to "general commodities (except classess A and B explosives)"; (b) farm machinery and parts, fence, and fence materials to "machinery, metal products, and lumber and wood products", tankage, feed, fertilizer, and seeds to "food and related products, chemicals and related products, and farm products", household goods and farm machinery and parts therefor to "household goods and machinery", coal to "coal and coal products", livestock to "farm products", farm machinery and parts thereof, farm implements and parts thereof, and binder twine to "machinery and textile mill products", fertilizer to "chemicals and related products", and feed, grain and cheese to "food and related products", farm implements and twine to "machinery and textile mill products", fencing materials to "metal products and lumber and wood products", and monuments, new furniture, shrubbery, trees, and cord wood to "metal products, furniture and fixtures, farm products, and lumber and wood products", (lead); (b) electric light and power line equipment and supplies to "machinery and metal products", (Sub 6); (c) building materials, gypsum, and gypsum products, and materials and supplies to "building materials, and clay, concrete, glass or stone products", (Sub 7); (d) malt beverages to "food and related products", (Sub 13); (e) adhesives, building materials, gypsum, and gypsum products and materials and supplies to "chemicals and related products, clay, concrete, glass or stone products, and materials and supplies", (Sub 20F); and (f) wrought iron pipe (Sub 21F) and iron and steel articles (Sub 22F) to "metal products"; (2) remove the following restrictions: for delivery only (lead); facilities limitations and/or originating at or destined to (Subs 7, 9 and 21F); and except commodities in bulk (Sub 20F); (3) allow service to all intermediate points (lead); (4) change one-way regular routes to two-way authority and one-way irregular routes to radial authority, in named certificates; (5) broaden off-route points (regular routes) to county-wide authority: Hammond and Whiting, IN (Lake County), Harvey, IL (Cook County), Rock Falls, IL (Whiteside County), Walnut, IL (Bureau County), Yorkville, IL (Kendall County), Bartonville, IL (Peoria County), Houghton and Mt. Hamill, IA (Lee County), points in that part of Iowa north and east of a line beginning at the confluence of the Skunk River and the Mississippi River and extending in a northwesterly direction along the Skunk River to junction U.S. Highway 218, thence along U.S. Highway 218 to junction Iowa Highway 78, thence south and east of a line beginning at the junction of U.S. Highway 218 and Iowa Highway 78 and extending along Iowa Highway 78 to junction Iowa Highway 249, thence along Iowa Highway 249 to junction unnumbered highway, thence along unnumbered highway to Columbus Junction, IA, thence south of a line beginning at Columbus Junction, IA, and extending along Iowa Highway 92 via Fredonia, IA, to Grandview, IA, and thence east to the Mississippi River, (Des Moines, Henry, Lee, and Louisa Counties, IA), and points within ten miles of Wilton Junction, IA (Cedar and Muscatine Counties, IA), lead; and Burns Harbor, Porter County, IN (Porter County), Sub 9; and (6) change city-wide (irregular routes) to country-wide authority: Mediapolis, IA, and points within ten miles thereof (Des Moines and Louisa Counties), Muscatine, IA (Muscatine County), Burlington, IA, and points in Iowa within 20 miles thereof (Des Moines, Henry, Lee and Louisa Counties), Wilton Junction, IA, and points in Iowa within 15 miles thereof (Muscatine, Cedar and Scott Counties), Sandwich, IA (De Kalb County), Burlington and Mediapolis, IA (Des Moines County), Rock Falls, IL (Whiteside County), points in Illinois within 20 miles of Burlington, IA (Hancock, Henderson, McDonough, and Warren Counties, IL), Rockford, IL (Winnebago County, De Kalb and Joliet, IL (De Kalb and Will Counties), Wilton Junction, IA (Muscatine County), Freeport, IL (Stephenson County), and points in Iowa and Illinois within 35 miles of Muscatine, IA, including Muscatine (Cedar, Clinton, Des Moines, Henry, Johnson, Louisa, Muscatine, Scott, and Washington Counties, IA, and Henderson, Henry, Mercer, Rock Island, and Warren Counties, IL), lead; Keokuk, IA (Lee County), points in Iowa and Illinois within 15 miles of that part of the Mississippi River extending between Burlington, IA, and Golden Eagle, IL (Clinton, Henderson, Henry, Mercer, Rock Island, Scott, and Warren Counties, IL and Cedar, Des Moines, Henry, Johnson, Louisa, Muscatine, and Washington Counties, IA), Sub 6; Mediapolis, IA (Des Moines County), Sub 7; South Bend, IL (St. Joseph County), Burlington, Coralville, and Muscatine, IA (Des Moines, Johnson and Muscatine Counties), Sub 13; Mediapolis, IA (Des Moines County), Sub 20F; Blue Island, Evanston, and Chicago and Forest Park, IL (Chicago, IL), Peoria and Bartonville, IL (Peoria, IL), and points in Illinois within 50 miles of the Iowa-Illinois State line (Adams, Brown, Bartonville, IL (Peoria, IL), and points in Illinois within 50 miles of the Iowa-Illinois State line (Adams, Brown, Bureau, Carroll, Fulton, Hancock, Henderson, Henry, JoDaviess, Knox, Lee, McDonough, Mercer, Ogle, Pike, Rock Island, Schuyler, Stark, Stephenson, Warren, Whiteside, and Winnebago Counties), lead.

MC 119815 (Sub-24)X, filed September 15, 1982. Applicant: INTERSTATE HIGHWAY EXPRESS, INC., P.O. Box 579, Bedford, IN 47421. Representative: Ronald N. Cobert, Suite 501, 1730 M Street NW., Washington, D.C. 20036. Lead and Subs 7, 8, 11, 12, 14, 15, 17, 19, and 21 permits: (1) broaden territorial descriptions to between points in the U.S. (except AK and HI) under continuing contract(s), with a named shipper; (2) broaden commodity descriptions from (a) gypsum products and reinforced precast concrete forms or shapes, with or without natural or artificial facing to "clay, concrete, glass or stone products" in the lead and Sub 7; and (b) corrugated metal pipe, corrugated metal sheets, metal pipe, metal sheets and fittings therefore and iron and steel articles to "metal products" in Subs 8, 11, 12, 14, 15, 17, and 19; and (3) remove the (a) except

commodities in bulk restrictions in Subs 14, and 21, and (b) size and weight restrictions in Subs 14, 17, and 19.

MC 134460 (Sub-13)X, filed September 20, 1982. Applicant: MARKET EXPRESS, INC., 2774 S. Orange Ave., Fresno, CA 93725. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306. Subs 3, 8, 10 and 12F. Broaden: Sub 3, frozen meats, in vehicles equipped with mechanical refrigeration; Sub 8, food and foodstuffs, in vehicles equipped with mechanical refrigeration, and Sub 10, foodstuffs requiring mechanical refrigeration, to "food and related products"; Sub 3, bananas, and Sub 12F, part (1) bananas, and part (2) agricultural commodities which are otherwise exempt from economic regulation under 49 U.S.C. 10526(a)(6), when moving in mixed loads with bananas, to "farm products"; Sub 3, Oakland, CA, to Alameda County, CA; Los Angeles Harbor, CA, Commercial Zone as defined by the Commission, to Los Angeles County, CA; Sub 8, Las Vegas, NV, to Clark County, NV; Sub 12F, Port Hueneme, CA facilities to Ventura County, CA; broaden to radial authority (Subs 3, 8 and 12F); and remove restriction in Subs 3 and 12F to transportation of traffic having prior movement by water.

[FR Doc. 82-27085 Filed 9-30-82; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements 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 oppostion.

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".

For the following please direct status inquiries to Team 2, (202) 275-7030.

Volume No. OP 2-239

Decided: September 24, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Chandler not participating.)

MC 138493 (Sub-15), filed September 20, 1982. Applicant: JAKUM TRUCKING, INC., Rural Route 2, Miley Rd., Sheboygan Falls, WI 53085. Representative: Michael J. Wyngaard, 150 East Gilman St., Madison, WI 53703, (608) 256-7444. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 147112 (Sub-5), filed September 20, 1982. Applicant: BRYAN TRUCKING CO., INC., P.O. Box 416, Ruffin, SC 29475. Representative: Bruce E. Mitchell, Suite 520, 3390 Peachtree Rd. NE, Atlanta, GA 30326, (404) 262-7855. Transporting *general commodities* (except commodities in bulk, household goods, and classes A and B explosives), between points in VA, NC, SC, GA, and FL.

MC 147573 (Sub-4), filed September 20, 1982. Applicant: OAK ISLAND EXPRESS, 2 Sixth St., Jersey City, NJ 07302. Representative: Peter Wolff, 722 Pittston Ave., Scranton, PA 18505, (717) 342-7595. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in the U.S., Under continuing contract(s) with Kansas City Shippers Association, of Kansas City, MO.

MC 147962 (Sub-5), filed September 20, 1982. Applicant: DONDO TRUCKING, INC., 9020 South Ridgeland, Oak Lawn, IL 60453. Representative: Joseph Winter, 29 South La Salle St., Chicago, IL 60603, (312) 263-2306. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL and IN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

For the following, please direct status inquiries to Team 1 at 202-275-7992.

Volume No. OP1-168

Decided: September 24, 1982.

By the Commission, Review Board No. 1, Members Parker, Fortier, and Chandler. (Member Chandler not participating.)

MC 75471 (Sub-8), filed September 14, 1982. Applicant: ELSTON RICHARDS STORAGE CO., 3739 Patterson SE, Grand Rapids, MI 49508. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503 (616) 459-6121. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Spartan Stores, Inc., and Miller Metal Products Co., both of Grand Rapids, MI.

MC 99261 (Sub-6), filed September 20, 1982. Applicant: ROOT'S EXPRESS, INC., 11 Karlada Drive, Binghamton, NY 13902. 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 and PA.

MC 99961 (Sub-6), filed September 8, 1982. Applicant: BIG CHIEF TRUCK LINES, INC., PO Box 1039, 1331 Hwy 93, Scott, LA 70583. Representative: Ronald Marchand (same address as applicant), (318) 232–1905. Transporting *oilfield drilling rigs, supplies and waste material,* between points in LA, TX, and MS, on the one hand, and, on the other, points in AL, GA, SC, and NC.

MC 120360 (Sub-2), filed September 10, 1982. Applicant: STEPHENS TRUCKS, INC., P.O. Box 1169, Graham, TX 76046. Representative: Mike Cotten, P.O. Box 1148, Austin, TX 78767 (512) 472–8080. Transporting (1) *Mercer commodities,* and (2) *those commodities* which because of their size and weight require the use of special handling or equipment, between points in TX. Condition: Issuance of a certificate in his proceeding is conditioned upon the prior or coincidental cancellation, at applicant's written request, of its certificate of registration No. MC–120360 Sub 1.

Note.—The purpose of this application is to convert applicant's certificate of registration in MC–120360 Sub 1 to a certificate of public convenience and necessity.

MC 121811 (Sub-12), filed September 16, 1982. Applicant: MC CLELLAN'S ENTERPRISES, INC., PO Box 1327, Tifton, GA 31794. Representative: J. L. Fant, PO Box 577, Jonesboro, GA 30237, (404) 477–1525. 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 123690 (Sub-2), filed September 20, 1982. Applicant: ROBERT N. SMITH, d.b.a. BOB SMITH's WRECKER SERVICE, P.O. Box 10514, Fort Wayne, IN 46852. Representative William B. Elmer, P.O. Box 801, Traverse City, MI 49685–0801, (616) 941–5313. Transporting *transportation equipment,* between points in IN, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK and TX.

MC 144510 (Sub-9), filed September 17, 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 Buena Vista and Cherokee Counties, IA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 147740, filed September 16, 1982. Applicant: RAY CLARK, d.b.a. RAY CLARK TRUCKING, Box 114, Haines, OR 97833. Representative: David C. White, 2400 SW Fourth Ave., Portland, OR 97201, (503) 226–6491. Transporting *lumber and wood products,* between points in OR, on the one hand, and, on the other, points in AZ, CA, CO, ID, NM, NV, OR, TX, UT and WA.

MC 151471 (Sub-15), filed September 20, 1982. Applicant: STEINBECKER BROS., INC., P.O. Box 852, Greeley, CO 80632. Representative: Charles M. Williams, 1600 Sherman St., #665, Denver, CO 80203, (303)–839–5856. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 153051 (Sub-4), filed September 20, 1982. Applicant: ATS TRANSPORT, INC., 34439 Mills Road, North Ridgeville, OH 44039. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114, (402) 397–9900. Transporting *chemicals and related products,* between Cleveland, OH, and points in Lake County, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 154401 (Sub-2), filed September 20, 1982. Applicant: TRI-STAR TRANSPORTATION, INC., 2 Stony Hill Rd., Wilbraham, MA 01095. Representative: David M. Marshall, 101 State St., Suite 304, Springfield, MA 01103, (413) 732–1136. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Hopewell, VA, and points in MA, on the one hand, and, on the other, points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, WV and DC.

MC 163100, filed September 20, 1982. Applicant: ROBERT SCOTT, d.b.a. SCOTT TRUCKING SERVICE, 7643 Shadyoak Drive, Downey, CA 90240. Representative: Milton W. Flack, 8484 Wilshire Blvd., Suite 840, Beverly Hills, CA 90211, (213) 655–3573. Transporting (1) *metal products and* (2) *computer machines and parts, and (b) such commodities as are dealt in by musical and theatrical entertainers,* between points in the U.S. (except AK and HI), under continuing contract(s) with Superior Fireplace Co., Division of Mobex Corporation, of Fullerton, CA, in (1) above, and Logical Distribution Management, of Gardena, CA, in (2) above.

MC 163880, filed September 16, 1982. Applicant: BERNIE EVELO, 800 Speedway Ave., E. Missoula, MT 59801. Representative: Thomas J. Simmons, P.O. Box 480, Sioux Falls, SD 57101. 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 MDK Enterprises, Inc, of Portland, OR.

MC 163890, filed September 16, 1982. Applicant: INDIANA LANDMARK, INC., R.R. #2, Box 10, Silver Lake, IN 46982. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846–6655. Transporting *food and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with V.P.I. Inc./ Straford Farms, of Goshen, IN. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343 or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to team 1, Room 2379.

MC 163901, filed September 17, 1982. Applicant: PEGGY BOYLE, 613 Runyon Ave., Piscataway, NJ 08854. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904, (201) 572–5551. As a *broker of general commodities* (except household goods) between points in the U.S. (except AK and HI).

MC 163911, filed September 20, 182. Applicant: R & L EXPRESS, INC., 534 Golf Rd., Streator, IL 61364. Representative: Richard Lenhausen (same address as applicant), (815)–672–6536. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in IL, IN, IA, KS, KY, MI, MN, MO NE, OH, TN, WV, WI and those points in NY and PA on and west of U.S. Highway 81.

MC 163921, filed September 20, 1982. Applicant: SUNBELT AUTO CARRIERS CORP., INC., P.O. Box 206, DeBary, FL 32713–0206. Representative: Bruce Lee Lawrence (same address as applicant), (305)–668–5377. Transporting *motor vehicles,* between points in FL, GA, AL, MS, TN, NC, VA, KY, SC, IN, OH, MI, DE, NJ, PA, NY, RI, CT, MA and IL.

MC 163930, filed September 20, 1982. Applicant: PREMIER PRODUCE SALES, INC., 1320 South Glenstone—Suite 30, Springfield, MO 65804. Representative: George Spencer, 7 North Block, Fayetteville, AR 72701, (501)–442–0585.

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 Charles McAlpin Brokerage, Inc., of Decatur, AL.

For the following, please direct status inquiries to Team 4 at 202–275–7669.

Volume No. OP4–345

Decided: September 27, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 13267 (Sub-9), filed September 16, 1982. Applicant: MOUNTAINSIDE TRANSPORT, INC., 4828 Hollins Ferry Rd., Baltimore, MD 20227. Representative: A. David Millner, 7 Becker Farm Rd., P.O. Box Y, Roseland, NJ 07068, (201) 992–2200. Transporting *food and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Doane Products Co., Inc. of Joplin, MO.

MC 149406 (Sub-17), filed September 17, 1982. Applicant: E. W. WYLIE CORPORATION, P.O. Box 1188–40th St. Southwest, Fargo, ND 58107. Representative: Stephen F. Grinnell, 1600 TCF Tower, Minneapolis, MN 55402, (612) 333–1341. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Minn-Dak Farmers' Cooperative, of Wahpeton, ND.

MC 150136 (Sub-4), filed September 17, 1982. Applicant: JOE SICILIA, INC., North 5523 Julia, Spokane, WA 99207. Representative: Boyd Hartman, P.O. Box 3641, Bellevue, WA 98009, (206) 453–0312. Transporting *petroleum and petroleum products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Chempro of Oregon, Inc., of Portland, OR, and Idaho Asphalt Supply, Inc., of Idaho Falls, ID.

MC 156317 (Sub-2), filed September 9, 1982. Applicant: FIDELITY TRUCKING CORPORATION, 4556 W. 61st St., Chicago, IL 60629. Representative: Robert J. O'Hearn (same address as applicant), (312) 581–5617. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 161246, filed September 17, 1982. Applicant: KENTON CRATE & PALLET COMPANY, INC., 18 Betty St., Milford, DE 19963. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St., NW., Washington, DC 20005, (202) 296–3555. Transporting (a) *rubber and plastic products,* between points in Sussex County, DE, and Philadelphia, PA, on the one hand, and, on the other, points in DE, MD, CT, NY, NJ, PA, VA, NC, WV, and DC, and (b) *food and related products,* between points in Fairfield County, CT, and points in DE, on the one hand, and, on the other, points in DE, MD, CT, NY, NJ, PA, VA, NC, WV, and DC.

MC 163227, filed September 17, 1982. Applicant: GARY JOHNSON TRUCKING CO., 16824 S Higley Rd., Higley, AZ 85236. Representative: Gary D. Johnson (Same address as applicant), (602) 963–8996. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Phoenix, AZ, and points in Dolores, La Plata and Montezuma Counties, CO, and San Juan and McKinley Counties, NM.

MC 163787, filed September 15, 1982. Applicant: OTTIS E. ADKISSON, d.b.a. ADKISSON'S HOTSHOT SERVICE, Route 8, Box 1585, Odessa, TX 7976e. Representative: Ottis E. Adkisson (same address as applicant), (915) 381–3669. Transporting *Mercer commodities,* (1) between points in TX, NM, OK, and LA, and (2) between points in TX, and those in Eddy and Lea Counties, NM, on the one hand, and, on the other, points in CO and WY.

MC 163876, filed September 16, 1982. Applicant: THOMPSONS' EXPRESS, INC., 5606 Plain view, Fort Wayne, IN 46815. Representative: Michael D. McCormick, 1301 Merchants Plaza, Indianapolis, IN 46204, (317) 638–1301. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), (1) between points in and east of ND, SD, NE, KS, OK and TX, and (2) between points in (1) above, on the one hand, and, on the other, points in CA and CO.

MC 163877, filed September 16, 1982. Applicant: U.S. TRANSPORT, INC., 1570 Iris Dr., Conyers, GA 30207. Representative: Robert E. Born, Suite 508, 1447 Peachtree St., N.E., Atlanta, GA 30309, (404) 892–8020. Transporting *petroleum and petroleum products,* between points in Charleston County, SC and Jefferson and Marshall Counties, AL, on the one hand, and, on the other, points in GA.

MC 163887, filed September 16, 1982. Applicant: SWIFT'S QUALITY COMPUTER MOVERS, 4700 W. Green Tree Rd., Milwaukee, WI 53223. Representative: Herbert L. Harris, 11629 W. Dearbourn Ave., Milwaukee, WI 53226, (414) 358–0659. Transporting *machinery,* between points in the U.S. (excpet HI, under continuing contract(s) with Harris Data Service, Inc., of Milwaukee, WI.

MC 163896, filed September 17, 1982. Applicant: S. D. H. CORPORATION, U.S. Route 40, W. Terre Haute, IN 47885. Representative: E. Stephen Heisley, 1919 Pennsylvania Ave., Suite 500, Washington, D.C. 20006, (202) 828–5015. Transporting *metal products and commodities in bulk,* between points in MO, WI, IL, IN, OH, MI, KY and TN.

MC 163897, filed September 17, 1982. Applicant: STALLION TRUCKING, 110 Howe Rd., Laramie, WY 82070. Representative: A. J. Sherlock (same address as applicant), (307) 742–2771. Transporting *building matrerials,* between those points in the U.S. in and west of ND, SD, NE, KS, OK, and TX.

For the following, please direct status inquiries to Team 5 at 202–275–7289.

Volume No. OP5–200

Decided: September 24, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 114028 (Sub-48), filed September 13, 1982. Applicant: ROWLEY INTERSTATE TRANSPORTATION COMPANY, INC., 2010 Kerper Boulevard, Dubuque, IA 52001. Representative: Carl L. Steiner, 29 So. LaSalle St., Chicago, IL 60603, (312) 236–9375. Transporting *food and related products* between points in the U.S. (except AK and HI), under continuing contract(s) with FDL Foods, Inc., of Dubuque, IA.

MC 142879 (Sub-3), filed September 17, 1982. Applicant: C & B CONTRACT CARRIERS, INC., 1345 Mayson Turner Rd., N.W., Atlanta, GA 30314. Representative: Guy H. Postell, Suite 675, 3384 Peachtree Rd., N.E., Atlanta, GA 30326, 404–237–6472. Tranporting *petroleum and coal products,* between points in Douglas County, GA, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Young Refining Corporation of Douglasville, GA.

MC 148018 (Sub-10), filed September 13, 1982. Applicant: JAMES S. BATT, d.b.a. BATT TRUCKING, P.O. Box 922, Caldwell, ID 83605. Representative: Kevin M. Clark, 2417 Bank Dr., Suite 8, Boise, ID 83705, (208) 344–7714. Transporting *such commodities* as are dealt in by grocery and food business houses, between points in the U.S. (except AK and HI).

MC 148208 (Sub-12), filed September 7, 1982. Applicant: FUR BREEDERS AGRICULTURAL COOPERATIVE, P.O. Box 295, Midvale, UT 84047.

Representative: Irene Warr, 311 S. State St., Suite 280, Salt Lake City, UT 84111, (801) 531–1300. 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), on the one hand, and, on the other, points in UT, ID, WY, NV, NM and TX.

MC 154559 (Sub-1), filed September 16, 1982. Applicant: DALMATIAN COACH SERVICE, INC., 3147 N. Pleasantburg Dr., Greenville, SC 29609. Representative: James Robert Evans, 145 W. Wisconsin Ave., Neenah, WI 54956, 414–722–2848. Transporting *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, beginning and ending at points in Abbeville, Anderson, Greenville, Laurens, Newberry, Oconee, Pickins, Richland, Spartanburg, Union and York Counties, SC, and extending to points in the U.S. (except AK and HI).

MC 159089, filed September 17, 1982. Applicant: WYOMING SUB RENTAL, INC., P.O. Box 4711, Casper, WY 82604. Representative: Clifford J. Neilson, 239 West First Street, Casper, WY 82601, (307) 266–1300. Transporting *machinery, materials, equipment and supplies used in replacing, servicing and repairing machinery and equipment used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission and distribution of commodities resulting from drilling operations,* between points in WY, on the one hand, and, on the other, points in AZ, CA, CO, ID, KS, LA, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, and WY.

MC 161678 (Sub-1), filed September 15, 1982. Applicant: CAPE TRANSIT CORP., 5501 Ocean Ave., Wildwood Crest, NJ 08260. Representative: Andrew J. Carraway, 1600 Wilson Boulevard, Suite 1301, Arlington, VA 22209 (703) 522–0900. Over regular route, transporting *passengers and their baggage,* in the same vehicle with passengers, between Ocean City, MD, and Atlantic City, NJ, serving all intermediate points: from Ocean City over MD Hwy 528 to the MD/DE State line, then over DE Hwy 1 to junction U.S. Hwy 9, then over U.S. Hwy 9 to Lewes, DE, then, by water ferry, from Lewes to North Cape May, NJ, then over U.S. Hwy 9 to junction NJ Garden State Parkway, then over NJ Garden State Parkway to Atlantic City Expressway, then over Atlantic City Expressway to Atlantaic City, and return over the same route.

MC 161828 (Sub-1), filed September 17, 1982. Applicant: KC EXPRESS, P.O. Box 258, Versailles, OH 45380. Representative: Krista D. Subler (same address as applicant), (513) 526–3309. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 162468 (Sub-1), filed September 17, 1982. Applicant: EUGENE O. ABLES, d.b.a. GENE ABLES TRUCKING CO., 1200 Silver Lake Rd., Topeka, KS 66608 Representative: Arthur J. Cerra, 2100 Charter Bank Center, P.O. Box 19251, Kansas City, MO 64141, (816) 842–8600. Transporting *petroleum and related products, rubber and plastic products, metal products, machinery, clay, concrete, glass or stone products, construction materials and equipment, and Mercer commodities, between points in AZ, AR, CO, IA, IL, KS, LA, MO, NE, NM, OK, and TX.*

MC 163708, filed August 26, 1982. Applicant: CARRINGTON TRANSPORTATION, INC., 1504 West Main, P.O. Box 259, Red Wing, MN 55066. Representative: Val M. Higgins, 1600 TCF Tower, 121 So. 8th St., Minneapolis, MN 55402, 612–333–1341. Transporting *rubber and plastic products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Durkee Atwood Company of Minneapolis, MN.

MC 163858, filed September 16, 1982. Applicant: CARDINAL EXPRESS, 7633 63rd Place, Tulsa, OK 74133. Representative: J.L. Fant, P.O. Box 577, Jonesboro, GA 30237, (404) 477–1525. transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in U.S. under continuing contract(s) with International Paper Company, of New York, NY, Armin Plastics Oklahoma, Inc., of Tulsa, OK, Southwest Packaging, Inc., of Tulsa, OK, and Elkem Holloway, Inc., of Tulsa, OK.

MC 163879, filed September 16, 1982. Applicant: MICHAEL CHARLES BROOKS, PATRICIA ANN BROOKS, and ROBERT ARTHUR DOCKERTY, d.b.a. CALIFORNIA LEISURE CHARTER, 2597 Hampshire Rd., Riverside, CA 92506. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702, (714) 667–8107. Transporting *passengers and their baggage* in the same vehicle with passengers, in charter operations, beginning and ending at points in San Bernardino and Riverside Counties, CA, and extending to points in AZ, NV, UT, OR, WA, SD, and WY.

MC 163889, filed September 16, 1982. Applicant: OLIVE HILL MOTOR SALES, INC., P.O. Box G, Olive Hill, KY 41164. Representative: Archie W. Andrews, P.O. Box 1166, Eden, NC 27288, (919) 635–4711. Transporting *wrecked or disabled vehicles and replacement vehicles for wrecked or disabled vehicles,* between points KY, on the one hand, and on the other, points in AR, IL, IN, MD, MI, MO, NC, OH, PA, SC, TN, VA, AND WV.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–27089 Filed (9–30–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349,* 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 C.F.R. 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 C.F.R. 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to

conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301,11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decison is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: September 27, 1982.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

MC–F–14950 filed September 1, 1982. HAYES TRUCK LINE, INC. (Hayes) (1410 Intercity Trafficway, P.O. Box 4060, Kansas City, MO 64101—Control and Merger—ACTION FREIGHT LINE, INC. (Action) (P.O. Box 141 Humansville, MO 65674) Representatives: Larry D. Knox and Ronald R. Adams, 600 Hubbell Building, Des Moines, IA 50309. Hayes (Certificate No. MC–9644 and subnumbers thereunder) seeks authority to acquire control of Action (Certificate No. MC–147778, Sub-No. 1) and subsequently to merge Action into Hayes. Freightways, Inc., a carrier operating pursuant to certificate No. MC–144484 and subnumbers thereunder, and which controls Hayes through stock ownership, and Claude C. Hayes and Ruth Ann Hayes who control Freightways, Inc. through stock ownership, seek to acquire control of Action's operating rights through the transaction. Claude C. Hayes also does business as Otten Truck Line (Certificate No. MC–70090 and subnumbers threreunder) and controls H&S Motor Freight, Inc. (Certificate No. MC–107838 and subnumbers thereunder). Action's operating rights generally authorize regular and irregular route transportation of general commodities in MO and KS. A more complete description of Action's authority is on file at the Commission's Office in Washington, D.C.

MC–F–14939. Keim Transportation, Inc. P.O. Box 226, Sabetha, KS 66534, seek authority to purchase a portion of the operating rights of Eckley Trucking, Inc., P.O. 156, Mead, NE 68041, and for acquisition by Glen L. Keim, also of P.O. Box 226, Sabetha, KS 66534, of control of such rights through the purchase. Keim operates under No. MC–2095. Operating rights to be purchased: Sub-No. 6: (1) *Agricultural implements, pumps, water systems, component parts for water systems, tanks and towers, and parts for agricultural implements and pumps*, between Beatrice, NE, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Dempster Industries, Inc., at or near Beatrice and against service from Chicago, IL, and Portage, IN, to the facilities of Dempster Industries, Inc., at or near Beatrice; and against service from Chicago, IL and Portage, IN to the facilities of Dempster Industries, Inc., at or near Beatrice (2) *equipment, materials and supplies* used in the manufacture or distribution of the commodities in (1) (except commodities in bulk), from points in the United States (except AK and HI), to Beatrice, NE, restricted to the transportation of traffic destined to the facilities of Dempster Industries, Inc., at or near Beatrice, and against the transportation of iron and steel articles from points in IL, IN, Ambridge and New Kensington, PA; Niles, OH and points in Cabell and Wayne Counties, WV, to the facilities of Dempster Industries, Inc., at or near Beatrice, (3) *experimental and show display agricultural implements, pumps, water systems, component parts for water systems, tanks and towers, and parts for agricultural implements and pumps*, between points in the United States (except AK and HI), restricted to the transportation of traffic for the account of Dempster Industries, Inc. Sub-No. 87: *Machinery and metal products*, between points in Clark County, OH, on the one hand, and on the other, points in IA, LA, IL, MS, MN, WI, GA, AL, TX, KS, NC, OK, MI, PA, AR, MO, TN, and NY. Sub-No. 46: *Irrigation pipe, fittings, and accessories and irrigation system*, from the facilities of Kroy Metals Products, Inc., at or near York, NE, to points in AL, AR, CO, FL, GA, ID, IL, IN, IA, KS, LA, MA, MI, MN, MO, MT, NV, NJ, NY, ND, OH, OK, OR, PA, SD, TN, TX, UT, VA, WA, WI, and WY, and Sub-No. 86 (1)(a): *Metal forming equipment and rolled formed steel articles*, from Moundridge, KS, to points in the United States (except AK, HI, and KS), and (b) *materials and supplies* used in the manufacture of *metal forming equipment and rolled formed steel articles* (except commodities in bulk), from points in the United States (except AK, HI and KS), to Moundridge, KS restricted to the transportation of traffic originating at or destined to the facilities of The Bradbury Co., Inc., at or near Moundridge, KS; (2)(a) *iron and steel articles*, and (b) *grain handling equipment*, from the facilities Grain Spounting and Elevator of Kansas, Inc., at or near Hutchinson, KS, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the above-named origin facilities; and (3) *plastic pipe and plastic pipe fittings* (except commodities in bulk), and Broken Arrow, OK, to points in the United States (except AK and HI), restricted to the transportation of trafic originating at the facilities of Continental Industries, Inc., at or near Broken Arrow, OK. Application for Temporary Lease of authority has been filed. Seller: Eckley Trucking, Inc., P.O. Box 156, Mead, NE 68041. Seller's Representative: A. J. Swanson, P.O. Box 1103, Sioux Falls, SD 57101–1103. Buyer: Keim Transportation, P.O. Box 226, Sabetha, KS 66534. Buyer's Representative: Clyde N. Christey, KS Credit Union Bldg., 1010 Tyler, Suite 1101, Topeka, KS 66612.

MC–E–14942. Filed August 26, 1982. BILLINGS TRUCKING CORPORATION (BILLINGS) (P.O. Box 1106, North Wilkesboro, NC 28659)—W&L MOTOR LINES, INC. (W&L) (P.O. Box 3467, Hickory, NC 28603). Representative: Theodore Polydoroff, 1307 Dolley Madison Blvd., McLean, VA 22101. Billings seeks to purchase a portion of the authority of W&L. Billings is purchasing the interstate operating rights contained in Certificate No. MC–123872 (Sub-No. 129), authorizing the

transportation of such commodities as are dealt in by grocery stores and food business houses and retail, discount, and department stores, between points in FL, on the one hand, and, on the other, points in NC, SC, TN, and VA. Billings is authorized to operate as a common carrier pursuant to certificates issued in No. MC–62110.

Note.—An application for temporary authority has been filed.

Condition.—Richard B. Johnston, Richard B. Johnston, Jr., Joseph A. Johnston, and Keith W. Johnson, who control Billings through stock ownership, must join the application as parties in control.

MC–F–14954, filed September 10, 1982. DANIEL HAMM DRAYAGE COMPANY (Hamm) (Second and Tyler, St. Louis, MO 63102)—purchase (portion)—ACE DORAN HAULING & RIGGING CO. (Ace Doran) (1601 Blue Rock Street, Cincinnati, OH 45223). Representative: A. Charles Tell, 100 E. Broad Street, Columbus, OH. 43215. Hamm seeks authority to purchase a portion of the interstate operating rights of Ace Doran. Hamm is a wholly-owned subsidiary of Ace Doran. Ace Doran also controls Western Lines, Inc., a motor carrier under MC–110814 and MC—119908. Hamm holds authority under MC–42963. The rights to be acquired by Hamm are those contained in Certificate No. MC–112304 Sub-No. 262X, which authorize the transportation of *general commodities* (except classes A and B explosives), between Carlyle, IL, and St. Louis, MO, over U.S. Hwy 50, serving all intermediate points and the off-route points in Beckemeyer, Aviston, Breese, O'Fallon, Trenton, Lebanon, East St. Louis, and St. Rose, IL.

Condition.—Prior to the issuance of the effective notice, Richard E. Doran must submit an affidavit stating that he is majority stockholder of Ace Doran and that he joins in this application as a person in control.

Decision-Notice

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 252 of the Commission's General Rules of Practice (49 CFR 1100.252).

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements as to the finance application *or* to the following operating rights applications directly related thereto filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice by effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

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.

Dated: September 22, 1982.

By the Commission, Review Board Number 3, Members Krock, Joyce and Dowell.

MC 123272 (Sub-57), filed July 12, 1982. Applicant: FAST FREIGHT, INC., 9651 St. Ewing Avenue, Chicago, IL 60617. Representative: James C. Hardman, 33 N. LaSalle Street, Suite 2108, Chicago, IL 60602. Applicant seeks authority to operate as a *common carrier* over irregular routes, transporting (1) *lumber and wood products* between points in Gloucester County, NJ and Norfolk County, MA, on the one hand, and, on the other, points in the U.S. (except WA, OR, CA, ID, NE, UT, and AZ); (2) *clay, concrete, glass or stone products,* between points in Fayette and Logan Counties, IL, and Indianapolis, IN, on the one hand, and, on the other, points in CT, DE, MA, NJ, PA, NY, and RI, between points in Gloucester County, NJ, and Norfolk County, MA, on the one hand, and, on the other, points in the U.S. (except WA, OR, CA, ID, NE, UT, and AZ); (3) *rubber and plastic products,* between Louisville, KY, and points in Fayette County, IL, on the one hand, and, on the other, points in CT, DE, MA, NJ, PA, NY and RI; (4) *rubber products,* between points in MA, CT, RI, and NJ, on the one hand, and, on the other, points in the U.S. (except WA, OR, CA, ID, NV, UT, and AZ); between Indianapolis, IN, on the one hand, and, on the other, points in DE, NY, and PA; (5) *metal products,* between points in Cook County, IL, on the one hand, and, on the other, points in the U.S. (except WA, OR, CA, ID, NE, UT, and AZ); between points in Fayette County, IL and Indianapolis, IN, on the one hand, and, on the other, points in CT, DE, MA, NJ, NY, PA, and RI; between Louisville, KY and Milwaukee, WI, on the one hand, and, on the other, points in Gloucester County, NJ and Norfolk County, MA; (6) *textile mill products,* between points in Fayette County, IL, on the one hand, and, on the other, points in CT, DE, MA, NJ, NY, PA, and RI; (7) *machinery,* between Indianapolis, IN, on the one hand, and, on the other, points in CT, DE, MA, NJ, NY, PA, and RI; (8) *Pulp, paper, and related articles,* between Portage County, OH, Gloucester County, NJ, and Norfolk County, MA, on the one hand, and, on the other, points in the U.S.; between Fayette County, IL, on the one hand, and, on the other, point in CT, DE, IL IN, MA, NJ, PA, NY and RI; (9) *petroleum, natural gases and their products,* between Fayette County, IL, on the one hand, and, on the other, points in Lancaster and Delaware Counties, PA, Essex County, NJ, and Hampden County, MA; and (10) *chemicals and related products,* between Fayette County, IL, on the one hand, and, on the other, points in Lancaster and Delaware Countys, PA and Essex County, NJ; between points in Gloucester County, NJ and Norfolk County, MA, on the one

hand, and, on the other, points in Kenton, Campbell, Carroll, McCracken, Henderson and Daviess Counties, NY; Allamahee, Clayton, Dubuque, Jackson, Clinton, Scott, Muscatine, Louisa, Des Moines, and Lee Counties, IA, and points in WI and the Lower Peninsula of MI.

Note:—This notice corrects the notice published in the **Federal Register**, Vol. 47, No. 155, P. 34860–34861, Wednesday August 11, 1982, which contained certain advertent errors. This gateway elimination application directly relates to MC–F–14904, Fast Freight, Inc.-Merger-Cole Freight Company, notice of which was published also in the same **Federal Register**.

[FR Doc. 82–27084 Filed 9–30–82; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. OP5–202]

Motor Carriers; Permanent Authority; Republications of Grants of Operating Rights Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the **Federal Register.**

An original and one copy of petition for leave to intervene must be filed with the Commission within 30 days after the date of this **Federal Register** notice addressing specifically the issue(s) indicated as the purpose for republication.

Agatha L. Mergenovich,

Secretary.

MC 150319 (Sub-1) (Republication), filed March 17, 1982, published in the **Federal Register** issue of April 1, 1982, and republished this issue. Applicant: WILMINGTON EXPRESS, INC., P.O. Box 540, Wilmington, NC 28402. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. An Order of the Commission, Review Board 3, decided August 9, 1982, and served August 17, 1982, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *fertilizer*, between points in North Carolina and South Carolina, on the one hand, and, on the other points in Kentucky, Tennessee, and West Virginia; (2) *metal products*, between points in Alabama, Georgia, Maryland, Delaware, Nebraska, North Carolina, New York, Pennsylvania, South Carolina, and Texas, on the one hand, and, on the other, points in Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maine, Maryland, Mississippi, North Carolina, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia; and (3) *general commodities* (except classes A and B explosives, hosehold goods, and commodities in bulk), between points in New Hanover County, NC, on the one hand, and, on the other, those points in the United States in and east of Wisconsin, Illinois, Kentucky, Tennessee and Mississippi, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate the applicant's actual grant of authority.

MC 161329 (Republication), filed April 1, 1982, published in the **Federal Register** issue of April 30, 1982, and republished this issue. Applicant: ROUNDABOUT TOURS, P.O. Box 6483, Tahoe City, CA 95730. Representative: Clive R. Hughes (same address as applicant), (916) 583–4490. An order of the Commission, Review Board 2, decided August 18, 1982, and served August 24, 1982, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a common carrier, by motor vehicle, over irregular routes, transporting *passengers and their baggage, in the same vehicle with passengers, in special operations*, beginning and ending at points in Placer County, CA and extending to points in Sierra, Eldorado, Nevada, and Alpine Counties, CA and to Reno and points in Ormsby and Douglas Counties, NV., that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and reguations. The purpose of this republication is to indicate the applicant's actual grant of authority.

[FR Doc. 82–27087 Filed 9–30–82; 8:45 am]

BILLING CODE 7035–01–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Notice of Investment Opportunity

The Agency for International Development (A.I.D.) has authorized guaranties of loans to the Republic of the Seychelles (Borrower) as part of A.I.D.'s overall development assistance program. The proceeds of these loans will be used to finance shelter projects for low income families residing in the Seychelles. The following set forth the address of the Borrower and the loan amount for a new project that will soon be ready to receive financing and for which the Borrower is requesting proposals from U.S. lenders or investment bankers:

Seychelles

Project: 662–HG–001—$2,500,000

Robert Grandcourt, Permanent Secretary, Ministry of Planning and Development, The Republic of the Seychelles; Telex: 2268 MINWP–SZ; Telegram Address: MINPD, Seychelles; telephone No. Victoria 22321

By this notice of investment opportunity, the above Borrower is soliciting expressions of interest from U.S. lenders or investment bankers to counsel on loan timing, structure and features, and to manage the loans or underwritings. Interested investment bankers or lenders should contact the Borrower indicated above. Selection of investment bankers and/or lenders and the terms of the loans are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. The lenders and A.I.D. shall enter into a Contract of Guaranty, covering each of the loans. Disbursements under the loans will be subject to certain conditions required of the Borrower by A.I.D. as set forth in implementation agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (1) U.S. citizens: (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Director, Office of Housing, Agency for International Development, Room 625, SA/12, Washington, D.C. 20523; telephone: (202) 632–9637.

Dated: September 24, 1982.

Fredrik A. Hansen,

Deputy Director, Office of Housing and Urban Development.

[FR Doc. 82–27093 Filed 9–30–82; 8:45 am]

BILLING CODE 4710–02–M

DEPARTMENT OF LABOR

Employment Standards Administration

Advisory Committee on Sheltered Workshops

A meeting of the Advisory Committee on Sheltered Workshops will be held on October 19, 1982, from 9:30 a.m. to 5:00 p.m. and on October 20 from 9:00 a.m. to 5:00 p.m. The meeting will be held in Rm. N5437 A,B, and C, Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C.

The Committee will consider topics concerning the employment of handicapped workers employed at subminimum wages under section 14(c) of the Fair Labor Standards Act. Major areas for discussion will include: revision of the regulations (29 CFR Part 525) governing the employment of handicapped workers at subminimum wages; the Government Accounting Office's report, released in September 1981, entitled "Stronger Federal Efforts Needed for Providing Employment Opportunities and Enforcing Labor Standards in Sheltered Workshops"; special enforcement problems under the Act and; simplification of certification procedures under the regulations. Other relevant topics may be introduced and discussed at the Committee's discretion.

Members of the public are invited to attend the proceedings Written data, views, or arguments pertaining to the business before the Committee must be received by the Committee's Coordinator prior to the meeting date. Twenty-five copies are needed for distribution to the members and for inclusion in the meeting minutes.

Telephone inquiries and communications concerning this meeting should be directed to: Arthur H. Korn, Coordinator for the Advisory Committee on Sheltered Workshops, Rm. C4316, Frances Perkins Building, 200 Constitution Avenue, N.W. Washington, D.C. 20210, telephone no. 202/523–8727. This is not a toll free telephone number.

Signed in Washington, D.C. this 28th day of September 1982.

Robert B. Collyer,

Deputy Under Secretary.

[FR Doc. 82–27178 Filed 9–30–82; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Hydrology Panel; Changed Meeting Date

The Hydrology Panel of the National Advisory Committee on Oceans and Atmosphere (NACOA) scheduled to meet on Friday, October 1, 1982 and published in the **Federal Register** of September 15, 1982 (Page 47 FR 40733) has been changed. It has been rescheduled for Friday, October 8, 1982 at the same time and same location.

Additional information concerning this meeting may be obtained through the NACOA Executive Director, Mr. Steven N. Anastasion, or James A. Almazan, the Staff Member for the Hydrology Panel. The mailing address is: NACOA, 3300 Whitehaven Street, NW., (Suite 438, Page Building #1), Washington, DC 20235.

Dated: September 29, 1982.

Steven N. Anastasion,

Executive Director.

[FR Doc. 82–27228 Filed 9–30–82; 8:45 am]

BILLING CODE 3510–12–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Design Arts Advisor, Panel to the National Council on the Arts; 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 Design Arts Advisory Panel to the National Council on the Arts will be held on October 12–13, 1982, from 9:00 a.m.–5:30 p.m. in room 1426 of the Columbia Plaza Office Complex, 2401 E Street, N.W., Washington, D.C.

A portion of this meeting will be open to the public on October 12–13, 1982, from 9:00 a.m.–2:00 p.m. to discuss leadership activities and guidelines.

The remaining sessions of this meeting on October 12–13, 1982, from 2:00 p.m.–5:30 p.m. 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, and for discussion and development of confidential FY 1984 budgetary materials to be submitted to the Office of Management and Budget and the Congress. 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.

Dated: September 24, 1982.

John H. Clark,

Director, Office of Council and Panel Operations National Endowment for the Arts.

[FR Doc. 82–27092 Filed 9–30–82; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

Procedures to be followed with respect to meetings conducted by the Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards, which were published September 30, 1981 (46 FR 47903), are renewed by this notice. These procedures are set forth in order that they may be incorporated by reference in future individual meeting notices.

The Advisory Committee on Reactor Safeguards (ACRS) is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements from members of the public to be considered as a part of the Committee's information gathering procedure, they are not adjudicatory hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety and Licensing Board as part of the Commission's licensing process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those pertaining to

radiological safety. ACRS full Committee and Subcommittee, meetings are conducted in accordance with sections 29 and 182b, of the Atomic Energy Act (42 U.S.C. 2039, 2232b).

General Rules Regarding ACRS Meetings

An agenda is published in the **Federal Register** for each meeting. Practical considerations may dictate some alterations in the agenda. The Chairman of the Committee or Subcommittee which is meeting is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incomplete session from one day to the next.

With respect to public participation in ACRS meetings, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy at the beginning of the meeting. When meetings are held at locations other than Washington, D.C., reproduction facilities are usually not available. Accordingly, 15 additional copies should be provided for use at such meetings. Comments should be limited to safety related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy addressed to the Designated Federal Employee specified in the **Federal Register** notice for the individual meeting in care of the ACRS, NRC, Washington, D.C. 20555. Comments postmarked no later than one calendar week prior to a meeting will normally be received in time for reproduction, distribution and consideration at the meeting.

(b) Persons desiring to make an oral statement at the meeting should make a request to do so prior to the beginning of the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee or Subcommittee will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether a meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call, on the working day prior to the meeting, to the Office of the Executive Director of the Committee (telephone 202–634–3265, ATTN: the Designated Federal Employee specified in the **Federal Register** Notice for the meeting) between 8:15 a.m. and 5:00 p.m., Washington, D.C. time.

(d) Questions may be asked only by ACRS Members, Consultants and Staff.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will be allowed while the meeting is in session at the discretion of the Chairman to a degree that is not disruptive to the meeting. When use of such equipment is permitted, appropriate measures will be taken to protect proprietary or privileged information which may be in documents, folders, etc., being used during the meeting. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept.

(f) A copy of the transcript of the open portions of the meeting where factual information is presented will be available at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, for inspection within one week following the meeting. A copy of the minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate charges.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least three working days prior to the meeting so that it can be confirmed and a determination made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Employee prior to the beginning of the meeting.

Dated: September 24, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-27231 Filed 9-30-82; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 12690; (812-5264)]

American Shares, Inc.; Filing of an Application

September 27, 1982.

Notice is hereby given that American Shares, Inc. ("Applicant"), 405 Central Avenue, St. Petersburg, FL 33731, registered under the Investment Company Act as an open-end, non-diversified, management investment company, filed an application on August 4, 1982, for an order pursuant to Section 11(a) of the Act approving certain proposed offers of exchange of shares among Applicant's two existing series of shares on a basis other than their relative net asset values and pursuant to Section 6(c) of the Act exempting Applicant from the provisions of Section 22(d) of the Act in connection with such exchanges. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

According to the application, Applicant is a Maryland corporation which proposes to offer initially two series of shares of capital stock designated as American Treasury Shares ("Treasury Series") and American Industry Shares ("Industry Series"). Applicant states that its Treasury Series has the investment objective of a conventional "money market" fund investing in a portfolio of the United States Government obligations and is offered to the public at net asset value without a sales charge. Applicant further represents that its Industry Series seeks to provide investment results that corresponds to the movements of the Dow Jones Industrial Average ("Index") by investing assets in portfolio securities identical to those constituting the Index. Applicant further represents that the public offering price of the Industry Series consist of the net asset value of such shares plus a sales charge which varies from 8.5% to 1.5% of the offering price based upon the amount invested.

Applicant states that both of its portfolios are managed by Industry Shares Management Inc. and that its shares are offered through its

underwriter, Securities Fund Investors Inc. ("Principal Underwriter").

Applicant states that in order to enhance the correlation between the net asset value of the Industry Series and the Index, Applicant and its Principal Underwriter have agreed that the brokerage commission costs incurred in acquiring and selling portfolio securities for the Industry Series portfolio will be paid by the Principal Underwriter. According to Applicant, this arrangement is intended to minimize the effect of brokerage commission costs, which is a factor not reflected in the Index, on day-to-day computation of the Industry Series net asset value. Thus, part of the sales charges received by the Principal Underwriter on the issuance of Industry Series is used to defray costs which would otherwise be directly imposed on Applicant.

According to the application, Applicant proposes to offer its investors the opportunity to exchange (i) all or part of their shares in the Industry Series for Treasury Series, shares at relative net asset value and (ii) all or part of their Treasury Series shares for shares of the Industry Series at relative net asset value plus a sales charge as described below. On an initial exchange of shares of the Treasury Series, for which no sales charge had ever been imposed, Applicant intends to impose the full sales charge for purchases of Industry Series shares as described in the Industry Series' then-current prospectus. Applicant represents that on an exchange of shares of the Treasury Series, which had previously been acquired by a shareholder in exchange for Industry Series shares, as sales charge, currently fixed at 1.25% of the offering price, is proposed ("Reduced Sales Charge"). Applicant further represents that the principal purpose of the reduced sales charge on subsequent exchanges is to provide the Principal Underwriter with funds to enable it to meet its obligation to Applicant to pay all brokerage commissions relating to portfolio transactions for the purchase and sale of securities constituting the Industry Series portfolio.

Section 11(a) of the Act provides, in part, that it shall be unlawful for any registered, open-end investment company or any principal underwriter thereof to make or cause to be made an offer to the holder of a security of such company, or any other open-end investment company, to exchange his security for a security in the same or another such company on any basis other than the relative net asset value of the respective securities to be exchanged unless the terms of offer have first been submitted to and approved by the Commission.

Section 22(d) of the Act provides, in part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the company's prospectus.

The proposed exchanges of shares of the Treasury Series into the Industry Series at relative net asset value plus a sales charge would violate Section 11(a) of the Act unless an order approving such exchanges is issued. Moreover, imposition of a fixed, reduced sales charge on certain exchanges into the Industry Series might be deemed to violate Section 22(d) of the Act absent an exemptive order under Section 6(c) of the Act.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested, Applicant states that by offering two interchangable series of shares, it makes available to its shareholders the opportunity of quickly and conveniently shifting between investment objectives. Applicant further represents that if it were unable to impose any sales charge upon an exchange from the Treasury Series to the Industry Series, the Principal Underwriter would not receive the funds necessary for it to carry out its obligation to pay brokerage commission costs (which costs, in turn, arise from the necessity to invest the cash received in the Industry Series portfolio as a result of the exchanges). Applicant further states that its board of directors has determined that the proposed reduced sales charge of 1.25% is appropriate in view of the obligations of the Principal Underwriter both to pay portfolio commission costs for the Industry Series portfolio and to meet distribution expenses related to such exchanges.

Applicant states that its board of directors recognizes that the Industry Series portfolio commission and distribution costs, not being fully within the control of either Applicant or Principal Underwriter, are subject to change. Accordingly, Applicant asserts that it is contemplated that the rate of the reduced sales charge on subsequent exchanges may also be changed. According to the application, any such change would take effect only: (a) After determination by Applicant's board of directors, including a majority of its directors deemed not "interested persons" under the Act, that the change is appropriate in the light of changes in actual or projected costs, and (b) upon effectiveness of a revised prospectus in which such new charge is described.

Applicant submits that it would be fair and equitable to its shareholders to permit subsequent exchanges by former Industry Series shareholders at reduced sales charges. Applicant also asserts that it is fair and equitable to permit its shareholders who have initially borne the full sales charges of their initial purchase to have the benefit of reduced sales charges in shifting their holdings from one investment policy to another. Finally, Applicant asserts that it appears that all of its shareholders would benefit from the proposed relief requested in that it believes that one result of being able to offer convenient and economical exchanges of shares would be an enhanced retention of its ability to maintain its assets despite changes in investment climate. Accordingly, Applicant contends that the approval and exemption it requests are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than October 22, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing

upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-27047 Filed 9-30-82; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-5894]

Beverly Enterprises, Common Stock, $.10 Par Value; Application To Withdraw From Listing and Registration

September 27, 1982.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. The common stock of Beverly Enterprises ("Company") is listed and registered on the Amex. Pursuant to a Registration Statement on Form 8-A which will become effective on September 23, 1982, the Company also is listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock on the Amex and the NYSE.

2. This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before October 19, 1982, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-27053 Filed 9-30-82; 8:45 am]

BILLING CODE 8010-01-M

Boston Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

September 27, 1982.

The above named national Securities exchange has filed an application with the securities and Exchange Commission pursuant to Section 12(f)(1)(B), of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of :

Western Company of North America
Common Stock, $.30 Par Value (File No. 7-6322)

This security is listed and registered on one or more other national securities exchange and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 19, 1982 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-27052 Filed 9-30-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12689; (812-5277)]

High Yield Securities, Inc., Convertible Yield Securities, Inc., The Edson Gould Fund, Inc., and AIM Management, Inc.; Filing of an Application for an Order Pursuant to Section 6(c) of the Act Exempting Applicants From the Provisions of Section 22(d) of the Act and Rule 22d-1 Thereunder

September 27, 1982.

Notice is hereby given that High Yield Securities, Inc., Convertible Yield Securities, Inc. and the Edson Gould Fund, Inc. (the "Funds"), each registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end, management investment company, together with AIM Management, Inc. ("AIM," collectively with the Funds, "Applicants") Eleven Greenway Plaza, Suite 1919, Houston, TX 77046, filed an application on August 12, 1982, for an order pursuant to Section 6(c) of the Act exempting the Applicants from the provisions of Section 22(d) of the Act and Rule 22d-1 thereunder to permit sales of shares of the Funds at net asset value to the AIM Management Profit Sharing Plan, a qualified employee profit sharing plan under the Internal Revenue Code (the "AIM Plan"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

According to the application, the Funds are organized as corporations under Maryland law and are currently engaged in continuous public offerings of their shares through AIM Distributors, Inc., a wholly-owned subsidiary of AIM, as principal underwriter, at public offering prices equal to net asset value plus a sales charge. The sales charges vary with the size of the purchases, as set forth in the Funds' prospectuses, and range from 6.5% of the offering price on transactions of less than $12,500 to 1.2% of the offering price on tranactions of $1,000,000 but under $2,000,000. There is a maximum sales charge of $24,000.

AIM a Delaware corporation, is the parent and sole stockholder of AIM Advisors, Inc., which serves as investment advisor to the Funds and of AIM Distributors, Inc., which serves as principal underwriter for the Funds. AIM, AIM Advisors, AIM Distributors, Inc., the Funds, other present subsidiaries of AIM and any AIM subsidiaries (or other similar entities controlled directly or indirectly by AIM) acquired or formed in the future are hereinafter collectively referred to as "AIM Companies." At June 15, 1982, the

full-time employees of AIM Companies totalled 34.

Applicants propose to permit the AIM Plan to purchase shares of the Funds at net asset value. The application states that all persons rendering employment services to any of the AIM Companies are paid by AIM. AIM determined that since most employees provide services to more than one of the AIM Companies that it would be appropriate from an accounting standpoint for all employees to be paid by AIM, with the cost of such payments allocated to each of the AIM Companies in proportion to the time spent by the employee working for each of the AIM Companies.

Applicants submit that the AIM Plan is a qualified employee profit sharing plan under the Internal Revenue Code, covering all full-time employees of AIM (the "AIM Employees"). The AIM Plan is administered by three trustees who are and will continue to be persons who are intimately familiar with the operations of the Funds. The trustees will invest all of the assets of the AIM Plan in shares of the Funds. This investment will be made once each calendar year and will be allocated between the Funds in the trustees' sole discretion. In addition to the annual contribution to the AIM Plan made by AIM, AIM Employees may make voluntary contributions to the AIM Plan through monthly withholdings. No AIM Employees currently make such voluntary contributions; however, if they do so in the future, investments in the Funds will be aggregated into one transaction each month. No share certificates will be issued to the AIM Plan in connection with its investment in shares of the Funds and dividends and capital gain distributions with respect to such shares will be automatically reinvested at net asset value. The AIM Plan will agree not to resell shares of the Funds that it acquires except by repurchase or redemption by or for the account of the Funds. Redemption of Fund shares purchased by the AIM Plan may not occur more often than once a year, except in the event of retirement or change in employment of an AIM Employee.

Applicants represent that no individual sales solicitations or face-to-face group sales solicitations will be made of either the AIM Plan or of the AIM Employees. Annually, the AIM Employees will receive a notice from AIM, furnished at AIM's expense, indicating the amount of each AIM Employee's share of the AIM Plan's investment in shares of the Funds. The notice will not set forth the allocation of the AIM Plan's investments among the Funds but it will indicate that additional information concerning the Funds and investment by the AIM Plan in shares of the Funds can be obtained from AIM and will inform AIM Employees of the availability of prospectuses from AIM.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company shall sell any redeemable security issued by it to any person except either to or through a principal underwriter for distribution or at a current public offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person except a dealer, a principal underwriter, or the issuer, except at a current public offering price described in the prospectus. Rule 22d–1 provides an exemption from Section 22(d) of the Act to permit sales at reduced charges or without any sales charge in specified circumstances. The sale of shares of the Funds to the AIM Plan at net asset value may conflict with the provisions of Section 22(d) of the Act and Rule 22d–1 thereunder.

According to the application, paragraph (i) of Rule 22d–1 would permit sales of a Fund's shares without any sales charge to directors, officers, employees and sales representatives of the Fund, its investment adviser and its principal underwriter, or to a profit sharing plan for the benefit of such persons, provided that any such person who is not a director, officer or full-time employee of the Fund must spend more than one-half of his or her working time providing investment advice to the Fund, selling its shares or supervising those engaged in such activities. The AIM Plan, however, covers all employees of AIM, even those who do not qualify under Paragraph (i) of rule 22d–1 as they are employed in positions that do not directly provide investment advice to or distribute shares of the Funds.

Paragraph (f) of Rule 22d–1 permits the elimination of sales charges in a sale pursuant to a uniform offer described in a prospectus and made to, employees' trusts, pension, profit-sharing or other employee benefit plans qualified under Section 401 of the Internal Revenue Code, or employee benefit plans not qualified under Seciton 401 of the Code, provided such non-qualified plans satisfy uniform criteria relating to the realization of economies of scale in sales effort and sales related expense.

Section 6(c) of the Act provides that the Commission by order upon application may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities, or transactions, from any provision of the Act or any Rule under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants submit that the sale to the AIM Plan of shares of the Funds at net asset value is supported by strong policy considerations, in that such sales should result in demonstrable economies in sales effort and sales-related expense as compared with other sales and would not be unjustly discriminatory. Applicants further submit that the grant of the exemption requested is appropriate in the public interest and consistent with the protection of investors and the purposes of Section 22(d) of the Act. Applicants further submit that the association of the Funds with AIM is the basis for a unique relationship to the Funds, which can be expected to result in economies in sales effort and sales-related expense that justify elimination of all sales charges on shares of the Funds purchased by the AIM Plan, without discrimination against other employee benefit plans or other purchasers of shares of the Funds. Applicants believe that sales of shares of the Funds to the AIM Plan at net asset value will not adversely affect the interests of investors and that such sales do not involve any of the abuses against which Section 22(d) is directed.

According to the application, sales of shares of the Funds to the AIM Plan are expected to give rise to economies of scale in sales effort and sales related expense for a number of reasons. First, Applicants represent that because the trustees of the AIM Plan are and will continue to be persons who are intimately involved in the operations of the Funds and because the AIM Employees possess a basic understanding of the nature of an investment company as well as a general familiarity with, and loyalty to the Funds, no solicitation of any kind is necessary for such sales of shares of the Funds. Therefore the Funds, AIM Advisors, Inc., AIM Distributor, Inc., their representatives or other broker dealers will not engage in any sales solicitation of either the AIM Plan or of the AIM Employees. Second, all notices that will be sent to the AIM employees concerning the Funds and the AIM Plan's investment in shares of the Funds will be furnished by AIM, at the expense of AIM. Third, the AIM Plan will make

its purchases of shares of the Funds only once each calendar year in a single transaction, except for monthly purchases which may occur in the future if any AIM Employees make voluntary contributions under the AIM Plan. Fourth, dividend and capital gain distributions on shares of the Funds sold to the AIM Plan will be automatically reinvested in additional Fund shares.

According to the application, AIM instituted the AIM Plan as a means of promoting employee incentive, goodwill, and loyalty to all of the AIM Companies, including the Funds. The Applicants strongly support investment by the AIM Plan in shares of the Funds. They believe that such investment reinforces the above-mentioned objectives of promoting employee incentive, goodwill, and loyalty.

Applicants submit that the requested order, permitting sales of shares of the Funds at net asset value to the AIM Plan, is both appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than October 22, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be isued as of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-27048 Filed 9-30-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 22643; 70-6785]

Southwestern Electric Power Co; Proposed Financing of Pollution Control Facilities

September 24, 1982.

Southwestern Electric Power Company ("SWEPCO") P.O. Box 21106, Shreveport, Louisiana 71156, a public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed an application-declaration with this Commission pursuant to Sections 6(a), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder.

SWEPCO and Central Louisiana Electric Company, a non-associate company, have begun construction of a 640 megawatt, lignite-fueled electric generating plant (the "Unit") near Dolet Hills, Louisiana. SWEPCO anticipates that it will own 50% of the Unit and will pay 50% of its cost. The estimated total costs of construction of SWEPCO's share of the Unit is $260,768,000. It is stated that it is necessary to acquire and construct certain air, water, and solid waste pollution control facilities (the "Facilities") as a part of the Unit in order to comply with applicable state and federal environmental control standards. SWEPCO proposes to enter into an Installment Sale Agreement (the "Agreement") with the Parish of De Soto (the "Parish"), a Parish within the Commonwealth of Louisiana, pursuant to which the Parish would undertake the financing of SWEPCO's share of the Facilities. The Agreement would provide for the transfer by SWEPCO to the Parish of the company's interest in the Facilities as they exist at the time the Agreement is entered into, and would provide that SWEPCO be reimbursed for its cost of acquiring and constructing the property so transferred. SWEPCO would then cause the construction of the Facilities to be completed for the Parish and would be reimbursed by the Parish for the costs of such construction. Title of the Facilities would be in the Parish during the period of construction. Upon completion of construction, title to the Facilities would automatically vest in SWEPCO.

The Parish will finance the acquistion and construction of the Facilities and related costs through the issuance and sale, concurrently with the execution of the Agreement, of the Parish's Pollution Control Revenue Bonds or Notes (the "Bonds"), in an aggregate amount presently estimated not to exceed $65,000,000. The Bonds will be issued under a trust indenture with a corporate trustee to be selected by SWEPCO.

The Bonds will bear interest semi-annually and will mature at a date or dates not more than 30 years from their nominal date of issue. The interest rate, maturity dates, redemption provisions, and other terms and conditions applicable to the Bonds will be determined by negotiations between SWEPCO and the underwriters. SWEPCO will not be a party to the underwriting agreement, but the underwriting agreement will be subject to approval by SWEPCO. The terms and conditions of the Bonds may include variable interest rates, interest rates redetermined periodically, intermediate term maturities, and/or other terms and conditions deemed necessary or desirable to take maximum advantage of the then current market conditions. It is anticipated that the Bonds will be redeemable at any time in whole at the option of SWEPCO at par plus accrued interest, upon the occurrence of various extraordinary events specified in the Agreement and the indenture relating generally to destruction or condemnation of the Facilities or the Unit, conditions rendering operation of the Facilities or the Unit infeasible, or the imposition on the company or the Parish of unreasonable burdens or excessive liabilities with respect to the Facilities or the Unit; that the Bonds will be subject to voluntary redemption at times and with premiums to be determined by negotiations between SWEPCO and the underwriters; and that the Bonds will be subject to mandatory redemption, in whole or in part, at par plus accrued interest if the Agreement shall, by constitutional amendment or legislative, administrative, or judicial action, become void or unenforceable or impossible of performance on a permanent basis in accordance with the expressed intention of the parties, or upon certain events causing the interest on the Bonds to be taxable. While it is not possible to ascertain in advance precisely the interest rate which may be obtained in connection with the issuance of the Bonds, SWEPCO has been advised that similar tax-exempt bonds currently carry an annual interest rate approximately 2%–4% lower than comparable taxable bonds.

Except as otherwise required under the indenture, the proceeds from the sale of the Bonds will be placed in a

construction fund created and established under the indenture and will be disbursed from time to time to pay or to reimburse SWEPCO for the cost of construction of the Facilities (including the costs of acquisition and construction paid by SWEPCO prior to the acquisition of the Facilities from SWEPCO and interest on the Bonds during construction), the trustee's expenses, the Parish's administrative and overhead expenses, and all other costs and expenses incurred in connection with the issuance and sale of the Bonds. In the event that amounts in the construction fund are insufficient to pay such costs, the Agreement obligates SWEPCO to pay all additional amounts.

The Agreement will contain an unsecured commitment by SWEPCO to pay to the Parish at specified times, in payment of the purchase price for the Facilities, amounts sufficient to enable the Parish to pay debt service on the Bonds, including principal, interest, and redemption premium, if any. Pursuant to the indenture, the Parish will assign to the trustee all such amounts payable under the Agreement. The Bonds will be special obligations of the Parish, payable only out of purchase price payments made by SWEPCO and will not be an obligation of the Parish payable from its general revenues or any tax assessment.

The applicant-declaration 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 October 20, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant 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-declaration, as filed or as it may be 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. 82-27050 Filed 9-30-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22645; (70-6760)]

John H. Ware, 3rd; Proposed Acquisition of Securities of a Public-Utility Company

September 24, 1982.

John H. Ware, 3rd ("Ware"), 55 South Third Street, Oxford, Pennsylvania 19363 has filed with this Commission an application and an amendment thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a)(2) and 10 of the Act as applicable to the proposed transaction. All interested persons are referred to the amended application, which is summarized below, for a complete statement concerning the proposed transaction.

Ware owns or controls, directly or indirectly, approximately 98% of the outstanding common stock of Penn Fuel System, Inc. ("System"), a Pennsylvania corporation. System owns 100% of the common stock of North Penn Gas Company ("North Penn"), a Pennsylvania corporation and a gas utility company, and approximately 85% of the common stock of Penn Fuel Gas, Inc. ("Penn Fuel"), a Pennsylvania corporation which has seven wholly owned gas utility subsidiaries, all of which are also Pennsylvania corporations. An additional 11% of the common stock of Penn Fuel is owned by Ware, persons related to him or trusts for and corporations owned by such persons. By order dated November 20, 1975 (HCAR N. 19254), System and its subsidiary companies were granted an exemption pursuant to Section 3(a)(1) from all provisions of the Act except Section 11(b)(2).

Ware also owns or controls 3.8% of the common stock of Pennsylvania & Southern Gas Company ("P&S"), a Delaware corporation and a gas utility company. Ware has applied for approval under Sections 9(a)(2) and 10 to acquire additional common shares of P&S such that he will thereby become an affiliate of P&S under Section 2(a)(11)(A). The acquisition would be made in open market purchases or in private purchases at negotiated prices. If approval is obtained, Ware anticipates he will make additional purchases from time to time pursuant to Rule 11(d).

North Penn distributes natural gas at retail to approximately 30,174 customers in eight counties in northern Pennsylvania. It also sells natural gas at wholesale to other gas utility companies and sells gas appliances. At December 31, 1981, North Penn had gross utility plant of $33,324,822 and net utility plant of $22,522,461. For the year then ended it reported $74,839,266 of operating revenues and $1,078,674 of net income. Penn Fuel, through its subsidiaries, distributes natural gas at retail to approximately 29,213 customers in 24 counties in central, eastern and southeastern Pennsylvania. A small portion of one subsidiary's operations are conducted in and around Emittsburg, Maryland. Penn Fuel has two non-utility subsidiaries which sell liquified propane gas in containers in Delaware, Maryland and New Jersey. Penn Fuel also sells directly liquified propane gas and appliances. At December 31, 1981, Penn Fuel (consolidated) had gross plant, property and equipment of $38,283,782 and net plant, property and equipment of $26,763,583. For the year then ended it reported consolidated revenues of $74,998,912 ($64,878,105 from distribution of natural gas) and net income applicable to common stock of $1,502,288.

P&S distributes gas at retail to approximately 19,000 customers through five operating divisions: (1) Valley Cities Division, serving the towns of Sayre, Athens, South Waverly, Towanda, Ulster and Wysox, all in Bradford County, Pennsylvania; (2) Waverly Division, serving Waverly, New York; (3) Elkton Division, serving Elkton, Maryland; (4) North Carolina Division, supplying natural and liquified propane gas to Reidsville, Eden, Madison and Mayoden, North Carolina; and (5) Elizabeth and Suburban Division, supplying liquified propane gas to Elizabeth City, North Carolina. At September 30, 1981, P&S has gross utility plant of $13,929,129 and net utility plant of $9,040,232. For its fiscal year then ended it reported $25,530,999 of revenues from natural gas sales, $2,403,435 of revenues from non-utility sales of liquified propane gas and $1,085,185 of net income. P&S has a wholly owned subsidiary, Rockingham Exploration Company, which is a participant in joint ventures engaged in the exploration and development of oil and gas properties. The investment by P&S in this subsidiary is carried on its books at $142,844. At September 30, 1981, P&S had 235,857 shares of common stock outstanding, held by 380 shareholders.

The service area of the Valley Cities Division of P&S is immediately east of the six-county area in Pennsylvania served by North Penn, and the service area of the Waverly Division is immediately north of the Valley Cities service area. Considered as a whole, these two P&S divisions are thus contiguous to the North Penn Service area. The service area of P&S's Elkton Division is 14 miles southeast of the

service area of the Oxford Division of South Penn Gas Company, a subsidiary of Penn Fuel.

Ware agrees that he will undertake, subject to any applicable restrictions, regulations or law, to integrate the Valley Cities, Elkton and Waverly Divisions of P&S into System at such time as this union would be practical and economically viable. It is stated that operating economies would result from such integration. Ware also agrees that he will not seek to integrate the two North Carolina divisions into System unless the Act is modified to permit such a transaction. The utility revenues and net utility plant of System and P&S in the states in which they operate are indicated in the following table (data for the 12 months ended December 31, 1981):

State	Utility revenues	Percent	Net utility plant	Percent
System				
Pennsylvania	$138,507,244	99.1	$50,658,577	99.2
Maryland	1,210,127	0.9	383,125	0.8
Total	139,717,371	100.0	51,041,702	100.0
P&S				
Pennsylvania	10,692,517	39.2	3,502,840	39.0
Maryland	1,933,986	7.1	931,402	10.4
New York	1,364,529	5.0	808,634	9.0
Subtotal	13,991,032	51.3	5,242,876	58.4
North Carolina	13,270,351	48.7	3,740,080	41.6
Total	27,261,383	100.0	8,982,956	100.0

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $7,500. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

The application 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 October 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 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 issied in this matter. After said date the application, as amended or as it may be further amended, may be granted.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-27051 Filed 9-30-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 19077; File No. 4-281]

Receipt of Amendment To CQ Plan

September 24, 1982.

On September 13, 1982, the participants in the Consolidated Quotation system ("CQS") submitted to the Commission, pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934, an amendment to the Restated and Amended Plan ("CQ Plan").[1]

I. Description of Amendment

The CQ Plan participants have adopted an amendment to the CQ Plan that reflects the change in address of the Boston and Philadelphia Stock Exchanges, and provides for the more frequent apportionment among the participants of yearly net income or losses resulting from operation of the CQ network. In addition, the amendment removes references from the CQ Plan pertaining to the CQS manual interface because that interface has never been utilized and is no longer a practical alternative.

II. Request for Comment

Pursuant to Rule 11Aa3-2(c)(3) under the Act, the amendment became effective upon filing with the Commission. The Commission, however, summarily may abrogate the amendment within 60 days of filing and require that the amendment be refiled pursuant to Rule 11Aa3-2(b)(1), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act. Accordingly, in order to assist the Commission in determining whether to abrogate the amendment and to require further review, interested persons are invited to submit their views to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, within 21 days from the date of publication in the **Federal Register**. The amendment to the CQ plan will be available for public inspection in the Commission's public reference room. All communications should refer to File No. 4-281.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-27049 Filed 9-30-82; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Securities Exchange Act Release No. 15009 (July 28, 1978), 45 FR 34851.

[2] 17 CFR 200.30-3(a)(29).

DEPARTMENT OF TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

During the period September 17 through September 23, 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 addressed to the Treasury Reports Management Officer, Information Resources Management Division, Room 309, 1625 I St. NW., Washington, D.C. 20220; *and* to the OMB reviewer listed at the end of each entry.

Date Submitted: September 17, 1982.

Submitting Bureau: Internal Revenue Service.

OMB No.: 1557-0074.

Form No.: 1040 and related schedules.

Type of Submission: Revision.

Title: U.S. Individual Income Tax Return and related schedules.

Purpose: IRC sections 601 and 6012 require individuals to file income tax returns annually. Form 1040 and related schedules are used to report income subject to tax and compute the tax liability. The data is used to verify that items on the forms are correct and for general statistical use.

OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: September 17, 1982.

Submitting Bureau: Internal Revenue Service.

OMB No.: 1545-0233.

Form No.: 7004.

Type of Submission: Revision.

Title: Application for Automatic Extension of Time to File Corporation Income Tax Return.

Purpose: Form 7004 is used by a corporation to request an automatic 3-month

extension of time to file its income tax return. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to insure that the proper amount of tax was computed and deposited.

OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: September 20, 1982.

Submitting Bureau: Alcohol, Tobacco and Firearms.

OMB No: N/A (New submission).

Form No.: ATF F 5200.18.

Type of Submission: New.

Title: Floor Stock Tax Return—Cigarettes.

Purpose: The Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248) imposes a one-time Floorstocks tax on taxpaid cigarettes held for distribution. This form is the tax return and contains information necessary to verify correct payment.

OMB Reviewer: Suzann Evinger (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: September 21, 1982.

Submitting Bureau: Internal Revenue Service.

OMB No.: 1545–0126.

Form No.: 1120F.

Type of Submission: Revision.

Title: U.S. Income Tax Return of a Foreign Corporation.

Purpose: Form 1120F is filed by foreign corporations that are engaged in a trade or business in the U.S. or have U.S. investment income. The IRS uses Form 1120F to determine whether the foreign corporation has correctly reported its income and computed its tax.

OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

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Date Submitted: September 21, 1982.

Submitting Bureau: Internal Revenue Service.

OMB No.: 1545–0284.

Form No.: 5309.

Type of Submission: Revision.

Title: Application for Determination of Employee Stock Ownership plan.

Purpose: Form 5309 is filed with Form 5301, 5303, or 5307, when applying for a determination letter as to a deferred compensation plan's qualification status under section 401(a) of the Internal Revenue Code. The information is used to determine whether the plan qualifies.

OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: September 21, 1982.

Submitting Bureau: Internal Revenue Service.

OMB No.: 1545–0098.

Form No.: 1045.

Type of Submission: Revision.

Title: Application for Tentative Refund.

Purpose: Form 1045 is used by individuals, estates, and trusts to apply for a quick refund of taxes due to carryback of a net operating loss, unused investment, WIN, jobs or research credit, or claim of right adjustment under section 1341(b). The information obtained is used to determine the validity of the application.

OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: September 21, 1982.

Submitting Bureau: Internal Revenue Service.

OMB No.: 1545–0047.

Form No. 990 and Schedule A.

Type of Submission: Revision.

Title: Return of Organization Exempt from Income Tax and Organization Exempt under 501(c)(3).

Purpose: Form 990 is needed to determine that IRC section 501(a) exempt organizations fulfill the operating conditions of their tax exemption. Sch. A (Form 990) is used to elicit special information from section 501(c)(3) organizations. IRS uses the information from these forms to determine if the filers are operating within the rules of their exemption.

OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: September 21, 1982.

Submitting Bureau: Internal Revenue Service.

OMB No.: 1545–0090.

Form No.: 1040SS and 1040–PR.

Type of Submission: Revision.

Title: U.S. Self-Employment Tax Return & Planilla Para La Declaracion DeLa Contribucion Federal Sabre El Traliajo Por Cuenta Propia-Puerto Rico.

Purpose: Forms 1040SS and 1040–PR are used to figure self-employment tax in accordance with IRC chapter 2 of Subtitle A, and provide proper credit to taxpayer's Social Security account. The data is used to determine whether the proper amount of self-employment tax is reported.

OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: September 21, 1982.

Submitting Bureau: Internal Revenue Service.

OMB No.: N/A (New submission).

Form No.: 6157.

Type of Submission: New.

Title: Employment Inquiry Form.

Purpose: The Form 6157 is used by all IRS offices to voucher past employers of prospective IRS employees. Due to the sensitive nature of the IRS function, a high level of integrity is demanded of IRS employees. Forms 6157 are sent out with self-addressed stamped envelopes to three most recent employers regarding applicants for positions in IRS to determine whether they should be hired.

OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: September 22, 1982.

Submitting Bureau: Internal Revenue Service.

OMB No.: N/A (New submission).

Form No.: 6894.

Type of Submission: New.

Title: TCE Retest (English).

Purpose: As a part of the Tax Counseling for the Elderly (TCE) program, the volunteers who fail the initial TCE test are permitted to take the retest. If they pass the retest, then they may prepare tax returns for the elderly.

OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

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Date Submitted: September 22, 1982.

Submitting Bureau: Internal Revenue Service.

OMB No.: N/A (New submission).

Form No.: 1668 (P).

Type of Submission: New.

Title: Request for Status of Form 637, Certificate of Registration.

Purpose: This notice was developed to notify taxpayers who have registered, under Section 4222 of the Code, to sell or purchase items tax free, that the Internal Revenue Service is verifying that the conditions of their exemption still exist. This verification is made biennially.

OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

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Date Submitted: September 22, 1982.

Submitting Bureau: Internal Revenue Service.

OMB No.: N/A (New submission).

Form No.: 6893.

Type of Submission: New.

Title: TCE Test (English).

Purpose: As a part of the Tax Counseling for the Elderly (TCE) program, all volunteers are requested to take a test at the end of the training session to insure that students have been adequately trained. This is a fail/pass system.

OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

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Date Submitted: September 22, 1982.

Submitting Bureau: Internal Revenue Service.

OMB No.: 1545–0132.

Form No.: 1120X.

Type of Submission: Revision.

Title: Amended U.S. Corporation Income Tax Return.

Purpose: Domestic corporations use Form 1120X to correct a previously filed Form 1120. The data is used to determine if the correct tax liability has been reported.

OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget,

Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: September 22, 1982.
Submitting Bureau: Internal Revenue Service.
OMB No.: 1545–0373.
Form No.: 5063.
Type of Submission: Revision.
Title: Information Needed to Identify Account or Locate Return.
Purpose: This form is used to request information needed to identify an account or locate a return. The information is needed to respond to a taxpayer for a photocopy of a return.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

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Date Submitted: September 22, 1982.
Submitting Bureau: Internal Revenue Service.
OMB No.: 1545–0128.
Form No.: 1120L.
Type of Submission: Revision.
Title: U.S. Life Insurance Company Income Tax Return.
Purpose: Life insurance companies are required to file an annual return of income and compute and pay any tax due. The data is used to ensure that companies have correctly reported taxable income and paid the correct tax.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

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Date Submitted: September 22, 1982.
Submitting Bureau: Internal Revenue Service.
OMB No.: 1545–0094.
Form No.: 1041–A.
Type of Submission: Revision.
Title: U.S. Information Return—Trust Accumulation of Charitable Amounts.
Purpose: Form 1041–A is used to report the information required in 26 U.S.C. 6034 concerning accumulation and distribution of charitable amounts. The data is used to verify that amounts for which a charitable deduction was allowed are used for charitable purposes.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

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Date Submitted: September 22, 1982.
Submitting Bureau: Internal Revenue Service.
OMB No.: 1545–0196.
Form No.: 5227.
Type of Submission: Revision.
Title: Split-Interest Trust Information Return.
Purpose: This data is used to verify that the beneficiaries of a charitable remainder trust include the correct amounts in their tax returns, and that the trust owes no income tax or private foundation taxes.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

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Date Submitted: September 22, 1982.
Submitting Bureau: Internal Revenue Service.
OMB No.: 1545–0052.
Form No.: 990–PF and 4720.
Type of Submission: Revision.
Title: Returns for Private Foundations, Non-Exempt Charitable Trusts, and Related Persons.
Purpose: IRC section 6033 requires the filing of an annual information return by all private foundations (taxable or tax exempt) and section 4947(a)(1) trusts treated as private foundations. Section 4940 imposes a tax on net investment income and section 53.4940–1(a) of the Regulations requires reporting it on the return filed under section 6033. Section 6011 requires a return for taxes on prohibited acts.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: September 22, 1982.
Submitting Bureau: Internal Revenue Service.
OMB No.: 1545–0621.
Form No.: NAR Form 3–215.
Type of Submission: Extension.
Title: Affidavit-Estate Tax Liability on Estate Tax.
Purpose: The form is needed in the examination of estate tax returns to document the payment of state death taxes. The data is used to verify that the credit or deduction of estate death taxes is accurately reflected on the estate tax return.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: September 23, 1982.
Submitting Bureau: Internal Revenue Service.
OMB No.: 1545–0028.
Form No.: 940 and 940 PR.
Type of Submission: Revision.
Title: Employer's Annual Federal Unemployment Tax Return.
Purpose: Internal Revenue code section 3301 imposes a tax on most employers based on the first $6,000 of annual wages paid to each employee. IRS uses the information to ensure that employers have reported and computed the correct FUTA (Federal Unemployment Tax Act) wages and FUTA tax.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

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Date Submitted: September 23, 1982.
Submitting Bureau: Internal Revenue Service.
OMB No.: 1545–0582.
Form No.: 1139.
Type of Submission: Revision.
Title: Corporation Application for Tentative Refund.
Purpose: Form 1139 is used by corporations to apply for a quick refund of taxes due to a carryback of a net operating loss, net capital loss, unused investment, WIN, jobs or research credit, or claim of right adjustment under IRC section 1341(b). The information obtained is used to determine the validity of the application.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: September 23, 1982.
Submitting Bureau: Internal Revenue Service.
OMB No.: 1545–0067.
Form No.: Form 2555.
Type of Submission: Revision.
Title: Foreign Earned Income.
Purpose: This form is used by U.S. citizens and resident aliens who qualify for the foreign earned income exclusion and/or the foreign housing exclusion or deduction. This information is used by the Service to determine if a taxpayer qualifies for the exclusion(s) or deduction.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: September 23, 1982.
Submitting Bureau: Internal Revenue Service.
OMB No.: 1545–0155.
Form No.: 3468.
Type of Submission: Revision.
Title: Computation of Investment Credit.
Purpose: Form 3468 is used to compute the credit for investment in certain types of assets, including energy property. The data is used to verify the correct amount of the credit against the income tax.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date submitted: September 23, 1982.
Submitting Bureau: Internal Revenue Service.
OMB No.: 1545–0092.
Form No.: 1041 and Schedules D, J & K–1.
Type of Submission: Revision.
Title: U.S. Fiduciary Income Tax Return and Schs. On Capital Gains and Losses, Trust Alloc. of Accum Dist., Beneficiary Share of Income, etc.
Purpose: IRC section 6012 requires that an annual income tax return be filed for estates and trusts. Section 6041 requires a return be filed reporting payments to recipients. Data used to determine that the estates, trusts, and beneficiaries filed the proper returns and paid the correct tax.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

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Date Submitted: September 23, 1982.
Submitting Bureau: Internal Revenue Service.

OMB No.: N/A (new submission).
Form No.: W–6.
Type of Submission: New.
Title: Individual Certificate of Exemption.
Purpose: Payees of interest and dividends file this form to tell the payer not to withhold income tax on the interest or dividends. This form is also used by a payee who no longer qualifies for exemption to revoke the exemption. The payer will use this form as the authority not to withhold or to revoke the exemption.
OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

September 28, 1982.

Joy Tucker,

Departmental Reports Management Officer.

[FR Doc. 82–27125 Filed 9–30–82; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Advisory Committee on Structural Safety of Veterans Administration Facilities; Rescheduled Meeting

The meeting of the Advisory Committee on Structural Safety of Veterans Administration Facilities which was originally scheduled for September 24, 1982, as set forth in **Federal Register** of August 4, 1982, (47 FR 33825) and as rescheduled for October 1, 1982, and set forth in **Federal Register** of September 8, 1982, (47 FR 39634) is now rescheduled for October 29, 1982. The meeting will convene in Room 442 of the Lafayette Building, 811 Vermont Avenue, NW, Washington, DC at 10 a.m.

Dated: September 23, 1982.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 82–27069 Filed 9–30–82; 8:45 am]

BILLING CODE 8320–01–M

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice

SUMMARY: The Veterans Administration 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). This document lists a revision. The entry contains the following information: (1) The department or staff office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(H) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the proposed form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (004A2), Veterans Administration, 810 Vermont Avenue, NW, Washington DC, 20420 (202) 389–2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Karen Sagett, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–6880.

DATE: Comments on form should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 27, 1982.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Revision

(1) Department of Medicine and Surgery.
(2) Funeral Arrangements.
(3) VA Form 10–2065.
(4) Once.
(5) Individual who is assuming responsibility for the burial of the VA beneficiary.
(6) Annually 60,000 responses.
(7) Annually 5,000 hours.
(8) Not applicable under 3504(H).

[FR Doc. 82–27070 Filed 9–30–82; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 191
Friday, October 1, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Copyright Royalty Tribunal	1
Federal Home Loan Bank Board	2
Federal Reserve System	3
Federal Maritime Commission	4
Nuclear Regulatory Commission	5, 6

1

COPYRIGHT ROYALTY TRIBUNAL

DATE AND TIME: Tuesday, October 5, 1982, 10 a.m.

PLACE: Postal Rate Commission, 2000 L Street, NW., room 500, Washington, DC.

STATUS: Open.

MATTER TO BE CONSIDERED:

1. 1980 Adjustment of Cable Copyright Royalties.

CONTACT PERSON FOR FURTHER INFORMATION: Thomas C. Brennan, Acting Chairman, Copyright Royalty Tribunal, 1111 20th St., NW., Washington, D.C. 20036 (202) 653-5175.

Thomas C. Brennan,
Acting Chairman.

[S-1401-82 Filed 9-28-82; 4:14 pm]
BILLING CODE 1410-01-M

2

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 10 a.m., Wednesday, October 6, 1982.

PLACE: Board room, Sixth floor, 1700 G Street, N.W., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Lockwood (202-377-6679).

MATTERS TO BE CONSIDERED:

Application for General Trust Powers—First Federal Savings and Loan Association of Dearborn, Dearborn, Michigan
Trust Department Application—First Federal Savings and Loan Association of Kalamazoo, Kalamazoo, Michigan
[No. 65, September 29, 1982]

[S-1402-82 Filed 9-29-82; 10:20 am]
BILLING CODE 6720-01-M

3

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 3 p.m., Tuesday, September 28, 1982. The business of the Board required that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposal by the American Bankers Association to change proposed amendments to Section 23A of the Federal Reserve Act to exempt from coverage the purchasing of loans on a nonrecourse basis from affiliated banks.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: September 29, 1982.

James McAfee,
Associate Secretary of the Board.

[S-1403-82 Filed 9-29-82; 3:38 pm]
BILLING CODE 6210-01-M

4

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9 a.m., October 6, 1982.

PLACE: Hearing Room One, 1100 L Street, N.W., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Agreement No. 9836-11: Modification of the Malaysia-Pacific Rate Agreement To Add Intermodal Rate Making Authority.
2. (1) Draft Final Rule—Docket No. 76-63, Filing of Agreements by Common Carriers and Other Persons Subject to the Shipping Act, 1916; and (2) Draft Commission Order—Internal Procedures Governing the Processing of Agreements.
3. Docket No. 81-50, Per Container Rates—Tariff Filing Regulations Applicable to Carriers and Conferences in the Foreign Commerce of the United States. Petitions for Reconsideration of Final Rule.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Assistant Secretary (202) 523-5725.

[S-1400-82 Filed 9-28-82; 4:09 pm]
BILLING CODE 6730-01-M

5

NUCLEAR REGULATORY COMMISSION:

DATE: Week of October 4, 1982.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED: *Wednesday, October 6:*

3:00 p.m.:
Status of Staff Certification on Licensee Compliance with Restart Requirements in TMI-1 (public meeting)

Thursday, October 7:

10:00 a.m.:
Briefing by Regulatory Reform Task Force (Legislative Proposals) (public meeting)
2:00 p.m.:
Discussion of Final Rule—Waste Management Technical Regulations (public meeting)
3:30 p.m.:
Affirmation/Discussion and Vote (public meeting)
a. Hearing Requests Concerning Extension of Construction Completion Dates for Washington Public Power Supply System Nuclear Project Nos. 1 and 2
b. Diablo Canyon Security—Purging of Classified Material in ALAB-653

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634-1498. Those planning to attend a meeting should reverify the status on the date of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

September 28, 1982.

Walter Magee,
Office of the Secretary.

[S-1404-82 Filed 9-29-82; 3:33 pm]
BILLING CODE 7590-01-M

6

NUCLEAR REGULATORY COMMISSION

DATE: Thursday, September 30, 1982 (Revised).

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE DISCUSSED: *Thursday, September 30:*

4:15 p.m.:
Affirmation/Discussion and Vote (public meeting) (items revised)
a. Order in Indian Point Proceeding
b. Delegation of Authority to Secretary (tentative)

ADDITIONAL INFORMATION: Discussion of TMI–1 Restart—Status of Staff Effort on Psychological Stress scheduled for September 28 has been *cancelled.*

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULED 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.

September 23, 1982.

Walter Magee,

Office of the Secretary.

[S–1405–82 Filed 9–29–82; 3:33 pm]

BILLING CODE 7590–01–M

federal register

Friday
October 1, 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 21136) 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:	
CA82-5120	Aug. 27, 1982.
District of Columbia, Maryland & Virginia:	
DC81-3040	June 5, 1981.
Idaho:	
ID81-5157	Oct. 9, 1981.
Illinois:	
IL81-2037	June 26, 1981.
Iowa:	
IA82-4030	June 18, 1982.
Louisiana:	
LA82-4020	May 7, 1982.
LA82-4022	May 7, 1982.
LA82-4023	May 7, 1982.
Nevada:	
NV82-5113	Aug. 6, 1982.
NV82-5114	Aug. 6, 1982.
NV82-5115	Aug. 6, 1982.
NV82-5116	Aug. 6, 1982.
New York:	
NY81-3030	May 1, 1981.
North Carolina:	
NC82-1027	Apr. 30, 1982.
Oregon:	
OR82-5100	Mar. 12, 1982.
Ohio:	
OH82-2035	May 7, 1982.
OH82-2045	Aug. 13, 1982.
Pennsylvania:	
PA81-3027	July 17, 1981.
PA81-3029	July 10, 1981.
PA81-3091	Dec. 28, 1981.
Rhode Island:	
RI81-3042	Aug. 21, 1981.
South Dakota:	
SD81-5150	Sept. 4, 1981.
Washington:	
WA82-5117	Aug. 13, 1982.
Texas:	
TX81-4008	Jan. 6, 1981.
TX81-4064	Aug. 7, 1981.
TX82-4002	Jan. 15, 1982.
TX82-4024	June 18, 1982.
TX82-4025	June 18, 1982.
TX82-4026	June 18, 1982.
TX82-4027	June 18, 1982.
TX82-4029	June 18, 1982.
TX82-4033	June 18, 1982.
TX82-4045	Sept. 24, 1982.
Virginia:	
VA82-3024	July 23, 1982.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses

following the numbers of the decisions being superseded.

Hawaii:	
HI82-5105 (HI82-5123)	Mar. 12, 1982.
Iowa:	
IA81-4096 (IA82-4048)	Nov. 27, 1981.
Kentucky:	
KY81-1281 (KY82-1054)	Aug. 28, 1981.
KY81-1282 (KY82-1055)	Aug. 28, 1981.
KY81-1283 (KY82-1053)	Sept. 4, 1981.
KY81-1290 (KY82-1056)	Sept. 11, 1981.
Mississippi:	
MS81-1287 (MS82-1052)	Sept. 4, 1981.
Missouri:	
MO81-4059 (MO82-4047)	July 24, 1981.
Ohio:	
OH81-2023 (OH82-2048)	May 8, 1981.
Texas:	
TX82-4028 (TX82-4046)	June 18, 1982.

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 is being phased in gradually.

Signed at Washington, D.C., this 24th day of September 1982.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

MODIFICATION PAGE 1

DECISION NO. CA82-5120 - Mod. #1
(47 FR 38022 - August 27, 1982)
Alameda, Amador, Calaveras, Contra Costa, Del Norte, El Dorado, Humboldt, Marin, Mariposa, Merced, Monterey, Napa, Nevada, Placer, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Sutter, Tuolumne, Yolo, and Yuba Counties, California

	Basic Hourly Rates	Fringe Benefits
Change:		
Bricklayers; Stohemasons:		
Area 2	$19.05	$4.95
Area 3	17.35	3.06
Brick Tenders:		
Area 1	15.48	3.70
Drywall Installers	20.12	6.255
Electricians:		
Area 11:		
Electricians	22.00	3%+5.75
Cable Splicers	24.75	3%+5.75
Ironworkers:		
Fence Erectors	16.41	8.03
Reinforcing; Ornamental; Structural	17.30	8.03
Plasterers:		
Area 1	17.33	4.43
Plumbers; Steamfitters:		
Area 8	15.47	8.65
Roofers:		
Area 8:		
Roofers	15.45	6.34
Enamelers and Pitch	17.45	6.34
Area 9:		
Roofers; Kettleman (1 kettle)	15.01	5.72
Sheet Metal Workers:		
Area 5	26.18	4.74
Area 6	25.06	5.92
Area 7	17.80	3.76
Sprinkler Fitters:		
Area 1	25.12	5.89

DECISION NO. DC81-3040 - MOD. #15
(46 FR 30290 - June 5, 1981)
DISTRICT OF COLUMBIA; MARYLAND-MONTGOMERY AND PRINCE GEORGES; D.C. TRAINING SCHOOL; VIRGINIA-INDEPENDENT CITY OF ALEXANDRIA, ARLINGTON AND FAIRFAX

CHANGE:		
PLUMBERS	15.81	2.99

DECISION NO. ID81-5157 - Mod #13
(46 FR 50223 - Oct. 9, 1981)
Statewide Idaho

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS: Area 2:		
Cable Splicers	$16.56	4%+2.0
PAINTERS: Area 2:		
Painters and Tapers	12.25	1.71
PLUMBERS: Area 2:	15.43	3.82

DECISION NO. IL81-2037 - MOD. #2
(46 FR 33181 - June 26, 1981)
Peoria & Tazewell Counties, Illinois

	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters:		
Commercial:		
Peoria Co. (Chillicothe & Vic.):		
Carpenters; Piledrivermen; & Soft Floor Layers	$15.03	2.68
Millwrights	15.28	2.68
Tazewell & Peoria (Rem. of Co.) Cos.:		
Carpenters; & Soft Floor Layers	16.38	2.07
Millwrights; & Piledrivermen	16.88	2.07
Residential:		
Peoria Co. (Chillicothe & Vic.)	13.68	2.68
Tazewell & Peoria (Rem. of Co.) Cos.	14.36	2.82

MODIFICATION PAGE 2

DECISION NO. IA82-4030 - MOD. #6
(47 FR 26537 - 6/18/82)
Black Hawk, Cerro Gordo, Clinton, Des Moines, Dubuque, Johnson, Linn & Polk Cos., Iowa

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Boilermakers	$16.12	2.825
Carpenters:		
Zone 3 - Millwrights	16.00	3.10
Cement masons - Zone 4	17.65	
Ironworkers - Zone 4	16.25	2.15
Laborers:		
Zone 4 - Group 1	13.50	1.70
Group 2	13.66	1.70
Group 3	13.76	1.70
Group 4	13.87	1.70
Group 5	13.97	1.70
Plasterers - Zone 4	17.28	
Roofers - Zone 3	15.60	2.66
Power equipment ops.:		
Zones 3 & 4 - Group 1	15.25	2.98
Group 2	13.85	2.98
Group 3	12.80	2.98
OMIT:		
Roofers:		
Zone 5:		
City of Dubuque & 30 mile radius from city limits	12.16	.50
Remainder of County	12.00	.50
ADD:		
Roofers - Zone 5	12.16	.50

DECISION NO. LA82-4020 - MOD. #8
(47 FR 19880 - 5/7/82)
Statewide Louisiana

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bricklayer & stonemason:		
Zone 3	$15.45	1.73
Carpenters:		
Zone 2 - Millwrights	16.71	.07
Marble, tile & terrazzo workers & finishers:		
Zone 1 - Marble, tile & terrazzo finishers	9.80	1.00
Zone 2 - Marble & terrazzo workers	15.45	1.73
Zone 6:		
Marble, tile & terrazzo workers	17.25	
Marble, tile & terrazzo finishers	9.80	1.00
Zone 7 - Tile finishers	9.80	1.00
OMIT Concordia Parish from Zone 7 PAINTERS		
ADD Concordia Parish to Zone 2 PAINTERS		

DECISION NO. LA82-4022 - MOD. #5
(47 FR 19877 - 5/7/82)
Calcasieu Par., Louisiana

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bricklayer & stonemason	15.45	1.73
Carpenters - Millwright	16.71	.07
Marble & terrazzo workers	15.45	1.73

DECISION NO. LA82-4023 - MOD. #4
(47 FR 19878 - 5/7/82)
Allen, Beauregard, Bossier, Caddo, Calcasieu, Cameron, Jefferson, Jefferson Davis, Orleans, Plaquemines, St. Bernard & St. Charles Pars., Louisiana

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bricklayer & stonemason:		
Zones 3, 4 & 5	15.45	1.73

DECISION NO. NV82-5113 - Mod. #1
(47 FR 34300 - August 6, 1982)
Clark County (does not include the Nevada Test Site), Nevada

	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters:		
Carpenters	$16.76	$4.05
Drywall Installers	16.93	4.05
Floor Layers; Patent Scaffold Erectors; Power Saw Operators	16.91	4.05
Lathers	16.93	4.05
Millwrights	16.76	5.05
Piledrivermen	16.96	4.05
Painters:		
Brush; Roller	18.30	1.86
Paperhangers; Spray; Steel; Swing Stage; Sandblasters; Tapers	18.65	1.86
Power Equipment Operators: (Except Piledriving and Steel Erection):		
Group 1	16.75	4.60
Group 2	17.03	4.60
Group 3	17.32	4.60
Group 4	17.46	4.60
Group 5	17.68	4.60
Group 6	17.79	4.60
Group 7	17.91	4.60
Group 8	18.08	4.60
Group 9	18.21	4.60

DECISION NO. NV82-5114 - Mod. #1 - (47 FR 34312- August 6, 1982) - Nevada Test Site including Tonopah Test Range in Clark, Lincoln and Nye Counties, Nevada

Change:		
Carpenters:		
Carpenters; Saw Filers; Power actuated tools; Pneumatic Nailer	17.66	3.05
Floor Layers; Shinglers	17.685	3.05
Millwrights	18.66	3.05
Piledrivers	17.86	3.05
Power Saw Operator	17.81	3.05

DECISION NO. NV82-5114 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Painters:		
Brush; Roller	$17.06	$3.56
Paperhangers; Spray; Steel; Sandblasters; Swing Stage; Tapers	17.41	3.56
Buffing steel; Sandblasters, steel	17.67	3.56
Truck Drivers:		
Group 1	15.46	2.58
Group 2	15.57	2.58
Group 3	15.62	2.58
Group 4	15.78	2.58
Group 5	15.96	2.58

DECISION NO. NV82-5115 - Mod. #1 - (47 FR 34314- August 6, 1982) - Washoe County, Nevada

Change:		
Brick Hod Carriers	13.56	2.60
Bricklayers; Stonemasons	16.65	1.96
Elevator Constructors:		
Mechanics	27.295	2.69+a
Helpers	19.11	2.69+a
Probationary Helpers	13.65	
Plasterers	15.47	3.21
Plumbers; Steamfitters	17.04	5.98

DECISION NO. NV82-5116 - Mod. #1 - (47 FR 34303- August 6, 1982) - Statewide (does not include the Nevada Test Site and Tonopah Test Range, and highway construction in Douglas County), Nevada

Change:		
Brick Hod Carriers:		
Area 1	13.56	2.60
Bricklayers; Stonemasons:		
Area 2	16.65	1.96

DECISION NO. NV82-5116 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Carpenters:		
Area 1:		
Carpenters	$16.76	$4.05
Drywall Installers	16.93	4.05
Floor Layers; Patent Scaffold Erectors; Power Saw Operators	16.91	4.05
Lathers	16.93	4.05
Millwrights	16.76	5.05
Piledrivermen	16.96	4.05
Elevator Constructors:		
Area 2:		
Mechanics	27.295	2.69+a
Helpers	19.11	2.69+a
Probationary Helpers	13.65	
Painters:		
Area 1:		
Brush; Roller	18.30	1.86
Paperhangers; Spray; Steel; Swing Stage; Sandblasters; Sign; Structural Steel; Taper	18.65	1.86
Buffing Steel; Sandblaster, structrual steel	19.00	1.86
Steeplejack	20.05	1.86
Plasterers:		
Area 2	15.47	3.21
Plumbers; Steamfitters:		
Area 2	17.04	5.98
Plumbers (Utility):		
Area 1	17.04	5.98

DECISION NO. NV82-5116 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Power Equipment Operators: Clark, Esmeralda, Lincoln, and Nye Counties:		
Group 1	$16.75	$4.60
Group 2	17.03	4.60
Group 3	17.32	4.60
Group 4	17.46	4.60
Group 5	17.68	4.60
Group 6	17.79	4.60
Group 7	17.91	4.60
Group 8	18.08	4.60
Group 9	18.21	4.60

DECISION NO. NY81-3030 - MOD. #7
(46 FR 24850 - May 1, 1981)
CATTARAUGUS, CHAUTAUQUA & ERIE COUNTIES, NEW YORK

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
FRINGE BENEFITS ONLY		
POWER EQUIPMENT OPERATORS; BUILDING CONSTRUCTION		
GROUP I		4.66+a
GROUP II		4.66+a
GROUP III		4.66+a
GROUP IV		4.66+a
GROUP V		4.66+a
GROUP VI		4.66+a
GROUP VII		4.66+a
GROUP VIII		4.26+a
GROUP IX		4.26+a
GROUP X		4.66+a
GROUP XI		4.66+a
GROUP XII		4.66+a
GROUP XIII		4.66+a
GROUP XIV		4.26+a
GROUP XV		4.66+a
GROUP XVI		4.66+a
GROUP XVII		4.66+a
HEAVY AND HIGHWAY CONSTRUCTION		
ZONE I & ZONE II		
CLASS VIII		4.26+a
CLASS IX		4.26+a

DECISION NO. NC82-1027 - MOD. # 1 (April 30, 1982 in 47 FR 18752)	Basic Hourly Rates	Fringe Benefits
Highway Construction Statewide North Carolina		
ADD: POWER EQUIPMENT OPERATORS: Tractor Operator (Utility)	$ 4.34	

DECISION NO. OR82-5100 - Mod. #9 (47 FR 10954 - March 12, 1982) Statewide Oregon		
CHANGE:		
ASBESTOS WORKERS	$21.48	$2.58
GLAZIERS	16.34	2.09
PLASTERERS: Area 2:	16.23	3.31
ROOFERS: Area 2:		
Roofers	14.75	1.72
Spray and/or application of irritating materials in a confined area	15.75	1.72

DECISION NO. OH82-2035 - MOD. #4 (47 FR 19893 - May 7, 1982) Statewide, Ohio	Basic Hourly Rates	Fringe Benefits
Change: Bricklayers & Stone Masons: Trumbull Co. (Except City of Youngstown)	$15.69	2.75

DECISION NO. OH82-2045 - MOD. #1 (47 FR 35431 - August 13, 1982) Mahoning & Trumbull Counties, Ohio		
Change: Bricklayers; Caulkers; Cleaners; Pointers; & Stonemasons: Trumbull (Rem. of Co.) Co.	15.69	2.75

DECISION NO. PA81-3027 MOD. NO. 9 (46 FR 37212 - July 17, 1981) Franklin County, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
POWER EQUIPMENT OPERATORS:		
Bulldozers	$14.925	3.07
Backhoe	15.075	3.07
Cranes	15.075	3.07
Loaders	14.925	3.07
Fork Lift	14.925	3.07

DECISION NO. PA81-3029 MOD. NO. 7 (46 FR 35891 - July 10, 1981) Blair County, PA.		
CHANGE:		
POWER EQUIPMENT OPERATORS:		
Backhoe	15.075	3.07
Cranes	15.325	3.07

DECISION NO. PA 81-3091 MOD. NO. 3 (46 FR 62761 - December 28, 1981) Greene, Somerset & Potter Counties, Pennsylvania		
CHANGE:		
POWER EQUIPMENT OPERATORS: Somerset & Potter Counties		
Class 1	15.075	3.07
Class 1-A	15.325	3.07
Class 1-B	15.575	3.07
Class 1-C	15.825	3.07
Class 2	14.925	3.07
Class 3	12.85	3.07
Class 3-A	13.35	3.07
Class 4	12.20	3.07
Class 5	11.15	3.07
Class 6	11.45	3.07
Class 6-A	11.55	3.07
Class 6-B	11.70	3.07
Class 6-C	12.45	3.07
ADD: POWER EQUIPMENT OPERATORS: Class 1-D Gradall (remote control)	17.075	3.07

DECISION NO. RI81-3042 - MOD. #8 (46 FR 42615 - August 21, 1981) STATEWIDE RHODE ISLAND	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BUILDING CONSTRUCTION		
ASBESTOS WORKERS	14.88	3.13
BOILERMAKERS	18.25	10⅞+ 1.465
BRICKLAYERS; STONEMASONS: Cities, Towns or Townships of Charlestown, Hopkinton, Peace Dale, Richmond, South Kingstown, Wakefield & Westerly	14.42	3.35
CARPENTERS; MILLWRIGHTS; PILEDRIVERMEN & SOFT FLOOR LAYERS:		
Cities of Providence, Pawtucket, East Providence, Central Falls, Cranston, Warwick, Woonsocket; Towns of Barrington, Burrillville, Warren, Bristol, West Warwick, East Greenwich, West Greenwich, North Providence, Johnston, Cumberland, Lincoln, Smithfield, North Smithfield, Foster, Scituate, Gloucester, Conventry, North Kingstown, South Kingstown, Exeter, Narragansett, Westerly, & Charlestown:		
Building	14.00	2.95
Millwrights	14.25	2.95
City of Newport; Towns of Middletown, Portsmouth, Jamestown, Tiverton, Little Compton, New Shoreham (Block Island), & Prudence Island:		
Carpenters; soft Floor Layers	14.00	2.95
Millwrights (Cities of Tiverton & Little Compton)	14.25	2.95

	Basic Hourly Rates	Fringe Benefits
CEMENT MASONS: PLASTERERS:		
Remainder of State: Plasterers	11.25	1.35
ELECTRICIANS:		
Tiverton & Little Compton	14.20	16⅛+ 1.00
Westerly Township	14.20	16⅓+ 1.00
Remainder of State	15.00	26⅛+ 1.12
ELEVATOR CONSTRUCTORS	15.445	2.69+a
ELEVATOR CONSTRUCTORS' HELPERS	10.81	2.69+a
IRONWORKERS: Ornamental; Reinforcing & Structural	14.33	4.45
LABORERS: Labors; Carpenter Tenders; Cement Finisher Tenders; Mason Tenders; Scaffold Erectors & Wrecking Laborers	11.70	2.30
Asphalt Rakers; Adzemen; Pipe-Trench Bracers; Demolition Burners; Chain Saw Ops.; Fence & Guard Rail Erectors; Setters of Metal Forms for Roadways; Pipelayers; Riprap & Dry Stonewall Builders; Highway Stone Spreaders Pneumatic Tool Ops.; Wagon Drill Ops.; Tree Trimmers; Barco Type Jumping Tampers; Mechanical Grinder Ops.; Plasterers' Tenders; Scaffold Builders; & Mortar Mixers	12.00	2.30
Pre-cast Floor and Roof Plank Erectors	12.20	2.30
Pumping Machine Operator	12.35	2.30
Air Track Ops.; Block Pavers; Rammers; & Curb Setters	12.45	2.30
Blasters; Powermen	12.70	2.30

DECISION NO. RI81-3042 - CONT'D	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Remainder of State:		
Brush; Roller; Tapers	13.55	2.05
Structural Steel; Steamcleaning	13.80	2.05
Air Powder Brush	14.05	2.05
Spray & Sand or Water Blasting	14.55	2.05
PAINTERS, SIGN:		
Bristol, Kent, & Providence Cos.	9.65	1.08+a+b
ROOFERS:		
Composition, Waterproofers	14.80	2.10
Slate, Tile, Precast Concrete	15.00	2.10
STEAMFITTERS	15.83	3.55
HEAVY AND HIGHWAY CONSTRUCTION		
BRICKLAYERS: STONEMASONS:		
Catch Basins; Manhole Builders	12.95	3.20
CARPENTERS; PILEDRIVERMEN:		
Bristol, Kent, Providence & Washington (excluding Block Island) Cos.	14.05	2.95
CEMENT MASONS & FINISHERS	10.10	.85
ELECTRICIANS:		
Westerly Township	14.20	16⅛+1.00
Remainder of State	15.00	26½+1.12
IRONWORKERS:		
Ornamental; Reinforcing; & Structural	14.33	4.45
LABORERS:		
Laborers; Carpenter & Cement Finisher Tenders & Wrecking Laborers	11.70	2.30
Adzeman; Asphalt Rakers; Barco-type Jumping Tampers; Chain Saw Ops.; Concrete & Power Buggy Ops.; Concrete Saw Ops.; Demolition Burners; Fence & Guard Rail Erectors; Highway Stone Spreaders; Mason Tenders; Mechanical Grinder Ops.; Mortar Mixers; Pipelayers; Pipe-Trench Bracers; Pneumatic Tool Ops.; Riprap & Dry Stonewall Builders; Scaffold Erectors; Setters of Metal Forms for Roadways; Wagon Drill Ops.; Wood Chipper Ops.	11.95	2.30
Air track drill ops.; Brick Pavers; Block Pavers; Rammers; Curb Setters	12.45	2.30
Blasters & Powdermen	12.70	2.30
Open Air Caisson, Underpinning and Boring Crew:		
Bottom man	13.80	2.30
Laborer, Top Men	13.05	2.30
Driller	13.92	2.30
PAINTERS:		
Remainder of State:		
Brush; Roller: Tapers	13.55	2.05
Structural Steel; Steamcleaning	13.80	2.05
Air Power Brush	14.05	2.05
Spray & Sand or Water Blasting	14.55	2.05
PAINTERS, SIGN:		
Bristol, Kent & Providence Cos.	9.65	1.08+a+b
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.		

DECISION NO. RI81-3042 - CONT'D

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; & F-Christmas Day

FOOTNOTES:

a. 7 paid holidays: A through F, plus Day after Thanksgiving
b. Employer contributes 8% basic hourly rate for 5 years or more of service; 6% basic hourly rate for 6 months to 5 years of service as vacation pay credit
c. 9 paid holidays: A through F, plus V. J. Day; Columbus Day; & Veterans Day
d. One year's seniority - one week's paid vacation; 2 years' seniority - 2 weeks' paid vacation
e. 7 paid holidays: A through F, plus Columbus Day provided employee has been employed 5 working days prior to the holiday and provided the employee works the scheduled work days immediately preceding and following the holiday.

BUILDING CONSTRUCTION POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits
Digging Machine; Ross Carriers; Cranes; Pile Drivers; Lighters; Locomotives; Derricks; Hoists; Pavers; and Front End Loaders 3 yds. and over	14.765	2.40
Economobile Type Equipment	14.54	2.40
Fork Lift	14.34	2.40
Firemen and Oilers	10.54	2.40
Bulldozers; Graders; Spreaders; Tractors; Scrapers and Rollers	13.34	2.40
Front-end Loaders less than 3 yards	13.84	2.40
Pipping Type Backhoe	13.69	2.40
Well-point Installation	13.415	2.40
Gas or electric Driven Pumps; Heaters; Concrete Mixers; Concrete Pumps; Stone Crushers; Air Compressors; Welding Machines and Generators for Light Plants	11.09	2.40
BRIDGES, CAISSONS, DOCKS, MARINES PIERS, SUB-BASEMENT SUBTERRANEAN, TUNNELS, AND HEAVY CONSTRUCTION		
Digging Machine; Cranes; Pile Drivers; Lighters; Locomotives; Derricks; Hoists; Pavers; & Front End Loaders, 3 Yds. & Over	15.49	2.40
Firemen and Oilers	11.115	2.40
Bulldozers; Graders; Spreaders; Scapers; Rollers	14.04	2.40
Front-end Loaders, less than 3 yds.	14.54	2.40
Well-point Installation Crews	14.215	2.40
POWER EQUIPMENT OPERATORS Gas or Electric Driven Pumps; Heaters; Concrete Mixers; Concrete Pumps; Stone Crushers; Air Compressors; Welding Machines; and Generators for Light Plants	11.54	2.40
Boat and Tug Operators	15.115	2.40
WATER AND SEWERLINE PROJECTS, HIGHWAY AND BRIDGE INCIDENTAL TO HIGHWAY CONSTRUCTION PROJECTS		

DECISION NO. RI81-3042 - CONT'D	Basic Hourly Rates	Fringe Benefits
CLASS 1	14.595	2.40
CLASS 2	13.745	2.40
CLASS 3	13.125	2.40
CLASS 4	9.875	2.40
CLASS 5	13.075	2.40
CLASS 6	13.575	2.40
CLASS 7	13.195	2.40
CLASS 8	13.175	2.40
CLASS 9	10.695	2.40
CLASS 10	12.175	2.40
CLASS 11	11.975	2.40
CLASS 12	12.645	2.40
CLASS 13	12.575	2.40
CLASS 14	13.025	2.40

DECISION NO. SD81-5150 Mod. #4 (46 FR 44656 - September 4, 1981) Minnehaha County, South Dakota	Basic Hourly Rates	Fringe Benefits
Change:		
Asbestos Workers	$15.70	$2.15
Electricians:		
Electricians	12.30	2.05+ 10%
Cable Splicers	13.56	2.05+ 10%

DECISION NO. WA82-5117 - Mod #3 (47 FR 35433 - Aug. 13, 1982) Statewide Washington	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS: Area 2	$21.48	$2.58
ELECTRICIANS: Area 6:		
Electricians	20.15	8% + 3.2%
Cable Splicers	22.17	8% + 3.2%
SPRINKLER FITTERS: Area 1	19.76	5.86
TERRAZZO WORKERS: TILE SETTERS: Area 1	15.40	3.15
TILE, MARBLE, AND TERRAZZO FINISHERS: Area 3	12.70	3.15

DECISION NO. TX81-4008 - MOD. #7 (46 FR 1550 - 1/6/81) Smith County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Electricians:		
Electricians	$12.99	.80+ 7-3/8%
Cable splicers	13.51	"

DECISION NO. TX81-4064 - MOD. #7 (46 FR 40487 - 8/7/81) El Paso County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Ironworkers	12.05	2.95

DECISION NO. TX82-4002 - MOD. #6 (47 FR 2472 - 1/15/82) Wichita County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Plumbers & pipefitters:		
Zone 1	14.50	1.80
Zone 2	15.00	1.80
Power equipment ops.:		
Group 1	12.325	1.425
Group 2	13.225	1.425
Group 3	13.625	1.425

DECISION NO. TX82-4024 - MOD. #5 (47 FR 26548 - 6/18/82) Travis County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bricklayers & stonemason	13.84	2.21
Carpenters - Carpenter	14.51	1.67
Millwright	14.76	1.67
Cement masons	13.94	1.30
Ironworkers	13.60	2.97
Laborers - Group 1	9.18	.75
Group 2	9.33	.75
Group 3	9.505	.75
Group 4	9.58	.75
Power Equipment ops.:		
Group 1	14.75	.95
Group 2	13.50	.95
Group 3	12.15	.95
Group 4	12.05	.95

DECISION NO. TX82-4025 - MOD. #2 (47 FR 26550 - 6/18/82) Brazos County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos workers	$16.70	2.71
Bricklayer & stonemason	16.45	2.25
Cement masons	15.80	2.13
Electricians	15.81	1.08+ 12%
Line construction:		
Linemen & cable splicers	16.21	.80+3½%
Groundmen	9.40	.80+3½%
Painters - Group 1	15.285	2.375
Group 2	15.66	2.375
Group 3	15.41	2.375
Group 4	15.91	2.375
Pipefitters	16.80	2.28
Plumbers	18.81	1.75
Power equipment ops.:		
Group 1	16.39	2.39
Group 2	14.53	2.39
Group 3	13.90	2.39
Group 4	13.69	2.39
Soft floor layers	14.90	2.06

DECISION NO. TX82-4026 - MOD. #4 (47 FR 26547 - 6/18/82) Lubbock County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Power equipment ops.:		
Group 1	12.325	1.425
Group 2	13.225	1.425
Group 3	13.625	1.425

DECISION NO. TX82-4027 - MOD. #4 (47 FR 26551 - 6/18/82) Bexar County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters:		
Carpenters	12.90	2.33
Millwrights	13.20	2.33
Cement masons	13.22	1.15

DECISION NO. TX82-4029 - MOD. #6 (47 FR 26552 - 6/18/82) Bell, Bosque, Coryell, Falls, Hill & McLennan Counties, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Building Construction:		
Cement masons	$13.94	1.30
Power equipment ops.:		
Group 1	14.75	.95
Group 2	13.50	.95
Group 3	12.15	.95
Group 4	12.05	.95

DECISION NO. TX82-4033 - MOD. #5 (47 FR 26549 - 6/18/82) Galveston & Harris Cos., Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos workers	16.70	2.71
Bricklayers & stonemasons	16.45	2.25
Carpenters:		
Carpenters	16.25	2.27
Piledrivermen	16.25	2.27
Millwrights	16.635	2.27
Cement masons:		
Galveston Co.	15.85	2.05
Harris Co.	15.80	2.13
Lathers (Harris Co. only)	16.25	2.27
Painters:		
Galveston Co.-Group 1	14.945	3.05
Group 2	15.245	3.05
Group 3	14.19	3.05
Pipefitters	16.80	2.28
Plumbers	18.81	1.75
Power equipment ops.:		
Group 1	16.39	2.39
Group 2	14.53	2.39
Group 3	13.90	2.39
Group 4	13.69	2.39

DECISION NO. TX82-4045 - MOD. #1 (47 FR - 9/24/82) Taylor County, Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Power equipment ops.:		
Cranes	$13.625	1.425
Bulldozers	13.625	1.425
Graders	13.225	1.425
Oilers	12.325	1.425

Decision No. VA82-3024-Mod. #1 (47 FR 32034-July 23, 1982) York County, & the Cities of Hampton and Newport News (including Langley AFB, Ft. Eustis & Ft. Monroe), Va.	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS:		
Zone 1-within a 16 air mile radius of 7812 Warwick Blvd., Newport News:		
Wiremen	$13.58	.80+10%
Cable Splicer	13.77	.80+10%
Zone 2-beyond a 16 air mile radius of 7812 Warwick Blvd., Newport News:		
Wiremen	14.58	.80+10%
Cable Splicer	14.77	.80+10%

SUPERSEDEAS DECISION

STATE: Hawaii
COUNTIES: Statewide
DECISION NUMBER: HI82-5123
DATE: Date of Publication
Supersedes Decision No. HI82-5105 dated March 12, 1982, in 47 FR 10948
DESCRIPTION OF WORK: Building Projects; Residential Projects (consisting of single family homes and apartments up to and including 4 stories); Heavy and Highway Projects and Dredging

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$14.07	$5.36
BOILERMAKERS	15.10	3.56
BRICKLAYERS; Stonemasons	14.23	5.55
CARPENTERS:		
Carpenters; Hardwood Floorlayers; Patent Scaffold Erectors; Pneumatic Nailer; Shinglers	15.40	5.30
Drywall	15.65	5.24
Lathers	15.40	5.20
Millwrights	15.65	5.30
Power Saw Operator (2 HP and over)	15.55	5.30
CEMENT MASONS:		
Cement Masons	14.18	5.65
Troweling Machine Operators	14.33	5.65
DRAPERY INSTALLERS	6.45	b+.90
ELECTRICIANS:		
Electricians; Linemen	14.45	4.27+ 26.6%
Technicians	14.88	4.27+ 26.6%
Cable Splicers	15.90	4.27+ 26.6%
ELEVATOR CONSTRUCTORS:		
Mechanics	16.685	a+2.465
Helpers	11.68	a+2.465
Probationary Helper	8.34	
FENCE ERECTORS:		
Chain Link	5.39	.65
GLAZIERS	13.01	4.43
IRONWORKERS:		
Bridge; Ornamental; Reinforcing; Structrual	14.50	5.97
LINE CONSTRUCTION:		
Electricians; Linemen	14.45	4.27+ 26.6%
Technicians	14.88	4.27+ 26.6%

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION: (Cont'd)		
Heavy Equipment Operator	$13.01	$4.27+ 26.6%
Groundmen	10.84	4.27+ 26.6%
Cable Splicers	15.90	4.27+ 26.6%
MARBLE SETTERS	14.23	5.45
PAINTERS:		
Brush	15.05	4.94
Tapers	15.30	4.94
Spray; Sandblaster	15.55	4.94
PLASTERERS	14.72	5.56
PLUMBERS; Steamfitters	15.00	6.12
ROOFERS	13.95	4.48
SHEET METAL WORKERS	13.50	6.63
SOFT FLOOR LAYERS	13.90	4.20
SPRINKLER FITTERS	17.37	2.83
TERRAZZO WORKERS and TILE SETTERS:		
Terrazzo Base Grinder	12.81	5.45
Terrazzo Floor Grinder and Finisher	11.38	5.45
Terrazzo Workers and Tile Setters	14.23	5.45
HELICOPTER WORK:		
Pilot of Helicopter	17.32	5.25
Copilot of Helicopter	17.15	5.25
Airborne Hoist Operator for Helicopter	17.01	5.25
DIVER (Aqua Lung)	18.46	5.25
ASPHALT PAVING GROUP:		
Asphalt Raker	14.10	c+4.15
Asphalt Spreader Operator	14.98	c+4.15
Roller Operator:		
over 5 tons	15.06	c+4.15
5 tons and under	13.83	c+4.15
Screed Man	14.41	c+4.15
Hand Roller	13.60	c+4.15

	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Group 1	$11.41	$4.08
Group 1-A	11.46	4.08
Group 1-B	11.81	4.08
Group 1-C	12.01	4.08
Group 1-D	11.86	4.08
Group 1-E	12.11	4.08
Group 1-F	12.16	4.08
Group 1-G	12.36	4.08
Group 2	11.76	4.08
Group 3	11.96	4.08
LANDSCAPE and IRRIGATION LABORERS:		
Group 1	8.52	2.47
Group 2	7.86	2.47
Group 3	6.03	2.47
POWER EQUIPMENT OPERATORS: (Except Piledriving and Steel Erection):		
Group 1	13.55	5.25
Group 2	13.66	5.25
Group 3	13.83	5.25
Group 4	14.10	5.25
Group 5	14.41	5.25
Group 6	15.06	5.25
Group 7	15.38	5.25
Group 8	15.49	5.25
Group 9	15.60	5.25
Group 9-A	15.83	5.25
Group 10	15.89	5.25
Group 10-A	16.04	5.25
Group 11	16.19	5.25
Group 12	16.55	5.25

	Basic Hourly Rates	Fringe Benefits
DREDGING:		
Hydraulic Suction Dredges; Clamshell Dredges; Boat Operators; Derrick:		
Group 1	$16.55	$5.25
Group 2	16.04	5.25
Group 3	15.49	5.25
Group 4	13.83	5.25
Group 5	13.83	5.25
Group 6	13.83	5.25
Group 7	16.30	5.25
Group 8	15.38	5.25
Group 9	16.00	5.25
Group 10	13.83	5.25
TRUCK DRIVERS:		
Group 1	13.43	5.25
Group 2	13.70	5.25
Group 3	14.01	5.25
Group 4	14.66	5.25
Group 5	14.98	5.25
Group 6	15.09	5.25
RIGGERS; WELDERS: Receive rate prescribed for craft performing operation to which rigging or welding is incidental		

FOOTNOTES:

a. Employer contributes 8% of basic hourly rate for 5 years' service and 6% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Six Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day

b. Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day; plus Kamehaha Day. In order to be eligible for a Paid Holiday, employees must work the last working day before the Holiday and the first working day following the Holiday. If the employee did not work either of these two days due to illness or layoff, he shall be entitled to Holiday Pay. In case of illness, the Company may require proof of illness.

c. ASPHALT PAVING GROUP Only: Employee who has completed two to five years' service shall receive a vacation of one week with pay; each additional year an additional one day vacation with pay; ten or more years, a vacation for two weeks each year; for each year of completed service thereafter to and including fifteen or more years of service, a vacation of three weeks each year with pay.

LABORERS

Group 1: All Clean-up work of debris, grounds, buildings; Bridge Laborers; Construction Laborers; Dumpman; General Laborers; Limbers, Brush Loaders and Pilers

Group 1-A: Plaster Laborers

Group 1-B: Plaster Hod Carrier

Group 1-C: Plaster Mortar Mixer

Group 1-D: Mason Tender

Group 1-E: High Scaler

Group 1-F: Gunnite Operator

Group 1-G: Powderman

Group 2: Asphalt Shovelers; Cement Dumpers; Choke-setter and Rigger (clearing work); Concrete Chipping; Driller's Tender, Chuck Tender, Outside Nipper; Guinea Chaser (Stakeman); High Pressure Nozzleman-hydraulic Monitor (over 100# pressure) excluding levee work; Loading and unloading, carrying and handling of all rods and materials for use in reinforcing concrete construction; Sloper; All pneumatic, gas and electric tools not listed in Group 1

LABORERS (Cont'd)

Group 3: Asphalt Ironers, Rakers and Hand Rollers; Barko and similar type Tampers; Buggymobile; Chainsaw, Faller, Logloader and Bucker; Concrete and Magesnite Mixer under 1/2 yard; Concrete Grinder; Concrete Pan Work; Concrete Saw (walking or hand type); Cribbers; Cut Granite Curb Setters; Form Raisers; Header Board; Mortar Mixers (block-brick-masonry); Jackhammer Operator Jackson and similar type Compactors; Lagging, Sheeting, Whaling, Bracing, Trench-jacking, Hand-guided Lagging Hammer; Magnesite and Mastic Workers (wet or dry); Mechanical Drillers not covered elsewhere; Pavement Breakers; Pipelayers, Caulkers, Bander; Pipewrappers, Kettlemen, Potmen and men applying asphalt, Lay-Kold, Creosote and similar type materials; Post Hole Diggers (hand held-gas, air and electric); Riprap, Stonepaver and Rockslinger, including placing of sacked concrete (wet or dry); Rotary Scarifier; Roto-tiller; Sandblasters; Tank Cleaners; Tree Climbers; Vibra-screed (Bull Float in connection with Laborers' work); Vibrator; Burning, welding, signaling and rigging in connection with Laborers' work; Concrete Pump Machine; Joy Drill Model TWM-2A, Gardner Denver DH-143 and similar type drills; Track Drillers, Diamond, Core and Wagon Drillers; Davis Trencher T-66 or similar types; Concrete Laborers (wet or dry), including Bucket Tender for concrete

LANDSCAPE and IRRIGATION LABORERS

Group 1: Layout and/or installation of all valves, valve boxes, vacuum breakers, low voltage electrical lines, hydraulic or electrical controllers, drinking fountains and other portable water systems, and metallic pipe (copper, brass, galvanized, or similar), and tie-in to main lines including soldering (torch, soldering iron, etc.); Making of pressure test; Operation of hand-held gas, air, or self-powered construction tools and equipment such as Jackhammers, Busters, Mud Guns, Jumping Jacks, Post Hole Diggers, Rototillers, Scarifiers, Jackson and similar type Compactors, Barko and similar type Tampers, Ramsets, etc.; Tree Climbers and Chain Saw Tree Trimmers; Shooting of grade elevations; Checking of all trees, shrubs, and other plantings for proper size, caliber, and condition; Concrete work (wet or dry), including Concrete Bucket Tending, Concrete Shipping, Concrete Grinding and operation of Concrete Vibrator, Concrete Pump Machine, Concrete Saw Cutter (hand held or walking type), and Concrete Mixer, includes setting of rock, stone, or riprap; Choke Setting, Signaling, and Rigging for equipment Operators on job site; Operation of Forklifts, Flat Bed Trucks up to and including 2½ tons, Drillers, Hydro-mulching Machines (Sprayman and Driver), Trenchers (Riding type, Davis T-66 and similar); Operation of Cranes (Bantom, Grove, and similar), Hoptos, Backhoes, Light Loaders, Rollers, and Dozers, (Case, John Deere, and similar), Trucks requiring Hawaii Public Utilities Commission type 7 License, and other self-propelled, sit-down operated machines not listed in Group 2

LANDSCAPE and IRRIGATION LABORERS (Cont'd)

Group 2: Grubbing, excavation (pick and shovel), and hand rolling or tamping; Installation of heads, Risers, and PVC or other plastic pipe; Sprigging, handseeding, and planting of trees, shrubs, ground covers, and other planting (including use of electrically-powered mud guns) and the performance of all other work relating to said planting that is not specifically listed in Group 1 above

Group 3: Landscape and Irrigation Maintenance work performed during the construction phase of work (Preparation/Installation/Planting), also includes the re-planting of trees, shrubs, ground covers, and other plantings that did not "take" or which are damaged (if re-planting requires two or more persons to perform, Group 2 wages shall be paid)

POWER EQUIPMENT OPERATORS
(Except Piledriving and Steel Erection)

Group 1: Partsman (heavy duty repair shop parts room when needed); Repairman Tender

Group 2: Compressor, electrically, diesel or gas powered etc.; Hydraulic Monitor; Material Loader and/or Conveyor Operator (handling building material); Mixer Box Operator (concrete plant); Pump Operator; Spreader Boxman (with screeds); Tar Pot Fireman (power agitated)

Group 3: Oiler; Fireman; Switchman; Brakeman; Deckhand; Tar Pot Fireman; Box Operator (bunker); Locomotive (up to and including 30 tons); Roller (5 tons and under); Screedman (except asphalt concrete paving); Self-propelled, automatically applied concrete Curing Machine (on streets, highways, airports and canals); Tugger Hoist, single drum

Group 4: Boom Truck or Dual Purpose "A" Frame Truck; Dinky Operator; Fork Lift or Lumber Stacker (construction job site); Material Hoist (1 drum); Straddle Truck; Ross Carrier and similar (job site)

Group 5: Agri-Cat (mini-cat); Concrete Mixer (up to 2 yards); Concrete Pumps or Pumpcrete Guns; Generators, gasoline or diesel driven (100 K.W.); Lubrication and Service Engineer (mobile and grease rack); Towermobile; Welding Machine (gasoline diesel)

POWER EQUIPMENT OPERATORS (Cont'd)
(Except Piledriving and Steel Erection) (Cont'd)

Group 6: Combination Loader and Backhoe including Hopto (up to and including 1/2 yard); Concrete Batch Plants (wet or dry); Concrete Saws and/or Grinder (self-propelled unit on streets, highways, airports, and canals); Drilling Machinery not to apply to Waterliners, Wagon Drills or Jackhammers); Highline Cableway Signalman; Loader (up to and including 2½ cu. yds.); Lull High Lift; Maginnis Internal Full Slab Vibrator (on airports, highways, canals, and warehouses); Mechanical Finishers (concrete) (large Clary, Johnson Bidwell Bridge Deck or similar types); Mobile Crane Driver; Pavement Breakers; Portable Crushers; Power Jumbo Operator (setting slip forms, etc. in tunnels); Rollers (over 5 tons); Self-propelled Compactor (single engine); Slip Form Pumps (power driven hydraulic, electric, air, gas, etc. lifting device for concrete forms); Small Rubber-tired Tractors; Trenchers (up to and including 6 feet)

Group 7: Crusher Plant; Dual Drum Mixer; Gradesetter (mechanical or otherwise); Hoist (2 drums); Loader (over 2½ cu. yds. up to and including 5 cu. yds.); Mechanical Finishers or Spreader Machine, Asphalt (Barber Greene and similar); Mine or Shaft Hoist; Mixermobile (over 5 tons); Pavement Breaker, truck mounted, with compressor combination; Pavement Breaker with compressor combination (operates 1 or 2); Pipe Cleaning Machine (tractor propelled and supported); Pipe Wrapping Machine (tractor propelled and supported); Pipe Bending Machine (pipe lines only); Self-propelled Elevating Grade Plane; Slusher Operator; Small Tractor (with boom D-6 or similar); Trencher (over 6 ft.); Water Tanker (pulled by Euclids, T-Pulls, DW-10, 20, 21 or similar)

Group 8: Boring Machine; Cast-in-place Pipe Laying Machine; Concrete Batch Plant (multiple units); Combination Loader and Hydraulic Backhoe (over 1/2 yd. up to and including 3/4 yd.); Conveyor (tunnel); Engineer, Locomotive (over 30 tons up to and including 100 tons); Finishing Machine Operator (airports and highways); Hydraulic Backhoe (over 1/2 yd. to and including 3/4 yard); Kolman Loader; Mechanic Trench Shield; Mucking Machine; No-joint Pipe Laying Machine; Portable Crushing and Screening Plants; Saurman type Dragline (under 5 yards); Self-propelled Boom type Lifting Device; Stationary Pipe Wrapping, Cleaning and Bending Machine; Surface Heater and Planer; Tunnel Badger; Tri-batch Paver

Group 9: Boom type Backfilling Machine; Combination Mixer and Compressor (gunite); Do-more Loader and Adams Elegrader; Lull Hi-lift (40' or over); Rubber-tired Earthmoving Equipment (up to 12 cu. yds.); Wheel Trencher (over 6")

Group 9-A: Dozers; Heavy Duty Repairman or Welder; Push Cats; Scrapers; Self-propelled Compactor with Dozer; Sheep Foot; Tractors; Tractors (with boom, larger than D-6 and similar)

POWER EQUIPMENT OPERATORS (Cont'd)
(Except Piledriving and Steel Erection) (Cont'd)

Group 10: Chicago Boom; Hoist (3 drums); Koehring Skooper; Loader (over 5 yards up to and including 12 yards); Locomotive (over 100 tons) (single or multiple units); Power Blade Operator; Rubber-tired Earthmoving Equipment (up to and including 35 cu. yds., Euclid, T-Pulls, DW-10, 20, 21 and similar); Saurman type Dragline (5 yards or over); Soil Stabilizer (P & H equal); Sub-grader (Gurries or other automatic type); Track-laying type earthmoving Machine (single engine with Tandem Scraper); Tractor, Compressor, Drill, Combination; Tractor (tandem Scraper); Tractors (D-9 or equivalent)

Group 10A: Cranes (not over 25 tons); Power Shovels, Clamshells, Draglines, Backhoes, Gradealls (up to and including 1 cu. yd.)

Group 11: Automatic Slip Form Paver (concrete or asphalt); Cranes (over 25 tons); DW-10, 20, etc. (Tandem); Earthmoving Machine (multiple propulsion power units and two or more scrapers) (up to and including 35 cu. yds. struck MRC); Highline Cableway; Lift Slab Machine; Loader (over 12 yds.); Power Shovels, Clamshells, Draglines, Backhoes, Gradealls (over 1 yd. and up to 7 yds.); Power Blade Operator (16 or over); Prestress Wire Wrapping Machine; Self-propelled Compactor (with multiple propulsion power units); Single Engine Rubber Tired Earth Moving Machine (with tandem scraper); Tandem Cats; Tower Cranes, mobile; Trencher (pulling attached shield); Universal, Liebher, Linden and similar types of tower cranes; Wheel Excavator (up to and including 750 cu. yds. per hour)

Group 12: Band Wagon (in conjunction with wheel excavator); Derricks; Drill Rigs; Multi-propulsion Earth Moving Machines (2 or more scrapers) (over 35 cu. yds. "struck" MRC); Power Shovels and Draglines (7 cu. yds. M.R.C. and over); Rubber-tired Earthmoving Equipment (over 35 cu. yds., Euclids, T-Pulls, DW-10, 20, 21 and similar); Wheel Excavator (over 750 cu. yds.)

DREDGING

Hydraulic Suction Dredges; Clamshell Dredges; Boat Operators; Derrick

Group 1: Clamshell or Dipper Operator; Operators (Derricks, Piledrivers and Cranes)

Group 2: Mechanic or Welder; Assistant Engineer; Assistant Engineer (steam or electric)

Group 3: Deckmate; Barge Mate (Seagoing)

Group 4: Fireman

Group 5: Oiler; Deckhand (can operate Anchor Scow under direction of Deck Mate)

DREDGING (Cont'd)
Hydraulic Suction Dredges; Clamshell Dredges; Boat Operators; Derrick (Cont'd)

Group 6: Bargeman; Leveeman

Group 7: Leverman; Master Boat Operator

Group 8: Winchman (Stern Winch on Dredge)

Group 9: Boat Operator

Group 10: Boat Deckhand

TRUCK DRIVERS

Group 1: Flatbed

Group 2: Dump, 8 yards and under; Water Truck (up to and including 2,000 gallons)

Group 3: Water Truck (over 2,000 gallons)

Group 4: Semi-trailer or Semi-dump

Group 5: Slip-in or Pup

Group 6: End Dumps, unlicensed (Euclid, Mack, Caterpillar or similar); Tractor Trailer (hauling equipment): Trucks (hooked up to trailer hauling equipment)

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: Iowa COUNTY: Woodbury
DECISION NO.: IA82-4048 DATE: Date of Publication
Supersedes Decision No. IA81-4096, dated 11/27/81, in 46 FR 58023.
DESCRIPTION OF WORK: Building Projects (excluding single family homes & apartments up to & including 4 stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$15.70	2.15
BOILERMAKERS	16.12	2.825
BRICKLAYERS & STONEMASONS	15.58	1.02
CARPENTERS:		
Carpenters & drywall hangers	14.38	1.94
Millwrights & piledrivermen	14.88	1.94
CEMENT MASONS	15.78	
ELECTRICIANS	15.06	1.95+ 3-3/4%
ELEVATOR CONSTRUCTORS:		
Mechanics	13.67	2.465+a
Helpers	70%JR	2.465+a
Helpers (Prob.)	50%JR	
GLAZIERS	15.51	
IRONWORKERS	14.94	1.495
LABORERS:		
GROUP 1 - Common laborers	10.77	2.21
GROUP 2 - Mortar mixers;plasterers' mixers;air tool ops.; mechanical tampers;concrete saw;gunnite nozzle;chain saw;wrecking torch;sandpot & blasting	10.92	2.21
LATHERS	14.38	1.94
LINE CONSTRUCTION:		
GROUP 1 - Lineman;all rigs setting assembled "H" fixtures & steel transmission structures	14.65	.45+7½% +b
GROUP 2 - Blaster;special equip. operations(hole digging machines,all tractors, transmission line pole hauling & setting equip. other than assembled "H" fixtures)	11.72	"
GROUP 3 - Groundman	9.52	"
GROUP 4 - Groundman-truck driver	9.67	"
GROUP 5 - Pole treating truck driver	9.38	"
GROUP 6 - Pole treating specialist	11.28	"
MARBLE & TERRAZZO WORKERS	15.58	1.02
PAINTERS:		
GROUP 1 - Brush & drywall finishers	$13.03	2.20
GROUP 2 - Spray,all swing work;all work higher than 40 ft.; scaffolds,jacks, ladders;pressure roller; sandblasting;structural steel over 25 ft.	13.58	2.20
PLUMBERS & PIPEFITTERS	15.57	1.84
ROOFERS:		
Roofers	10.81	1.14
Kettlemen	9.43	1.14
SHEET METAL WORKERS	15.15	1.99
SPRINKLER FITTERS	16.47	2.83
POWER EQUIPMENT OPERATORS:		
GROUP 1	14.395	2.10
GROUP 2	14.15	2.10
GROUP 3	12.88	2.10
GROUP 4	12.10	2.10

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

FOOTNOTES:
a-Employer contributes 8% of basic hourly rate for over 5 yrs. service & 6% of basic hourly rate for 6 mos. to 5 yrs. of service as Vacation Pay Credit. Seven Paid Holidays A - G
b-Seven Paid Holidays A - G

PAID HOLIDAYS
A-New Yrs.' Day;B-Memorial Day;C-Independence Day;D-Labor Day;E-Thanksgiving Day;F-the Friday after Thanksgiving Day; G-Christmas Day

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS
GROUP 1 - Cranes including those being used as backhoe,dragline,clamshell,etc.,tower cranes; truck cranes & cherry pickers 12½ ton & over rated capacity;derrick;piledrivers & extractors; caisson rigs;side boom & winch truck used for erection of structural steel & moving & setting of heavy machinery;3 drum hoist;welders;mechanics;locomotive;dredge(levermen)
GROUP 2 - 1 & 2 drum hoist;air & electric tugger(on power plants or setting steel or grating); economobiles;plant mixer;farm type tractors(with loaders,backhoes,attachments,etc.);scrapers (tournapull,etc.);endloaders;dredge(engineer);side boom & winch truck other than Group 1; Motor patrol;bulldozers;push cat;truck cranes & cherry pickers(under 12½ ton);concrete mixers (1 yd. & over);ditching machine(8" & over);fork lifts(on steel erection & machinery moving or hoisting above 1 complete story);concrete pump;dewatering pump;temporary hoist cage operated;second man on locomotive;vibrating concrete spreader(gomaco,C-450 or equal)
GROUP 3 - Tractors(under 35 HP);with or without attachments;endloaders(under 35 HP) with or without attachments;air compressors(1 or combination of 250 CFM or more);pumps 3" or over; welding machines 600 amps or combination thereof;conveyors;firemen(boiler);generator 75 KW & over);fork lifts (other than above Group 2);gunnite machine;self-propelled rollers;stump chippers;self-propelled tampers;air & electric tuggers(other than above);Ditching machine under 8"
GROUP 4 - Oilers,mechanical heaters;truck crane drivers;permanent elevators

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: KENTUCKY
COUNTIES: ADAIR, BARREN, BELL, BREATHITT, CASEY, CLAY, CLINTON, CUMBERLAND, ESTILL, FLOYD, GARRARD, GREEN, HARLAN, HART, JACKSON, JOHNSON, KNOTT, KNOX, LAWRENCE, LAUREL, LEE, LESLIE, LETCHER, LINCOLN, MCCREARY, MAGOFFIN, MARTIN, MENIFEE, METCALFE, MONROE, MORGAN, OWSLEY, PERRY, PIKE, POWELL, PULASKI, ROCKCASTLE, RUSSELL, TAYLOR, WAYNE, WHITLEY, AND WOLFE.
DECISION NUMBER: KY82-1054 DATE: DATE OF PUBLICATION
Supersedes Decision Number KY81-1281, dated August 28, 1981, in 46 FR 43616.
DESCRIPTION OF WORK: HEAVY & HIGHWAY CONSTRUCTION PROJECTS

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$11.50	1.75
CEMENT MASONS	11.35	1.75
ELECTRICIANS	15.66	3% + 1.00
IRONWORKERS:		
Structural	11.60	1.75
Reinforcing	11.40	1.75
LABORERS:		
Laborers - general, steam jenny	9.55	1.75
Batch truck dumper	9.80	1.75
Power driven tool operator of the following: Wagon drill, chain saw, jack hammer, concrete saw, sand blaster, concrete chipper, pavement breaker, vibrator, power wheel barrow, power buggy	9.90	1.75
Sewer pipe layer, bottom man, dry cement handler, concrete rubber, mason tender	9.90	1.75
Asphalt lute & rakeman, side rail setter	9.95	1.75
Tunnel laborer (free air)	10.10	1.75
Tunnel mucker (free air)	10.15	1.75
Tunnel miner, blaster & driller (free air)	10.50	1.75
Powderman	11.15	1.75
Drill operator of percussion type drills which are both powered & propelled by an independent air supply	12.35	1.75
PAINTERS:		
Guard rail	10.00	1.75
Structural	13.20	1.75
PILEDRIVERMEN	11.15	1.75
PLUMBERS & PIPEFITTERS	15.63	2.00
POWER EQUIPMENT OPERATORS - HEAVY CONSTRUCTION PROJECTS INCLUDING BRIDGES ACROSS COMMERCIALLY NAVIGABLE RIVERS:		
CLASS A	13.92	2.13
CLASS B	11.09	2.13
CLASS C	10.29	2.13
CLASS D	14.42	2.13

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS - HIGHWAY CONSTRUCTION PROJECTS:		
CLASS A	$12.87	2.13
CLASS B	10.45	2.13
CLASS C	10.83	2.13
CLASS D	10.19	2.13
TRUCK DRIVERS:		
Drivers, 3 tons & under	10.13	1.75
Drivers, over 3 tons	10.34	1.75
Driver, truck mounted rotary drill	10.34	1.75
Driver, semi-trailer or pole trailer	10.00	1.75
Driver, dump truck, tandem axle	10.00	1.75
Driver, Euclid & other heavy earth moving equipment & low boy	10.91	1.75
Truck mechanic	10.10	1.75
Tire changer	10.13	1.75
Driver of distributors	10.00	1.75
Driver on pavement breakers	10.15	1.75
Driver on mixer trucks (all types)	10.05	1.75
Greaser on greasing facilities	11.00	1.75
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.		
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).		

CLASSIFICATIONS DEFINITIONS - POWER EQUIPMENT OPERATORS, HEAVY CONSTRUCTION PROJECTS:

CLASS A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant, clamshell, concrete mixer (21 cu. ft. & over), concrete pump, crane, crusher plant, derrick, derrick boat, ditching & trenching machine, dragline, dredge engineer, elevator (used for hoisting building materials), elevating grader & all types of loaders, hoe-type machine, hoisting engine, locomotive, LeTourneau or carry-all scoop, bulldozer, mechanic, mechanic welder, Orangepeel bucket, pile driver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, high lift, fork lift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-Frame winch truck, concrete paver, gradeall, hoist (two or more drums), hyster, pumpcrete, Ross carrier, side boom, tail boom, Rotary drill, mucking machine, rock spreader attached to equipment, scoopmobile, hydrocrane, back filler, gurries, subgrader, KeCal loader, tower cranes (French, etc.).
CLASS B - All air compressors (over 900 cu. ft. per min. or greater capacity), bituminous mixer, concrete mixer (under 21 cu. ft.), welding machine, form grader, roller (rock), tugger, tractor (50 HP & over), bull float, finish machine, outboard motor boat, well points, flexplane, fireman, boom type tamping machine, truck crane oiler, greaser on grease facilities servicing heavy equipment, switchman or brakeman, joint sealing machine, mechanic helper, whirley oiler, tractair & road widening trencher, grout pump, electric vibrator, compactor, self-propelled compactor, throttlevalve, elevator (one drum or buck hoist), power sweeper (riding type), core drill & caisson drill helper (truck mounted).
CLASS C - Bituminous distributor, cement gun, conveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 HP), vibrator, oiler, concrete saw, burlap & curing machine, hydro-seeder, power form handling equipment, deckhand steerman, hydraulic post driver, core drill & caisson drill helper (track or skid mounted).
CLASS D - Operators on cranes with booms one hundred fifty feet (150') & over (including jib).

CLASSIFICATIONS DEFINITIONS - POWER EQUIPMENT OPERATORS, HIGHWAY CONSTRUCTION PROJECTS:

CLASS A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant op., clamshell, concrete mixer (21 cu. ft. & over), concrete pump, crane, crusher plant, derrick, derrick boat, ditching & trenching machine, dragline, elevator (used for hoisting building materials), elevating grader & all types of loaders, hoe-type machine, hoisting engine (two or more drums), locomotive, motor scraper, bulldozer, mechanic, Orangepeel bucket, piledriver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, high lift, fork lift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-Frame winch truck, concrete paver, grade-all, hoist (two or more drums), hyster, pumpcrete, Ross carrier, side boom, rotary drill (5" & over), mucking machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes (French, German, & other types), hydrocrane, backfiller, gurries, subgrader, tailboom & dredge engineer.
CLASS B - All air compressors (over 900 cu.ft. per min.), bituminous mixer, concrete mixer (under 21 cu. ft.), elevator (one drum or buck hoist), welding machine, form grader, grout pump, roller (rock), tractor (50 HP or over), bull float, finish machine, outboard motor boat, electric vibrator, compactor, self-propelled compactor, boom type tamping machine, truck crane oiler, switchman or brakeman, mechanic helper, whirley oiler, tractair and road widening trencher, joint sealing machine, rotary drill (under 5"), throttle valve man, tugger, well points, flexplane, fireman, and hoist (one drum).
CLASS C - Greaser on grease facilities servicing heavy equipment.
CLASS D - Bituminous distributor, cement gun, conveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50HP), vibrator, oiler, concrete saw, burlap and curing machine, hydroseeder, power form handling equipment, deckhand oiler, and hydraulic post driver

SUPERSEDEAS DECISION

STATE: KENTUCKY
COUNTIES: ANDERSON, BATH, BOURBON, BOYD, BOYLE, BRACKEN, BRECKINRIDGE, BULLITT, CARROLL, CARTER, CLARK, ELLIOTT, FAYETTE, FLEMING, FRANKLIN, GALLATIN, GRAYSON, GRANT, GREENUP, HARDIN, HARRISON, HENRY, JEFFERSON, JESSAMINE, LARUE, LEWIS, MADISON, MARION, MASON, MEADE, MERCER, MONTGOMERY, NELSON, NICHOLAS, OLDHAM, OWEN, ROBERTSON, ROWAN, SCOTT, SHELBY, SPENCER, TRIMBLE, WASHINGTON, & WOODFORD.
DECISION NUMBER: KY82-1055 DATE: DATE OF PUBLICATION
Supersedes Decision Number KY81-1282, dated August 28, 1981, in 46 FR 43618.
DESCRIPTION OF WORK: HEAVY & HIGHWAY CONSTRUCTION PROJECTS.

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$11.91	1.88
CEMENT MASONS	13.14	3.27
CEMENT MASONS ON SUSPENDED SCAFFOLD	13.39	3.27
ELECTRICIANS	16.14	3½%+2.61
IRONWORKERS	13.45	4.20
LABORERS:		
GROUP I	9.95	1.70
GROUP II	10.20	1.70
GROUP III	10.25	1.70
GROUP IV	10.85	1.70
PAINTERS:		
Brush	11.07	1.18
Spray	11.52	1.18
Bridges	13.07	1.18
PILEDRIVERMEN	12.16	1.88
PIPEFITTERS	17.40	2.87
PLUMBERS	13.23	2.19
POWER EQUIPMENT OPERATORS - HEAVY CONSTRUCTION PROJECTS INCLUDING BRIDGES ACROSS COMMERCIALLY NAVIGABLE RIVERS:		
CLASS A	13.92	2.13
CLASS B	11.09	2.13
CLASS C	10.29	2.13
CLASS D	14.42	2.13
POWER EQUIPMENT OPERATORS - HIGHWAY CONSTRUCTION PROJECTS:		
CLASS A	12.87	2.13
CLASS B	10.45	2.13
CLASS C	10.83	2.13
CLASS D	10.19	2.13
TRUCK DRIVERS:		
Driver - single axle dump & flat bed trucks	11.51	64.50a
Driver - semi-trailer or pole trailer when used to pull building material & equipment	11.51	64.50a
Driver - dump truck, tandem axle	11.51	64.50a

TRUCK DRIVERS (Cont'd):	Basic Hourly Rates	Fringe Benefits
Driver - Euclid & other heavy earth moving equipment & low boy	$11.61	64.50a
Driver - Winch truck & A-Frame truck when used in transporting materials & Ross Carrier	11.61	64.50a
Driver - fork lift truck when used to transport building materials	11.61	64.50a
Truck mechanic	11.51	64.50a
Greaser, tire changer, & mechanic helper	11.33	64.50a
Mobile batch truck helper & truck helper	11.22	64.50a
Driver of distributors	11.51	64.50a
Driver on pavement breakers	11.61	64.50a
Driver on mixer trucks (all types)	11.54	64.50a

FOOTNOTE 'a': Per week per employee who has been employed a minimum of twenty (20) work days within any ninety (90) consecutive day period for that employer.

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

CLASSIFICATION DEFINITIONS - LABORERS:

GROUP I - General laborers, asphalt plant laborers, concrete laborers, asphalt laborers, storm & sanitary sewer laborers, carpenter tenders, cement mason tenders, mesh handlers & placers, landscaping & seeding, planters & tree-trimmers, sign, guard rail & fence installers, grade checkers, aging & curing of concrete, truck spotters & dumpers, batch truck dumpers, rip-rap & grouters, dredging laborers, right-of-way laborers, wrecking & demolition laborers, drill helpers, & hand digging & hand back filling.

GROUP II - Wagon drills, jack hammers, paving breakers, chain saw, concrete saw, paving joint machine, vibrator operator, power driven Georgia buggy or wheelbarrow, sand blaster & concrete chipper, brickmason tenders & mortar mixers, green concrete cutting, pipe layers, joint makers, batter board man (sanitary & storm sewer), dry cement handlers, concrete rubbers, walk-behind tamper machine, walk-behind trenching machine, operator & deckhand scow man, burner & welder.

GROUP III - Powderman & blasters, side rail setters (including rail paved ditches), tunnel laborers (free air), gunnite operators & mixer man, gunnite nozzleman, asphalt luteman & rakeman, air tract driller (all types), grout pump operator.

GROUP IV - Tunnel blasters, tunnel muckers (free air), miners & drillers (free air), caisson workers (free air).

CLASSIFICATION DEFINITIONS - POWER EQUIPMENT OPERATORS, HEAVY CONSTRUCTION PROJECTS:

CLASS A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant op., clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick, derrick boat, ditching & trenching machine, dragline, dredge engineer, elevator (hoisting building material), elevating grader & all types of loaders, hoe-type machine, hoisting engine, locomotive, LeTourneau or carry-all scoop, bulldozer, mechanic, mechanic welder, orangepeel bucket, pile driver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, highlift, forklift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-Frame winch truck, concrete paver, grade-all, hoist (two or more drums), hyster, pumpcrete, Ross carrier, side-boom, tail boom, rotary drill, mucking machine, rock spreader attached to equipment, scoopmobile, hydrocrane, back filler, gurries, subgrader, KeCal loader, tower cranes (French, German, and other types).

CLASS B - All air compressors (over 900 cu. ft. per min or greater capacity), bituminous mixer, concrete mixer (under 21 cu. ft.), welding machine, form grader, roller (rock), tugger, tractor (50 HP & over), bull float, finish machine, outboard motor boat, well points, flexplane, fireman, boom type tamping machine, truck crane oiler, greaser on grease facilities servicing heavy equipment, switchman or brakeman, joint sealing machine, mechanic helper, whirley oiler, tractair & road widening trencher, grout pump, electric vibrator, compactor, self-propelled compactor, throttlevalve, elevator (one drum or buck hoist), power sweeper (riding type), core drill & caisson drill helper (truck mounted).

CLASS C - Bituminous distributor, cement gun, conveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 HP), vibrator, oiler, concrete saw, burlap & curing machine, hydro-seeder, power form handling equipment, deckhand steerman, hydraulic post driver, core drill & caisson drill helper (track or skid mounted).

CLASS D - Operators on cranes with booms one hundred fifty feet (150') & over (including jib).

CLASSIFICATION DEFINITIONS - POWER EQUIPMENT OPERATORS, HIGHWAY CONSTRUCTION PROJECTS:

CLASS A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant operator, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick boat, ditching and trenching machine, dragline, elevator (when used for hoisting any building material), elevating grader and all types of loaders, hoe-type machine, hoisting engine (two or more drums), locomotive, motor scraper, bulldozer, mechanic, orangepeel bucket, pile driver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, high lift, fork lift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-frame winch truck, concrete paver, grade-all, hoist (two or more drums), hyster, pumpcrete, Ross carrier, side boom, rotary drill (5" and over), muching machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes (French, German and other types), hydrocrane, backfiller, gurries, subgrader, tailboom and dredge engineer.

CLASS B - All air compressors (over 900 cu. ft. per min.), bituminous mixer, concrete mixer (under 21 cu. ft.), elevator (one drum or buck hoist), welding machine, form grader, grout pump, roller (rock), tractor (50 HP or over), bull float, finish machine, outboard motor boat, electric vibrator compactor/self-propelled compactor, boom type tamping machine, truck crane oiler, switchman or brakeman, mechanic helper, whirley oiler, tractair and road widening trencher, joint sealing machine, rotary drill (under 5"), throttle valve man, tugger, well points, flexplane, fireman, and hoist (one drum).

CLASS C - Greaser on grease facilities servicing heavy equipment.

CLASS D - Bituminous distributor, cement gun, conveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 HP), vibrator, oiler, concrete saw, burlap and curing machine, hydro seeder, power form handling equipment, deckhand oiler, and hydraulic post driver.

STATE: KENTUCKY
COUNTIES: ALLEN, BALLARD, BUTLER, CALDWELL, CALLOWAY, CARLISLE, CHRISTIAN, CRITTENDEN, DAVIESS, EDMONSON, FULTON, GRAVES, HANCOCK, HENDERSON, HICKMAN, HOPKINS, LIVINGSTON, LOGAN, LYON, MCCRACKEN, MCLEAN, MARSHALL, MUHLENBERG, OHIO, SIMPSON, TODD, TRIGG, UNION, WARREN, AND WEBSTER.
DECISION NUMBER: KY82-1053 DATE: DATE OF PUBLICATION
Supersedes Decision Number KY81-1283, dated September 4, 1981, in 46 FR 44628.
DESCRIPTION OF WORK: HEAVY & HIGHWAY CONSTRUCTION PROJECTS.

HEAVY & HIGHWAY CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$11.70	1.98
CEMENT MASONS	13.05	1.75
CEMENT MASONS - working on swinging scaffold up to 50'	13.30	1.75
CEMENT MASONS - working on swinging scaffold each additional 50' or portion thereof: + 25¢ more per hour		
ELECTRICIANS	14.35	13%+.65
IRONWORKERS	15.35	1.90
LABORERS:		
GROUP I	9.95	1.70
GROUP II	10.20	1.70
GROUP III	10.25	1.70
GROUP IV	10.85	1.70
MILLWRIGHTS	12.05	1.35
PAINTERS:		
Brush & Roller	12.30	.70
Sandblast & Power tools	12.85	.70
Bridge	13.30	.70
PILEDRIVERMEN	11.95	1.98
PLUMBERS & PIPEFITTERS	17.01	1.98
POWER EQUIPMENT OPERATORS - HEAVY CONSTRUCTION PROJECTS INCLUDING BRIDGES ACROSS COMMERCIALLY NAVIGABLE RIVERS:		
CLASS A	13.92	2.13
CLASS B	11.09	2.13
CLASS C	10.29	2.13
CLASS D	14.42	2.13
POWER EQUIPMENT OPERATORS - HIGHWAY CONSTRUCTION PROJECTS:		
CLASS A	12.87	2.13
CLASS B	10.45	2.13
CLASS C	10.83	2.13
CLASS D	10.19	2.13
TRUCK DRIVERS:		
Driver - single axle dump & flat bed trucks	11.83	55.00a
Driver - semi-trailer or pole trailer when used to pull building materials or equipment	11.83	55.00a
Driver - dump truck tandem axle	11.83	55.00a
Driver - Euclid and other heavy earth moving equipment and low boy	$11.84	55.00a
Driver - winch truck and A-Frame truck when used in transporting materials & Ross carrier	11.84	55.00a
Driver - Fork lift truck when used to transport building materials	11.84	55.00a
Truck mechanic	11.76	55.00a
Truck helper	11.48	55.00a
Greaser, tire changer and mechanic helper	11.53	55.00a
Driver of distributors	11.83	55.00a
Driver on mixer trucks (all types)	11.83	55.00a
Driver on pavement breakers	11.84	55.00a
Mobile batch truck helper	11.48	55.00a

FOOTNOTE a: Per week per employee. Pension Fringe Benefit applies to employees who have been employed a minimum of twenty (20) work days within any ninety (90) consecutive day period for that employer.

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

CLASSIFICATION DEFINITIONS - LABORERS:

GROUP I - General laborers, asphalt plant laborers, concrete laborers, asphalt laborers, storm & sanitary sewer laborers, carpenter tenders, cement mason tenders, mesh handlers & placers, landscaping & seeding, planters & tree-trimmers, sign, guard rail & fence installers, grade checkers, aging & curing of concrete, truck spotters & dumpers, batch truck dumpers, rip-rap & grouters, dredging laborers, right-of-way laborers, wrecking & demolition laborers, drill helpers, & hand digging & hand back filling.
GROUP II - Wagon drills, jack hammers, paving breakers, chain saw, concrete saw, paving joint machine, vibrator operator, power driven Georgia buggy or wheelbarrow, sand blaster & concrete chipper, brickmason tenders & mortar mixers, green concrete cutting, pipe layers, joint makers, batter board man (sanitary & storm sewer), dry cement handlers, concrete rubbers, walk-behind tamper machine, walk-behind trenching machine, operator & deckhand scow man, burner & welder.
GROUP III - Powderman & blasters, side rail setters (including rail paved ditches), tunnel laborers (free air), gunnite operators & mixer man, gunnite nozzleman, asphalt luteman & rakeman, air tract driller (all types), grout pump operator.
GROUP IV - Tunnel blasters, tunnel muckers (free air), miners & drillers (free air), caisson workers (free air).

CLASSIFICATION DEFINITIONS - POWER EQUIPMENT OPERATORS, HEAVY CONSTRUCTION PROJECTS:

CLASS A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant op., clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick, derrick boat, ditching & trenching machine, dragline, dredge engineer, elevator (hoisting building material), elevating grader & all types of loaders, hoe-type machine, hoisting engine, locomotive, LeTourneau or carry-all scoop, bulldozer, mechanic, mechanic welder, orangepeel bucket, pile driver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, highlift, forklift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-Frame winch truck, concrete paver, grade-all, hoist (two or more drums), hyster, pumporete, Ross carrier, side-boom, tail boom, rotary drill, mucking machine, rock spreader attached to equipment, scoopmobile, hydrocrane, back filler, gurries, subgrader, KeCal loader, tower cranes (French, German, and other types).
CLASS B - All air compressors (over 900 cu. ft. per min or greater capacity), bituminous mixer, concrete mixer (under 21 cu. ft.), welding machine, form grader, roller (rock), tugger, tractor (50 HP & over), bull float, finish machine, outboard motor boat, well points, flexplane, fireman, boom type tamping machine, truck crane oiler, greaser on grease facilities servicing heavy equipment, switchman or brakeman, joint sealing machine, mechanic helper, whirley oiler, tractair & road widening trencher, grout pump, electric vibrator, compactor, self-propelled compactor, throttlevalve, elevator (one drum or buck hoist), power sweeper (riding type), core drill & caisson drill helper (truck mounted).
CLASS C - Bituminous distributor, cement gun, conveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 HP), vibrator, oiler, concrete saw, burlap & curing machine, hydro-seeder, power form handling equipment, deckhand steerman, hydraulic post driver, core drill & caisson drill helper (track or skid mounted).
CLASS D - Operators on cranes with booms one hundred fifty feet (150') & over (including jib).

CLASSIFICATION DEFINITIONS - POWER EQUIPMENT OPERATORS, HIGHWAY CONSTRUCTION PROJECTS:

CLASS A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant operator, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick boat, ditching and trenching machine, dragline, elevator (when used for hoisting any building material), elevating grader and all types of loaders, hoe-type machine, hoisting engine (two or more drums), locomotive, motor scraper, bulldozer, mechanic, orangepeel bucket, pile driver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, high lift, fork lift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-frame winch truck, concrete paver, grade-all, hoist (two or more drums), hyster, pumpcrete, Ross carrier, side boom, rotary drill (5" and over), mucking machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes (French, German and other types), hydrocrane, backfiller, gurries, subgrader, tailboom and dredge engineer.

CLASS B - All air compressors (over 900 cu. ft. per min.), bituminous mixer, concrete mixer (under 21 cu. ft.), elevator (one drum or buck hoist), welding machine, form grader, grout pump, roller (rock), tractor (50 HP or over), bull float, finish machine, outboard motor boat, electric vibrator compactor/self-propelled compactor, boom type tamping machine, truck crane oiler, switchman or brakeman, mechanic helper, whirley oiler, tractair and road widening trencher, joint sealing machine, rotary drill (under 5"), throttle valve man, tugger, well points, flexplane, fireman, and hoist (one drum).

CLASS C - Greaser on grease facilities servicing heavy equipment.

CLASS D - Bituminous distributor, cement gun, conveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 HP), vibrator, oiler, concrete saw, burlap and curing machine, hydro seeder, power form handling equipment, deckhand oiler, and hydraulic post driver.

SUPERSEDEAS DECISION

STATE: KENTUCKY COUNTIES: BOONE, CAMPBELL, KENTON, & PENDLETON

DECISION NUMBER: KY82-1055 DATE: DATE OF PUBLICATION

Supersedes Decision Number KY81-1290, dated September 11, 1981, in 46 FR 45518.

DESCRIPTION OF WORK: HEAVY & HIGHWAY CONSTRUCTION PROJECTS.

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$15.80	2.075
CEMENT MASONS	14.28	1.77
ELECTRICIANS:		
Linemen	17.75	3%+2.55
Groundmen	13.31	3%+2.55
IRONWORKERS:		
Structural	15.03	2.88
Reinforcing	15.83	2.87
LABORERS:		
GROUP 1	11.77	2.10
GROUP 2	11.895	2.10
GROUP 3	11.97	2.10
GROUP 4	12.12	2.10
GROUP 5	12.42	2.10
PAINTERS:		
Brush	15.80	.75
Spray	16.30	.75
Sandblast	17.05	.75
Bridge - when highest point of clearance is 60' or more add $ 1.00 to base rate of work classification.		
PILEDRIVERMEN	15.80	2.075
PIPEFITTERS	16.23	3.375
PLUMBERS	15.97	3.42

TRUCK DRIVERS:	Basic Hourly Rates	Fringe Benefits
Driver - single axle dump & flat bed trucks, semi-trailer or pole trailer when used to pull building materials and equipment, dump truck tandem axle, & distributors	$11.51	64.50a
Driver - Euclid & other heavy earth moving equipment, low boy, winch truck & A-Frame truck when used in transporting materials, Ross Carrier, fork lift truck when used to transport building materials, & pavement breakers	11.61	64.50a
Driver on mixer trucks (all types)	11.54	64.50a
Truck mechanic	11.51	64.50a
Greaser, tire changer, & mechanic helper	11.33	64.50a
Mobile batch truck helper, & truck helper	11.22	64.50a

FOOTNOTE 'a': Per week per employee who has been employed a minimum of twenty (20) work days within any ninety (90) consecutive day period for that employer.

CLASSIFICATION DEFINITIONS - LABORERS:

GROUP 1 - Laborers (construction), plant laborers or yardmen, right-of-way laborers, landscape laborers, utility men or handymen, joint setter, carpenter tender, waterproofing laborers, slurry seal, seal coating, surface treatment or road mix laborers, riprap laborers or grouter, asphalt laborers, dump man (batch trucks), guardrail and fence installer, mesh handler and placers, concrete curing applicator, scaffold erector.

GROUP 2 - Asphalt raker, concrete puddler, kettleman (pipeline), all machine driven tools (gas, electric, air), mason tenders, mortar mixer, sheeting and shoring man, surface grinder man, power buggy and wheelbarrow (power).

GROUP 3 - Form setter, bottom man, welder tender (pipeline), concrete saw man, cutting with burning torch, pipe layer, hand spiker (railroad), car pusher (without air), underground man (working in sewer and waterline, cleaning and repairing and reconditioning), tunnel laborer (without air), and caisson, cofferdam (below 25 ft. deep), air track and wagon drill.

GROUP 4 - Blaster and powder man, muckers, wrencher (mechanical joint and utility pipeline), yarner, top lander.

GROUP 5 - Curb setter, and cutter, miner (without air), concrete crew in tunnels, utility pipeline tapper, gunnite nozzleman, waterline caulker.

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits
CLASS A	$16.39	3.06
CLASS B	16.27	3.06
CLASS C	15.23	3.06
CLASS D	14.80	3.06
CLASS E	10.94	3.06

WELDERS:	Basic Hourly Rates	Fringe Benefits
Receive rate prescribed for craft performing operation to which welding is incidental.		

CLASSIFICATION DEFINITIONS - POWER EQUIPMENT OPERATORS:

CLASS A - Air compressor on steel erection, boiler operator on compressor or generator when mounted on a rig, cableways, combination concrete mixer & tower, concrete plants (over 4 yds. capacity), concrete pumps, cranes (all types, including A-frame, boom truck, cherry picker), derricks, draglines, dredge (dipper, clam or suction), elevating grader or euclid loader, floating equipment (all types), helicopter crew (operator hoist or winch), hoes (all types), hoisting engines or shaft or tunnel work, hoisting engines, industrial type tractor, jet engine dryer (D8 or D9) diesel tractor, locomotives (standard gauge), maintenance operator class A mixer, paving (single or double drum), mucking machines, multiple scraper, piledriving machines (all types), power shovels, Quad 9 (double pusher), refrigerating machine (freezer operation), Rotary drill on caisson work, slip-form paver, tower derricks, tree shedder, trench machines (over 24" wide), truck mounted concrete pumps tug boat, tunnel machine, wheel excavator.

CLASS B - Asphalt paver, automatic subgrader machine, self-propelled (CMI type), bulldozers, endloader, kolman loader (production type - Dirt), lead grease man, maintenance operators Class B, power grader, power scoops & scrapers, push cat, trench machines (24" wide & under).

CLASS C - Air compressors on tunnel work (low pressure), asphalt plant, locomotive (narrow gauge), mixers, concrete (more than 1 bag capacity), mixers, side loader (1 bag capacity), power boilers over 15 lbs. pressure, pump operator installing and operating well points, pumps (4" and over discharge), rollers (asphalt, utility operator - small equipment), welding machines & generators.

CLASS D - Backfillers, bar, joint & mesh installing machines, batch plant, bull floats, burlap & curing machines, compressors (portable - sewer, heavy & highway), concrete plant (capacity 4 yds. & under), concrete saw (multiple), conveyors (highway), crushers, deckhand, drill (highway with integral power), farm type tractors with attachments (highway), finishing machines, fireman, floating equipment (all types), fork lift (highway), form trenches, hydro seeders, plant mixers, post driver, post hole digger (power auger), power brush burner, power form handling equipment, road widening trencher, rollers (brick, grade, macadam), self-propelled power spreaders, self-propelled subgraders, steam fireman, tractor (pulling sheepfoot) roller or grader), vibratory compactors (with integral power), Boring machine operators (48" or less), hydro hammer, pavement breaker.

CLASS E - Drum fireman, asphalt plant, tenders - inboard-outboard motor boat-launch, oil heaters (asphalt plants), oilers, power driven heaters, pumps (under 4" discharge), signalmen, tire repairmen.

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: MISSISSIPPI

COUNTIES: HANCOCK, HARRISON, JACKSON, & PEARL RIVER

DECISION NO.: MS82-1052

DATE: DATE OF PUBLICATION

Supersedes Decision No.: MS81-1287 dated September 4, 1981 in 46 FR 44641.

DESCRIPTION OF WORK: BUILDING CONSTRUCTION (excluding single family homes and apartments up to and including 4 (four) stories).

	Basic Hourly Rates	Fringe Benefits
HEAT & FROST INSULATORS & ASBESTOS WORKERS:		
Hancock & Pearl River Cos.	$ 10.70	
Harrison & Jackson Cos.	14.65	2.43+a
BOILERMAKERS	14.50	3.015
BRICKLAYERS:		
Bricklayers	11.45	.61
Blockmasons	11.45	.61
Caulkers & Pointers	11.45	.61
Marble Masons	11.45	.61
Stone Masons	11.45	.61
CEMENT MASONS	10.61	
CARPENTERS:		
Carpenters	10.16	
Millwrights	12.40	
ELECTRICIANS:		
Cable Splicers	14.40	10 1/8 % + .05
Electricians	14.15	10 1/8 % + .05
ELEVATOR CONSTRUCTORS:		
Mechanics	12.08	2.69+b
Helpers	8.46	2.69+b
GLAZIERS	7.09	
IRONWORKERS, Structural, Ornamental & Reinforcing:		
Jackson Co. & eastern 1/3 of Harrison Co. (including Biloxi, Keesler AFB, & towns of Howison & Success)	13.28	1.35
Hancock & Pearl River Cos., & western 2/3 of Harrison Co.	14.02	1.66
LABORERS:		
Pipelayers & Wrappers	6.50	
Unskilled	6.14	
LINE CONSTRUCTION:		
Cable Splicers	14.40	10 1/8 % + .05
Linemen	14.15	10 1/8 % + .05
PAINTERS, Brush, Spray, & Sandblasting	8.10	
PLASTERERS	10.76	
PLUMBERS & PIPEFITTERS	12.28	1.56

	Basic Hourly Rates	Fringe Benefits
ROOFERS:	$ 10.30	
Roofers	7.68	
Kettlemen	14.57	2.83
SHEET METAL WORKERS	9.00	
TILE SETTERS	9.15	
TRUCK DRIVERS		
WELDERS - Rate For Craft		
POWER EQUIPMENT OPERATORS:		
Asphalt Spreader	9.28	
Backhoe	9.08	
Bulldozer	9.93	
Cherry Picker	12.13	.95
Crane	10.04	
Forklift	12.13	.95
Mechanic	12.63	.95
Motor Patrol	7.50	
Oiler	7.00	
Roller	8.18	
Scraper	7.50	
Trackhoe	7.50	

FOOTNOTES:

a. Two Paid Holidays

b. Employer contributes 6% of basic hourly rate for 6 months to 5 years service and 8% for over 5 years service as vacation pay credit; also seven paid holidays.

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: Missouri
COUNTY: Greene
DECISION NO.: M082-4047
DATE: Date of Publication
Supersedeas Decision No. M081-4059 dated July 24, 1981 in 46 FR 38268
DESCRIPTION OF WORK: Building projects, (excluding single family, homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
Asbestos Workers	$14.07	1.79
Boilermakers	14.97	2.575
Bricklayers, Stonemasons & Tuck Pointers	13.67	1.15
Carpenters:		
Carpenters	13.13	1.43
Millwrights & Piledrivermen	13.38	1.43
Cement Masons	12.75	
Electricians:		
Electricians	14.55	9% +1.49
Cable Splicers	14.95	9% +1.49
Elevator Constructors:		
Elevator Constructors	16.53	a +2.465
Elevator Constructors, Prob Helpers	70%JR	a +2.465
Glaziers, Outside	15.30	b
Ironworkers	15.035	2.75
Laborers:		
Group 1	10.25	1.65
Group 2	10.53	1.65
Group 3	10.68	1.65
Group 4	10.85	1.65
Marble Masons, Tile Layers & Terrazzo Workers	13.17	1.10
Plasterers	12.75	
Plumbers & Pipefitters	14.42	1.33
Roofers	12.00	.66
Sheet Metal Workers	14.65	1.83
Tile Finishers	10.85	

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Group 1	$13.63	2.10
Group 2	13.15	2.10
Group 3	12.55	2.10
Group 4	11.95	2.10
TRUCK DRIVERS:		
Warehouseman, pickup driver, flatbed, single axle, dump truck-single & double axle, oiler, greaser	10.85	c + .50
Flat bed-double axle, wheel tractor (when used for towing), semi-truck drivers and low boys	10.90	c + .50
Heavy hauling, A-frame and winch trucks, fork trucks, hydro-lift, hydraulically operator aerial lifts	11.00	c + .50
Mechanics	11.05	c + .50

LABORERS CLASSIFICATION DEFINITIONS

Group 1 - Common labor, handling and carrying of reinforcing steel pumps of all types and heaters
Group 2 - Asphalt raker, crusher feederman, cement finisher tender, jackhammer and air tool operator, power tamper operator, pipe layer (concrete or clay), sand blast and gunnite nozzlemen, vibrator operator, wagon drill operator, cat-drill operator, and all work of a semi-skilled nature not listed
Group 3 - Mason tenders: Including plasterers tender, mortar mixer and fork lift operator
Group 4 - Powderman

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

Group 1 - Crane, dragline, derrick, drum or tower hoist (2 drum), power shovel or back hoe (on tracks), piledriver, power blade, motor patrol, mechanic, hydraulic, self-propelled crane, stinger or cherry picker crane
Group 2 - Bulldozer, dirt scoop or pan, elevating grader, drum or tower hoist (1-drum), loader (track or rubber tire), tractor pusher, roller (asphalt), tractor or backhoe (on rubber tires), tractor (compaction roller or pull blade track)
Group 3 - Fork lift, roller, tractor (compaction roller or pull blade-rubber tire), distributor, (bituminous), finishing machine (concrete paving), concrete saw (self-propelled), air compressor (600 cu. ft. or over)
Group 4 - Oiler, oiler-driver

FOOTNOTE: a - Employer contributes 8% of basic hourly rate for over 5 years' service, and 6% of basic hourly rate for 6 months to 5 years Vacation Pay Credit, also 7 Paid Holidays.

b - 1 Paid Holiday (Labor Day)

c - $51.00 per/week

"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: Ohio
DECISION NO. OH82-2048
Supersedes Decision No. OH81-2023 dated May 8, 1981 in 46 FR 25963
COUNTIES: Fayette & Ross
DATE: Date of Publication
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 Mechanics	$ 6.42	
Bricklayers; Blocklayers	10.97	
Carpenters	6.74	
Cement Masons	8.14	
Drywall Hangers	8.85	
Drywall Finishers/Tapers	8.36	
Electricians	7.39	
Laborers:		
Common	5.60	
Mason Tenders	6.00	
Plumbers; Pipefitters	8.28	
Roofers	6.23	
Sheet Metal Workers	6.87	
Soft Floor Layers	7.00	
Tile Setters	7.00	
Truck Drivers	7.15	
Power Equipment Operators:		
Backhoe	6.65	
Bulldozers	9.58	
Front End Loaders	6.65	

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: Texas
DECISION NO.: TX82-4046
Supersedes Decision No. TX82-4028, dated 6/18/82, in 47 FR 26553.
COUNTIES: Jefferson & Orange
DATE: Date of Publication
DESCRIPTION OF WORK: Building (including Residential) Projects

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Jefferson County	$16.70	2.71
Orange County	16.755	2.215
BOILERMAKERS	16.25	2.415
BRICKLAYERS & STONEMASONS	17.28	2.10
CARPENTERS:		
Carpenters - Commercial	16.02	1.765
Carpenters - residential const. of not more than 2 units & condominium townhouses of not more than 10 units excluding all apt. const. & multiple bldgs. for rental purposes	14.69	1.765
Millwrights	16.275	1.75
Piledrivermen	16.16	1.70
CEMENT MASONS	16.37	
ELECTRICIANS	19.63	1.135+ 3%
ELEVATOR CONSTRUCTORS:		
Mechanics	15.34	2.465+a
Helpers	70%JR	2.465+a
Helpers (Prob.)	50%JR	
GLAZIERS:		
Northern 1/2 Jefferson Co	14.45	.87
Southern 1/2 Jefferson Co & all of Orange Co.:		
Commercial	15.66	.87
Residential	11.95	.65
IRONWORKERS	15.15	2.95
LABORERS:		
GROUP 1	9.71	1.25
GROUP 2	9.91	1.25
GROUP 3	10.01	1.25
GROUP 4	10.16	1.25
LATHERS	16.02	1.765
LINE CONSTRUCTION:		
Linemen & cable splicers	19.94	.80+ 3-1/2%
Groundmen	14.56	"
PAINTERS:		
Southern 1/2 of Jefferson Co. & all of Orange Co.:		
COMMERCIAL:		
GROUP 1 - Brush, steel wood & wallpaperhanger	15.66	.87
GROUP 2 - Spray, roller, sandblaster, power cleaning, all time spent rigging; hot paint or creosote brush	$16.11	.87
GROUP 3 - Hot paint or creosote spray or roller	16.46	.87
RESIDENTIAL:		
Brush	11.95	.65
Paperhanger	12.20	.65
Spray	12.47	.65
Sandblaster, power cleaning	12.21	.65
North 1/2 Jefferson Co.:		
Brush	14.45	.87
Drywall	14.45	.87
Spray	14.87	.87
Paper & vinyl	14.70	.87
Sign	14.87	.87
Hand cleaning operation	14.45	.87
Power tool operations	14.87	.87
25¢ per hour above the prevailing wage rate when working on window sills or legde, swing stage, bosun chair, cat walks, spider & skates in all classifications		
PIPEFITTERS	16.52	2.02
PLASTERERS	15.20	1.69
PLUMBERS	17.71	.99
POWER EQUIPMENT OPERATORS:		
GROUP 1	16.435	1.40
GROUP 2	13.81	1.40
GROUP 3	12.64	1.40
GROUP 4	12.39	1.40
ROOFERS:		
Composition	13.86	1.58
Slate & tile	14.61	1.58
Kettlemen	12.90	1.58

DECISION NO. TX-82-4046

	Basic Hourly Rates	Fringe Benefits
SHEET METAL WORKERS:		
Commercial	$16.36	2.01+3%
Work on a single family dwelling or multiple family housing unit less than 3 stories in height where each individual family apt. is individually conditioned by a separate & independent unit or system	10.63	2.01+3%
SPRINKLER FITTERS	16.17	2.83
TILE SETTERS	15.77	2.10
TRUCK DRIVERS:		
GROUP 1 - Under 1-1/2 ton	12.85	.79
GROUP 2 - 1-1/2 tons thru 2-1/2 tons	13.64	.79
GROUP 3 - Dump truck less than 7 yds.	$13.64	.79
GROUP 4 - Over 2-1/2 tons; euclids (not self-loading)	13.93	.79

WELDERS-receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS

A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

FOOTNOTE FOR ELEVATOR CONSTRUCTORS

a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 6%; over 5 yrs. - 8% of basic hourly rate; Also seven paid holidays A thru G

LABORERS CLASSIFICATION DEFINITIONS

GROUP 1 - All hand digging & dirt work;backfilling;loading & unloading of material to & from hoist or cages;loading & unloading of tools & equip.; handling of lumber,steel,cement;distribution of materials;wrecking & razing of bldgs. & struc.; storing materials & tools in & out of receiving lots & sheds;dumper;spotter; carpenter tender & all construction work not hereinafter classified

GROUP 2 - Air power tool op.;cutting torch op,;gunnite rebound man;machine ops.; power buggy;sandblaster(potmen);drill tenders;concrete grademen;wagon drill op.; metal pan & steel form men

GROUP 3 - Conc. burner;cement mason tender;hod carrier,mortar mixers,plaster tenders & brick mason tenders;pipelayer,pumpcrete nozzlemen;scaffold builder;water pump op.;tank cleaning;all pipe cleaning & wrapping;mortar & plaster mixing machines,grout machines;pumpcrete machines;gunnite mixing machines,incl. placing & cleaning of all pipe & conduits used in placing of conc.

GROUP 4 - Powdermen & blasters;sandblaster;gunnite workers;terrazzo grinders

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Heavy duty mechanic;Blade grade,self-propelled;Bullclam;Backfiller; Derrick,power operated,all types;Dragline;Push cat;Bulldozer & all types of cat tractors;Cableway;Backhoe;Shovel;Cranes,power operated,all types;Elevating grader,self-propelled;Hoist-motor driven,two drum or more;Mixmobile;Winch truck; Locomotive crane;Mixer,14 cu. ft. or more;Paving mixer,all sizes;Piledrivers; Scraper-heavy type,over 3 cu. yds.;Trench machine,all sizes;Gradeall;High-lift; Foundation boring machines;Gasoline or diesel driven welding machines-7 to 12 machines;Pumpcrete machine;Drill op.-Water well; DW-10 euclid;Tournapulls;Asphalt plants;crushing machine & Batch plants;Scoopmobiles;Fingerlift op.; Elevator when used to haul men or material on const. work;Well point system & operation of similar dewatering devices

GROUP 2 - Air compressor;Blade grade-towed; Flex plane;Form grader;Mixer,less than 14 cu. ft.;Pump,Pulsometer;Truck crane driver;Gasoline or diesel welding mach., 3 to 6 machs.;Hoist,single drum;Scraper,3 cu. yds. or less;Conveyors,power op.

GROUP 3 - Fireman

GROUP 4 - Oiler

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Friday
October 1, 1982

Part III

Federal Reserve System

Semiannual Regulatory Flexibility Agenda

FEDERAL RESERVE SYSTEM

12 CFR Ch. II

Semiannual Regulatory Flexibility Agenda

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Semiannual agenda.

SUMMARY: Pursuant to the Regulatory Flexibility Act, and the Board's Statement of Policy Regarding Expanded Rulemaking Procedures, the Board anticipates having under consideration regulatory matters as indicated below during the period from October 1, 1982 through April 1, 1983. The Board's next Semiannual Agenda will be published in April 1983.

DATE: Comments may be received any time during the next six months.

ADDRESS: comments should be addressed to William W. Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR FURTHER INFORMATION CONTACT: (A staff contact for each item is indicated with the regulatory description below.)

SUPPLEMENTARY INFORMATION: The Board's Semiannual Agenda is divided into three sections: Section A reports on regulatory matters that have been proposed and that are under Board consideration; Section B reports on major regulatory reviews in progress under the Board's Regulatory Improvement Project and other regulatory matters the Board may consider for public comment during the next six months; and Section C reports those regulatory matters from the Board's last Semiannual Agenda (April 1, 1982 through October 1, 1982) on which final action has been taken.

A double asterisk (**) in Sections A and B indicates those matters listed on the Board's previous Semiannual Agenda; a dagger (†) indicates a proposal that is likely to have a significant economic impact on a substantial number of small entities. The latter designation applies to only those matters proposed for public comment *after* the January 1, 1982 effective date of the Regulatory Flexibility act.

A. Regulatory Matters That Have Been Proposed and Will Involve Further Board Consideration

****1. Regulation: B—Equal Credit Opportunity (12 CFR Part 202)**

Action taken: In April 1979, the Board, in response to requests for clarification, solicited public comment on how the specific rules of Regulation B should apply to various credit scoring practices (44 FR 23365, April 23, 1979).

In August 1980, the Board published a revised proposal in the form of two interpretations, the first dealing with consideration of income and the second with the selection and disclosure of reasons for adverse action (45 FR 56818, August 26, 1980). In May, 1982, the Board substantially revised the two interpretations and again published them for comment (47 FR 23738, June 1, 1982) the proposals would primarily affect larger creditors that use credit scoring systems. (Very few small businesses use credit scoring systems.) The economic impact of either interpretation is unlikely to be significant. The Board is expected to take further action during the next six months.

Authority: Section 703(a) of the Equal Credit Opportunity Act, 15 U.S.C. 1691b(a).

Docket number: R–0203.

Staff contact: Lucy H. Griffin, Senior Attorney, Division of Consumer and Community Affairs, (202–452–2412).

****2. Regulation: B—Equal Credit Opportunity (12 CFR Part 202)**

Action taken: In October 1978, the Board proposed for comment several amendments to the regulation. In April 1979, one of the proposals was adopted (44 FR 23813, April 23, 1979). The three remaining proposals would affect creditors that extend credit to small businesses by extending recordkeeping and adverse action notification requirements to business loans of under $100,000. Inquiries as to marital status of applicants would be prohibited in all business credit applications.

In May 1982, the Board proposed to withdraw these remaining amendments and sought comments to learn whether any recent changes in industry practices might affect the Board's consideration (47 FR 23741, June 1, 1982).

The Board is expected to consider these matters during the next six months in conjunction with action on the proposed credit-scoring interpretations that are also outstanding. (See entry A.1.)

The proposed amendments, if adopted by the Board, would impose on commercial lending institutions additional notice and record-keeping requirements for business loans of less than $100,000. These requirements would adversely affect the large number of small lenders that make business loans of such limited size. The benefits of the proposed amendments appear to be limited.

Authority: Equal Credit Opportunity Act, 15 U.S.C. 1691b.

Docket number: R–0185.

Staff contact: Dolores S. Smith, Assistant Director, Division of Consumer and Community Affairs, (202–452–2412).

****3. Regulation: C—Home Mortgage disclosure (12 CFR Part 203)**

Action taken: the Home Mortgage Disclosure Act (HMDA) and Regulation C provide that the Board may exempt state-chartered depository institutions within a state if two conditions are met: (1) state requirements are substantially similar to federal requirements, and (2) there is adequate provision for enforcement.

Five states (California, Connecticut, Massachusetts, New Jersey and New York) applied for exemptions from the Home Mortgage disclosure Act as recently revised. (California subsequently withdrew its application.) In May 1982, the Board published notice of the four applications for comment (47 FR 22370, May 24, 1982).

State exemptions from federal law that are granted by the Board would result in fewer burdens on depository institutions subject to HMDA and located in those states (without significant loss of consumer protection) because duplicative requirements would be eliminated.

The HMDA and Regulation C apply to all depository institutions over $10 million in assets that have offices in SMSAs (Standard Metropolitan Statistical Areas) and that make federally related mortgage loans.

The Board will review the public comments and is expected to take final action in the next six months.

Authority: the Home Mortgage Disclosure Act, 12 U.S.C. 2801 *et seq.*

Docket number: R–0406.

Staff contact: John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, (202–452–2412).

****4. Regulation: D—Reserve Requirements of Depository Institutions (12 CFR Part 204)**

Action taken: The Board will consider further during the next six months a proposal to adopt contemporaneous reserve accounting. In August 1980, the Board stated that it is disposed toward returning to contemporaneous reserve accounting if investigation indicates that such a system is practical. In November 1981, the Board solicited additional public comments on a proposal to adopt contemporaneous reserve accounting (46 FR 58184, November 30, 1981). The proposal would change the reserve maintenance schedule of depository institutions to coincide with reserve

computation periods as a means of improving the System's ability to meet its monetary policy objectives. Such a proposal would affect the reserve management practices of all depository institutions with $15 million or more in total deposits.

Authority: 12 U.S.C. 461 *et seq.*

Docket number: R–0371.

Staff contacts: David Lindsey, Assistant Director, Division of Research and Statistics, (202–452–2601); and Gilbert T. Schwartz, Associate General Counsel, Legal Division, (202–452–3625).

5. Regulation: D—Reserve Requirements of Depository Institutions and Regulation Q—Interest on Deposits (12 CFR Parts 204 and 217)

Action taken: In August 1982, the Board requested public comment on a proposal to amend Regulations D and Q to reduce the minimum maturity of all time deposits to seven days (47 FR 38138, August 30, 1982). At present, time deposits are defined as deposits or accounts with a minimum maturity or required notice period of 14 days. Small banks would likely benefit from this proposal because it will provide an additional tool for them to use in competing with larger institutions for short-term, large-denomination deposits.

The Board will review the public comments and is expected to take further action during the next six months.

Authority: Section 19(a) of the Federal Reserve Act, 12 U.S.C. 461(a).

Docket number: R–0417.

Staff contacts: Gilbert T. Schwartz, Associate General Counsel, (202–452–3625); Paul S. Pilecki, Senior Attorney, (202–452–3281); and Beverly A. Belcamino, Legal Assistant, Legal Division, (202–452–3623).

****6. Regulation: E—Electronic Fund Transfers (12 CFR Part 205)**

Action taken: In March 1982, the Board approved issuing for public comment amendments to the regulation that would provide (1) an exemption for small institutions limited to their participation in the federal government's direct deposit program; (2) a partial exemption from the periodic statement requirements for certain telephone transfers between a consumer's accounts held at the same institution; (3) modification of certain requirements for institutions that offer electronic services internationally; and (4) an exception to the required disclosure on the terminal receipt of type of account affected, for certain transfers in a regional or nationwide interchange system (47 FR 12997, March 26, 1982).

The proposed amendments, if adopted by the Board would relax existing regulatory burdens for a number of small institutions (under the first two items listed above) and for institutions that are members of debit-credit card networks (under the third and fourth item). It is believed that these proposed changes would not result in the loss of significant protections for consumers. The Board will review the comments and is expected to take final action within the next six months.

Authority: Electronic Fund Transfer Act, 15 U.S.C. 1693b.

Docket number: R–0388

Staff contacts: John C. Wood, Senior Attorney; and Jessie Filkins, Senior Attorney, Division of Consumer and Community Affairs (202–452–2412).

****7. Regulation G—Securities Credit by Persons Other Than Banks, Brokers, or Dealers (12 CFR Part 207); T—Credit by Brokers and Dealers (12 CFR Part 220); U—Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks (12 CFR Part 221)**

Action taken: In February 1982, the Board issued for public comment a regulatory framework that could be used to establish margin requirements on futures contracts based on stock indexes (47 FR 8788, March 2, 1982). This action was taken in connection with the Board's review of an application by the Kansas City Board of Trade (KCBOT) to trade in stock market index futures contracts.

The Board noted actions taken by the KCBOT to increase its own initial margin requirements on these futures contracts and to narrow the definition of hedging for margin purposes. In view of this, the Board decided not to take immediate action of its own.

However, the Board indicated that formal margin requirements on stock index futures contracts may be appropriate later. The Board plans to monitor the development and operation of this market closely.

The Board therefore asked for comment both on specific issues related to establishment of margin requirements on stock index futures contract and related instruments and on a proposed framework for such regulation. It is not expected that the proposals would have a significant impact on a substantial number of small firms.

The Board will review the comments on the proposals and may take further action during the next six months.

Authority: Securities Exchange Act of 1934, 15 U.S.C. 78c, g and w.

Docket number: R–0385.

Staff contacts: Laura Homer, Securities Credit Officer; and Robert Lord, Attorney, Division of Banking Supervision and Regulation, (202–452–2781).

† **8. Regulation: J—Collection of Checks and Other Items and Wire Tranfer of Funds (12 CFR Part 210)

Action taken: In April 1982, the Board requested public comment on a proposal that would allow Federal Reserve Banks to charge depository institutions for cash letters that are made available to them on a weekday that is a banking day for the Reserve Bank but not for the paying bank (47 FR 15349, April 9, 1982). The purpose of the admendment is to eliminate the float generated when depository institutions regularly close on weekdays, and to promote equity with other depository institutions that remain open on such days. The proposal will not impose any additional reporting, recordkeeping, or other compliance requirements on any institutuon, or duplicate, overlap, or conflict with any other federal rule. Board staff does expect, however, that affected institutions (approximately 450 of them with deposits of less than $20 million) could experience some reduction of earnings.

The Board will review the public comments and is expected to take further action within the next six months.

Authority: Sections 13, 16 and 11(i) of the Federal Reserve Act, 12 U.S.C. 342, 248(o), 360, and 248(i).

Docket number: R–0392.

Staff contact: Joseph R. Alexander, Attorney, Legal Division (202–452–2489).

****9. Regulation: J—Collection of Checks and Other Items and Wire Transfer of Funds (12 CFR Part 210)**

Action taken: In May 1981, the Board issued for public comment proposals to amend Subpart A of Regulation J by (1) redefining the terms "sender" and "bank" to include a depository institution as defined in 12 U.S.C. 461 (b), namely, banks and thrift institutions, (2) imposing on a paying bank that returns an item an indemnity for loss or expense resulting form return of the item beyond the deadlines provided in the regulation, (3) incorporating provisions for collecting coupons and other securities similar to provisions regarding the payment and return of cash items, and (4) imposing a warranty and related indemnity regarding wire advice of nonpayent on a paying bank which returns a cash item (46 FR 24576, May 1, 1981). After considering the comments received, the Board adopted the first proposal in substantially the form proposed (46 FR 42059, August 19, 1981). Final action on the other three items is expected during the next six months. In its consideration of these proposals, the Board has taken account of the

requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, and has concluded that none are expected to have a significant economic impact on a substantial number of small entities.

Authority: Sections 13, 16 and 11(i) of the Federal Reserve Act, 12 U.S.C. 342, 248(o), 360, and 248(i).

Docket number: R–0357.

Staff contact: Joseph R. Alexander, Attorney, Legal Division (202–452–2489).

**10. Regulation: L—Management Official Interlocks (12 CFR Part 212)

Action taken: On September 15, 1982, the Board approved issuing for public comment proposed amendments to Regulation L, which generally prohibits certain management official interlocks between depository institutions, depository holding companies, and their affiliates. The proposals would update, clarify and make technical changes in light of the Board's experience with the regulation and recent amendments to the Interlocks Act (12 U.S.C. 3201 *et seq.*). *It is anticipated that the Board will review the public comments and take further action on these proposals within the next six months.*

At the same time, the Board adopted an amendment to Regulation L to conform its provisions to recent statutory amendments.

The final amendment, as well as the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. Since the amendments would ease the application of the regulation on depository institutions, their effect is expected to be beneficial rather than adverse and small instutitions would share the benefits with larger organizations.

Authority: Depository Institutions Management Interlocks Act, 12 U.S.C. 3207.

Staff contacts: Melanie L. Fein, Attorney, (202–452–3594); and Browen Mason, Senior Counsel, Legal Division, (202–452–3564).

11. Regulation: Q—Interest on Deposits and Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 217 and 204)

Action taken: In August 1982, the Board requested public comment on a proposal to amend Regulations Q and D to increase the maximum size limitation on business savings accounts at member banks to $250,000 (47 FR 38137, August 30, 1982). Currently, member banks are not permitted to accept savings deposits in excess of $150,000 per depositor from organizations operated for profit. The Board is also inviting comment on the possibility of eliminating this limitation completely. Small banks would benefit from either a liberalization or elimination of this limit because the change would allow these institutions to compete more effectively with thrift institutions, which currently are subject to no such limitation. Further, small businesses should be aided by the opportunity to place larger cash balance in interest-bearing accounts.

The Board will review the public comments and is expected to take further action during the next six months.

Authority: Section 19(a) of the Federal Reserve Act, 12 U.S.C. 461(a).

Docket number: R–0420.

Staff contacts: Gilbert T. Schwartz, Associate General Counsel, (202–452–3625); Paul S. Pilecki, Senior Attorney, (202–452–3281); and Beverly A. Belcamino, Legal Assistant, Legal Division, (202–452–3623).

**12. Regulation: T—Credit by Brokers and Dealers (12 CFR Part 220)

Action taken: In March 1982, the Board proposed for public comment a complete revision of Regulation T (47 FR 13376, March 30, 1982). The proposal is part of the Board's Regulatory Improvement Project in which the Board is reviewing and revising all of its regulations to simplify their language and ease the burden of compliance. In its last semiannual agenda the Board indicated that it would consider issuing for public comment an amendment to Regulation T to facilitate the covered writing of options by insitutions and other entities which are prevented by law from using margin accounts. Such a proposed amendment has been included as part of the Board's complete revision of Regulation T (proposed section 220.7, Cash Account).

The Federal Register documents published in June and July of 1981 (46 FR 32592 and 46 FR 37516) by the Board contained an Initial Regulatory Flexibility Analysis for the complete revision of Regulation T. Comments received on the proposals appear to agree with the Board's analysis. The two new items in this proposal concerning options clearing firms and option writing in the cash account should not have any substantial impact on small businesses.

The Board will review the comments on the proposals and is expected to take further action during the next six months.

Authority: Securities Exchange Act of 1934, 15 U.S.C. 78 g and w.

Docket number: R–0389.

Staff contacts: Laura Homer, Securities Credit Officer; and Robert Lord, Attorney, Division of Banking Supervision and Regulation, (202–452–2781); Robert Rewald, Division of Research and Statistics, (202–452–3637), Board of Governors of the Federal Reserve System, Washington, D.C.; or Mindy R. Silverman, (212–791–5032), and James M. McNeil, (212–791–5914), Federal Reserve Bank of New York.

**13. Regulation: Z—Truth in Lending (12 CFR Part 226)

Action taken: The Truth in Lending Act and Regulation Z provide that state law requirements determined to be inconsistent with certain federal Truth in Lending requirements are preempted by the federal law and regulation. Upon request by any interested person or on its own motion, the Board is authorized to make determinations regarding inconsistent state law provisions for preemption purposes.

The Board has received four requests for preemption determinations concerning state laws in Arizona, Florida, Missouri, and South Carolina. In April 1982, the Board published for comment a notice concerning its determination as to whether any or all of these laws are preempted (47 FR 16201, April 15, 1982).

Board determinations that state laws are inconsistent and thus preempted, and state exemptions from federal laws that are granted by the Board, would result in fewer burdens on creditors in those states (without significant loss of consumer protection) because in each case duplicative requirements would be eliminated.

The Truth in Lending Act and Regulation Z apply to all sectors of the economy that grant consumer credit including banks, credit agencies, and retail establishments.

The Board will review the comments and is expected to take further action within the next six months.

Authority: The Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

Docket number: R–0395.

Staff contacts: Clarence B. Cain, Attorney, (202–452–2412); Lynn C. Goldfaden, Attorney, (202–452–3867); and Rugenia Silver, Attorney, (202–452–2412), Division of Consumer and Community Affairs.

14. Regulation: Z—Truth in Lending (12 CFR Part 226)

Action taken: In July 1982, the Board proposed for public comment two alternative methods for the treatment of seller's points and reduced rate financing under revised Regulation Z (47 FR 32433, July 27, 1982). One alternative would remove the current exclusion for seller's points from the finance charge disclosed under Truth in Lending. The other alternative would require that a disclosure be given to advise the

consumer that the seller has paid money to obtain the financing and that, if passed on in the form of a higher sales price or other charge, the annual percentage rate and the other disclosures understate the cost of credit. The action was taken in response to the increasing number of below-market rate financing arrangements that have been developed since adoption of the revised Regulation Z and the concerns raised by some that the regulation's exclusion of seller's points from the finance charge may permit an understatement of the annual percentage rate. Adoption of either of the proposed alternatives would affect lenders who both offer below-market rate financing and impose seller's points. It is not expected that either alternative would have a significant economic impact on a substantial number of small creditors or small sellers of new homes. It is unlikely that a substantial number of small creditors are involved in such buy-down transactions, and the incremental cost incurred by any particular small seller in changing its advertising to comply with the new requirements is not likely to be significant.

The original 30-day comment period was extended from August 27, 1982, to September 27, 1982 (47 FR 38548, September 1, 1982).

The Truth in Lending Act and Regulation Z apply to all sectors of the economy that grant consumer credit including banks, credit agencies, and retail establishments.

Authority: Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

Docket number: R–0413.

Staff contacts: Clarence B. Cain, Staff Attorney, and Gerald P. Hurst, Staff Attorney, Division of Consumer and Community Affairs, (202–452–2414).

B. Regulatory Matters the Board May Consider During the Next Six Months

****1. Regulatory Improvement Project**

Anticipated action: The Board's Regulatory Improvement Project involves, among other things, a substantive, zero-based review of all Federal Reserve regulations that affect the public to determine (1) the fundamental objectives of the regulation and the extent to which it is meeting current policy goals, (2) nonregulatory alternatives that would accomplish the objectives, (3) costs and benefits of the regulation, (4) unnecessary burdens imposed by the regulation, and (5) the clarity of the regulation.

During the next six months, the staff should complete its review of Regulation Y (Banking Holding Companies and Change in Bank Control), and public comment on proposed changes is expected to be sought during this period. These proposals are being designed to reduce regulatory burdens, and none is expected to have a significant adverse economic impact on any bank holding company. In addition, the Project will be continuing to develop simplified revisions of the "margin credit" regulations: Regulation G (Securities Credit by Persons Other Than Banks, Brokers, or Dealers), Regulation T (Credit by Brokers and Dealers), Regulation U (Credit by Banks for the Purposes of Purchasing or Carrying Margin Stocks), and Regulation X (Rules Governing Borrowers Who Obtain Securities Credit). Substantive amendments of these regulations were made in January 1982, and a revision of Regulation T was proposed for public comment in March 1982. (See Entry A-12.) During the next six months, revisions of Regulation G, U, and X are expected to be proposed for comment. The Project will also participate in other regulatory actions listed in this agenda to ensure that the objectives of the Project are met.

Authority: Financial Regulation Simplification Act of 1980, 12 U.S.C. 3501.

Staff contact: Barbara R. Lowrey, Associate Secretary, Office of the Secretary, (202–452–3742).

****2. Regulation: K—International Banking Operations (12 CFR Part 211)**

Anticipated action: The Board will consider publishing for comment a revised proposal that would permit Edge Corporations to provide a broader range of banking services than is now permissible to a limited class of customers. While Edge Corporations are in most instances owned by major banks, the proposal would also afford scope for smaller banks to compete more effectively in development and supply of services to support U.S. trade. Pursuant to the International Banking Act, a similar proposal was published for comment in February 1979 to improve the competitive position of Edge Corporations (44 FR 10509, February 21, 1979).

Action on this matter would represent a relaxation of regulatory burden on Edge Corporations and would permit a shift to a more cost-effective method of supervision of Edge Corporations.

Authority: International Banking Act of 1978, 12 U.S.C. 3101; Federal Reserve Act, 12 U.S.C. 601 and 605.

Staff contacts: Nancy P. Jacklin, Assistant General Counsel, Legal Division, (202–452–3582); and Henry S. Terrell, Chief, International Banking Section, Division of International Finance, (202–452–3768).

3. Regulation: T—Credit by Brokers and Dealers (12 CFR Part 220)

Anticipated action: The Board will consider issuing for public comment an amendment to the definition of "OTC margin bond" in Regulation T expressly to permit private mortgage pass-through securities to be used as collateral for margin credit at brokerage firms. At present, any "OTC margin bond" is eligible for credit on a "good faith" basis. It is expected that such a proposal would contribute to greater competitive equality between brokers/dealers and commercial banks.

Staff believes there would be no significant economic impact on a substantial number of small entities if this proposed rule change is adopted.

Authority: Securities Exchange Act of 1934, 15 U.S.C. 78g and w.

Staff contacts: Laura Homer, Securities Credit Officer; Robert Lord, Attorney, Division of Banking Supervision and Regulation, (202–452–2781); or David Seiders, Senior Economist, Division of Research and Statistics, (202–452–2694).

****4. Regulation: Y—Banking Holding Companies and Change in Bank Control (12 CFR Part 225)**

Anticipated action: The Board will consider issuing for public comment a proposal to amend Regulation Y to authorize bank holding companies to act as agents for the sale of renewal insurance.

In rulemaking proceedings to conform to the Board's insurance agency regulation (Section 225.4(a)(9) of Regulation Y) to a court decision, the Board in July 1981, removed the authority for bank holding companies to sell renewal insurance. In connection with that rulemaking proceeding, the Board had received comments from several organizations requesting that the authority for bank holding companies to sell renewal insurance be re-added to Regulation Y. In addition the Board received a request opposing the inclusion of renewal insurance within the final regulation. The proposal was deferred pending final board action on the rulemaking proceedings referred to above that were completed on July 15, 1981. On October 2, 1981, the Board considered the proposal to amend Regulation Y to authorize bank holding companies to act as agent for the sale of

renewal insurance and decided to suspend further consideration in an effort to avoid the expense and delay associated with proceedings that in part might be duplicated by Congress in its examination of related matters.

Accordingly, if the Board Determines to pursue this proposal, it would seek comment from the public on whether the activity is "so closely related to banking * * * as to be a proper incident thereto," including comment on whether performance of the activity by an affiliate of a bank holding company can reasonably be expected to produce benefits to the public that outweigh possible adverse effects. The proposal would impose no additional burden on any bank holding company.

Authority: Bank Holding Company Act, 12 U.S.C. 1843(c)(8).

Docket number: R–0150

Staff contact: Richard Whiting, Senior Attorney, Legal Division, (202–452–3779).

**5. Regulation: AA—Unfair or Deceptive Acts and Practices (12 CFR Part 227)

Anticipated action: The Board is required by the Federal Trade Commission Act to adopt a rule applicable to banks that is substantially similar to a trade regulation rule adopted by the FTC prohibiting certain acts or practices of other creditors as unfair or deceptive, unless the Board finds that such acts or practices of banks are not unfair or deceptive or that implementation of a similar rule with respect to banks would seriously conflict with essential monetary and payments systems policies of the Board.

In response to a proposed FTC rule (governing the preservation of consumers' claims and defenses), in 1976 the Board published a comparable proposal for comment (41 FR 7110). The proposal would require the insertion in certain credit contracts of a notice preserving a consumer's claim and defenses against a seller of goods or services so that they can be raised against any holder of the contract. The FTC published a revised version of its creditor rule for comment in November 1979. When a final FTC rule is adopted, the Board will consider appropriate regulatory action.

Authority: Section 18(f) of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

Docket number: R–0006.

Staff contact: Lucy H. Griffin, Senior Attorney, Division of Consumer and Community Affairs, (202–452–2412).

C. Regulatory Matters From the April 1 Through October 1, 1982 Semiannual Agenda on Which Final Action Has Been Taken

1. Regulation: G—Securities Credit by Persons Other Than Banks, Brokers, and Dealers (12 CFR Part 207); T—Credit by Brokers and Dealers (12 CFR Part 220); U—Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks (12 CFR Part 221)

Action taken: In May 1982, following review of public comments, the Board adopted proposed amendments to its criteria for inclusion on the List of OTC Margin Stocks (47 FR 21756, May 20, 1982). These amendments (1) permit inclusion of securities of certain foreign issuers, (2) eliminate the alternative market value criterion and make the price and capital criteria mandatory, (3) reduce the initial listing capital and publicly-held share criteria, and (4) reduce the continued listing price and capital criteria.

The initial regulatory flexibility analysis indicated that because the proposals to amend the criteria involved a mixture of relaxing and tightening changes, it was not easy to judge the overall impact on small domestic entities—primarily those small-sized corporations whose stocks are traded in the over-the-counter market. However, no comments were received which would lead the Board to conclude that the adoption of these amendments would have a significant economic impact on a substantial number of small entities.

Authority: Securities Exchange Act of 1934, 15 U.S.C. 78 g and w.

Docket number: R–0372.

Staff contacts: Jamie Lenoci, Financial Analyst; and Robert Lord, Attorney, Division of Banking Supervision and Regulation, (202–452–2781).

2. Regulation: M—Consumer Leasing (12 CFR Part 213)

Action taken: The Truth in Lending Act and Regulation M provide that classes of lease transactions within a state may be exempt from some of the federal requirements if certain conditions are met. These conditions require an existing state law to be substantially similar to the federal law or to afford greater consumer protection and benefit, and to contain adequate provisions for enforcement. Upon application by a state, the Board is directed to determine whether the conditions for exemption are met, and either grant or deny the application.

The State of Maine applied for an exemption from Regulation M for certain lease transactions under the revised Truth in Lending Act. The application was published for comment in April 1982 (47 FR 16201, April 15, 1982). Following review of public comments, the Board granted the exemption (47 FR 36961, August 24, 1982).

A state exemption from federal law that is granted by the Board would result in fewer burdens on lessors in that state (without significant loss of consumer protection) because duplicative requirements would be eliminated.

The Truth in Lending Act and Regulation M apply to all sectors of the economy that engage in lease transactions including bank and retail establishments.

Authority: The Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

Docket number: R–0394.

Staff contact: Rugenia Silver, Attorney, Division of Consumer and Community Affairs, (202–452–2412).

3. Regulation: T—Credit by Brokers and Dealers (12 CFR Part 220)

Action taken: In May 1982, following review of public comments, the Board adopted proposed amendments to Regulation T to permit, in addition to cash, the use of securities issued or guaranteed by the United States government or its agencies, certain letters of credit, bank CD's and bankers acceptances, as permissible collateral in stock lending and borrowing transactions (47 FR 21238, May 18, 1982). The amendment also permits foreign banks to issue letters of credit in such transactions if they have filed with the Board agreements to comply with the same rules and regulations applicable to member banks in securities credit transactions. These amendments are not expected to have an adverse economic impact on any small institutions.

Authority: Securities Exchange Act of 1934, 15 U.S.C. 78g and w.

Docket number: R–0370.

Staff contacts: Laura Homer, Securities Credit Officer; and Robert Lord, Attorney, Division of Banking Supervision and Regulation, (202–452–2781).

4. Regulation: Y—Bank Holding Companies and Change in Bank Control (12 CFR Part 225)

Action taken: In October 1980, the Board issued for public comment a proposed amendment to Regulation Y to modify the scope of permissible data processing activities for bank holding companies (45 FR 75221, November 5, 1980). In July 1981, the Board clarified this proposal by issuing a more detailed description of the proposed rule (46 FR 37905, July 23, 1981). Following review of the public comments, the Board in

August 1982, adopted a modified version of the proposed amendment (47 FR 37368, August 26, 1982).

The amendment imposed no additional burden on any bank holding company; indeed it should facilitate the application process for any company wishing to engage in the activity because the company would merely have to refer to the regulation without offering specific evidence on the "closely related" test.

Authority: Bank Holding Company Act, 12 U.S.C. 1843(c)(8).

Docket number: R–0363.

Staff contacts: Jennifer Johnson, Senior Attorney, (202–452–3584); and Richard Ashton, Assistant General Counsel, Legal Division, (202–452–3289).

5. Regulation: Y—Bank Holding Companies and Change in Bank Control (12 CFR Part 225)

Action taken: In December 1981, the Board issued for public comment notice of an application by J.P. Morgan & Co., Inc. to act as a futures commission merchant with respect to futures contracts in bullion, foreign exchange, U.S. Government securities, and money market instruments. At the same time, the Board requested comment on the question whether these activities should be added to the list of activities permissible for bank holding companies generally (46 FR 60503, December 10, 1981). The Board approved the application by Order. However, effective July 8, 1982, the Board withdrew the rulemaking proposal (47 FR 30872, July 15, 1982). Applications for this activity in the future will continue to be considered on a case-by-case basis.

Authority: Bank Holding Company Act, 12 U.S.C.1843 (c)(8).

Docket number: R–0375.

Staff contacts: Carl Howard, Senior Attorney, Legal Division, (202–452–3786)

6. Regulation: Y—Bank Holding Companies and Change in Bank Control (12 CFR Part 225)

Action taken: In September 1982, the Board approved by Order a proposal to authorize BankAmerica Corporation to engage, through a mortgage banking subsidiary, in financing commercial real estate development by the placing of equity interests, subject to certain conditions and commitments.

In taking this action, the Board considered public comments received on the proposal, which was published for comment in December 1981 (46 FR 61297, December 16, 1981). In that notice, the Board stated that it was also considering whether to amend Regulation Y to add the activity to the list of those generally permissible for bank holding companies. In approving BankAmerica's application by Order, the Board determined not to add the activity to the list at this time, and will consider future applications to engage in the activity on a case-by-base basis.

Authority: Bank Holding Company Act, 12 U.S.C. 1843(c)(8).

Docket Number: R–0376.

Staff contacts: Browen Mason, Senior Counsel (202–452–3564); and Mary Ann Gadziala, Attorney, Legal Division (202–452–3786).

7. Regulation: Z—Truth in Lending (12 CFR Part 226)

Action taken: The Truth in Lending Act and Regulation Z provide that some classes of transactions within a state may be exempt from some of the federal requirements if certain conditions are met. These conditions require an existing state law to be substantially similar to the federal law (or in certain instances to afford greater protection to consumers) and to contain adequate provisions for enforcement. Upon application by a state, the Board is directed to determine whether the conditions are met, and then either grant or deny the application.

The Board in April 1982, published for comment its proposed determinations on exemption applications from the states of Maine and Connecticut (47 FR 16201, April 15, 1982). Following review of the public comments, the Board granted those exemptions (47 FR 36961, August 24, 1982).

Board exemptions from the Truth in Lending Act and Regulation Z result in fewer burdens on creditors in those states (without significant loss of consumer protection) because duplicate requirements in the federal and state laws are eliminated.

The Truth in Lending Act and Regulation Z apply to all sectors of the economy that grant consumer credit including banks, credit agencies, and retail establishments.

Authority: The Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

Docket Number: R–0394.

Staff contacts: Lynn C. Goldfaden, Attorney (202–452–3867); and Rugenia Silver, Attorney, Division of Consumer and Community Affairs (202–452–2412).

Board of Governors of the Federal Reserve System, September 24, 1982.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 82–26848 Filed 9–30–82; 8:45 am]

BILLING CODE 6210–01–M

federal register

Friday
October 1, 1982

Part IV

Department of Agriculture

Federal Grain Inspection Service

Grain Standards; Inspection Points

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Renewals of Designation of Los Angeles Grain Inspection Service, Inc. (CA), and Peoria Grain Inspection Service, Inc. (IL)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the renewal of designation of Los Angeles Grain Inspection Service, Inc. (Los Angeles), and Peoria Grain Inspection Service, Inc. (Peoria), 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: November 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.

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 May 3, 1982, issue of the **Federal Register** (47 FR 18942) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Los Angeles and Peoria's designations would terminate on October 31, 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 June 2, 1982.

FGIS announced the names of the applicants for designation for each agency and requested comments on same in the July 1, 1982, issue of the **Federal Register** (47 FR 28720). Comments were to be postmarked by August 16, 1982. No comments were received regarding the renewals of designation of Los Angeles and Peoria (the only applicants for each respective designation) as official agencies.

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 determined that Los Angeles and Peoria are able to provide official services in the geographic area for which their designations are being renewed. Each assigned area is the entire geographic area as described in the May 3 issue of the **Federal Register**.

Effective November 1, 1982, and terminating October 31, 1985, the responsibility for providing official inspection services in each geographic area as specified above will be assigned to Los Angeles and Peoria, 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 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 alist 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:

Los Angeles Grain Inspection Service, Inc., 1625 Bluff Road, Montebello, CA 90640

Peoria Grain Inspection Service, Inc., 330 S.W. Washington Street, 2nd Floor, Peoria, IL 61602

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: September 21, 1982.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 82–26896 Filed 9–30–82; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Applicants for Designation in the Areas Currently Assigned to the Lima Grain Inspection Service (OH) and Virginia Department of Agriculture and Consumer Services (VA)

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 Lima Grain Inspection Service (Lima) and the Virginia Department of Agriculture and Consumer Services (Virginia). The designations terminate January 31, 1983.

DATE: Comments to be postmarked on or before November 15, 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. 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 July 30, 1982, issue of the **Federal Register** (47 FR 32970) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official inspection services for Lima, and official inspection, official weighing, and supervision of weighing services for Virginia, under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the areas currently assigned to the official agencies. Applications were to be postmarked by August 30, 1982.

Lima Grain Inspection Service, the only applicant, requested designation for all of the geographic area currently assigned to Lima. The Virginia Department of Agriculture and Consumer Services, the only applicant, requested designation for all of the geographic area currently assigned to Virginia. Lima and Virginia each applied for a renewal of designation for an additional 3-year period.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present thier 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 November 15, 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, Sec. 9, Pub. L. 94–582, 90 Stat. 2873, 2875 (7 U.S.C. 79, 79a))

Dated: September 21, 1982.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 82–26897 Filed 9–30–82; 8:45 am]

BILLING CODE 3410–EN–M

Request for Applicants for Designation to Perform Official Services in the Geographic Area Currently Serviced by Evansville Grain Inspection (IN), Quincy Grain Inspection and Weighing Service (IL), and Winchester Grain Inspection (IN)

AGENCY: Federal Grain Inspection service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), designations of official agencies shall terminate not later than triennially and may be renewed in accordance with the criteria and procedures provided in the Act. This notice announces that the designations of three agencies will terminate, in accordance with the Act and requests applications from parties, including the agencies currently designated, who are interested in being designated as official agencies to conduct official services in the geographic areas currently serviced by each of the specified agencies. The official agencies are the Evansville Grain Inspection, Quincy Grain Inspection and Weighing Service, and Winchester Grain Inspection..

DATE: Applications to be postmarked on or before November 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. 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 or 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 in an assigned geographic area.

Evansville Grain Inspection (Evansville), P.O. Box 2057, Station D, Evansville, Indiana 47714, was designated as an official agency under the Act for the performance of official inspection functions on August 31, 1978. Quincy Grain Inspection and Weighing Service (Quincy), P.O. Box 755, Quincy, Illinois 62301, was designated as an official agency under the Act for the performance of official inspection functions on August 25, 1978. Winchester Grain Inspection (Winchester), 107 N. Main Street, P.O. Box 386, Farmland, Indiana 47340, was designated as an official agency under the Act for the performance of official inspection functions on August 31, 1978. The agencies' designations will terminate on March 31, 1983. this 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 Evansville in Indiana, Kentucky, and Tennessee, 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 includes the following Counties in the respective States:

In Indiana; Daviess, Dubois, Gibson, Knox (except the area west of U.S. Route 41(150) from Sullivan County south to U.S. Route 50), Pike, Posey, Vanderburgh, and Warrick;

In Kentucky; Caldwell, Christian, Crittenden, Henderson, Hopkins (west of State Route 109 south of the Western Kentucky Parkway), Logan Todd, Union, and Webster (west of Alternate U.S. Route 41 and State Route 814);

And in Tennessee; Cheatham, Davidson, and Robertson Counties.

Exceptions to the described geographic area are the following locations, in Kentucky, situated inside Evansville's area which have been and will continue to be serviced by Cairo Grain Inspection Agency:

Hopkinsville Elevator Company, Inc., Hopkinsville, and the L&N Railroad Siding on Alternate U.S. Route 41 (five miles south of Hopkinsville), Christian County.

The geographic area presently assigned to Quincy in Illinois 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 includes the following Counties: Adams, Brown, Greene, Macoupin (southwest of a straight line from the junction of State Route 111 and the northern Macoupin County line southeast to the junction of Insterstate 55 and State Route 16), and Pike Counties.

Exceptions to the described geographic area are the following location, in Illinois, situated inside Quincy's area which have been and will continue to be serviced by the following official agencies:

1. Keokuk Grain Inspection Service, Inc., will service Ursa Farmers Coop, Meyer and Ursa, Adams County; and

2. Springfield Grain Inspection Department will service Pillsbury Co., Florence, Pike County.

The geographic area presently assigned to Winchester in Indiana and Ohio, 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 includes the following Counties in the respective States:

In Indiana; Blackford, Delaware, Fayette, Jay, Henry, Madison (east of State Route 13 and north of State Route 132), Randolph, Rush (north of State Route 244), Union, and Wayne;

In Ohio, Darke County.

Interested parties, including Evansville, Quincy, and Winchester, are hereby given opportunity to apply for designation as the official agency to perform the respective official services in each geographic area, as specified above, under the provisions of Section 7(f) of the Act and § 800.196(b) of the regulations issued thereunder. Designations in each specified geographic area are for the period beginning April 1, 1983, and terminating March 31, 1986. Parties wishing to apply for these designations should contact the Chief, Regulatory Branch, Compliance Division, at the address listed above for appropriate forms and information. Applications must be postmarked not later than November 1, 1982 to be eligible for consideration.

In making a determination as to which applicant will be designated to provide official 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: September 21, 1982.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 82–26898 Filed 9–30–82; 8:45 am]

BILLING CODE 3410–EN–M

Request for Applicants for Designation in the South Texas Area

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests applications from interested parties for designation as an official agency to provide official inspection services in the South Texas area.

DATE: Applications to be postmarked on or before November 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. 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.

The Federal Grain Inspection Service (FGIS) Corpus Christi Field Office has provided official inspection service at domestic locations in the South Texas area, since November 1978, under the authority of Section 7(h) of the Act. At that time, there were few requests for official inspections; however, in recent years, the number of official inspection requests has increased. As a result, FGIS is requesting applications for the designation of an official agency for this area.

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 FGIS is authorized, upon application by any qualified agency or 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 such services in an assigned geographic area. In making a determination as to which applicant will be designated to provide official services in the geographic area, consideration will be given to all applications submitted and all other information available.

Interested parties are hereby given opportunity to apply for designation as the official agency to perform official services in the geographic area, as specified below, under the provisions of Section 7(f) of the Act and section 800.196(b) of the regulations issued thereunder. Parties wishing to apply for this designation should contact the Regulatory Branch, Compliance Division, at the address listed above for appropriate forms and information. Applications must be postmarked not later than November 1, 1982 to be eligible for consideration.

Pursuant to Section 7(f)(2) of the Act, the geographic area that may be assigned to the applicant selected for designation is the following area in South Texas, including and South of these Counties: Val Verde, Edwards, Kerr, Kendall, Comal, Guadalupe, Gonzales, DeWitt, Victoria, and Calhoun.

This assignment of geographic area is for domestic locations only, and excludes any export port locations. The export port locations will continue to be provided all services by the Corpus Christi Field Office. At this time, the export port locations include the Corpus Christi Public Elevator, Port of Brownsville Public Elevator, and Interstate Grain Port Terminal (Corpus Christi).

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873, (7 U.S.C. 79))

Dated: September 27, 1982.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 82–26899 Filed 9–30–82; 8:45 am]

BILLING CODE 3410–EN–M

Voluntary Cancellation of the Designation Issued to Alva Grain Inspection Department (OK) and Interim Assignment of a Designation to a New Agency

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the voluntary cancellation of designation of Alva Grain Inspection Department, owned and operated by Mr. Delbert Howell. The new official agency, which will retain the same name, will be owned and operated by Mr. Tom Oller. Mr. Oller's Agency will provide official inspection services in this geographic area on an interim basis until December 31, 1983.

EFFECTIVE DATE: October 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.

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.

Alva Grain Inspection Department, Alva, Oklahoma (Alva), currently owned and operated by Mr. Delbert Howell, requested voluntary cancellation of its designation, effective September 30, 1982. Mr. Tom Oller is purchasing the Alva Agency's assets. Mr. Oller's Agency, which will retain the same name, will provide official inspection services to this geographic area, on an interim basis, effective October 1, 1982, until the previously scheduled termination of Alva's designation on December 31, 1983. Mr. Oller's Agency has met the criteria for designation contained in Section 7(f)(1)(A) of the U.S. Grain Standards Act, as amended (7 U.S.C. 79(f)(1)(A)) (Act).

Accordingly, the Administrator of the Federal Grain Inspection Service has determined that interim assignment of geographic area to Mr. Oller's Agency is consistent with the provisions and objectives of the Act and that this action will facilitate providing official inspection services in the specified geographic area.

The geographic area being assigned on an interim basis to Mr. Oller's Agency includes the following Counties in the State of Oklahoma: Alfalfa, Beckham, Caddo, Custer, Dewey, Ellis, Greer, Harper, Kiowa, Major, Roger Mills, Washita, Woods, and Woodward.

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 agency will provide official services not requiring a licensed inspector to all locations within its geographic area.

The specified service point which will be maintained by Mr. Oller's Agency is as follows: Alva Grain Inspection Department, 129 College, P.O. Box 501, Alva, OK 73717.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: September 27, 1982.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 82–26900 Filed 9–30–82; 8:45 am]

BILLING CODE 3410–EN–M

federal register

Friday
October 1, 1982

Part V

Department of Health and Human Services

Food and Drug Administration

Orally Administered Drug Products for Relief of Symptoms Associated With Overindulgence in Alcohol and Food for Over-the-Counter Human Use; Establishment of Monograph; Advance Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 357

[Docket No. 82N-0166]

Orally Administered Drug Products for Relief of Symptoms Associated With Overindulgence in Alcohol and Food for Over-the-Counter Human Use; Establishment of a Monograph

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing an advance notice of proposed rulemaking that would establish conditions under which over-the-counter (OTC) orally administered drug products for relief of symptoms associated with overindulgence in alcohol and food (drug products for the relief of symptoms of upset stomach due to overindulgence in the conbination of alcohol and food, drug products for the relief of hangover symptoms, and drug products to minimize inebriation or to minimize hangover symptoms) are generally recognized as safe and effective and not misbranded. This notice is based on the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products and is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by December 30, 1982 and reply comments by January 31, 1983.

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

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, National Center for Drugs and Biologics (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In accordance with Part 330 (21 CFR Part 330), FDA received on August 23, 1981, a report on OTC orally administered drug products for relief of symptoms associated with overindulgence in alcohol and food from the Advisory Review Panel on OTC Miscellaneous Internal Drug Products. FDA regulations (21 CFR 330.10(a)(6)) provide that the agency issue in the **Federal Register** a proposed rule containing (1) the monograph recommended by the Panel, which establishes conditions under which OTC orally administered drug products for relief of symptoms associated with overindulgence in alcohol and food are generally recognized as safe and effective and not misbranded; (2) a statement of the conditions excluded from the monograph because the Panel determined that they would result in the drugs' not being generally recognized as safe and effective or would result in misbranding; (3) a statement of the conditions excluded from the monograph because the Panel determined that the available data are insufficient to classify these conditions under either (1) or (2) above; and (4) the conclusions and recommendations of the Panel.

The unaltered conclusions and recommendations of the Panel are issued to stimulate discussion, evaluation, and comment on the full sweep of the Panel's deliberations. The report has been prepared independently of FDA, and the agency has not yet fully evaluated the report. The Panel's findings appear in this document to obtain public comment before the agency reaches any decision on the Panel's recommendations. This document represents that best scientific judgment of the Panel members, but does not necessarily reflect the agency's position on any particular matter contained in it.

After reviewing all comments submitted in response to this document, FDA will issue in the **Federal Register** a tentative final monograph for OTC orally administered drug products for relief of symptoms associated with overindulgence in alcohol and food as a notice of proposed rulemaking. Under the OTC drug review procedures, the agency's position and proposal are first stated in the tentative final monograph, which has the status of a proposed rule. Final agency action occurs in the final monograph, which has the status of a final rule.

The agency's position on OTC orally administered drug products for relief of symptoms associated with overindulgence in alcohol and food will be stated initially when the tentative final monograph is published in the **Federal Register** as a notice of proposed rulemaking. In that notice of proposed rulemaking, the agency also will announce its initial determination whether the monograph is a major rule under Executive Order 12291 and will consider the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The present notice is referred to as an advance notice of proposed rulemaking to reflect its actual status and to clarify that the requirements of the Executive Order and the Regulatory Flexibility Act will be considered when the tentative final monograph is published. At that time FDA also will consider whether the monograph has a significant impact on the human environment under 21 CFR Part 25 (proposed in the **Federal Register** of December 11, 1979; 44 FR 71742).

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC orally administered drug products for relief of symptoms associated with overindulgence in alcohol and food. Types of impact may include, but are not limited to cost associated with product testing, relabeling, repackaging, or reformulating. Comments regarding the impact of this rulemaking on OTC orally adminstered drug products for relief of symptoms associated with overindulgence in alcohol and food should be accompanied by appropriate documentation.

In accordance with § 330.10(a)(2), the Panel and FDA have held as confidential all information concerning OTC orally administerd drug products for relief of symptoms associated with overindulgence in alcohol and food submitted for consideration by the Panel. All the submitted information will be put on public display in the Dockets Management Branch, Food and Drug Administration, after November 1, 1982, except to the extent that the persons submitting it demonstrates that it falls within the confidentiality provisions of 18 U.S.C. 1905 or section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)). Requests for confidentiality should be submitted to William E. Gilbertson, Bureaus of Drugs and Biologics (HFD-510) (address above).

FDA published in the **Federal Register** of September 29, 1981 (46 FR 47730) a final rule revising the OTC procedural regulations to conform to the decision in *Culter* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979), The Court in *Cutler* held that the OTC drug review regulations (21 CFR 330.10) were unlawful to the extent that they authorized the marketing of Category III drugs after a final monograph had been established. Accordingly, this provision is now delegated from the regulations. The regulations now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking

process, before the establishment of a final monograph

Although it was not required to do so under *Cutler*, FDA will no longer use the terms "Category I," "Category II," and "Category III" at the final monograph stage in favor of the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III because that was the framework in which the Panel conducted its evaluation of the data.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug products that are subject to the monograph and that contain nonmonograph conditions, i.e., conditions which would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce. Further, any OTC drug products subject to this monograph which are repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In some advance notices of proposed rulemaking previously published in the OTC drug review, the agency suggested an earlier effective date. However, as explained in the tentative final monograph for OTC topical antimicrobial drug products (published in the **Federal Register** of July 9, 1982 (47 FR 29986)), the agency has concluded that, generally, it is more reasonable to have a final monograph be effective 12 months after the date of its publication in the **Federal Register**. This period of time should enable manufacturers to reformulate, relabel, or take other steps to comply with a new monograph with a minimum disruption of the marketplace thereby reducing economic loss and ensuring that consumers have continued access to safe and effective drug products.

A proposed review of the safety, effectiveness, and labeling of all OTC drugs by independent advisory review panels was announced in the **Federal Register** of January 5, 1972 (37 FR 85). The final regulations providing for this OTC drug review under § 330.10 were published and made effective in the **Federal Register** of May 11, 1972 (37 FR 9464). In accordance with these regulations, a request for data and information on all active ingredients used in OTC miscellaneous internal drug products was issued in the **Federal Register** of November 16, 1973 (38 FR 31696). (In making their categorizations with respect to "active" and "inactive" ingredients, the advisory review panels relied on their expertise and understanding of these terms. FDA has defined "active ingredient" in its current good manufacturing practice regulations (§ 210.3(b)(7), (21 CFR 210.3(b)(7))), as "any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of man or other animals. The term include those components that may undergo chemical change in the manufacture of the drug product and be present in the drug product in a modified form intended to furnish the specified activity or effect." An "inactive ingredient" is defined in § 210.3(b)(8) as "any component other than an 'active ingredient.'") In the **Federal Register** of August 27, 1975 (40 FR 38179) a notice supplemented the initial notice with a detailed, but not necessarily all-inclusive, list of ingredients in miscellaneous internal drug products to be considered in the OTC drug review. This list was provided to give guidance on the kinds of ingredients for which data should be submitted. It included drug products for the relief of hangover symptoms, but did not include drug products for relief of upset stomach symptoms due to overindulgence in the combination of alcohol and food, and drug products to prevent inebriation or to minimize or reduce a hangover. The notices of November 16, 1973 and August 27, 1975 informed OTC drug product manufacturers of their opportunity to submit data to the review at that time and of the applicability of the monographs from the OTC drug review to all OTC drug products.

Under § 330.10(a)(1) and (5), the Commissioner of Food and Drugs appointed the following Panel to review the information submitted and to prepare a report on the safety, effectiveness, and labeling of the active ingredients in these OTC miscellaneous internal drug products:

James L. Tullis, M.D., Chairman (appointed December 1979)
John W. Norcross, M.D., Chairman (resigned March 1979)
Ruth Eleanor Brown, R.Ph. (resigned May 1976)
Elizabeth C. Giblin, M.N., Ed. D.
Richard D. Harshfield, M.D. (deceased June 1, 1981)
Theodore L. Hyde, M.D.
Claus A. Rohweder, D.O. (deceased April 13, 1979)
Samuel O. Thier, M.D. (resigned November 1975)
William R. Arrowsmith, M.D. (appointed March 1976)
Diana F. Rodriquez-Calvert, Pharm D. (appointed July 1976)

Representatives of consumer and industry interests served as nonvoting members of the Panel. Eileen Hoates, nominated by the Consumer Federation of America, served as the consumer liaison until September 1975, followed by Michael Schulman, J.D. Francis J. Hailey, M.D., served as the industry liaison, and in his absence John Parker, Pharm, D., served. Dr. Hailey served until June 1975, followed by James M. Holbert, Sr., Ph. D. All industry liaison members were nominated by the Proprietary Association.

The following FDA employees assisted the Panel: Armond M. Welch, R.Ph., served as the Panel Administrator until July 1979, followed by John R. Short, R.Ph.; Enrique Fefer, Ph. D., served as the Executive Secretary until July 1976, followed by George W. James, Ph. D., until October 1976, followed by Natalia Morgenstern until May 1977, followed by Arthur Auer until October 1978. Roger Gregorio served as the liaison for the Office of New Drug Evaluation beginning November 1978. Joseph Hussion, R.Ph., served as the Drug Information Analyst until July 1976, followed by Anne Eggers, R.Ph., M.S., until October 1977, followed by John R. Short, R.Ph., until July 1979.

To expand its scientific base, the Panel called upon the following consultants for advice in areas which required particular expertise:

Ralph B. D'Agostino, Ph. D. (statistics)
Lynn R. Brady, Ph. D. (pharmacognosy)

The Advisory Review Panel on OTC Miscellaneous Internal Drug Products was charged with the review of many categories of drugs. Due to the large number of ingredients and varied labeling claims, the Panel decided to review and publish its findings separately for several drug categories and individual drug products. The Panel presents its conclusions and recommendations for OTC drug products for relief of symptoms of upset stomach due to overindulgence in the

combination of alcohol and food, drug products for relief of hangover symptoms, and drug products to prevent inebriation or to minimize or reduce a hangover in this document. The Panel's findings on other categories of miscellaneous internal drug products are being published periodically in the Federal Register.

The Panel was first convened on January 13, 1975 in an organizational meeting. Working meetings which dealt with the topics in this document were held on the following dates: June 6 and 7, August 8 and 9, September 28 and 29, November 15 and 16, December 13 and 14, 1980; January 31, and February 1, March 21, July 10 (telephone conference call), and August 21, 22, and 23, 1981.

The minutes of the Panel meetings are on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration (address above).

The following individuals were given an opportunity to appear before the Panel at their own request to express their views on OTC drug products for relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food, drug products for relief of hangover symptoms, and drug products to prevent inebriation or to minimize or reduce a hangover.

William F. Arndt, Jr., M.D.
Allan R. Cooke, M.D.
Leroy J. Honkomp, Ph. D.
Kenneth Klippel
Stanley H. Lorber, M.D.
Sal L. Mercurio, Esq.
Robert Pinco, Esq.
J. Bryan Smith, Ph. D.
Edward B. Truitt, Jr., Ph. D.
Julian E. Villarreal, Ph. D., M.D.
Ralph O. Wallerstein, M.D.
Joseph M. White, M.D.

No person who so requested was denied an opportunity to appear before the Panel to discuss drug products for relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food, drug products for relief of hangover symptoms, and drug products to prevent inebriation or to minimize or reduce a hangover.

The Panel has thoroughly reviewed the literature and data submissions, has listened to additional testimony from interested persons, and has considered all pertinent data and information submitted through August 23, 1981, in arriving at its conclusions and recommendations.

In accordance with the OTC drug review regulations in § 330.10, the Panel's findings with respect to OTC drug products for relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food, drug products for relief of hangover symptoms, and drug products to prevent inebriation or to minimize or reduce a hangover are set out in three categories:

Category I. Conditions under which OTC orally administered drug products for relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food, drug products for relief of hangover symptoms, and drug products to prevent inebriation or to minimize or reduce a hangover are generally recognized as safe and effective and are not misbranded.

Category II. Conditions under which OTC orally administered drug products for relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food, drug products for relief of hangover symptoms, and drug products to prevent inebriation or to minimize or reduce a hangover are not generally recognized as safe and effective or are misbranded.

Category III. Conditions for which the available data are insufficient to permit final classification at this time.

The Panel reviewed 16 ingredients for use in treating the symptoms of upset stomach due to overindulgence in the combination of alcohol and food, for the relief of hangover, and to prevent inebriation or to minimize or reduce a hangover. Two ingredients were placed in Category I for use in treating the symptoms of upset stomach due to overindulgence in the combination of alcohol and food. Nine ingredients were placed in Category I and four in Category II for use in the relief of hangovers. Two ingredients were placed in Category III to prevent inebriation or to minimize or reduce a hangover. (The number of ingredients classified does not equal the number of ingredients reviewed because some of the ingredients were reviewed for more than one labeled claim.)

I. Submission of Data and Information

Pursuant to the notices published in the Federal Register of November 16, 1973 (38 FR 31696) August 27, 1975 (40 FR 38179) requesting submission of data and information on "hangover remedies" and pursuant to FDA's deferral to this Panel of the "upset stomach" claims from causes other than hyperacidity (44 FR 41607), the following firms made submissions related to drug products for their respective uses as follows:

A. Submissions by Firms

1. *Drug products for relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food.*

Firms, and marketed products

Norwich-Eaton Pharmaceuticals, Norwich, NY 13815; Pepto-Bismol liquid and tablets
Miles Laboratories, Inc., Elkhart, IN 46515; Alka-Seltzer tablets
Warner-Lambert Co., Morris Plains, NJ 07950; Bromo-Seltzer granules.

2. *Drug products for relief of hangover symptoms.*

Firms, and marketed products

Miles Laboratories, Inc., Elkhart, IN 46515; Alka-Seltzer tablets
Warner-Lambert Co., Morris Plains, NJ 07950; Bromo-Seltzer granules
Lemmon Pharmacal Co., Sellersville, PA 18960; Quick.Over capsules
Cary Corp., St. Helena, CA 94574; Chaser tablets

3. *Drug products to prevent inebriation or to minimize or reduce a hangover.*

Firms, and marketed products

Requa Manufacturing Co., Inc., Greenwich, CT 06830; Requa's activated charcoal capsules
Julius Schmid, Inc., New York, NY 10019; Fructose tablets

B. Ingredients Reviewed by the Panel

1. *Drug products for relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food—Labeled ingredients contained in marketed products submitted to the Panel.*

Acetaminophen
Aspirin [1]
Bismuth subsalicylate
Citric acid [1]
Sodium bicarbonate [1]

2. *Drug products for relief or hangover symptoms*—a. *Labeled ingredients contained in marketed products submitted to the Panel.*

Acetaminophen
Aspirin [2]

[1] These are the active ingredients in a market package. When immersed in water prior to ingestion, a series of chemical reactions occurs which results in the formation of sodium citrate in solution, sodium acetylsalicylate in solution, and free and dissolved carbon dioxide with a slight excess residual of sodium bicarbonate in solution. For the purposes of this document, only sodium citrate in solution will be discussed for relieving the symptoms of upset stomach due to overindulgence in the combination of alcohol and food.

[2] Aspirin is available as plain aspirin in one submitted product; in another it is present for conversion to sodium acetylsalicylate. Citric acid and sodium bicarbonate are also components of this latter preparation. When the latter preparation is immersed in water prior to ingestion, a series of chemical reactions occurs which results in the formation of sodium citrate in solution, sodium acetylsalicylate in solution, and free and dissolved cabon dioxide with a slight excess of residual sodium bicarbonate in solution. For the purpose of

Aluminum hydroxide
Aluminum hydroxide gel
Caffeine
Citric acid [2]
Magnesium carbonate
Magnesium trisilicate
Niacinamide
Oil of Peppermint
Sodium bicarbonate [2]
Thiamine hydrochloride

b. *Other ingredients.* (Ingredients which appeared in the second **Federal Register** notice dated August 27, 1975 (40 FR 38179) for which no submissions were received.)

Dextrose
Disaccharide
Peat
Thiamine mononitrate
Xylem

3. *Drug products to prevent inebriation or to minimize or reduce a hangover—Labeled ingredients contained in marketed products submitted to the Panel.*

Activated charcoal
Fructose

C. Classification of Ingredients

1. *Drug products for relief of symptoms of upset stomach due to the overindulgence in the combination of alcohol and food*—a. *Active ingredients.*

Bismuth subsalicylate
Sodium citrate in solution

b. *Ingredients reviewed by the Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products as published in the* **Federal Register** of July 8, 1977 (42 FR 35346).

Acetaminophen

2. *Drug products for relief of hangover symptoms*—a. *Active ingredients used only in combination.*

Acetaminophen
Aspirin
Aluminum hydroxide
Aluminum hydroxide gel
Caffeine
Magnesium carbonate
Magnesium trisilicate
Sodium acetylsalicylate in solution
Sodium citrate in solution

b. *Inactive ingredients.*

Oil of peppermint

c. *Ingredients reviewed by the Advisory Review Panel on OTC Vitamin, Mineral, and Hematinic Drug Products as published in the* **Federal Register** *of March 16, 1979 (44 FR 16126).* (The Panel is aware that the FDA intends to withdraw this report; nevertheless, it remains a basic scientific reference.) [3]

Niacinamide
Thiamine hydrochloride
Thiamine mononitrate

d. *Other ingredients.* The Panel was not able to locate, nor was it aware of, data demonstrating the safety and effectiveness of the following OTC ingredients when used to relieve hangover symptoms. The Panel, therefore, classifies these ingredients as Category II for this use, and they will not be reviewed further in this document.

Dextrose
Disaccharide
Peat
Xylem

3. *Drug products to prevent inebriation or to minimize or reduce a hangover—Active ingredients.*

Charcoal, activated
Fructose

D. Referenced OTC Volumes

The "OTC Volumes" cited throughout this document include submissions made by interested persons in response to the call-for-data notices published in the **Federal Register** of November 16, 1973 (38 FR 31696) and August 27, 1975 (40 FR 38179). All of the information included in these volumes, except for those deletions which are made in accordance with the confidentiality provisions set forth in § 330.10(a)(2), will be put on public display after November 1, 1982, in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

II. General Statements and Recommendations

A. General Discussion and Definition of Terms

The subject of "upset stomach" has been under review by FDA for quite some time. This claim has been discussed in two previous rulemaking proceedings (antiemetic and antacid). In the tentative final monograph for antimetic drug products (44 FR 41064), FDA specifically deferred the "upset stomach" claim for bismuth-containing compounds to this Panel.

"Upset stomach" was initially denied inclusion in the antacid final monograph in 21 CFR, Part 331 (see 39 FR 19862). Subsequent petitions to amend the monograph to include "upset stomach" were also denied (see 44 FR 41067). After review of the data submitted in the petitions, FDA acknowledged that consumers frequently use the term "upset stomach" to describe symptoms associated with gastric hyperacidity such as "heartburn," "sour stomach," and "acid indigestion." The agency then proposed an amendment to the antacid monograph in the **Federal Register** of September 21, 1979 (44 FR 54731) to allow for claims such as "For the relief of upset stomach associated with heartburn, sour stomach, and acid indigestion." As part of that proposal (44 FR 54732), the agency made the following statement:

> The agency has referred the review of ingredients for the relief of gastrointestinal distress from causes other than gastric hyperacidity to the OTC Advisory Review Panel on Miscellaneous Internal Drug Products. Among ingredients to be reviewed by that Panel are those that are claimed to relieve the symptoms resulting from overindulgence in food and drink.

Based upon the above referral and upon consideration of the data in the submissions received, this Panel decided to review products with claims relating to "upset stomach," "overindulgence in food and drink," "hangover," "preventing inebriation," and "minimizing or reducing a hangover" in this document.

Overindulgence in the combination of alcohol and food can be manifested, in layman's terms, as an "upset stomach" and is sometimes confused with the overlapping symptom of a "hangover" due to overindulgence in alcohol alone. Symptoms of upset stomach due to overindulgence in the combination of alcohol and food can occur within one hour of overindulgence and persist for periods up to 24 hours. Hangover symptoms, however, are not usually manifested until several hours after overindulgence depending on the degree of inebriation. For the purposes of this document the Panel has agreed on the following definitions:

1. *Upset stomach due to overindulgence in the combination of alcohol and food.* A condition which occurs as a result of overindulgence in the combination of alcohol and food and consists of a group of symptoms which includes heartburn, fullness, and nausea.

2. *Hangover.* A condition consisting of a complex of symptoms involving the gastrointestinal, neurologic, and metabolic systems that follows recent acute excessive alcohol ingestion. These symptons may include nausea, heartburn, thirst, tremor, disturbance of equilibrium, fatigue, generalized aches and pains, headache, dullness, and/or depression or irritability.

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this document and the latter formulation, sodium citrate in solution and sodium acetylsalicylate in solution will be considered as the active ingredients for the relief of hangover symptoms.

[3] The withdrawal notice was published in the **Federal Register** on November 27, 1981 (46 FR 57914).

This document is divided into three parts as follows:

(1) Drug products for relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food.

(2) Drug products for relief of hangover symptoms.

(3) Drug products to prevent inebriation or to minimize or reduce a hangover.

B. Combination Policy

The panel has reviewed the FDA's general combination policy on OTC drug products (21 CFR 330.10)(a)(4)(iv)) and believes that the policy is rational. This policy is as follows:

An OTC drug may combine two or more safe and effective active ingredients and may be generally recognized as safe and effective when each active ingredient makes a contribution to the claimed effects; when combining of the active ingredients does not decrease the safety or effectiveness of any of the individual active ingredients; and when the combination, when used under adequate directions for use and warnings against unsafe use, provides rational concurrent therapy for a significant proportion of the target population.

The Panel notes that the combination drug products described in this document have been reviewed in accordance with this general combination policy and with FDA's combination guidelines (the availability of which was announced in the **Federal Register** of November 28, 1978 (43 FR 55466)). In addition, the Panel recommends that if a combination of ingredients is intended to treat separate but concurrent conditions, e.g., "upset stomach due to overindulgence in the combination of alcohol and food" and "headache", the labeling of such a combination should convey to the consumer that the product is intended for use only when the concurrent symptoms are present.

C. Labeling

The Panel has carefully reviewed the submitted labeling claims for products promoted for relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food, for relief of hangover symptoms, and to prevent inebriation or to minimize or reduce a hangover and has categorized them into either Category I, Category II, or Category III. The Panel realizes that other terms may be developed to express the same Category I indications; however, only those indications and warnings listed under Category I are generally recognized to be acceptable at this time.

In order for any labeling to be acceptable, it must include (1) the indications for use, (2) pertinent warnings and contraindications, and (3) the recommended dosage.

The Panel believes that all labeling should be clear, concise, easily read, and understood by most consumers. It has followed this concept in the development of all Category I labeling. The Panel is also concerned about the size and color of the print used in labeling of these and all drug products, and recommends that the industry make the necessary effort to design labeling which is legible.

One of the primary functions of this Panel is to attempt to eliminate confusing labeling claims. Some of the labeling either presently used or proposed on currently marketed "upset stomach" and "hangover" drug products is unsupported by scientific data and in some cases misleading. Accordingly, such labeling has been placed in Category II.

The indications for use should be simple and clearly stated. The directions should provide the consumer with enough information for safe and effective use of the product.

The Panel believes that if two ingredients are indistinguishable with regard to effectiveness, it is misleading to claim superiority for one of the ingredients unless supported by scientific data. The Panel understands that its function is not to compare various ingredients in order to determine the OTC drug of choice but to determine only safety and effectiveness for active OTC miscellaneous internal ingredients, as well as proper dosage ranges, warnings, and contraindications.

In the labeling, effectiveness shall not be related to the physical characteristics of the product, except as those characteristics may relate to the action of the active ingredients.

The Panel concurs with the recommendations of the Advisory Review Panel on OTC Antacid Drug Products as published in the **Federal Register** of April 5, 1973 (38 FR 8719) and the agency's regulations in 21 CFR 331.30(b) (4) and (5) that warnings should be included in the labeling of certain drug products containing sodium and magnesium but recommends that the wording be as follows in order to be more meaningful to the consumer:

(1) *For products containing more than 5 mEq of sodium in the maximum recommended daily dosage:* "If you are on a sodium-restricted diet, do not take this product except under the supervision of a physician."

(2) *For products containing more than 50 mEq of magnesium in the maximum recommended daily dosage:* "If you have kidney disease, do not take this product except under the supervision of a physician."

The Panel is aware of the current OTC labeling regulation dealing with warning statements (21 CFR 330.1(g)). The Panel concurs with the warning, "Keep this and all drugs out of the reach of children," and believes that it should be incorporated in the labeling of drug products affected by this document. However, the Panel recommends that the other warning statement required by § 330.1(g) "In case of accidental overdose, seek professional assistance or contact a poison control center immediately" be revised to read as follows: "In case of accidental overdose, contact a poison control center, emergency medical facility, or physician immediately for advice." The Panel believes that this revision will be more useful to the consumer.

Because OTC products can be purchased by anyone, it is the view of the Panel that the public may not regard them as products which can result in injurious or potentially serious consequences if used improperly. The public needs to be continually alerted to the idea that these products, like all medicine, carry some risk and should be used with caution. The consumer also should be informed of signs or symptoms of known toxicity requiring discontinuation of the use of the drug.

In addition, the Panel recommends that the drug product labeling contain instructions for the most effective use of the product. These instructions should be displayed prominently on all package labeling.

The Panel recommends that the label should contain a listing of all ingredients and that it should clearly indicate which are active and which are inactive. Active ingredients should be listed by their established names, and the label should state the quantity of the active ingredient per dose.

III. Drug Products for Relief of Symptoms of Upset Stomach Due To Overindulgence in the Combination of Alcohol and Food

A. General Discussion

The Panel has reviewed in detail the diverse symptoms which may occur after the excessive ingestion of alcohol alone or alcohol and food in combination. Although considerable overlap occurs in the symptoms which follow such excesses, the Panel concludes that overindulgence in a combination of alcohol and food produces a distinctive syndrome of

reproducible complaints which is usually different from those experienced from overindulgence in alcohol alone. This syndrome consists primarily of nausea, heartburn, and fullness, although other symptoms may be present.

The development of this overindulgence syndrome from the combination of excessive alcohol and food ingestion has a corollary in clinical medicine. The life-threatening illness, acute pancreatitis, is more likely to follow the ingestion of excessive amounts of alcohol and foods which produce high blood fats than with the excessive ingestion of either agent alone.

The Panel took note of the fact that nausea, heartburn, and fullness which follow overindulgence in the combination of alcohol and food can be produced by a wide range of etiologic factors. For example, nausea may occur in systemic disorders, such as uremia, hypercalcemia, ketoacidosis, or cerebral edema, and in local lesions of the gastrointestinal tract, such as ulcers or neoplasm. Nausea can also be associated with motion sickness, headache, fright, pregnancy, or stress, yet be indistinguishable to the sufferer from the nausea of a more serious origin. As another example, the single symptom of heartburn may often be due to gastric hyperacidity early in a bout of overindulgence, by may be due to acute hyperemia and gastritis several hours later. Thus, the symptoms which follow overindulgence in the combination of alcohol and food may be of different basis than the same symptoms from another cause. A medication which relieves nausea, heartburn, or fullness resulting from one cause may not necessarily provide relief for these symptoms when they are due to another cause.

Consideration of timing is also important. Symptoms which occur immediatley after overindulgence in the combination of alcohol and food can be different from those occurring the next morning. For example, headache is a rare occurrence immediately following such an episode, but frequently occurs the next morning.

The early symptoms, as well as their potential relief, may be further suppressed or confused by the direct effect of alcohol on the central nervous system. Thus, the Panel deemed it important to draw heavily on data from specific clinical trials rather than basing its decisions for effectiveness solely on physiologic probabilities or on empiricism.

1. *Establishment of upset stomach symptom complex as related to overindulgence in the combination of alcohol and food.* The Panel stated previously that for the purposes of this document upset stomach is defined as "a condition which occurs as a result of overindulgence in the combination of alcohol and food and consists of a group of symptoms which includes heartburn, fullness, and nausea." There are two important components in this definition. First, there is the causal factor which, for the purposes of this document, is limited to overindulgence in the combination of alcohol *and* food. The second component in the definition of upset stomach is the symptom complex associated with it. This symptom complex includes heartburn, fullness, and nausea. The Panel decided upon this symptom complex after reviewing the scientific literature and data submitted and listening to oral presentations. Data submitted in references one through seven summarize consumer/patient perception of upset stomach and the frequency of symptoms.

One submission to the Panel contained the results of a combined patient survey and clinical study (Ref. 1). The consumer survey component is relevant to the problem of determining the symptom complex of an upset stomach. Its objective was "to determine which specific terms patients use to describe the presenting symptom 'upset stomach.' " The sample consisted of 285 subjects whose presenting complaint was upset stomach with no known pre-existing gastrointestinal disease.

Each subject was "asked to verbally list all terms that he thought described his 'upset stomach.' " The 285 patients produced 677 terms. These terms consisted of many of the same or overlapping symptoms and were classified by the sponsor into nine categories of symptoms (including a miscellaneous category) "based on the obvious nature of the terms and/or by medical opinion." The eight symptom categories (miscellaneous category excluded) and the percentage of subjects with these symptoms were as follows:

Symptom category	Percent reporting symptom
Gas	56
Nausea	35
Heartburn	37
Pain	26
Acid indigestion	22
Motility	9
Vomiting	3
Upset stomach	4

Ninety-six percent of the subjects had at least one of the symptoms of gas (fullness), heartburn (or acid indigestion), or nausea.

One study did not relate the symptoms of upset stomach to any particular cause such as overindulgence, and so its major contribution is limited to the general discription of the symptom complex of an upset stomach (Ref. 1).

The Panel reviewed the results of three studies (Refs. 2, 3, and 4), whose objective was the determination of the upset stomach symptom complex associated with the overindulgence in food and alcohol. In the first study, which was conducted in Mexico, one of the objectives was to determine whether there is a distinct cluster of symptoms following overindulgence in alcohol and food whch can be distinguished from those clusters of symptoms associated with other conditions (Ref. 2). In this study "more than 600 statements concisely describing subjective experiences of all kinds but associated with gastrointestinal conditions were obtained from many sources." From these, an inventory of 300 questions was finally constructed. These questions were then put to subjects who were divided into five groups as follows:

(1) 40 untreated volunteers (controls),

(2) 11 normal volunteers before and after a heavy meal,

(3) 10 normal volunteers before and after receiving quipazine, a drug known to produce gastrointestinal discomfort,

(4) 18 hospitalized patients with severe drug-induced gastritis, and

(5) 113 hospitalized patients with miscellaneous gastrointestinal disorders.

The statistical method of cluster analysis was applied to the study subjects, and is consistently separated the subjects who had the heavy meal from the other groups. Further, the statistical method of discriminant analysis was employed, and it correctly classified all subjects who had the heavy meal. Next, factor analysis was used to characterize the pattern of the overindulgence sysmptons. The symptom categories (or clusters) which increased by at least 25 percent after the meal from those given before the meal were as follows:

Symptom category (cluster)	Post meal percent positive response
Fullness	90
Dry mouth	90
Headache	64
Sluggishness	55
Belching	50

Symptom category (cluster)	Post meal percent positive response
Nausea	36
Stomach ache	36
Feeling of needing air	36
Rumbling sensation	27

Another study was a consumer survey of 143 male subjects, all of whom had experienced upset stomach within the past six months (Ref. 3). Of the respondents, 53 percent listed overindulgence in the combination of food and drink, and another 27 percent listed overeating alone, as the cause of upset stomach. The survey subjects were given a list of 33 symptoms compiled from the symptoms used in the Mexico study. These 33 symptoms were considered to provide the greatest discrimination. The subjects were asked to check those symptoms that they usually experienced when they had an upset stomach and for which they took medication. There were 12 symptom categories in which symptoms sere reported as being experienced by 30 percent or more of the subjects as follows:

Symptom category	Percent reporting symptom
Fullness[1]	72
Heartburn/burning	65
Passing of gas	64
Headache[1]	62
Stomach ache[1]	60
Belching[1]	57
Rumbling sensation[1]	54
Thirsty/dry mouth[1]	51
Sluggishness[1]	50
Taste repeat	46
Nausea[1]	39
Bitter/acid aftertaste	30

[1] These symptom categories also appeared with high frequency in the Mexico study (Ref. 2).

The Panel reviewed a clinical study in which 64 subjects from the group of 143 males of the previous survey were given a heavy meal accompanied by alcoholic beverages to induce an upset stomach (Ref. 4). Of the 12 symptoms listed above, all except headache are clearly related to the gastrointestinal tract, and, during the course of this study, all 11 of those appeared with at least a 50 percent frequency. Specifically, 60 of the 64 subjects (94 percent) had fullness, 33 (52 percent) had nausea, and 33 (52 percent) had heartburn (Ref. 5).

The results of one consumer survey (Refs. 6 and 7) and one clinical trial (Ref. 8) were also reviewed. The objective of the consumer survey was "to determine the specific symptoms that consumers perceive as comprising the condition known and commonly referred to as the 'upset stomach.' " Data were collected by an independent market research firm through personal interviews with adult men and women (18 to 75 years old) who claimed to have suffered from an upset stomach at least once in the 6 months immediately preceding the date of the interview. Respondents were selected by the shopping center intercept survey technique at 10 geographically dispersed high traffic shopping centers throughout the continental United States. There were approximately 40 interviews per center with a total of 432 interviews in all.

Respondents were asked what they perceived to be the cause of their last upset stomach. Multiple causes could be given. Thirty-one percent (133 subjects) stated overeating and/or overdrinking as the cause, and 35 percent (151 subjects) cited "food that was disagreeable" as the cause. In total, 59 percent (257 subjects) stated either overindulgence in alcohol and/or food and/or eating food that was disagreeable as the cause. Each respondent also was asked to indicate all symptoms usually experienced when suffering an upset stomach. This was accomplished using a closed-end questionnaire consisting of 17 comprehensive symptoms. The symptom list was developed utilizing the marketing experience of the sponsor and the consumer research data contained in studies discussed above (Refs. 1, 2, and 3).

The statistical technique of cluster analysis was applied to the results of the survey in order to extract individual symptoms or groups of symptoms which were statistically distinguishable from other symptoms or groups of symptoms (Refs. 9 and 10). These distinguishable individual symptoms or groups of symptoms were called clusters. When the cluster analysis was applied to the subjects with upset stomach caused by overindulgence (133 subjects), or to the subjects with upset stomach caused by eating disagreable food (151 subjects), or to the combination of these two groups (257 subjects), four distinct clusters emerged. In each of these three conditions there were separate clusters for heartburn, fullness, and nausea. The fouth cluster, cosisting of symptoms such as headache, feeling sluggish, diarrhea, and dry mouth, can be called a cluster of associated symptoms. This delineation of the symptoms into four clusters, i.e., heartburn, fullness, nausea, and the associated conditions, was similar to clusters proposed in one of the consumer surveys (Ref. 6) before the application of the satistical procedure of cluster analysis. The analysis (Ref. 7) acted as a confirmation of the proposed structure in one of the consumer surveys (Ref. 6).

At least 30 percent of the respondents in each of the three subject groups given above (i.e., upset stomach caused by overindulgence, or eating disagreeable food, or both) reported having symptoms in the categories of heartburn, fullness, or nausea. Over 80 percent reported symptoms in at least one of these three symptom categories (Ref. 11).

A clinical study by Berkowitz (Ref. 8) consisted of 132 normal, healthy, nonalcoholic, adult volunteers who partook of a large meal which included wine, champagne, and cordials. Ninety-one of the subjects developed symptoms of upset stomach. Seventy-three percent of these had fullness, 55 percent had nausea, and 53 percent had heartburn. A cluster analysis was perfomed on all the symptoms reported (nausea, fullness, heartburn, belching, bitter or acid taste, stomach pain/cramps, passing gas/wind, or other). As was the case in the consumer survey when four clusters were extracted from the data, the symptom categories of heartburn, fullness, and nausea were distinguished clearly from one another and from the remaining symptoms and associated conditions. Ninety-five percent of the subjects had at least one of these three symptoms, i.e., heartburn, fullness, or nausea (Ref. 7).

On the basis of its review of the above clinical studies and consumer surveys, the Panel concluded that there is a significant target population for whom upset stomach due ot overindulgence in the combination of alcohol and food consists predominently of a group of symptoms which includes heartburn, fullness, and nausea.

2. *Clinical study guidelines.* In order to evaluate the date from clinical trials designed to investigate the effectiveness of drugs for relieving the symptoms of upset stomach due to overindulgence in the combination of alcohol and food, the Panel decided upon the following criteria: (1) The study must be placebo-controlled and double-blind, (2) The upset stomach reported by the study subjects must be related to overindulgence in the combination of alcohol and food, and (3) A significant number of subjects (e.g., at least 90 percent) must report symptoms in at least one of the symptom categories of heartburn, fullness, and nausea and the other two symptom categories must be reported by a substantial number (e.g., at least 30 percent) of the subject.

3. *Effectiveness criteria.* The major effectiveness variable should be a

variable measuring "overall" relief from the upset stomach. The data for this variable can be obtained by having the subjects categorize their overall relief (e.g., into one of the four categories of excellent, good, fair, and poor or none), or by having the subjects rate relief separately for each individual symptom and then combine these ratings for an overall rating (e.g., by averaging). A statistically significant difference (p less than or equal to 0.05) between drug and placebo on the overall relief variable is needed to establish the effectiveness of a drug for relieving the symptoms of upset stomach due to overindulgence in the combination of alcohol and food.

In order to justify the claim of relief for any specific symptom (i.e., for relief of heartburn, fullness, or nausea), analysis for the specific symptom must be performed and the difference between the drug and placebo must be statistically significant.

4. *Combination products and concurrent symptoms.* The Panel believes that there exists a significant target population of individuals who, in addition to having an upset stomach due to overindulgence in the combination of alcohol and food, also experience a headache or other minor aches and pains. With the exception of combining two or more salicylate-containing ingredients (due to potential salicylate toxicity), the Panel recommends that any Category I ingredient used to relieve the symptoms of upset stomach due to overindulgence in the combination of alcohol and food may be combined with any Category I internal analgesic used to relieve minor aches and pains for relieving the concurrent symptoms; if the analgesia is aspirin, the preparation should be appropriately buffered so that the final dosage form at least meets the buffering capacity required of an antacid final dosage form.

A combination product should be labeled as follows: "For the relief of upset stomach due to overindulgence in the combination of food and drink, when accompanied by a headache or other minor aches and pains."

References

(1) Comment 31–11370, Docket No. 78N–0263, Dockets Management Branch.

(2) Villarreal, J., et al., "Discrimination and Characterization of the Cluster of Symptoms Resulting from overindulgence in Food and Drink," unpublished study and related materials, OTC Volumes 170123 (Appendix 2), 170132, 170189 (Section III.D.2.), 170204 (Tab 369), and 170212.

(3) Hurley, F. L., and J. M. White, "Consumer Definition of Upset Stomach," unpublished study and related materials, OTC Volumes 170123 (Appendix 4), 170189 (Section III.D.2.), and 170196 (Tab 151).

(4) White, J. M., et al., "Clinical Study of Experimentally Produced Upset Stomach and Its Treatment," unpublished study and related materials, OTC Volumes 170123 (Appendix 5), 170132, 170189 (Section III.D.2.), 170205 (Tab 390), and 170212.

(5) Letter from Miles Laboratories, Inc., dated September 18, 1980 (Exhibit B), Panel Administrator's File (OTC Volume 17LPAII).

(6) Consumer survey conducted by Norwich-Eaton Pharmaceuticals included in OTC Volume 170187 (pp. 4–6).

(7) OTC Volume 170206.

(8) Berkowitz, J. M., "Bismuth Subsalicylate in Excessive Alcohol/Food Intake," unpublished study and related materials, OTC Volumes 170206 (pp. 7–9) and 170208 (pp. 11–15).

(9) "SAS (Statistical Analysis System) User's Guide," 1979 Ed., SAS Institute, Inc., Raleigh, NC, 1979.

(10) Johnson, S. C., "Hierarchal Clustering Schemes," *Psychometrika*, 32:241–254, 1967.

(11) Letter from Norwich-Eaton Pharmaceuticals, dated August 29, 1980, Panel Administrator's File (OTC Volume 17LPAII).

B. Category I Conditions

The following are Category I conditions under which drug products for relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food are generally recognized as safe and effective and not misbranded.

1. *Category I active ingredients.*
Bismuth subsalicylate
Sodium citrate in solution

a. *Bismuth subsalicylate.* The Panel concludes that bismuth subsalicylate is generally recognized as safe and effective in the dosage noted below for OTC use in relieving symptoms of upset stomach due to overindulgence in the combination of alcohol and food.

(1) *Safety.* The Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic and Antiemetic Drug Products in its report published in the **Federal Register** of March 21, 1975 (40 FR 12930) found bismuth subsalicylate to be safe for use as an antidiarrheal preparation in a dose of 0.6 to 2.0 grams (g) taken three to four times daily. Based on the data submitted for the claim of relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food, this Panel finds the manufacturer's recommended dose of 0.525 g of bismuth subsalicylate given up to eight times daily at intervals of at least ½ to 1 hour between doses to be safe because this limits the maximum daily dose to 4.2 g.

This Panel has considered reports of many cases of bismuth encephalopathy occurring in France and Australia (Ref. 1). Those reactions followed chronic administration of various bismuth preparations at very high doses. The bismuth preparations implicated in those reports were all of French origin. There have been no new cases of bismuth encephalopathy reported from Australia since Australia ceased the importation of bismuth from France (Ref. 2). A communication by the manufacturer (Ref. 3) further points out that no cases of bismuth encephalopathy have been reported in the United States and, furthermore, bismuth subsalicylate has never been implicated by any source as having caused a case of bismuth-related encephalopathy. It is also noted from this communication that several studies have failed to show bismuth absorption in humans; no bismuth was detected by the tests employed in the blood or urine of any subjects. Based upon this evidence, the Panel concludes that bismuth subsalicylate does not present a risk of bismuth encephalopathy when administered at the dosage recommended below.

The Panel is aware of a report in *The Medical Letter* on *Drugs and Therapeutics* (Ref. 4) which cites the theoretical possibility that if the maximum dose (240 milliliters (mL)) of a bismuth subsalicylate preparation for the treatment of diarrhea were consumed with large daily doses of a salicylate-containing internal analgesic (e.g., the amount of aspirin for the treatment of arthritis), the plasma salicylate concentrations would be likely to rise to toxic levels. The Panel also shares this concern and has given due consideration to the maximum daily dose of salicylate of 3.04 g (4 g aspirin) recommended by the Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products (hereafter referred to as the Internal Analgesic Panel). The recommended daily dose of salicylate in the bismuth subsalicylate preparation submitted to this Panel (but not reviewed by the Internal Analgesic Panel) is 2.144 g of salicylate (25 percent of the salicylate content contributed by ingredients other than bismuth subsalicylate). According to the manufacturer's recommended dosage intervals (8 times daily, every ½ to 1 hour), the maximum amount of salicylate can be consumed within 3½ hours. This works out to an hourly dose of 612.6 milligrams (mg) which exceeds the maximum salicylate dose recommended by the Internal Analgesic Panel which is 1,500 mg of aspirin over a 3-hour period (42 FR 35490) or an average of 500 mg/hour (equivalent to 381 mg/hour of salicylate). In a recent study conducted by Pickering et al. (Ref. 5) using the same preparation according to the dosage recommended by the

manufacturer (as cited above), an average peak plasma salicylate level of 137 micrograms per milliliter (μg/mL) (13.7 mg/100 mL) was reported, which is considerably less than the average level (20 mg/100 mL) at which ototoxicity (tinnitus—ringing in the ears) may appear (42 FR 35362 and 35364). In addition, *The Medical Letter on Drugs and Therapeutics* (Ref. 4) reported that the administration of 60 mL of this same bismuth subsalicylate preparation to 6 normal adult volunteers produced peak plasma salicylate concentrations of 40 μg/mL (4 mg/100 mL) which is comparable to the plasma concentration achieved with the usual analgesic doses of aspirin. The Panel, therefore, does not consider salicylate toxicity to be a problem when bismuth subsalicylate is administered alone because of the acute, self-limiting disorder (upset stomach due to overindulgence in the combination of alcohol and food) being treated; but, because of the possibility of concomitant use of bismuth subsalicylate with other salicylates, the warning regarding ringing in the ears is indicated. The Panel, therefore, recommends that the following warning be included in the labeling of any bismuth subsalicylate preparation: "This product contains salicylates. If taken with other salicylate-containing preparations, such as aspirin, and ringing in the ears occurs, discontinue use."

Additionally, *The Medical Letter on Drugs and Therapeutics* (Ref. 4) stated that such high plasma salicylate levels (resulting from the concurrent administration of bismuth subsalicylate and salicylate-containing internal analgesics) could lead to enhanced effects of anticoagulants causing bleeding, could inhibit the activity of uricosuric drugs, and could increase the methotrexate toxicity in patients who are taking such a medication.

A presentation was made to the Panel by Joseph M. White, M.D. (Ref. 6), a consultant for Miles Laboratories, in which he discussed the significance of the possible interaction of salicylates with certain prescription drugs, i.e., anticoagulants and drugs for the treatment of diabetes, gout, and arthritis, as proposed by the Internal Analgesic Panel in the Federal Register of July 8, 1977 (42 FR 35493). This Panel concurs with his conclusions that a warning prohibiting the concomitant use of salicylates and anticoagulants is justified. The Panel also concurs that a warning relating to the other three types of drugs, i.e., for diabetes, gout, and arthritis, need not be included in the labeling of preparations marketed only for the acute, self-limiting condition discussed here (upset stomach due to overindulgence in the combination of alcohol and food). The Panel, therefore, recommends that the following warning be included in the labeling of products containing bismuth subsalicylate and intended to relieve upset stomach due to overindulgence in the combination of alcohol and food: "If taking oral medication for anticoagulation (thinning of the blood), consult a physician before taking this product."

The Panel concludes that bismuth subsalicylate is safe for OTC use when administered at a dose of 0.525 g to be repeated no more frequently than every ½ to 1 hour with a maximum daily dose not to exceed 4.2 g (8 doses) and when labeled with the warnings described below.

(2) *Effectiveness.* Three randomized, placebo-controlled, double-blind studies were reviewed (Refs. 7, 8, and 9). Investigators were Jesse M. Berkowitz, M.D. (Ref. 7), John H. Newsom, M.D. (Ref. 8), and Charles S. Davis, M.D., Ph. D (Ref. 9). The latter two studies have design faults, but are supportive of the effectiveness claim.

Berkowitz studied 132 normal, healthy, nonalcoholic adult volunteers, 18 to 63 years of age of both sexes. These subjects participated in a randomized, placebo-controlled, double-blind, parallel clinical trial in which they were instructed to fast for a 6-hour period immediately preceding the study. In the study, subjects were provided unlimited food and drink (champagne, wine, cordials) in a dinner party atmosphere. Of the 132 subjects, 91 developed one or more symptoms of gastrointestinal distress that required medication. Forty-three subjects took one or more doses of the bismuth subsalicylate formulation as cited above (0.525 g per dose) ½ to 1 hour apart up to a maximum of 8 doses, and 48 subjects took 1 or more doses of a placebo formulation.

Subjects were instructed to record the symptoms, degree of discomfort (none, mild, moderate, or severe), and the time of onset for each of the following symptoms: stomach queasiness/nausea, sense of fullness/bloated feeling, heartburn, belching, stomach pain/cramps, passing gas/wind, bitter or acid taste in mouth, and "others."

In addition, for each dose of medication during the study period, the subjects filled in the time taken and relief obtained (none, poor, good, or excellent). At the end of the study (24 hours after subjects arrived at study site), the subjects were asked to give their subjective evaluation of the overall relief obtained (none, poor, good, or excellent) from their treatment.

The subjects who took the bismuth subsalicylate formulation reported significantly better overall relief than did the subjects who took the placebo (p less than 0.01). Ninety-one percent of those who took bismuth subsalicylate and 56 percent of those who took the placebo reported good or excellent overall relief. (Statistical technique employed was the chi square test.)

Statistical analyses (Mantel-Haenszel test and the chi square test) showed that subjects taking the bismuth subsalicylate got significantly greater relief than subjects taking the placebo for the specific symptoms of nausea (p less than 0.01), fullness (p less than 0.01), and heartburn (p less than 0.01). Baseline symptom severity (i.e., before medication) was considered in the analyses. Further, the time to relief analyses (life table techniques) showed that bismuth subsalicylate provided significantly faster relief than the placebo for nausea (p less than 0.01), fullness (p less than 0.01), and heartburn) (p less than 0.01). The number of subjects who experienced these individual symptoms by treatment groups were as follows:

TREATMENT GROUP

	Bismuth subsalicylate	Placebo	Total
Nausea	22	28	50
Fullness	29	37	66
Heartburn	26	22	48

The Newsom study (Ref. 8) was a randomized, placebo-controlled, double-blind, multiple crossover study involving 48 adult subjects suffering from episodes of "indigestion" or "acute gastrointestinal discomfort" which was defined as a symptom complex consisting of two or more of the following symptoms occurring during or after the ingestion of food: nausea, heartburn, upper-abdominal pain, flatulence and eructation (belching), sense of fullness, and a feeling of abdominal distension. There was no record of whether or not alcohol was ingested. Subjects were not in any study or controlled setting during the episodes, but took the medication during their normal daily routine.

Each subject was treated for six episodes, three with a bismuth subsalicylate formulation (as cited above) and three with a placebo formulation. For each episode treated, the subjects recorded the time of onset, identified the specific symptoms present, and rated the overall severity

(mild, moderate, or severe) on the case report form. Further, the severity of each symptom was rated at 15 and 30 minutes following each dose. Up to 8 doses could be taken at 30 minute intervals if needed. Additionally, if relief was obtained, the subject was asked to specify the time it was noted.

For the overall relief of symptoms, independent of the time to relief, there was a uniformly higher proportion of relief for the episodes treated with bismuth subsalicylate than for the episodes treated with placebo. This trend held in all severity categories (mild, moderate, and severe). However, the differences were not statistically significant (p equals more than 0.05, but less than 0.10). Analysis of time to overall relief (by the Bernard and Van Elteran test) did attain a statistically significant difference between the bismuth subsalicylate and the placebo (p less than 0.005).

For individual symptoms, bismuth subsalicylate was statistically superior to the placebo for both the mean severity score over the 4-hour time period (up to 8 doses at half hour intervals) and for the time to relief for the symptoms of nausea, fullness, and heartburn.

The number of episodes in which subjects treated these individual symptoms with placebo and with bismuth subsalicylate is as follows:

TREATMENT

	Bismuth subsalicylate	Placebo	Total
Nausea	53	56	109
Fullness	83	91	174
Heartburn	88	75	163

In order to perform the analysis on the treatment of separate symptoms, episodes were considered the basic units of analysis and not the individual subjects. This ignores the fact that subjects contributed variable total numbers of episodes, that the number of bismuth subsalicylate-treated and placebo-treated episodes contributed by a given subject were not always equal, and that the episodes were not independent of other episodes.

The Davis study (Ref. 9) was a randomized, placebo-controlled, double-blind study which involved 626 families. Each family was given a medication (bismuth subsalicylate formulation (as cited above) or placebo formulation (in a ratio of two bismuth to one placebo) and instructed to use it for minor gastrointestinal upsets (upset stomach) which might occur within the 2-week period following enrollment in the study.

In the 625 families, 141 individuals had upset stomach; of these, 97 were treated with bismuth subsalicylate and 44 with placebo. Statistical analysis of the five ordered relief categories (complete, good, fair, slight, and none) showed a statistically significant advantage for the bismuth subsalicylate treatment (p equals 0.04 for a two-sided test). When the relief categories were divided into "success" (complete or good) and "failure" (fair, slight, or none), the difference between the bismuth subsalicylate and placebo groups still favored the bismuth group, but now was not statistically significant (p equals 0.123 for a two-sided test).

The Panel concludes that the "overall" effectiveness of bismuth subsalicylate has been demonstrated in relieving the symptoms of upset stomach due to overindulgence in the combination of alcohol and food. In addition, it has been demonstrated to be effective in relieving the specific symptoms of nausea, fullness, and heartburn due to overindulgence in the combination of alcohol and food.

(3) *Dosage.* The Panel has determined that a dose of 0.525 g of bismuth subsalicylate to be given at intervals no more frequent than every ½ to 1 hour for a total daily dose of 4.2 g (8 doses) is safe and effective for relief of the symptoms of upset stomach due to overindulgence in the combination of alcohol and food.

(4) *Labeling.* The Panel recommends Category I labeling for ingredients intended to relieve symptoms of upset stomach due to overindulgence in the combination of alcohol and food. (See part III. paragraph B.2. below—*Category I labeling.*) In addition, the Panel recommends the following warnings: "This product contains salicylates. If taken with other salicylate-containing preparations, such as aspirin, and ringing in the ears occurs, discontinue use. If taking oral medication for anticoagulation (thinning of the blood), consult a physician before taking this product."

Data submitted have demonstrated the effectiveness of bismuth subsalicylate in relieving the specific symptoms of nausea, heartburn, and fullness due to overindulgence in the combination of alcohol and food and, therefore, these symptoms may be included in the indication as stated under Category I labeling. (See part III. paragraph B.2. below—*Category I labeling.*)

References

(1) Anonymous, "Mental Illness Due to Bismuth Salts," *Japan Medical Gazette,* pp. 8–9, February 20, 1976.

(2) Buge, A., et al., "Correlations Evolutives: Cliniques Electroencephalographiques, Tomodensitometriques et Toxicologiques, Dan Cinq Cas D'Encephalopathies Bismuthiques," *La Semaine Des Hopitaux De Paris,* 55:1466–1472, 1979.

(3) OTC Volume 170208 (p. 5).

(4) Anonymous, "Salicylate in Pepto-Bismol," *The Medical Letter on Drugs and Therapeutics,* 22:63, 1980.

(5) Pickering, L. K., et al., "Absorption of Salicylate and Bismuth in Children and Adults from a Bismuth Subsalicylate Containing Compound (Pepto-Bismol)," unpublished study (forwarded to FDA by letter dated February 24, 1981), Panel Administrator's File (Volume 17LPAII).

(6) White, J. M., "Drug Interactions," OTC Volumes 170213 and 170214.

(7) Berkowitz, J. M., "Bismuth Subsalicylate in Excessive Alcohol/Food Intake," OTC Volume 170208 (pp. 11–15).

(8) Newsom, J. H., "Evaluation of Bismuth Subsalicylate in Relieving Symptoms of Indigestion," OTC Volume 170208 (pp. 15–17).

(9) Davis, C. S., "The Effectiveness of Pepto-Bismol in Gastrointestinal Upsets," OTC Volume 170208 (pp. 18–19).

b. *Sodium citrate in solution.* The Panel concludes that sodium citrate in solution is generally recognized as safe and effective in the dosage noted below for OTC use in relieving symptoms of upset stomach due to overindulgence in the combination of alcohol and food.

Two of the preparations which the Panel reviewed for this indication are combination drug products which contain, in addition to an analgesic, citric acid and sodium bicarbonate in a dry form. One preparation is formulated as effervescent granules, and the other as an effervescent tablet. When either preparation is immersed in water, a series of chemical reactions occurs which results in the formation of sodium citrate in solution and free and dissolved carbon dioxide, with a slight excess of residual sodium bicarbonate in solution. The slight excess of sodium bicarbonate is included in the formulation to ensure that the above chemical reaction progresses to completion. For treating the symptoms of upset stomach due to overindulgence in the combination of alcohol and food, the Panel considers sodium citrate in solution to be the only active ingredient.

(1) *Safety.* The Advisory Review Panel on OTC Antacid Drug Products concluded that the citrate ion (available as citric acid or salt) is safe in a maximum daily dose limit of 8 g as published in the **Federal Register** of April 5, 1973 (38 FR 8724). This Panel is unaware of any safety problems associated with the ingestion of citrate ion, and believes that the Antacid Panel's daily limits of 100 mEq of

sodium for persons 60 years of age or older and 200 mEq of sodium for persons under 60 years of age is more realistic than using the citrate ion as the upper limit and adopts these limits for calculating the amounts of sodium citrate. The Panel, therefore, concludes that sodium citrate is safe in a daily dose of up to 8.6 g (100 mEq of sodium) for persons 60 years of age or older and up to 17.2 g (200 mEq of sodium) for persons under 60 years of age. If there is another source of sodium in a combination drug product, the dose of sodium citrate must be reduced proportionally.

(2) *Effectiveness.* Sodium citrate was reviewed by the Advisory Review Panel on OTC Antacid Drug Products and was found to be effective for use as an antacid (38 Fr 8724).

This Panel has been presented with another claim for sodium citrate, i.e., upset stomach due to overindulgence in the combination of food and drink. In support of this claim, White et al. (Ref. 1) conducted a study comparing the effectiveness of a sodium acetylsalicylate and sodium citrate combination to aspirin tablets, an antacid, and a placebo. This was a placebo-controlled, parallel sample study on 64 subjects who were randomly assigned to one of the medication groups. The subjects were separated into 4 groups of 16. Each group, on different dates, was encouraged to overeat a variety of rich and spicy foods while consuming alcoholic beverages of their own choosing. A symptom questionnaire, which was completed 5 times during the course of the 14-hour and 15-minute study protocol, included 11 upset stomach symptoms: fullness, heartburn/burning, passing of gas, stomach ache, belching, rumbling sensation, thirsty/dry mouth, sluggishness, taste repeat, nausea, and bitter/acidic aftertaste. Average severity scores for each subject were computed and analysis of variance was applied comparing the four treatments for each time period. Significant differences (p equals 0.004) among treatments were found for the final measurement (45 minutes after medication on the morning after overindulgence), which was the primary point of measurement. Duncan's Multiple Range test showed the combination of sodium acetylsalicylate and sodium citrate significantly better than placebo (p equals 0.05) or aspirin (p equals 0.05) at the final measurement. Also, there was no significant difference between aspirin and placebo.

On the basis of this study, collateral studies (Ref. 2), proven antacid capacity (21 CFR Part 331), and long history of use, the Panel concludes that sodium citrate in solution has demonstrated an "overall" effectiveness in relieving the symptoms of upset stomach due to overindulgence in the combination of alcohol and food.

(3) *Dosage.* The Panel recommends that sodium citrate be given in divided doses and that the daily dose not exceed 8.6 g (100 mEq of sodium) for persons 60 years of age or older and 17.2 g (200 mEq of sodium) for persons under 60 years of age. If there is another source of sodium in a combination drug product, the dose of sodium citrate must be reduced accordingly.

(4) *Labeling.* The Panel recommends Category I labeling for ingredients intended for relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food. (See part III. paragraph B.2. below—*Category I labeling.*) In addition, the Panel recommends the following statements:

(i) *Warning—For products containing more than 5 mEq of sodium in the maximum recommended daily dose.* "If you are on a sodium-restricted diet, do not take this product except under the supervision of a physician.

(ii) *Directions.* "If you are 60 years of age or older, the maximum daily dose should not exceed —— of this drug." (Space to be filled in with the number of dosage units which will not exceed 100 mEq of sodium in a daily dose as specified under "Dosage.")

References

(1) White, J. M., et al., "Clinical Study of Experimentally Produced Upset Stomach and Its Treatment," unpublished study, OTC Volumes 170123 (Appendix 5), 170132, 170189 (Section III.D.2.), 170205 (Tab 390), and 170212.

(2) OTC Volume 170189.

2. *Category I labeling.* The Panel recommends the following Category I labeling for drug products which contain ingredients that are generally recognized as safe and effective for relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food, as well as any ingredient-specific labeling statements discussed previously:

Indications. "For the relief of upset stomach due to overindulgence in the combination of food and drink." Throughout this document the Panel has used the phrase "overindulgence in the combination of alcohol and food" to emphasize that alcohol is the more important of the two elements in terms of symptoms generated. The Panel has not followed through with this wording in the indication to be used on product labeling because it believes that the phrase "overindulgence in the combination of food and drink" is more acceptable to the consumer. It is also assumed by the Panel that the consumer will know that "drink" means an alcoholic beverage.

If any or all of the major individual symptoms (i.e., nausea, heartburn, and fullness) are also demonstrated to be relieved by a particular drug product (e.g., bismuth subsalicylate), those symptoms relieved may also be included in the labeling following the term "upset stomach." For example, if all these symptoms are shown to be relieved, the labeling could be as follows: "For the relief of upset stomach associated with nausea, heartburn, and fullness due to overindulgence in the combination of food and drink."

C. Category II Conditions

The following are Category II conditions under which drug products intended to relieve the symptoms of upset stomach due to overindulgence in the combination of alcohol and food are not generally recognized as safe and effective or are misbranded.

1. *Category II active ingredients.* None.

2. *Category II labeling.* The Panel concludes that the following labeling claims are misleading or unsupported by scientific data. Therefore, the following claims and other related terms are classified as Category II labeling:

a. "Upset stomach." (unqualified as to cause)

b. "Fast relief," "quick relief," or any other term which nonspecifically relates to the speed of action.

c. "Upset stomach with headache from overindulgence." (no explanation as to what item in which one overindulged)

D. Category III Conditions

There are no Category III conditions.

IV. Drug Products for Relief of Hangover Symptoms

General Discussion

The word "hangover" is commonly used to describe noxious feelings encountered several hours after the sporadic ingestion of large amounts of alcohol. This syndrome involves a temporary metabolic disturbance affecting many organ systems of the body, most notably the central nervous system, gastrointestinal system, and endocrine system. A hangover is generally differentiated from alcoholism, an entirely different disorder encountered with chronic alcohol ingestion and the resulting pathological organ damage. This Panel has

considered only the treatment of the sporadic episode of overindulging in alcohol. The Panel has reviewed the literature and found approximately 30 symptoms used in describing "hangover" (Refs. 1 through 5).

Collins (Ref. 1), in measuring performance effects on simulated tasks during alcohol intoxication and hangover, used a questionnaire to measure severity of an assortment of hangover symptoms which included the following: "throwing up, stomachache, hungry, headache, loose bowels, tight bowels, muscle aches, shaking, dizzy, feel hot, feel confused, eyes burn, backache, nose runs, nervous, tired, dry mouth, feel sad or depressed, ringing in ears, hurts to move, thirsty, nauseated, heartburn."

In a review article, Anylian, Dorn, and Swerdlow (Ref. 2) reported the results of a series of tests conducted in Finland which attempted to define hangover by using the subjective feelings of "fatigue, headache, dizziness, nausea, thirst, tension, depression, and general malaise," and the objective signs of "paleness, tremor, perspiration, nystagmus (involuntary eye movement), vomiting, and general appearance." This paper cited three other studies in which hangover symptoms were measured. Khan, Jensen, and Krogh (Ref. 3) in comparing pyritinol and placebo in preventing hangover, used the following symptoms: "vomiting, loss of appetite, heartburn, lassitude, continued thirst, palpitation, weakness of joints, respiratory difficulties, sleeplessness, giddiness, headache, fatigue, sweating, disturbed balance and gait, pallor, tremor, nystagmus, general malaise, anxiety and depression." Chapman (Ref. 4), in attempting to predictably induce hangover for experimental studies, used the following symptoms: "thirst, fatigue, drowsiness, trouble in sleeping, general malaise, nausea, loss of appetite, dizziness or feelings of faintness, headache, depression, and anxiety." Damrau and Liddy (Ref. 5), in attempting to demonstrate that congeners play an important role in the production of hangover, used the following symptoms: "headache, bad breath, gastric irritation, fatigue, dizziness and desensitization of the taste sensations."

To the Panel's knowledge no study has been performed delinating the frequency of these symptoms in a large population. Therefore, the Panel developed a list of the most frequently occurring hangover symptoms mentioned in the five studies cited above (Refs. 1 through 5). These symptoms reflect disturbances in the gastrointestinal, neurologic, and endocrine systems and consist of nausea, heartburn, thirst, tremor, disturbance of equilibrium, fatigue, generalized aches and pains, headache, dullness, and/or depression or irritability.

The Panel has reviewed remedies for relief of hangover symptoms in a different manner from those remedies intended for relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food. For the latter, the Panel required results of clinical studies to demonstrate effectiveness, but for hangover remedies, no studies were deemed necessary. The hangover symptom complex is complicated and reflects multiple body disturbances. Based upon the Panel's background in clinical medicine, it concluded that a hangover can be manifested by a wide variety of signs and symptoms of varying frequency and severity usually appearing several hours after overindulgence in alcohol.

Over the years, people have found it convenient to treat their generalized hangover symptoms with internal analgesics for headache, antacids for gastric distress, and caffeine for the fatigue or dullness. The Panel, therefore, concludes that it would be logical to allow consumers to self-treat hangover symptoms with various combinations of analgesics, antacids, and stimulants. The Panel recommends that preparations intended as hangover remedies contain a combination of ingredients from two or more of these drug categories so that consumers can choose the product which contains the ingredients needed to treat the symptoms they are experiencing. Because these ingredients have been extensively reviewed by other panels for treating the diffferent symptoms that comprise a hangover, the Panel considers it unnecessary to require clinical studies that demonstrate effectiveness. The Panel does require that these combinations conform to FDA's combination policy and combination guidelines. (See part II. paragraph B. above—*Combination Policy.*)

The Panel required clinical studies for remedies intended to relieve the symptoms of upset stomach due to overindulgence in the combination of alcohol and food because it believes that this condition is not as clearly understood by consumers as is the hangover syndrome. Moreover, the symptoms of upset stomach due to overindulgence in the combination of alcohol and food have been difficult to identify, even by experts in the field. This Panel required prolonged discussions and reviews before arriving at a classification of symptoms that appears reproducible and characteristic. Furthermore, the Panel is not aware of any Category I ingredient which would relieve two of the three symptoms established by the Panel, i.e., nausea and fullness. The Panel, therefore, concludes that the effectiveness of any single ingredient intended to relieve symptoms of an upset stomach due to overindulgence in the combination of alcohol and food must be demonstrated by the use of clinical trials. The use of empiricism or reasonable probabilities was not deemed adequate.

1. *Formulation criteria.* The Panel has identified no product or single ingredient which is unique in relieveing the symptoms of a hangover. Based upon this fact and the above discussion, the Panel recommends that a hangover drug product contain a combination which may include analgesics, antacids, and/or stimulants as long as the preparation meets all of the following criteria:

a. The combination must contain Category I ingredients from at least two of the following drug categories: analgesics (a final dosage form containing aspirin would have to at least meet the buffering capacity required of an antacid final dosage form), antacids, and stimulants.

b. Each of the ingredients, and any combination of ingredients (if applicable) must meet the conditions of the appropriate monographs with the exceptions as specified in paragraph 3. below—*"Use of buffered aspirin and an antacid in gastric distress."*

c. The product must conform with FDA's combination policy and combination guidelines.

If these criteria are met and the product does not contain any active ingredients other than Category I analgesics, antacids, or stimulants, the Panel considers such a product to be rational and effective for relieving hangover symptoms.

2. *Combination products for relief of hangovers.* The Panel has reviewed the following four combination products for the relief of hangover symptoms:

a. Aspirin, citric acid, and sodium bicarbonate (when immersed in water and ingested contains sodium acetylsalicylate in solution and sodium citrate in solution as the active ingredients),

b. Acetaminophen, citric acid, and sodium bicarbonate (when immersed in water and ingested contains acetaminophen and sodium citrate in solution as the active ingredients),

c. Aspirin, caffeine, aluminum hydroxide, and magnesium carbonate, and

d. Acetaminophen, aspirin, caffeine, magnesium trisilicate, magnesium carbonate, and aluminum hydroxide gel.

The panel concludes that each combination satisfies the criteria of effectiveness established by the Panel. However, combinations c. and d. require additional acid neutralizing capacity to meet requirements of the antacid monograph.

The Panel emphasizes that although the consumer may desire an antacid for what he describes as heartburn, acid indigestion, or sour stomach, the condition existing in a hangover state usually is not due to hyperacidity. It is more likely due to acute gastritis (inflamed gastric mucosa) and the antacid would be necessary to protect the mucosa from normal gastric acid secretion.

3. *Use of buffered aspirin and an antacid in gastric distress.* the Advisory Review Panel on OTRC Internal Analgesic and Antirheumatic Drug Products, in its report published in the **Federal Register** of July 8, 1977 (42 FR 35386 and 35471), recommended against the combination of aspirin and an antacid for use in gastric distress. This Panel differs with that Panel's recommendation and bases its conclusion in favor of combining aspirin with antacids (as long as the final dosage form at least meets the buffering capacity required of an antacid final dosage form) for use in conditions of gastric distress for the following reasons:

Acetylsalicylic acid (aspirin) has been shown to cause an increase in blood loss from the gastrointestinal tract. Aspirin is a weak acid and is lipid-soluble in its undissociated dorm, which facilitates its absorption into the gastric mucosa. The presence of aspirin in gastric mucosal cells results in an abnormal permeability and subsequent back diffusion of gastric acid which in turn results in an increased potential for mucosal erosions and bleeding. In the presence of strong buffers, aspirin is converted to sodium acetylsalicylate which is water-soluble and lipid-insoluble. In this form it is not absorbed by the cells of the gastric mucosa in amounts significant enough to cause gastric erosion. Studies of an effervescent alkaline solution containing sodium acetysalicylate have demonstrated that there is no increase in fecal blood loss (Ref. 6), no gastric erosions are seen on gastrocamera examination (Ref. 7), and the mucosal barrier of dogs remains intact (Ref. 8). Concommitant administration of alcohol had no affect on the gastric mucosa of dogs, whereas aspirin combined with alcohol showed an increase in blood loss (Ref. 8).

The Advisory Review Panel on OTC Antacid Drug Products in its report published in the **Federal Register** of April 5, 1973 (38 FR 8721) concluded that

> . . . unbuffered aspirin causes greqter visible gastric mucosal damage and more gastrointestinal blood loss than strongly buffered aspirin in solution, which causes little or none of these experimental forms of damage. However, the actual clinical condition of major gastrointestinal hemorrhage associated with aspirin ingestion has been seen with both unbuffered and strongly buffered aspirin in solution. There is inadequate evidence to establish whether the risk of clinically major gastrointestinal hemorrhage is less with strongly buffered aspirin in solution than with unbuffered aspirin.

The internal Analgesic Panel in its report published in the **Federal Register** of july 8, 1977 (42 FR 35471), concluded

> * * * that there is evidence that highly buffered aspirin solutions will reduce, but not eliminate the acute gastric erosions and occult blood loss produced by the local effects of aspirin in experimental animals and individuals with no predisposing gastrointestinal disease. However, there is no valid clinical evidence to support the claim that highly buffered aspirin for solution has significantly less potential to induce major gastrointestinal hemorrhage in patients with preexisting gastrointestinal lesions which the Panel believes includes mechanisms other than the acid-mediated local mechanisms involved in the production of occult bleeding in normal subjects.

That Panel also stated: "Furthermore, based on current knowledge of high risk groups such as individuals who drink alcohol excessively, the benefit to risk ratio for individuals with symptoms of gastric distress, particularly with concomitant headache, does not warrant the use of aspirin in any dosage form."

This Panel, with its experience in hematology, has reviewed the current literature and considered expert testimony (Ref. 9) and concludes that evidence indicates that sodium acetylsalicylate does not cause gastric erosions or appreciable increased blood loss. The Panel also concludes that evidence implicating sodium acetylsalicylate as a cause of major gastrointestinal hemorrhage has been based on occasional isolated reports in which there is no proven causal relationship.

The effects of aspirin on the mechanisms of hemostasis were reviewed because it has been suggested that mechanisms other than acid reflux might cause gastrointestinal hemorrhage. When a blood vessel is served, a complex series of interactions ensues, i.e., localized vasoconstriction, platelet adhesion at the wound site, platelet aggregation, release of internal platelet materials, formation of a platelet plug, formation of a fibrin network, and, finally, dissolution of the fibrin clot by the action of plasmin and other means. Aspirin has an inhibitory effect on prostaglandin synthesis, which in turn inhibits secretion of adenosine diphosphate from platelets and their aggregation. However, adenosine diphosphate is present in abundance from other sources where tissue or vacular damage occurs, and so the net effect is minimal in healthy persons. O'Laughlin et al. (Ref. 10) studied the effects of acute and chronic aspirin use on gastric bleeding time in humans using endospic punch biopsies and observed the time it took for bleeding to stop. This study demonstrated that aspirin in the dose administered had no measurable effect on the bleeding time of gastric mucosa.

The synergism between the effects of aspirin and alcohol to induce gastrointestinal bleeding was explored by the Panel. At low concentrations, alcohol stimulates acid secretion. Davenport (Ref. 11) observed that severe damage occurred to the gastric mucosa of dogs treated with a mixture of aspirin, hydrochloric acid, and 8 to 10 percent alcohol; however, no back diffusion of acid or bleeding occurred when the solution contained a combination of buffered sodium acetylsalicylate and alcohol. Leonards (Ref. 12) administered large amounts of alcohol to normal subjects and compared fecal blood loss after alcohol alone and after a combination of alcohol and buffered sodium acetylsalicylate. Adding buffered aspirin produced no increase in fecal blood loss. Another study also demonstrated that a combination of alcohol and buffered sodium acetylsalicylate did not cause gastrointestinal bleeding (Ref. 13).

It should be noted that chronic alcoholism is well known to cause gastrointestinal hemorrhage for various reasons and that no claims of effectiveness of sodium acetylsalicylate in relief of symptoms of chronic alcoholism are recognized.

The Panel has reviewed sodium acetylsalicylate as an agent to provide symptomatic relief of a hangover defined by the Panel as overindulgence in alcohol producing symptoms which include nausea, heartburn, thirst, tremor, disturbance of equilibrium, fatigue, generalized aches or pains, headache, dullness, and/or depression or

irritability, and has found this ingredient to be safe and effective in relief of those symptoms subject to relief by an analgesic. In addition, the combination of sodium citrate and sodium acetylsalicylate to treat a hangover is rational and justified because the alkaline buffering ability of sodium citrate enables aspirin to become dissolved and remain dissolved as sodium acetylsalicylate, thus protecting the gastric mucosa from the erosive effects caused by the combination of aspirin, gastric acidity, and alcohol.

4. *Category I labeling for OTC drug products that provide relief from hangover symptoms.* The Panel offers the following discussion and recommendations of Category I labeling claims for drug products which are considered safe and effective for relief of hangover symptoms and are not misbranded. A drug manufacturer shall include all of the hangover symptoms (from the Panel's definition of hangover) which the active ingredients in the formulation would normally be expected to relieve (e.g., if one of the ingredients is an analgesic, the symptoms of "headache" and/or "generalized aches and pains" shall be included).

Any additional labeling information (e.g., warnings, drug interaction precaution) which is specific to the individual ingredients would come from the respective monographs (i.e., analgesic (21 CFR Part 343), antacid (21 CFR Part 331), and stimulant (21 CFR Part 348); only the antacid monograph is final at this time). With regard to warnings, for those products marketed only for the condition "relief of hangover" the following exceptions are recommended to the warning statements as published in the July 8, 1077 **Federal Register** (42 FR 35493–4) for internal analgesics, the June 4, 1974 **Federal Register** (39 FR 19876) for antacids, and the June 13, 1978 **Federal Register** (43 FR 25602) for stimulants:

Any labeling pertaining to children (except the warning to keep the medication out of the reach of children) is not applicable due to the nature of the condition being treated.

a. *For products that include a salicylate.* (1) That portion of § 343.50(c)(1)(i) that reads, "Adults: Do not take this product for more than 10 days," is not applicable and should be deleted because of the acute nature of the condition being treated. The resultant warning would read, "If symptoms persist, or new ones occur, consult your physician."

(2) That portion of § 343.50(c)(3)(ii) that reads, "or other symptoms," (regarding ringing in the ears) should be deleted because it is too vague. The resultant warning would read, "Stop taking this product if ringing in the ears occurs."

(3) The entire warning in § 343.50(c)(3)(iv) that reads, "*Caution.* Do not take this product if you have stomach distress, ulcers, or bleeding problems except under the advice and supervision of a physician," is not applicable and should be deleted because the hangover syndrome involves stomach distress.

(4) Revision of the warning regarding the concurrent use of certain prescription medications (§ 343.50(c)(3)(v)) has been discussed earlier in this document. (See part III. paragraph B.1.a. above—*Bismuth subsalicylate*). This reasoning also applies to hangover remedies and the resultant wording should read, "*Warning:* If taking medication for anticoagulation (thinning of the blood), consult a physician before taking this product."

(5) That portion of § 343.50(c)(6) that reads, "except under the advice and supervision of a physician," (regarding an allergic reaction to the salicylate portion of choline, magnesium, and sodium salicylate) should be deleted because if one is allergic to the ingredient, then one should not take the product. The resultant warning would read, "Do not take this product if you are allergic to salicylates, such as aspirin."

(b) *For products that contain acetaminophen.* (1) The warning in § 343.50(c)(5)(i) that reads, "Do not exceed recommended dosage because severe liver damage may occur," is not applicable and should be deleted because of the temporary nature of the condition being treated.

(2) That portion of § 343.50(c)(1)(i) that reads, "Adults: Do not take this product for more than 10 days," is not applicable and should be deleted because of the temporary nature of the condition being treated. The resultant warning would read, "If symptoms persist, or new ones occur, consult your physician."

c. *For products that contain antiacids.* (1) The portion of § 331.30(b)(1) that reads, "or use the maximum dosage of this product for more than 2 weeks," is not applicable and should be deleted because of the temporary nature of the condition being treated. The resultant warning would read, "Do not take more than (maximum recommended daily dosage, broken down by age groups if appropriate, expressed in units such as tablets or teaspoonsful) in a 24-hour period, except under the advice and supervision of a physician."

(2) The warning in § 331.30(b)(2) that reads, "May cause constipation," for use with products which cause constipation in 5 percent or more of the persons who take the maximum recommended dosage is not applicable and should be deleted because of the temporary nature of the condition being treated.

(3) The warning in § 331.30(b)(3) that reads, "May have a laxative effect," for use with products which cause laxation in 5 percent or more of persons who take the maximum recommended dosage is not applicable and should be deleted because of the temporary nature of the condition being treated.

d. *For products that contain stimulants.* That portion of § 340.50(c)(2) that reads, "If fatigue or drowsiness persist continuously for more than 2 weeks, consult a physician," is not applicable and should be deleted because of the temporary nature of the condition being treated. The resultant warning would read, "For occasional use only."

5. *Category II labeling.* The Panel concludes that the following labeling claims are misleading or unsupported by scientific data. Therefore, the following claims and other related terms are classified as Category II labeling:

a. "For the relief of overindulgence."

b. "Fast relief," "quick relief," or any other term which nonspecifically relates to the speed of action.

6. *Category III labeling.* The Panel could identify no labeling claims for which available data are insufficient to permit final classification at this time.

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Acetylsalicylate at Different pH Levels," report to Miles Laboratories, Inc., OTC Volume 170196 (Tab 152).

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(9) OTC Volume 170212.

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V. Drug Products To Prevent Inebriation or To Minimize or Reduce a Hangover

A. General Discussion

In addition to products submitted for relief of "upset stomach due to overindulgence in food and drink" and for relief of "symptoms of hangover," the Panel reviewed preparations which had claims of "minimizing or reducing the symptoms of hangover" and "to prevent alcoholic intoxication." Because the claims for these products were preventive in nature, the Panel decided to review them separately.

Activated charcoal is the only ingredient reviewed with the claim of minimizing or reducing the symptoms of a hangover. The Panel believes that congeners in alcoholic beverages contribute to a hangover and realizes that activated charcoal has been demonstrated in vitro to adsorb congeners but no clinical studies have been submitted. The Panel classified this ingredient in Category III and recommends that clinical studies be performed to demonstrate that activated charcoal minimizes the symptoms of a hangover.

Fructose is the only active ingredient reviewed by the Panel with the claim of preventing alcoholic intoxication. The Panel believes that the term "inebriation" is more familiar to the public and, therefore, has used this term throughout this document. The Panel has classified fructose in Category III.

B. Category I Conditions

The following are Category I conditions under which drug products intended to prevent inebriation or to minimize or reduce the symptoms of a hangover are generally recognized as safe and effective and not misbranded.

1. *Category I active ingredients.* None.

2. *Category I labeling.* Although there are no Category I active ingredients, the Panel recommends the use of Category I labeling for Category III ingredients.

a. *To prevent inebriation:* "To minimize inebriation."

b. *To minimize or reduce a hangover*—(1) "To minimize the symptoms of a hangover caused by alcoholic beverages."

(2) "For minimizing the symptoms of a hangover caused by alcoholic beverages."

(3) "An aid in minimizing the symptoms of a hangover caused by alcoholic beverages."

C. Category II Conditions

The following are Category II conditions under which drug products intended to prevent inebriation or to minimize or reduce a hangover are not generally recognized as safe and effective or are misbranded.

1. *Category II active ingredients.* None.

2. *Category II labeling.* The Panel considers the claims listed below and any related claims to be unsupported by scientific data and, therefore, are classified as Category II.

a. *To prevent inebriation*—(1) "For the inebriation."

(2) "For the prevention of alcholic inebriation."

b. *To minimize or reduce a hangover.*—(1) "For the prevention (or reduction) of the symptoms of a hangover caused by alcoholic beverages."

(2) "An aid in preventing (or reducing) the symptoms of a hangover caused by alcoholic beverages."

D. Category III Conditions

The following are the Category III conditions for which the available data are insufficient to permit final classification at this time.

1. *Category III active ingredients*—a. *To prevent inebriation—Fructose.* The Panel concludes that fructose is safe for OTC use in the dose noted below, but data are insufficient to demonstrate its effectiveness in minimizing inebriation. The Panel has placed an "prevention" claims in Category II because the Panel is unaware of any evidence that any ingredient can entirely prevent inebriation.

(1) *Safety.* Fructose, also known as levulose or fruit sugar, is usually obtained from the inversion of aqueous solutions of sucrose and the subsequent separation from glucose. A component of honey, fructose is sweeter that sucrose and is readily absorbed from the gastrointestinal tract, but not as rapidly as dextrose (Refs. 1, 2, and 3).

One text considers fructose to be safe in oral dose of up to 150 g per day in divided doses of 2 to 25 g (Ref. 2). The author notes that large oral doses may cause abdominal pain and diarrhea and that fructose should not be given to person with a fructose intolerance. Persons with methyl alcohol poisoning should not be given fructose, because it enhances the oxidation of the methyl alcohol to formaldehyde. As fructose is rapidly removed from the blood, it has little effect on blood-sugar concentration, except that diabetics metabolize it to dextrose to a greater extent that do nondiabetics. Furthermore, it does not require insulin for its metabolism (Ref. 2).

Fructose has been used as in intervenous infusion (500 mL of a 40-percent solution) in grossly intoxicated individuals to accelerate the metabolism of the alcohol (Ref. 4).

The Panel, therefore, concludes that the ingestion of up to 4 g of fructose (2 g followed by 2 g in 30 minutes), as recommended by the manufacturer, is generally recognized as safe for OTC use.

(2) *Effectiveness.* All the studies available to the Panel involved the investigation of the effect of fructose on lowering blood-alcohol levels. In a study by Pawan (Ref. 5), 12 normal, healthy male volunteers ingested 30 g doses of fructose along with alcohol (0.5 ethanol per kilogram body weight) and the rates or slopes of the decrease in plasma alcohol concentrations for up to 4.5 hours after the ingestion were compared to the rates obtained when the alcohol was ingested along with a control of pure lemon juice. Fructose was reported to produce a "significant increase of 18–40 percent" in the rate of alcohol metabolism over the control (no level of significance was reported). Eight of the 12 subjects repeated the above experiment, but took the fructose 30 minutes after the ingestion of the alcohol. The fructose "increased the rate of metabolism of alcohol by 15–30 percent." No statement about statistical significance of this result was reported. The above experiments were performed for other sugars (glucose, galactose, and sucrose) on different days. Only sucrose showed any increase in the rate of alcohol metabolism. It was, however, only "very slight."

In a small-scale, controlled, pilot experiment, Feldman (Ref. 6) performed two crossover studies involving four subjects (two males and two females). In the first study, no significant difference was found between the use of

10 g of fructose and 10 g of sucrose in reducing blood-alcohol levels for up to 1 hour after consumption of 1 ounce of 80 proof vodka and a glass of water. In the second study, the subjects were again given 1 ounce of 80 proof vodka and a glass of water. In ths study there was a highly significant difference (p less than 0.001) between the use of 2 g of fructose in a lozenge form (dissolved in the mouth) versus the use of no other active ingredient in reducing blood-alcohol levels for up to 1 hour after the drink.

In another small-scale experiment, involving a total of 20 subjects, Molomut (Ref. 7) performed two crossover studies investigating the effects of glucose, a 1-g fructose lozenge swallowed directly, and two 1-g fructose lozenges dissolved in the mouth when taken simultaneously with 80 proof vodka (43 mL) on blood-alcohol levels measured at 30- and 60-minute intervals after ingestion of the alcohol. While the investigator claimed an effect in favor of dissolving the fructose lozenge in the mouth, as compared to swallowing it directly, the data at 30- and 60-minute intervals are inconsistent and no clear interpretation of the data can be made.

In another crossover study, Albanese (Ref. 8) used 9 subjects to compare the effect of a 1-g fructose tablet versus the use of a placebo tablet (both to be dissolved in the mouth) just prior to administration of 80 proof vodka (0.5 mL/kg). While fructose had a better reduction of blood-alcohol levels than did the placebo, the difference in reduction was not statistically significant (p greater than 0.05). Albanese also investigated the effectiveness of one fructose tablet on two doses of vodka. (twice the amount cited above) and the effectiveness of fructose when given 30 minutes after the ingestion of the vodka. The sample sizes and variations displayed in the latter two studies made it impossible to reach any conclusions.

An additional controlled study was performed by Brown et al. (Ref. 9) to test the effectiveness of fructose when administered as an intravenous infusion (500 mL of a 40-percent solution) in treating patients with acute alcoholic intoxication. Nineteen patients were used in the experiment which covered a 15-month period. Normal saline was used as the control. The investigators reported the rate of decrease in the blood-ethanol levels of the patients receiving fructose to be approximately 25 percent greater than that obtained from the normal saline controls. This was statistically significant with a one-sided test (p equals 0.05). They concluded that:

> In unconscious patients, where the possibility of drug overdosage, head injury, or other acute medical emergency may coexist, intravenous fructose may help to reveal any underlying pathological condition by shortening the period of alcoholic intoxication. In patients who are simply inebriated, 200 g of intravenous fructose may usefully shorten their stay in a casualty department by a few hours, depending on the initial ethanol level.

This study was later commented on by Hessov (Ref. 10), who stated that such a high dose of fructose (200 g) over such a short period of time (30 minutes) could have at least three unfavorable effects and further complicate the coexisting conditions mentioned above.

The above studies indicate that fructose given with a drink of alcohol may have an effect in lowering blood-alcohol levels, but the data are insufficient for the Panel to determine what practical clinical significance the blood level lowering has in minimizing inebriation. The Panel is unaware of any evidence that any ingredient can entirely prevent inebriation and therefore has placed any "prevention" claims in Category II.

(3) *Proposed dosage.* The Panel recommends the dosage, as recommended by the manufacturer, of 2 g of fructose administered either just prior to drinking or within 30 minutes following such ingestion, followed by an additional 2 g taken 30 minutes after the first dose, if necessary.

(4) *Labeling.* The Panel recommends Category I labeling for ingredients intended to minimize inebriation. (see part V. paragraph B.2.a.—*Category I labeling.*)

(5) *Evaluation.* The Panel concludes that fructose is generally recognized as safe for OTC use in the dosage noted above, but data are insufficient to demonstrate its effectiveness in minimizing inebriation. The Panel recommends that clinical studies be performed to demonstrate what practical clinical significance the lowering of blood-alcohol levels has in minimizing inebriation.

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b. *To minimize or reduce a hangover—Charcoal, activated.* The Panel concludes that activated charcoal is safe for OTC use in the doses noted below, but data are insufficient to demonstrate its effectiveness in minimizing the symptoms of a hangover. The Panel has placed claims for "reduction" in Category II because activated charcoal is only intended to work prior to getting a hangover.

(1) *Safety.* The Panel has previously reviewed this ingredient in its reports on OTC Digestive Aid Drug Products, Deodorants for Internal Use Drug Products, and OTC Drug Products for the Treatment of Acute Toxic Ingestion. In each case, it has found activated charcoal to be safe for OTC use in the dosages recommended. The Panel's recommended dosage in the Acute Toxic Ingestion report is 30 g as a one-time dose, whereas the dosage was limited to 10 g per day in both the Digestive Aid and Deodorants for Internal Use reports. The 7-day limit of use as a digestive aid was because, if symptoms lasted that long, a physician should be consulted to identify the underlying cause, whereas, chronic administration was allowed for use as a deodorant for internal use because of the long-term condition being treated.

(2) *Effectiveness.* Activated charcoal is known to adsorb many gases, organic and inorganic compounds, and toxins. Activated charcoal is claimed to minimize or reduce a hangover by adsorbing the congeners in the alcoholic beverage. In order to show that activated charcoal is effective in minimizing a hangover, it must first be shown that hangovers are caused by the congeners in the alcoholic beverage. Congeners are materials, other than ethanol and water, in alcoholic beverages which give the beverage its unique color, aroma, and taste (Ref. 1).

It has been established that the congener content varies from one

alcoholic beverage to another; bourbon contains the most and vodka contains the least (not much more than synthetic ethanol) (Refs. 1 and 2). The congeners measured in each of these studies are acetaldehyde, ethyl formate, ethyl acetate, methanol, *n*-propanol, isobutanol, and isoamyl alcohol (the latter three being the primary constituents of fusel oil). In most of the beverages tested isoamyl alcohol and ethyl acetate constituted more than 70 percent of the total congeners present (Ref. 2).

Although the Panel was unable to find studies in which activated charcoal was given to subjects to determine what effect it would have in minimizing a hangover, one in vitro study does demonstrate the ability of activated charcoal to adsorb congeners. Damrau and Goldberg (Ref. 3) performed the study in which a mixture of 86 proof whiskey and 0.1 N hydrochloric acid (to simulate stomach contents) was subjected to activated charcoal in a ratio of 1 g per 60 mL of whiskey. Total congener content was determined following 1 hour of agitation. As a control a separate mixture of whisky and hydrochloric acid was agitated and measured for congeners. Results indicated that "significant amounts" of the congeners were removed (36 percent fusel oils, 82.6 percent acetaldehyde, 93.8 percent furfural, and 31.3 percent ethyl acetate). The investigators cited a clinical study conducted by Damrau and Liddy (Ref. 4) in which they conducted a crossover clinical study to test the effects of 80 proof whiskey (high congener content) and prefiltered 80 proof vodka ("virtually no congeners") in a 2-ounce dose with the intention of producing a hangover the day following administration of the beverage. Damrau and Liddy found the whiskey to produce the following "after-effects": halitosis, gastric irritation, headache, dizziness, and fatigue. These effects occurred in 6 to 27 percent of those consuming whiskey, but only headache and gastric irritation occurred in 2 percent of those ingesting vodka. No raw data were given for this study. Damrau and Goldberg (Ref. 3) concluded from the above results (Res. 3 and 4) that "activated charcoal appears to be a useful agent for reducing the congeneric material from whiskey" and that "whiskey with less congeneric material should lessen hangover symptoms."

In order to determine whether the congener content of alcoholic beverages is the primary contributing factor to a hangover, the Panel reviewed a number of additional studies. Chapman (Ref. 5) found in testing 91 subjects that when vodka and bourbon were consumed in amounts equivalent to 1.5 mL of ethanol per kg of body weight, this level was the minimal dose which consistently produced hangover symptoms. An ethanol dose of 1.0 mL/kg (10 subjects) and 1.25 mL/kg (10 subjects) did not consistently produce the symptoms, and a dose of 1.75 mL/kg (11 subjects) did not increase the proportion of hangovers reported, but did increase the incidence of undesirable behavior. Concentrating on the results of the 1.5 mL/kg group (60 subjects), Chapman found that when using a scale of 0 to 7 (0 for no hangover and 7 for the most severe possible) 20 of the 30 subjects who received bourbon reported a definite hangover (rating of 2 or more) as compared with 13 of the 30 who received vodka. He also reported that 10 of the 30 who received bourbon noted a severe hangover (ratings greater than 3), and only 1 of 30 who received vodka noted a severe hangover. Chapman concluded that the dose of the ethanol (1.5 mL/kg) is crucial in consistently producing hangover symptoms (50 percent of the subjects when vodka or bourbon ws administered at a ethanol dose of 1.5 mL/kg). He also concluded that "subjects in our culture, drinking relatively large amounts of bourbon, experienced a greater incidence and severity of hangover than they did after drinking equivalent amounts of alcohol as vodka."

Brusch et al. (Ref. 6) in a crossover study administered bourbon, rum, gin, and vodka in amounts equivalent to 3 ounces of ethyl alcohol mixed with sufficient water to produce a total of 12 ounces to 20 subjects (not described as to heavy, moderate, or non-drinkers). For this test, the authors concluded that, "our results indicate that there are definite differences produced by some spirits and that these differences are probably produced by the congeners they contain." Although the authors report that hangover was based on subjective and objective finding, no data is given for the various beverages consumed. The data are so incomplete that no analysis can be made.

Murphree, Price, and Greenberg (Ref. 7), in reporting on the effect of alcoholic beverage congeners on the incidence of nystagmus (involuntary eye movement) during intoxication, demonstrate a more prolonged nystagmus when a congener-fortified vodka (32 times as much congeners as the bourbon) is administered than when bourbon containing the same amount of ethanol is administered. They also cite published studies in which moderate differences were reported favoring vodka (low congener content) over whiskey (high congener content) (Refs. 4 and 6) but make the following comment regarding these studies: "Limitation of the observations employed in these studies to highly subjective and impressionistic evaluations, and the absence of objective measurements of any kind, render the reported conclusions suggestive but something less then convincing."

An unpublished study by Collins and Chiles (Ref. 8) also references the studies conducted by Damrau and Liddy (ref. 4) and Brusch et al. (Ref. 6) and states that their "experimental approaches make the results less than convincing (e.g., Damrau and Liddy administered only 2 ounces of alcohol to nondrinkers or moderate social drinkers and obtained what they referred to as an 'unexpected' relatively high percentage of hangover effects)." Collins and Chiles (Ref. 8) performed a study to determine the effects of alcohol on the performance of simulated tasks. In a crossover experiment, 11 subjects were exposed to a series of tasks to determine the effect on hangover of consuming bourbon, vodka, and placebo (tests also performed to determine effect while inebriated). During the period from 8:00 p.m. to 12:00 p.m. (midnight) subjects were given four large drinks (each containing one-fourth of the total bourbon and vodka consumed—1.62 mL of ethanol per kg of body weight) with 1 hour to finish each drink. All the subjects consuming bourbon and vodka indicated drunkenness at a midnight testing session and two of the subjects who were given the placebo were rated "slightly drunk" at the same midnight session. The next morning, strong hangover symptoms occurred for both types of alcoholic beverages, with vodka showing a slightly higher rating (increased degree of hangover) over placebo than did bourbon, but performance on the various tasks was not significantly affected. The authors concluded that for the morning after "there were no significant impairments due to alcohol and no congener vs. noncongener differences." While subjects reported significant hangover symptoms, there were no statistical differences between the effects of bourbon and vodka on any of the hangover ratings (in fact, vodka, the noncongener beverage, produced numerically higher overall hangover scores than did bourbon). This study was performed to determine the effects of hangover on pilots' "8-hour rule" (no member may act as a crewmember of a civil aircraft within 8 hours after the consumption of any alcoholic beverage).

The authors concluded that while the results of this study do not contradict the "8-hour rule," they should be interpreted with caution.

A placebo-controlled, crossover study was conducted by Ylikahri et al. (Ref. 9), in which 23 medical students were given either ethanol (1.5 g per kg body weight) or water (placebo) over a 3-hour period in order to produce a hangover the next morning. This study determined various metabolites of ethanol over a 21-hour period in an attempt to relate them to degrees of intoxication (subjective and physical signs) and hangover (subjective and physical signs). Subjective feelings for intoxication and hangover were graded by the subject and objective physical signs for these conditions were graded by the observer. Blood samples were taken at 0, 2, 4, 8, 12, 14, 15, 16, 18, and 21 hours and analyzed for lactate, acetaldehyde, ethanol, ketone bodies, blood glucose, free fatty acids, and triglyceride.

Results indicated that a hangover begins when the blood-alcohol concentration begins to decrease and that the most severe hangover was found 14 hours after the initiation of a 3-hour drinking episode. Ethanol had disappeared from the blood at about 14 hours. No difference was demonstrated in the acetaldehyde level between the groups with severe (group I) and mild hangovers (group II) and the concentration of acetaldehyde showed no correlation with the intensity of hangover at any time. Lactate concentration was found to reach a maximum at 16 hours after the start of drinking, when the hangover was still severe. There were no differences in lactate concentration between groups I and II, and there was no significant correlation between lactate concentration and clinical symptoms and signs of the hangover. The highest levels of free fatty acids occurred at the time of maximal hangover, and the mean concentration of free fatty acids in group I was significantly higher than in group II (p less than 0.05). Ketone bodies were found to be at the highest concentration 16 hours after the start of drinking (when the mean hangover was severe). Ketonemia was somewhat greater in group I than in group II, but the difference was not statistically significant. No correlation could be found between the ketone body concentration and the severity of the hangover. The authors observed that the states of intoxication and hangover are not clearly separated by any subjective symptom or physical sign. They also state that this study clearly indicates that hangover can be induced by pure ethanol in a dose of 1.5 g/kg body weight and that this will result in moderate alcohol intoxication which leads to a feeling of severe hangover in half of the subjects. The authors concluded that, although there seems to be some correlation between the free fatty acid levels and the intensity of hangover, this certainly is not the cause; it is probably secondary to the anxiety state associated with hangover. The following additional comments were made by the authors:

> Thus the present results suggest that hangover is not caused by major metabolic changes induced by ethanol oxidation, but is perhaps more attributable to pharmacological effects on central nervous system and hormonal homeostasis. However, the symptoms of hangover are multiple and variable, which suggests multiple pathogenic mechanisms. Thus, it seems probable that hangover has no single cause, but that the syndrome is due to a combination of neural, hormonal and metabolic effects, the relative importance of which is not known (Ref. 9).

Information was also available to the Panel by means of a convincing presentation by E. B. Truitt, Ph. D. (Ref. 10).

The Panel concludes that, even though the results from various studies described above are conflicting, congeners do contribute to the cause of a hangover. But data are insufficient to demonstrate the effectiveness of activated charcoal in minimizing the symptoms of a hangover.

(3) *Proposed Dosage.* The Panel recommends a dosage, as recommended by the manufacturer, of 1,600 mg taken before, during, or immediately after consumption of alcoholic beverages, with the maximum 24-hour dose not to exceed 10 g.

(4) *Labeling.* The Panel recommends Category I labeling for ingredients intended to minimize the symptoms of a hangover. (See part V. paragraph B.2.b. above—*Category I labeling.*)

(5) *Evaluation.* The Panel concludes that activated charcoal is safe for OTC use in the doses stated above, but data are insufficient to demonstrate its effectiveness in minimizing the symptoms of a hangover. The Panel recommends that clinical studies be performed to demonstrate such effectiveness.

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(9) Ylikahri, R. H., et al., "Metabolic Studies on the Pathogenesis of Hangover," *European Journal of Clinical Investigations,* 4:93–100, 1974.

(10) Truitt, E. B., presentation made to the OTC Miscellaneous Internal Panel on August 23, 1981, Panel Administrator's File (OTC Volume 17L:PAII).

2. *Category III labeling.* None.

List of Subjects in 21 CFR Part 357

Over the counter drugs.

PART 357—MISCELLANEOUS INTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371)), and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)), and under 21 CFR 5.11 as revised (see 47 FR 16010; April 14, 1982), the agency advises in this advance notice of proposed rulemaking that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations would be amended by adding in Part 357, a new Subpart J, to read as follows:

* * * * *

Subpart J—Orally Administered Drug Products for Relief of Symptoms Associated with Overindulgence in Alcohol and Food

Sec.

357.901 Scope.
357.903 Definitions.

357.910 Active ingredients for the relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food.
357.912 Active ingredients for the relief of hangover symptoms.
357.914 Active ingredients to minimize inebriation. [Reserved]
357.916 Active ingredients to minimize hangover symptoms. [Reserved]
357.920 Permitted combinations of active ingredients.
357.950 Labeling of drug products for the relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food.
357.952 Labeling of drug products for the relief of hangover symptoms.
357.954 Labeling of drug products to minimize inebriation.
357.956 Labeling of drug products to minimize hangover symptoms.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704).

Subpart J—Orally Administered Drug Products for Relief of Symptoms Associated With Overindulgence in Alcohol and Food

§ 357.901 Scope.

(a) An over-the-counter drug product for the relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food, for the relief of hangover symptoms, to minimize inebriation, or to minimize hangover symptoms, in a form suitable for oral administration is generally recognized as safe and effective and is not misbranded if it meets each condition in this subpart and each general condition established in § 330.1.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to Chapter 1 of Title 21 unless otherwise noted.

(c) References to Part 343 are to the proposed monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products published in the **Federal Register** of July 8, 1977 (42 FR 35346).

(d) References to Part 340 are to the tentative final monograph for OTC stimulant drug products published in the **Federal Register** of June 13, 1978 (43 FR 25544).

§ 357.903 Definitions.

As used in this subpart:

(a) *Upset stomach due to overindulgence in the combination of alcohol and food.* A condition which occurs as a result of overindulgence in the combination of alcohol and food and consists of a group of symptoms which includes heartburn, fullness, and nausea.

(b) *Hangover.* A condition consisting of a complex of symptoms involving the gastrointestinal, neurologic, and metabolic system that follows recent acute excessive alcohol ingestion. The symptoms may includes nausea, heartburn, thirst, tremor, disturbances of equilibrium, fatigue, generalized aches and pains, headache, dullness, and/or depression or irritability.

§ 357.910 Active ingredients for the relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food.

The active ingredients of the product consist of the following in the dosage limits established for each ingredient in § 357.950(d):

(a) Bismuth subsalicylate.

(b) Sodium citrate in solution.

§ 357.912 Active ingredients for the relief of hangover symptoms.

The active ingredients of the product consist of the following when used only in combination as provided in § 357.920(b) and in the dosage limits established for each ingredient in the respective OTC drug monographs:

(a) Any analgesic active ingredient identified in Part 343.

(b) Any antacid active ingredient identified in Part 331.

(c) Any stimulant active ingredient identified in Part 340.

§ 357.914 Active ingredients to minimize inebriation. [Reserved]

§ 357.916 Active ingredients to minimize hangover symptoms. [Reserved]

§ 357.920 Permitted combinations of active ingredients.

(a) *Combinations of ingredients for the relief of the symptoms of upset stomach due to overindulgence in the combination of alcohol and food.* (1) Bismuth subsalicylate identified in § 357.910(a) may be combined with any nonsalicylate analgesic active ingredient identified in Part 343.

(2) Sodium citrate in solution identified in § 357.910(b) may be combined with any analgesic active ingredient identified in Part 343, provided that if the product contains aspirin identified in Part 343, the finished product meets the acid neutralizing requirements of § 331.10.

(b) *Combinations of ingredients for the relief of hangover symptoms.* The combination contains active ingredients from at least two of the three drug categories identified in § 357.912 provided the product is labeled according to § 357.952. If the product contains aspirin, the finished product must meet the acid neutralizing requirements of § 331.10. The combination of ingredients must also meet the conditions of the respective drug monographs, except as otherwise noted in this subpart.

§ 357.950 Labeling of drug products for the relief of symptoms of upset stomach due to overindulgence in the combination of alcohol and food.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "food and drink overindulgence reliever."

(b) *Indications.* The labeling of the product contains a statement of indications under the heading "Indications" that is limited to following phrases:

(1) *For products containing the ingredients identified in § 357.910.* "For the relief of upset stomach due to overindulgence in the combination of food and drink."

(2) *Alternative indication—For products containing bismuth subsalicylate identified in § 357.910(a).* "For the relief of upset stomach associated with" (select one or more of the following: "nausea," "heartburn," and "fullness") "due to overindulgence in the combination of food and drink."

(3). *For combination products identified in § 357.920(a).* "For the relief of upset stomach due to overindulgence in the combination of food and drink, when accompanied by a headache or other minor aches and pains."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For products containing bismuth subsalicylate identified in § 357.910(a).*

(i) "This product contains salicylates. If taken with other salicylate-containing preparations, such as aspirin, and ringing in the ears occurs, discontinue use."

(ii) "If taking oral medication for anticoagulation (thinning of the blood), consult a physician before taking this product."

(2) *For products containing more than 5 milliequivalents of sodium in the maximum recommended daily dose.* "If you are on a sodium-restricted diet, do not take this product except under the supervision of a physician."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For products containing bismuth subsalicylate identified in § 357.910(a).* Adult oral dosage is 0.525 grams to be given at intervals no more frequently than every ½ to 1 hour for a total daily dose of 4.2 grams (8 doses).

(2) *For products containing sodium citrate in solution identified in § 357.910(b).* For adults under 60 years of age the oral daily dosage should not exceed 17.2 grams sodium citrate (200 milliequivalents of sodium) in divided doses. For adults 60 years of age and over the oral daily dosage should not exceed 8.6 grams sodium citrate (100 milliequivalents of sodium) in divided doses. If there is another source of sodium in the product, the dose of sodium citrate must be reduced accordingly. In addition, the labeling contains the following statement: "If you are 60 years of age or older, the maximum daily dose should not exceed —— of this drug." (Space to be filled in the the number of dosage units which will not exceed 100 milliequivalents of sodium in a daily dose.)

§ 357.952 Labeling of drug products for the relief of hangover symptoms.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "hangover reliever."

(b) *Indications.* The labeling of the product contains a statement of indications under the heading "Indications" that is limited to the following: "For the relief of" (select all symptoms applicable to the product: "heartburn" (antacids), "fatigue" (stimulants), and/or "headache and generalized aches and pains" (analgesics)) "associated with a hangover."

(c) *Warnings.* The labeling of the drug product contains the applicable warnings under Parts 331, 340, and 343 with the following exceptions:

(1) *General exception.* Labeling warnings in Parts 331, 340, and 343 that pertain to children should be excluded.

(2) *Exceptions to Part 331 warnings.* (i) The warning in § 331.30(b)(1) should be revised to state "Do not take more than (maximum recommended daily dosage, broken down by age groups if appropriate, expressed in units such as tablets or teaspoonsful) in a 24-hour period, except under the advice and supervision of a physician."

(ii) The warning in § 331.30(b)(2) should be excluded from the labeling.

(iii) The warning in § 331.30(b)(3) should be excluded from the labeling.

(iv) The warning in § 331.30(b)(4) should be revised to state "If you are on a sodium-restricted diet, do not take this product except under the supervision of a physician."

(v) The warning in § 331.30(b)(5) should be revised to state "If you have kidney disease, do not take this product except under the supervision of a physician."

(3) *Exceptions to Part 340 warnings.* The warning in § 340.50(c)(2) should be revised to state "For occasional use only."

(4) *Exceptions to Part 343 warnings.* (i) The warning in § 343.50(c)(1)(i) should be revised to state "If symptoms persist or new ones occur, consult your physician."

(ii) The warning in § 343.50(c)(3)(ii) should be revised to state "Stop taking this product if ringing in the ears occurs."

(iii) The warning in § 343.50(c)(3)(iv) should be excluded from the labeling.

(iv) The warning in § 343.50(c)(3)(v) should be revised to state "If taking medication for anticoagulation (thinning of blood), consult a physician before taking this product."

(v) The warning in § 343.50(c)(6) should be revised to state "Do not take this product if you are allergic to salicylates, such as aspirin."

(vi) The warning in § 343.50(c)(5)(i) should be excluded from the labeling.

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For products containing any analgesic ingredient identified in § 357.912(a).* The labeling of the product contains the dosage and any applicable directions identified in Part 343.

(2) *For products containing any antacid ingredient identified in § 357.912(b).* The labeling of the product contains the dosage and any applicable directions identified in Part 331.

(3) *For products containing any stimulant ingredient identified in § 357.912(c).* The labeling of the product contains the dosage and any applicable directions identified in Part 340.

§ 357.954 Labeling of drug products to minimize inebriation.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "inebriation minimizer."

(b) *Indications.* The labeling of the product contains a statement of indications under the heading "Indications" that is limited to the following phrase: "To minimize inebriation."

(c) *Warnings.* [Reserved]

(d) *Directions.* [Reserved]

§ 357.956 Labeling of drug products to minimize hangover symptoms.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "hangover minimizer."

(b) *Indications.* The labeling of the products contains a statement of indications under the heading "Indications" that is limited to the following phrases:

(1) "To minimize the symptoms of a hangover caused by alcoholic beverages."

(2) "For minimizing the symptoms of a hangover caused by alcoholic beverages."

(3) "An aid in minimizing the symptoms of a hangover caused by alcoholic beverages."

(c) *Warning.* [Reserved]

(d) *Directions.* [Reserved]

Interested persons may, on or before December 30, 1982, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this advance notice of proposed rulemaking. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. Comments replying to comments may also be submitted on or before January 31, 1983. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

Dated: September 22, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

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Friday
October 1, 1982

Part VI

Department of Health and Human Services

Food and Drug Administration

Quinine for the Treatment of Nocturnal Leg Muscle Cramps for Over-the-Counter Human Use; Establishment of a Monograph; and Reopening of Administrative Record

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 343

[Docket No. 77N-0094]

Quinine for the Treatment of Nocturnal Leg Muscle Cramps for Over-the-Counter Human Use; Establishment of a Monograph; and Reopening of Administrative Record

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking and reopening of administrative record.

SUMMARY: The Food and Drug Administration (FDA) is issuing an advance notice of proposed rulemaking that would establish conditions under which quinine used over-the-counter (OTC) for the treatment of nocturnal leg muscle cramps is generally recognized as safe and effective and not misbranded. This notice relates to the development of a monograph for internal analgesic drug products in general, which is part of the ongoing review of OTC drug products conducted by FDA. This notice also reopens the administrative record for OTC internal analgesic, antipyretic, and antirheumatic drug products to allow for consideration of a statement on quinine used OTC for the treatment of nocturnal leg muscle cramps that has been received from the Advisory Review Panel on OTC Miscellaneous Internal Drug Products.

DATES: Written comments by December 30, 1982 and reply comments by January 31, 1983.

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

FOR FURTHER INFORMATION CONTACT: Willian E. Gilbertson, National Center for Drugs and Biologics (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In accordance with Part 330 (21 CFR Part 330), FDA received on August 23, 1981, a statement on quinine used OTC for the treatment of nocturnal leg muscle cramps from the Advisory Review Panel on OTC Miscellaneous Internal Drug Products. FDA regulations (21 CFR 330.10(a)(6)) provide that the agency issue in the **Federal Register** a proposed rule containing (1) the monograph recommended by the Panel, which establishes conditions under which this OTC drug product is generally recognized as safe and effective and not misbranded; (2) a statement of the conditions excluded from the monograph because the Panel determined that they would result in the drug not being generally recognized as safe and effective or would result in misbranding; (3) a statement of the conditions excluded from the monograph because the Panel determined that the available data are insufficient to classify these conditions under either (1) or (2) above; and (4) the conclusions and recommendations of the Panel.

Because a review of quinine was previously included in the advance notice of proposed rulemaking for internal analgesic, antipyretic, and antirheumatic drug products at 42 FR 35434, FDA has determined that the Miscellaneous Internal Panel's recommendations regarding the OTC use of quinine for the treatment of nocturnal leg muscle cramps should be included as part of the proposed rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products, which has been ongoing for some time.

In the **Federal Register** of July 8, 1977 (42 FR 35346), FDA issued an advance notice of proposed rulemaking to establish a monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products. FDA advises that it is reopening the administrative record for OTC internal analgesic, antipyretic, and antirheumatic drug products in order to allow for the consideration of the Miscellaneous Internal Panel's statement on quinine used OTC for the treatment of nocturnal leg muscle cramps. Comments received on this advance notice of proposed rulemaking will be addressed in a future issue of the **Federal Register**. Because the Panel did not recommend any Category I conditions for quinine used OTC for the treatment of nocturnal leg muscle cramps, no new sections to amend Part 343 are being included in this advance notice of Proposed rulemaking.

The unaltered statement of the Panel is issued to stimulate discussion, evaluation, and comment on the full sweep of the Panel's deliberations. The statement has been prepared independently of FDA, and the agency has not yet fully evaluated the Panel's recommendations. The Panel's findings appear in this document to obtain public comment before the agency reaches any decision on the Panel's statement. this statement represents the best scientific judgment of the Panel members, but does not necessarily reflect the agency's position on any particular matter contained in it.

After reviewing all comments submitted in response to this document, FDA will amend the rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products to include quinine used OTC for the treatment of nocturnal leg muscle cramps. Under the OTC drug review procedures, the agency's position and proposal are first stated in the tentative final monograph, which has the status of a proposed rule. Final agency action occurs in the final monograph, which has the status of a final rule.

The agency's position on quinine used OTC for treatment of nocturnal leg muscle cramps will be stated initially when the tentative final monograph is published in the **Federal Register** as a notice of proposed rulemaking. In that notice of proposed rulemaking, the agency also will announce its initial determination whether the proposed rule is a major rule under Executive Order 12291 and will consider the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The present notice is referred to as an advance notice of proposed rulemaking to reflect its actual status and to clarify that the requirements of the Executive Order and the regulatory Flexibility Act will be considered in the notice of proposed rulemaking. At that time FDA also will consider whether the proposed rule has a significant impact on the human environment under 21 CFR Part 25 (proposed in the **Federal Register** of December 11, 1979; 44 FR 71742).

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC quinine products used for the treatment of nocturnal leg muscle cramps. Types of impact may include, but are not limited to, costs associated with product testing, relabeling, repackaging, or reformulating. Comments regarding the impact of this rulemaking on OTC quinine products used for the treatment of nocturnal leg muscle cramps should be accompanied by appropriate documentation. Comments will not be accepted at this time on any portion of the OTC internal analgesic, antipyretic, and antirheumatic rulemaking other than that relating to OTC quinine products used for the treatment of nocturnal leg muscle cramps.

In accordance with § 330.10(a)(2), the Panel and FDA have held as confidential all information considered by the Panel concerning OTC quinine products used for the treatment of nocturnal leg muscle cramps. All this information will be put on public display in the Dockets Management Branch,

Food and Drug Administration, after November 1, 1982, except to the extent that the person submitting it demonstrates that it falls within the confidentiality provisions of 18 U.S.C. 1905 or section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)). Requests for confidentiality should be submitted to William E. Gilbertson, Bureaus of Drugs and Biologics (HFD–510) (address above).

FDA published in the **Federal Register** of September 29, 1981 (46 FR 47730) a final rule revising the OTC procedural regulations to conform to the decision in *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979). The Court in *Cutler* held that the OTC drug review regulations (21 CFR 330.10) were unlawful to the extent that they authorized the marketing of Category III drugs after a final monograph had been established. Accordingly, this provision is now deleted from the regulations. The regulations now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph.

Although it was not required to do so under *Cutler*, FDA will no longer use the terms "Category I," "Category II," and "Category III" at the final monograph stage in favor of the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III because that was the framework in which the Panel conducted its evaluation of the data.

A proposed review of the safety, effectiveness, and labeling of all OTC drugs by independent advisory review panels was announced in the **Federal Register** of January 5, 1972 (37 FR 85). The final regulations providing for this OTC drug review under § 330.10 were published and made effective in the **Federal Register** of May 11, 1972 (37 FR 9464). In accordance with these regulations, a request for data and information on all active ingredients used in OTC miscellaneous internal drug products was issued in the **Federal Register** of November 16, 1973 (38 FR 31696). (In making their categorizations with respect to "active" and "inactive" ingredients, the advisory review panel relied on their expertise and understanding of these terms. FDA has defined "active ingredient" in its current good manufacturing practice regulations (§ 210.3(b)(7), (21 CFR 210.3(b)(7))), as "any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of man or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in the drug product in a modified form intended to furnish the specified activity or effect." An "inactive ingredient" is defined in § 210.3(b)(8) as "any component other than an 'active ingredient.' ") In the **Federal Register** of August 27, 1975 (40 FR 38179) a notice supplemented the initial notice with a detailed, but not necessarily all-inclusive, list of ingredients in miscellaneous internal drug products to be considered in the OTC drug review. This list, which did not include quinine used OTC for the treatment of nocturnal leg muscle cramps, was provided to give guidance on the kinds of active ingredients for which data should be submitted. The notices of November 16, 1973 and August 27, 1975 informed OTC drug product manufacturers of their opportunity to submit data to review at that time and of the applicability of the monographs from the OTC drug review to all OTC drug products.

Under § 330.10(a)(1) and (5), the Commissioner of Food and Drugs appointed the following Panel to review the information submitted and to prepare a report on the safety, effectiveness, and labeling of the active ingredients in these OTC miscellaneous internal drug products:

James L. Tullis, M.D., Chairman (appointed December 1979)
John W. Norcross, M.D., Chairman (resigned March 1979)
Diana F. Rodriquez-Calvert, Pharm. D. (appointed July 1976)
Ruth Eleanor Brown, R.Ph. (resigned May 1976)
Elizabeth C. Giblin, M.N., Ed. D.
Richard D. Harshfield, M.D. (deceased June 1, 1981)
Theodore L. Hyde, M.D.
Claus A. Rohweder, D.O. (deceased April 13, 1979)
Samuel O. Thier, M.D. (resigned November 1975)
William R. Arrowsmith, M.D. (appointed March 1976)

Representatives of consumer and industry interests served as nonvoting members of the Panel. Eileen Hoates, nominated by the Consumer Federation of America, served as the consumer liaison until September 1975, followed by Michael Schulman, J.D. Francis J. Hailey, M.D., served as the industry liaison, and in his absence John Parker, Pharm. D., served. Dr. Hailey served until June 1975, followed by James M. Holbert, Sr., Ph. D. All industry liaison members were nominated by the Proprietary Association.

The following FDA employees assisted the Panel: Armond M. Welch, R.Ph., served as the Panel Administrator until July 1979, followed by John R. Short, R.Ph. Enrique Fefer, Ph.D., served as the Executive Secretary until July 1976, followed by George W. James, Ph. D., until October 1976, followed by Natalia Morgenstern until May 1977, followed by Arthur Auer until October 1978. Roger Gregorio served as the liaison for the Office of New Drug Evaluation beginning November 1978. Joseph Hussion, R.Ph., served as the Drug Information Analyst until July 1976, followed by Anne Eggers, R.Ph., M.S., until October 1977, followed by John R. Short, R.Ph., until July 1979.

The Advisory Review Panel on OTC Miscellaneous Internal Drug Products was charged with the review of many categories of drugs. Due to the large number of ingredients and varied labeling claims, the Panel decided to review and publish its findings separately for several drug categories and individual drug products. The Panel presents in this statement its conclusions and recommendations for quinine used OTC for the treatment of nocturnal leg muscle cramps. The Panel's findings on other categories of miscellaneous internal drug products are being published periodically in the **Federal Register.**

The Panel was first convened on January 13, 1975 in an organizational meeting. The only meeting at which quinine used OTC for the treatment of nocturnal leg muscle cramps was discussed was held on August 23, 1981.

The minutes of that Panel meeting are on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration (address above.)

No individuals requested to appear before the Panel to discuss quinine used OTC for the treatment of nocturnal leg muscle cramps, nor was any individual requested to appear by the Panel.

The Panel has thoroughly reviewed the one submission received and the material prepared by FDA in arriving at its conclusions and recommendations for quinine used OTC for the treatment of nocturnal leg muscle cramps.

In accorance with the OTC drug review regulations in § 330.10, the Panel reviewed quinine for the OTC treatment of nocturnal leg muscle cramps with respect to the following three categories:

Category I. Conditions under which quinine used OTC for the treatment of nocturnal leg muscle cramps is generally recognized as safe and effective and is not misbranded.

Category II. Conditions under which quinine used OTC for the treatment of nocturnal leg muscle cramps is not generally recognized as safe and effective or is misbranded.

Category III. Conditions for which the available data are insufficient to permit final classification at this time.

The Panel considered quinine only for OTC use for the treatment of nocturnal leg muscle cramps and classified it in Category III.

Pursuant to the notices published in the **Federal Register** of November 16, 1973 (38 FR 31696) and August 27, 1975 (40 FR 38179) requesting submission of data and information on OTC miscellaneous internal drug products, the Purex Corporation, Carson, CA 90745, was the only firm to make a submission for quinine (quinine sulfate) for OTC use for the treatment of nocturnal leg muscle cramps.

The "OTC Volumes" cited in this document include the one submission made by the Purex Corporation in response to the call-for-data notices published in the **Federal Register** of November 16, 1973 (39 FR 31696) and August 27, 1975 (40 FR 38179) and the material prepared by the agency. All of the information included in these volumes, except for those deletions which are made in accordance with the confidentiality provisions set forth in § 330.10(a)(2), will be put on display after November 1, 1982, in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

Statement by the Advisory Review Panel on OTC Miscellaneous Internal Drug Products on Quinine Used OTC for the Treatment of Nocturnal Leg Muscle Cramps

The Panel reviewed quinine used OTC for the treatment of nocturnal leg muscle cramps and offers the following general information:

Nocturnal leg muscle cramps occur in middle life and beyond. They are of unknown etiology but have been variously attributed to (1) arterial insufficiency with resulting anoxic muscle spasm, (2) excessive venous dilation secondary to sudden emptying of small venules into larger vessels during recumbency, and (3) accumulation of products of muscle metabolism with local pH change due to lactic acid accumulation. The attacks do not have a regular pattern with respect to time or severity. They appear to be more common after a day of exercise or heavy physical activity. However, they sometimes occur during sedentary periods. The attacks tend to occur regularly for a few nights or weeks and then may clear spontaneously. Analgesics (including quinine), antihistamines, and mechanical means of obtaining relief, such as elevating the foot of the bed, have been used for this condition for many years with variable results.

Extracts of the bark of the cinchona tree have been used successfully for the treatment of malaria since the early 1700's. The principal extract component, quinine, also has been found to be an effective antipyretic and analgesic, and it has been used for arthralgia and neuralgia in oral doses of 300 to 600 milligrams (mg). Its side effects include severe tinnitus and partial damage to the eighth cranial nerve if prolonged toxic doses are employed. It sometimes leads to gastrointestinal symptoms. Among its more serious side effects are the induction of abortion and occasional cases of autoimmune thrombocytopenic purpura and hemolytic anemia. In the latter instances the drug appears to act as a hapten, linking a specific blood cell to an autoantibody.

Quinine was reviewed as an analgesic by the Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products and the Panel concluded that it has demonstrable analgesic, antipyretic, and muscle relaxant actions, but its numerous toxic side effects represent an unfavorable benefit-to-risk ratio (42 FR 35434). This Panel received a single industry submission containing 10 literature references regarding the use of quinine for the relief of nocturnal leg cramps and other muscular disorders (Ref. 1). The Panel also reviewed additional material prepared by FDA on this subject (Ref. 2).

The industry submission proposed a 3-grain (200 mg) OTC tablet of quinine sulfate with directions for use as an antispasmodic for the prevention and symptomatic relief of nocturnal leg muscle cramps. The proposed directions specify one or two tablets at bedtime and advise the consumer to consult a physician if the symptoms persist more than 1 week. The proposed labeling also includes a warning to discontinue use if tinnitus, deafness, diarrhea, skin rash, nausea, or visual disturbance occur, and warnings against use during pregnancy, by individuals sensitive to quinine, or by children under 12 years of age. No clinical trials were included in the submission.

Despite these occasional side effects, quinine appears to be reasonably safe over prolonged periods of time in generally recommended doses of 200 to 325 mg daily. However, no controlled trials have demonstrated whether this dose range will effectively control nocturnal leg muscle cramps.

Despite frequent prescribing of quinine by physicians for treatment of nocturnal leg muscle cramps, no controlled trials are available to establish its effectiveness beyond a reasonable doubt. The Panel, therefore, concludes that quinine should be placed in category III because of insufficient data to show that it is safe and effective for treatment of nocturnal leg muscle cramps.

References

(1) OTC Volume 170050.

(2) OTC Volume 170234.

List of Subjects in 21 CFR Part 343

Internal antipyretic and antirheumatic drug products.

Interested persons may, on or before December 30, 1982, submit to the dockets Management branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this advance notice of proposed rulemaking. three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments replying to comments may also be submitted on or before January 31, 1983. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Arthur Hull Hayes, Jr.,

Commissioner of food and Drugs.

Dated: September 22, 1982.

Richard S. Schweiker,

Secretary of Health and Human services.

[FR Doc. 82–27063 Filed 9–30–82; 8:45 am]

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Friday
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Part VII

Department of Health and Human Services

Food and Drug Administration

Drug Products To Treat the Symptoms of Benign Prostatic Hypertrophy for Over-the-Counter Human Use; Advance Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 82N-0168]

Drug Products To Treat the Symptoms of Benign Prostatic Hypertrophy for Over-the-Counter Human Use

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing an advance notice of proposed rulemaking that would classify over-the-counter (OTC) drug products to treat the symptoms of benign prostatic hypertrophy (enlarged prostate gland) as not generally recognized as safe and effective and as being misbranded. This notice is based on the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products and is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by December 30, 1982 and reply comments by January 31, 1983.

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

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, National Center for Drugs and Biologics (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In accordance with Part 330 (21 CFR Part 330), FDA received on August 23, 1981 a statement on OTC drug products to treat the symptoms of benign prostatic hypertrophy from the Advisory Review Panel on OTC Miscellaneous Internal Drug Products. FDA regulations (21 CFR 330.10(a)(6)) provide that the agency issue in the **Federal Register** a proposed rule containing (1) the monograph recommended by the Panel, which establishes conditions under which OTC drug products to treat the symptoms of benign prostatic hypertrophy are generally recognized as safe and effective and not misbranded; (2) a statement of the conditions excluded from the monograph because the Panel determined that they would result in the drugs' not being generally recognized as safe and effective or would result in misbranding; (3) a statement of the conditions excluded from the monograph because the Panel determined that the available data are insufficient to classify these conditions under (1) or (2) above; and (4) the conclusions and recommendations of the Panel.

The Panel's recommendations on OTC drug products to treat the symptoms of benign prostatic hypertrophy contain no Category I or Category III conditions, and FDA is issuing the Panel's recommendations proposing Category II classification of OTC drug products to treat the symptoms of benign prostatic hypertrophy.

The unaltered conclusions and recommendations of the Panel are issued to stimulate discussion, evaluation, and comment on the full sweep of the Panel's deliberations. The statement has been prepared independently of FDA, and the agency has not yet fully evaluated the statement. This document represents the best scientific judgment of the Panel members, but does not necessarily reflect the agency's position on any particular matter contained in it. The Panel's findings appear in this document to obtain public comment before the agency reaches any decision on the Panel's recommendation that OTC drug products to treat the symptoms of benign prostatic hypertrophy be classified as Category II. If the agency proposes to adopt the Panel's recommendations, a regulation declaring these products to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(p)) will be proposed for inclusion in Part 310, Subpart E (21 CFR Part 310, Subpart E). The agency is including, in this advance notice of proposed rulemaking, a regulation based upon the Panel's recommendations in order to obtain full public comment at this time.

After reviewing all comments submitted in response to this document, FDA will issue in the **Federal Register** a proposed rulemaking on OTC drug products to treat the symptoms of benign prostatic hypertrophy. The agency's position on OTC drug products to treat the symptoms of benign prostatic hypertrophy will be stated initially when that notice of proposed rulemaking is published in the **Federal Register**. In the notice of proposed rulemaking, the agency will announce its initial determination whether the proposed rule is a major rule under Executive Order 12291 and will consider the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The present notice is referred to as an advance notice of proposed rulemaking to reflect its actual status and to clarify that the requirements of the Executive Order and the Regulatory Flexibility Act will be considered when the notice of proposed rulemaking is published. At that time FDA also will consider whether the proposed rule has a significant impact on the human environment under 21 CFR Part 25 (proposed in the **Federal Register** of December 11, 1979; 44 Fr 71742).

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC drug products to treat the symptoms of benign prostatic hypertrophy. Types of impact may include, but are not limited to, costs associated with product testing, relabeling, repackaging, or reformulating. Comments regarding the impact of this rulemaking on OTC drug products to treat the symptoms of benign prostatic hypertrophy should be accompanied by appropriate documentation.

If FDA proposes to adopt the Panel's recommendations, the agency will propose that the final rule for OTC drug products to treat the symptoms of benign prostatic hypertrophy be effective 6 months after its date of publication in the **Federal Register**. Because benign prostatic hypertrophy is not a self-diagnosable disorder, and OTC treatment might unnecessarily delay diagnosis and treatment of a prostatic malignancy, the agency believes 6 months to be a reasonable effective date for the final rule. On or after the effective date of the final rule, no OTC drug products that are subject to the rule may be initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

In accordance with § 330.10(a)(2), the Panel and FDA have held as confidential all information generated by the agency and considered by the Panel concerning OTC drug products to treat the symptoms of benign prostatic hypertrophy. This information will be put on public display in the Dockets Management Branch, Food and Drug Administration, after November 1, 1982, except to the extent that its content falls within the confidentiality provisions of 18 U.S.C. 1905 or section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)).

A proposed review of the safety, effectiveness, and labeling of all OTC drugs by independent advisory review panels was announced in the **Federal Register** of January 5, 1972 (37 FR 85). The final regulations providing for this OTC drug review under § 330.10 were published and made effective in the **Federal Register** of May 11, 1972 (37 FR

9464). In accordance with these regulations, a request for data and information on all active ingredients used in OTC miscellaneous internal drug products was issued in the **Federal Register** of November 16, 1973 (38 FR 31696). (In making their categorizations with respect to "active" and "inactive" ingredients, the advisory review panels relied on their expertise and understanding of these terms. FDA has defined "active ingredient" in its current good manufacturing practice regulations (§ 210.3(b)(7), (21 CFR 210.3(b)(7))), as "any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of man or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in the drug product in a modified form intended to furnish the specified activity or effect." An "inactive ingredient" is defined in § 210.3(b)(8) as "any component other than an 'active ingredient'.") In the **Federal Register** of August 27, 1975 (40 FR 38179) a notice supplemented the initial notice with a detailed, but not necessarily all-inclusive, list of ingredients in miscellaneous internal drug products to be considered in the OTC drug review. The list, which did not include ingredients for the treatment of the symptoms of benign prostatic hypertrophy, was provided to give guidance on the kinds of active ingredients for which data should be submitted. The notices of November 16, 1973 and August 27, 1975 informed OTC drug product manufacturers of the opportunity to submit data to the review at that time and of the applicability of the monographs from the OTC drug review to all OTC drug products.

Under § 330.10(a)(1) and (5), the Commissioner of Food and Drugs appointed the following Panel to review the information submitted and to prepare a report on the safety, effectiveness, and labeling of the active ingredients in these OTC miscellaneous internal drug products:

James L. Tullis, M.D., Chairman (appointed December 1979)
John W. Norcross, M.D., Chairman (resigned March 1979)
Diana F. Rodriquez-Calvert, Pharm. D. (appointed July 1976)
Ruth Eleanor Brown, R.Ph. (resigned May 1976)
Elizabeth C. Giblin, M.N., Ed. D.
Richard D. Harshfield, M.D. (deceased June 1, 1981)
Theodore L. Hyde, M.D.
Claus A. Rohweder, D.O. (deceased April 13, 1979)
Samuel O. Thier, M.D. (resigned November 1975)
William R. Arrowsmith, M.D. (appointed March 1976)

Representatives of consumer and industry interests served as nonvoting members of the Panel. Eileen Hoates, nominated by the Consumer Federation of America, served as the consumer liaison until September 1975, followed by Michael Schulman, J.D., Francis J. Hailey, M.D., served as the industry liaison, and in his absence John Parker, Pharm. D., served. Dr. Hailey served until June 1975, followed by James M. Holbert, Sr., Ph. D. All industry liaison members were nominated by the Proprietary Association.

The following FDA employees assisted the Panel: Armond M. Welch, R. Ph., served as the Panel Administrator until July 1979, followed by John R. Short, R.Ph. Enrique Fefer, Ph. D., served as the Executive Secretary until July 1976, followed by George W. James, Ph. D., until October 1976, followed by Natalia Morgenstern until May 1977, followed by Arthur Auer until October 1978. Roger Gregorio served as the liaison for the Office of New Drug Evaluation beginning November 1978. Joseph Hussion, R.Ph., served as the Drug Information Analyst until July 1976, followed by Anne Eggers, R.Ph., M.S., until October 1977, followed by John R. Short, R.Ph., until July 1979.

The Advisory Review Panel on OTC Miscellaneous Internal Drug Products was charged with the review of many categories of drugs. Due to the large number of ingredients and varied labeling claims, the Panel decided to review and publish its findings separately for several drug categories and individual drug products. The Panel presents its conclusions and recommendations for OTC drug products to treat the symptoms of benign prostatic hypertrophy in this document. The Panel's findings on other categories of miscellaneous internal drug products are being published periodically in the **Federal Register**.

The Panel was first convened on January 13, 1975 in an organizational meeting. The only meeting at which drug products to treat the symptoms of benign prostatic hypertrophy were discussed was held on August 23, 1981.

The minutes of that Panel meeting are on public display in the Docket Management Branch (HFA–305), Food and Drug Administration (address above).

No individuals requested to appear before the Panel to discuss OTC drug products to treat the symptoms of benign prostatic hypertrophy, nor was any individual requested to appear by the Panel.

Although no submissions were received, the Panel thoroughly reviewed information prepared by FDA in arriving at its conclusions and recommendations for OTC drug products to treat the symptoms of benign prostatic hypertrophy.

In accordance with the OTC drug review regulations in § 330.10, the Panel reviewed OTC drug products to treat the symptoms of benign prostatic hypertrophy with respect to the following three categories:

Category I. Conditions under which OTC drug products to treat the symptoms of benign prostatic hypertrophy are generally recognized as safe and effective and are not misbranded.

Category II. Conditions under which OTC drug products to treat the symptoms of benign prostatic hypertrophy are not generally recognized as safe and effective or are misbranded.

Category III. Conditions for which the available data are insufficient to permit final classification at this time.

The Panel considered three active ingredients (glycine, alanine, and glutamic acid) in OTC drug products to treat the symptoms of benign prostatic hypertrophy and classified these ingredients in Category II.

The "OTC Volume" cited in this document contains material prepared by the agency. All of the information included in this volume, except for those deletions which are made in accordance with the confidentiality provisions set forth in § 330.10(a)(2), will be put on display following publication of this statement in the **Federal Register**, in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

Statement by the Advisory Review Panel on OTC Miscellaneous Internal Drug Products on OTC Drug Products to Treat the Symptoms of Benign Prostatic Hypertrophy

The Panel completed a review of ingredients to treat the symptoms of benign prostatic hypertrophy and offers the following general information.

A benign overgrowth of the prostate is a relatively common accompaniment to aging in males. The cause is unknown, but evidence suggests it is secondary to hormonal imbalance. About 50 percent of all men over the age of 50 develop some clinical evidence of the disease, and, of these, approximately 10 percent

require sugical intervention. The growth is characterized principally by an abnormal increase in the number of cells leading to a benign swelling with some normal glandular prostatic tissue still being present. The size of the growth may amount to from 1 to 10 times the normal prostatic weight. The resulting symptoms include urinary frequency, nocturia, difficulty in initiating voiding, and, in rare instances, complete bladder outlet obstruction. Although there is no direct relationship between benign prostatic hypertrophy and adenocarcinoma of the prostate, there are similarities between the two conditions. Adenocarcinoma of the prostate also occurs primarily in men over the age of 50 and produces the same obstructive symptoms. This malignant disease occurs in approximately 15 percent of men in their fifties and as many as 60 percent of men in their eighties. It is a major cause of death from malignancies in males, accounting for some 10 percent.

It is possible for prostatic carcinoma to be present concurrently with benign prostatic hypertrophy or to be confused with it. Blood tests, such as the serum acid phosphatase, help to diagnose prostatic carcinoma if the growth is beyond the capsule of the prostate, but in the early stages a hard nodule that indicates its prsence may be detected only by rectal palpation. Thus, any treatment of prostatic enlargement by OTC drugs might unnecessarily delay diagnosis and treatment of a malignancy.

The agency is aware of three products marketed OTC for the treatment of symptoms of benign prostatic hypertrophy. Each of these products contains a mixture of three amino acids, glycine, alanine, and glutamic acid and has been marketed for many years. Initial marketing of these products for this use presumably was based on the observation of improvement in a patient in Boston who originally took the mixture for another reason and noted improvement in his urinary difficulty. There is no evidence to show any potential harm from ingestion of these three naturally occurring amino acids, but, as mentioned above, there is a danger that the symptoms being treated are the result of prostatic cancer rather than benign hypertrophy.

A package insert accompanying one of these OTC drug products describes four studies purporting to show the effectiveness of the product (Ref. 1). The first study, involving 50 men in the Boston area, showed that the product provided relief in 80 percent of the cases. About 3 years after this study, a separate follow-up field study questionnaire on 100 men revealed that ". . . a large majority had received relief ranging from fair to excellent within a very few weeks." Two more studies, conducted in New York City during the 1950's, found that 80 percent of one group of 40 men ". . . secured substantial relief from their symptoms of Benign Prostatic Hypertrophy" and another 40 had ". . . very good results." Because of the subjective nature of the described results, the Panel concludes that these studies do not provide valid support of effectiveness.

In 1962 the U.S. District Court in Massachusetts granted a permanent injunction against the manufacturer of the products mentioned above on the basis of misbranding (Ref. 1). This prohibited the interstate distribution of these products at that time, but the manufacturer revised the labeling and the products once again were marketed over-the-counter. In granting the injunction, the Court stated that "a fair interpretation of their literature, of which 15 samples are attached to the complaint, would indicate to the lay mind that the use of [trade name] can be a substitute for surgery in the treatment of prostatic disorders."

The Panel Chairman solicited information about one of these products from two prominent urologists in the Boston area (Ref. 1). Both believed there was no rational reason why amino acids would alter the obstructive or inflammatory signs and symptoms of benign prostatic hypertrophy. A review of the *Journal of Urology* Index from 1948 included no mention of the product.

The Panel is not aware of any definitive clinical trials with appropriate controls, nor is there any a priori basis for assuming the effectiveness of these ingredients. The Panel, therefore, recommends that the mixture of amino acids the products contain be placed in Category II for safety and effectiveness. Because benign prostatic hypertrophy cannot be self-diagnosed and because OTC treatment might unnecessarily delay diagnosis and treatment of a prostatic malignancy, the Panel concludes that no ingredient or mixture of ingredients should be available OTC to treat the symptoms of this condition.

Reference

(1) OTC Volume 170233.

List of Subjects in 21 CFR Part 310

New drugs.

PART 310—NEW DRUGS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371)), and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)), and under 21 CFR 5.11 as revised (see 47 FR 16010; April 14, 1982), the agency advises in this advance notice of proposed rulemaking that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations would be amended in Part 310 by adding to Subpart E new § 310.532, to read as follows:

§ 310.532 Drug products containing active ingredients offered over-the-counter (OTC) to treat the symptoms of benign prostatic hypertrophy.

(a) Glycine, alanine, and glutamic acid (in combination) have been marketed to treat the symptoms of benign prostatic hypertrophy. There is a lack of adequate data to establish the safety and effectiveness of these, or any other, ingredients for treating the symptoms of this disorder. In addition, benign prostatic hypertrophy is not a self-diagnosable disorder, and OTC treatment might unnecessarily delay diagnosis and treatment of a prostatic malignancy. Therefore, any OTC drug product containing ingredients offered to treat the symptoms of benign prostatic hypertrophy cannot be considered generally recognized as safe and effective.

(b) Any OTC drug product that is labeled, represented, or promoted to treat the symptoms of benign prostatic hypertrophy is misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act and is regarded as a new drug within the meaning of section 201(p) of the act for which an approved new drug application under section 505 of the act and Part 314 of this chapter is required for marketing.

(c) A completed and signed "Notice of Claimed Investigational Exemption for a New Drug" (Form FD–1571), as set forth in § 312.1 of this chapter, is required to cover clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted OTC to treat the symptoms of benign prostatic hypertrophy is safe and effective for the purpose intended.

(d) After the effective date of the final regulation, any such drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

Interested persons may, on or before December 30, 1982, submit to the Dockets Management Branch (HFA-

305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this advance notice of proposed rulemaking. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments replying to comments may also be submitted on or before January 31, 1983. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

Dated: September 22, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

[FR Doc. 82–27066 Filed 9–30–82; 8:45 am]

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federal register

Friday
October 1, 1982

Part VIII

Department of Health and Human Services

Food and Drug Administration

Aphrodisiac Drug Products for Over-the-Counter Human Use

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Food and Drug Administration

21 CFR Part 310

[Docket No. 80N-0419]

Aphrodisiac Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing an advance notice of proposed rulemaking that would classify aphrodisiac drug products for over-the-counter (OTC) human use as not generally recognized as safe and effective and as being misbranded. This notice is based on the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products and is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by December 30, 1982 and reply comments by January 31, 1983.

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

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, National Center for Drugs and Biologics (HFD-510, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In accordance with Part 330 (21 CFR Part 330), FDA received on July 21, 1979 a report on OTC aphrodisiac drug products for oral use from the Advisory Review Panel on OTC Miscellaneous Internal Drug Products. FDA regulations (21 CFR 330.10(a)(6)) provide that the agency issue in the **Federal Register** a proposed rule containing (1) the monograph recommended by the Panel, which establishes conditions under which OTC aphrodisiac drug products are generally recognized as safe and effective and not misbranded; (2) a statement of the conditions excluded from the monograph because the Panel determined that they would result in the drugs' not being generally recognized as safe and effective or would result in misbranding; (3) a statement of the conditions excluded from the monograph because the Panel determined that the available data are insufficient to classify such conditions under either (1) or (2) above; and (4) the conclusions and recommendations of the Panel.

The Panel's recommendations on OTC aphrodisiac drug products for oral use contain no Category I or Category III conditions, and FDA is issuing the Panel's recommendations proposing Category II classification of OTC aphrodisiac drug products for oral use.

The unaltered conclusions and recommendations of the Panel are issued to stimulate discussion, evaluation, and comment on the full sweep of the Panel's deliberations. The report has been prepared independently of FDA, and the agency has not yet fully evaluated the report. This document represents the best scientific judgment of the Panel members, but does not necessarily reflect the agency's position on any particular matter contained in it. The Panel's findings appear in this document to obtain public comment before the agency reaches any decision on the Panel's recommendations that the ingredients in OTC aphrodisiac drug products for oral use be classified as Category II. If the agency proposes to adopt the Panel's recommendations, a regulation declaring these products to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(p)) will be proposed for inclusion in Part 310, Subpart E (21 CFR Part 310, Subpart E). The agency is including, in this advance notice of proposed rulemaking, a regulation based upon the Panel's recommendations in order to obtain full public comment at this time.

After reviewing all comments submitted in response to this document, FDA will issue in the **Federal Register** a proposed rulemaking on OTC aphrodisiac drug products for oral use. The agency's position on OTC aphrodisiac drug products for oral use will be stated initially when that notice of proposed rulemaking is published in the **Federal Register**. In the notice of proposed rulemaking, the agency also will announce its initial determination whether the proposed rule is a major rule under Executive Order 12291 and will consider the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The present notice is referred to as an advance notice of proposed rulemaking to reflect its actual status and to clarify that the requirements of the Executive Order and the Regulatory Flexibility Act will be considered when the notice of proposed rulemaking is published. At that time FDA also will consider whether the proposed rule has a significant impact on the human environment under 21 CFR Part 25 (proposed in the **Federal Register** of December 11, 1979; 44 FR 71742).

The agency invites public comment regarding any substantial or significant impact that this rulemaking would have on OTC aphrodisiac drug products for oral use. Types of impact may include, but are not limited to, costs associated with product testing, relabeling, repackaging, or reformulating. Comments regarding the impact of this rulemaking on OTC aphrodisiac drug products for oral use should be accompanied by appropriate documentation.

If FDA proposes to adopt the Panel's recommendations, the agency will propose that the final rule for OTC aphrodisiac drug products for oral use be effective 6 months after its date of publication in the **Federal Register**. Because the OTC aphrodisiacs have been found to be either ineffective or unsafe for OTC use and the Panel recommended that individuals with decreased libido or impaired sexual performance not self-medicate with these products, the agency believes 6 months to be a reasonable effective date for the final rule. On or after the effective date of the final rule, no OTC drug products that are subject to the rule may be initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

A proposed review of the safety, effectiveness, and labeling of all OTC drugs by independent advisory review panels was announced in the **Federal Register** of January 5, 1972 (37 FR 85). The final regulations providing for this OTC drug review under § 330.10 were published and made effective in the **Federal Register** of May 11, 1972 (37 FR 9464). In accordance with these regulations, a request for data and information on all active ingredients used in OTC miscellaneous internal drug products was issued in the **Federal Register** of November 16, 1973 (38 FR 31696). (In making their categorizations with respect to "active" and "inactive" ingredients, the advisory review panels relied on their expertise and understanding of these terms. FDA has defined "active ingredient" in its current good manufacturing practice regulations (§ 210.3(b)(7), (21 CFR 210.3(b)(7))), as "any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of man or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in the drug product in a modified form intended to furnish the specified activity or effect."

An "inactive ingredient" is defined in § 210.3(b)(8) as "any component other than an 'active ingredient.' ") In the **Federal Register** of August 27, 1975 (40 FR 38179), a notice supplemented the initial notice with a detailed but not necessarily all-inclusive, list of active ingredients in miscellaneous internal drug products to be considered in the OTC drug review. The list, which included aphrodisiac ingredients, was provided to give guidance on the kinds of active ingredients for which data should be submitted. The notices of November 16, 1973, and August 27, 1975, informed OTC drug product manufacturers of their opportunity to submit data to the review at that time and of the applicability of the monographs from the OTC drug review to all OTC drug products.

Under § 330.10(a)(1) and (5), the Commissioner of Food and Drugs appointed the following Panel to review the information submitted and to prepare a report on the safety, effectiveness, and labeling of the active ingredients in these miscellaneous internal drug products:

Diana F. Rodriguez-Calvert, Pharm. D. (appointed July 1976), Acting Chairman
John W. Norcross, M.D., Chairman (resigned March 1979)
Ruth Eleanor Brown, R. Ph. (resigned May 1976)
Elizabeth C. Giblin, Ed. D.
Richard D. Harshfield, M.D.
Theodore L. Hyde, M.D.
Claus A. Rohweder, D.O. (deceased April 1979)
Samuel O. Thier, M.D. (resigned November 1975)
William R. Arrowsmith, M.D. (appointed March 1975)

Representatives of consumer and industry interests served as nonvoting members of the Panel. Eileen Hoates, nominated by the Consumer Federation of America, served as the consumer liaison until September 1975, followed by Michael Schulman, J.D., Francis J. Hailey, M.D., served as the industry liaison, and in his absence John Parker, Pharm. D., served. Dr. Hailey served until June 1975, followed by James M. Holbert, Sr., Ph. D. All industry liaison members were nominated by the Proprietary Association.

The following FDA employees assisted the Panel: Armond M. Welch, R. Ph., served as the Panel Administrator. Enrique Fefer, Ph. D., served as the Executive Secretary until July 1976, followed by George W. James, Ph. D., until October 1976, followed by Natalia Morgenstern until May 1977, followed by Arthur Auer until October 1978. Roger Gregorio served as the liaison for the Office of New Drug Evaluation beginning November 1978. Joseph Hussion, R. Ph., served as the Drug Information Analyst until July 1976, followed by Anne Eggers, R. Ph., M.S., until October 1977, followed by John R. Short, R. Ph.

In order to expand its scientific base, the Panel called upon the following consultants for advice in areas which required particular expertise:

Lynn R. Brady, Ph. D. (pharmacognosy)
Arthur E. Schwarting, Ph. D. (pharmacognosy)
Ralph B. D'Agostino, Ph. D. (statistics)

The Advisory Review Panel on OTC Miscellaneous Internal Drug Products was charged with the review of many categories of drugs. Due to the large number of ingredients and varied labeling claims, the Panel decided to review and publish its findings separately for several drug categories and individual drug products. The Panel presents its conclusions and recommendations on aphrodisiac drug products for oral use in this document. The Panel's findings on other categories of miscellaneous internal drug products are being published periodically in the **Federal Register.**

The Panel was first convened on January 13, 1975 in an organizational meeting. Working meetings at which aphrodisiac drug products were discussed were held on March 2 and 3, April 17 and 18, June 2 and 3, and July 21 and 22, 1979.

The minutes of the Panel meetings are on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration (address above).

No individuals requested to appear before the Panel to discuss OTC aphrodisiac drug products for oral use, nor was any individual requested to appear by the Panel.

The Panel has thoroughly reviewed the literature and has considered all pertinent information available through July 21, 1979 in arriving at its conclusions and recommendations.

In accordance with the OTC drug review regulations in § 330.10, the Panel reviewed OTC aphrodisiac drug products for oral use with respect to the following three categories:

Category I. Conditions under which OTC aphrodisiac drug products for oral use are generally recognized as safe and effective and are not misbranded.

Category II. Conditions under which OTC aphrodisiac drug products for oral use are not generally recognized as safe and effective or are misbranded.

Category III. Conditions for which the available data are insufficient to permit final classification at this time.

The Panel reviewed 15 active ingredients as OTC aphrodisiac drug products for oral use and classified all of the ingredients in Category II.

A. Ingredients Reviewed by the Panel

Although data were requested in the initial **Federal Register** notice of November 16, 1973 (38 FR 31696) and specific aphrodisiac ingredients were listed in the supplemental notice of August 27, 1975 (40 FR 38179), no submissions were received on aphrodisiac drug products. The Panel considered the six ingredients contained in the supplemental list as well as other ingredients with a history of aphrodisiac usage.

The following ingredients were listed in the **Federal Register** of August 27, 1975 (40 FR 38179):

Don qual
Golden seal
Gotu kola
Korean ginseng
Licorice
Sarsaparilla

Other ingredients reviewed by the Panel on its own initiative were as follows:

Cantharides
Estrogens
Ginseng
Methyltestosterone
Nux vomica
Pega Palo
Strychnine
Testosterone
Yohimbine

B. Definition of Terms

For the purpose of this document the Panel agreed on the following definitions:

1. *Androgenic.* Producing masculine characteristics.

2. *Androgens.* Any substance that possesses masculinizing activities, e.g., testosterone.

3. *Aphrodisiac.* Any drug which is claimed to arouse or increase sexual desire or improve sexual performance.

4. *Estrogens.* The female sex hormones.

5. *Libido.* Sexual desire.

6. *Virilism. The development of masculine physical and mental traits in the female.*

7. *Virility.* Possession of the normal primary sex characteristics in one of the male sex.

C. Evaluation of Aphrodisiacs

The literature is replete with a large number of substances which, at one

time or another, have been claimed to have aphrodisiac action (Refs. 1, 2, and 3). By contrast the list of aphrodisiac ingredients in the Federal Register of August 27, 1975 (40 FR 38179) is relatively limited. This discrepancy may be explained by the fact that the vast majority of so-called "aphrodisiacs" exist or existed as part of folkloric tradition. Very few of such substances are commercially marketed with claims of aphrodisiac action. Aphrodisiacs reviewed in this document are defined as drugs taken internally which are claimed to arouse or increase sexual desire (libido) or improve sexual performance. Occasionally, the term "tonic" is used somewhat synonymously with "aphrodisiac," in that a product may be claimed to restore enfeebled function and to promote vigor.

In humans with good general health who are not taking any drugs including alcohol, sexual drive (libido) and sexual performance are governed by multiple factors, the most common of which are physchological. Impotence and frigidity have often been successfully treated by psychotherapy. The Panel further concludes that the conditions of decreased libido and impaired sexual performance are not amenable to self-treatment with internal drugs.

Hormonal factors also affect libido. The androgens have been shown to change the sexual drive in both sexes. For example, testosterone, when given to women in repeated large doses (100 to 200 milligrams (mg) of testosterone propionate given three times per week) in the treatment of breast cancer, often causes intensified libido along with genital sensitivity and signs of virilism (Ref. 4). In men who have a testosterone deficiency, specific therapy (Ref. 5); whereas, in men who are physically normal and who have normal testicular function, the administration of androgens has not been documented convincingly to show either a change in libido or an improvement in sexual performance (Ref. 4). Also, the Panel is not aware of any data demonstrating that estrogens increase sexual responsiveness in the normal human female, but the Panel is aware that in the male high doses of estrogens, as used in the treatment of prostatic cancer and in attempts to reduce blood cholesterol, are powerful inhibitors of libido (Ref. 4).

Although the androgens and estrogens have been shown to have both positive and negative effects on libido, they are powerful hormones and are not safe for use except under the supervision of a physician.

After a search of the available medical literature, the Panel was able to find only two studies which were designed to demonstrate a specific aphrodisiac action. In one double-blind crossover study, a combination prescription product containing methyltestosterone, yohimbine hydrochloride, and nux vomica (5 mg of each) was claimed to produce an "excellant or good response" in 31 out of 41 impotent male patients. Placebo produced only one "good" result (Ref. 6).

This study, as reported, has at least three major deficiencies. First, the "drugs" were coded "A" and "B" ("A" was the test medication and "B" the placebo); and, while each subject did not know the content of the "drug" he was receiving, he did know if it was "A" or "B." Such a code for the "drugs" could especially have been deciphered, thus destroying the blindness of the study. Second, since no details are given with regard to the outcome effectiveness measures ("excellent," "good," "fair," and "poor"), it is impossible to evaluate the appropriateness of these measures. Third, the study did not demonstrate a placebo effect because only 1 out of 41 individuals was classified as having a "good" response while on the placebo. In dealing with a phenomenon where psychological factors are so important, this low placebo success rate is highly unusual and suspect.

In the other study examined by the Panel (Ref. 7), an alcoholic extract of the Pega Palo plant (leaves and stems of *Rhynchosia pyramidalis)* was used in "50 cases of sexual impotence with partial or complete loss of libido and erections." The investigators reported that libido was increased in 41 individuals of whom 16 were restored to normal sexual activity during the test period. The study was not double-blind in that the investigators knew the drug the subjects were receiving. Further, while a placebo was said to be given "in many cases," no results were presented for the placebo. The study, as reported, does not meet the requirements of a well-controlled clinical study and cannot be considered as evidence toward the claims of effectiveness for Pega Palo.

Apart from these two studies which the Panel found to be highly inadequately, there was no substantive evidence whatever to support the claims of aphrodisiac action attributed to the various ingredients reviewd by the Panel. Such claims have been transmitted largely through folklore and exploited by manufactures who prey on the qullibility of people who most likely are in need of counsel or therapy.

Claims for cantharides and yohimbine have never been adequately supported. Cantharides (Spanish Fly) or cantharidin, the active constituent from the dried insect, causes irritation of the genitourinary tract, sometimes causing congestion of the tissue of the clitoris or penis. There is no evidence available to the Panel that this effect is accompanied by increased sexual desire or improved performance. Serious damage to the genitourinary tract has been reported, and there have been fatalities from shock associated with severe gastroenteritis. Yohimbine (from the bark of *Corynanthe yohimbe*), an alkaloid resembling reserpine, has been employed for centuries as an aphrodisiac, but there is not clinical evidence that it has any effect on either sexual desire or performance.

Ginseng (root of *Panax* species) has a long and popular folkoric use as an aphrodisiac. There are, however, no clinical studies or reports to support the often-repeated claim for effectiveness.

Nux vomica (seeds of *Strychnos nux-vomica*) and its active constituent, strychnine, have been used as sexual stimulants with claims of effectiveness based entirely on testimonials. There are no reports in the literature on clinical effectiveness. This plant-drug or its alkaloid is usually combined with other chemicals or products.

Of the six ingredients listed in the Federal Register of August 25, 1975 (40 FR 38179), gotu kola from *Centella asiatica,* licorice from glycyrrhiza species, sarsaparilla from smilax species, and Korean ginseng from *Panax* species, contain triterpenes. The panaxosides of ginseng, the asiatic acid-related compounds of gotu kola, and glycyrrhizic acid in licorice typify a group of constituents which may have a low level of androgenic action. The Panel is unaware of any proof that these compounds posses significant androgenic or aphrodisiac activity. The Panel could find no data in the literature of the last 20 years for the other two ingredients listed in the Federal Register. The Panel is not aware of the existence of the ingredient don qual and has not found it to be recorded in the indices of any major abstract service. Also, the Panel could find no information reporting the use of golden seal (Hydrastis canadensis) as an aphrodisiac.

Conclusion. Testosterone and methyltestosterone have a recognized influence on libido and sexual performance, but these drugs are powerful hormones with potentially serious untoward effects and must be used only under the supervision of a physician. Serious health risks are associated with alleged aphrodisiacs such as cantharides. There is no

conclusive scientific evidence demonstrating the safety or effectiveness of the large number of plant materials which have been used historically for aphrodisiac purposes. Individuals suffering from decreased libido and impaired sexual performance should not self-medicate, but should seek treatment under professional guidance. For these reasons, all OTC internal drug products with aphrodisiac claims are placed in Category II.

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(2) Puri, H. S., "Vegetable Aphrodisiacs of India," *Quarterly Journal of Crude Drug Research*, 11:1742–1748, 1971.

(3) Wedeck, H. E., editor, "Dictionary of Aphrodisiacs," Peter Owen Ltd., London, 1961.

(4) Aaron, H., et al., "The Medical Letter on Drugs and Therapeutics," Drug and Therapeutic Information, Inc., New York, 5:45–46, June 7, 1963.

(5) Labhart, A., "Clinical Endrocrinology—Theory and Practice," Springer-Verlag, New York, pp. 468–469, 1976.

(6) Bruhl, D. E., and C. H. Leslie, "Afrodex: Double-Blind Test in Impotence," *Medical Record and Annals*, 56:22, 1963.

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Category II Labeling

The Panel concludes that all labeling claims for OTC aphrodisiacs or "placebo" aphrodisiacs are either false, misleading, or unsupported by scientific data. Claims such as those listed below and other similar terms which state or imply an aphrodisiac action are classified as Category II labeling when applied to OTC drug products:

a. "Acts as an aphrodisiac."

b. "Arouses or increases sexual desire and improves sexual performance."

c. "Helps restore sexual vigor, potency, and performance."

d. "Improves performance, staying power, and sexual potency."

e. "Builds virility and sexual potency."

f. "Creates an uncontrollable desire for immediate sexual gratification."

g. "Expands nature's gift of love."

List of Subjects in 21 CFR Part 310

New drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371)), and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)), and under 21 CFR 5.11 as revised (see 47 FR 16010; April 14, 1982), the agency advises in this advance notice of proposed rulemaking that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations would be amended in Part 310 by adding to Subpart E new § 310.528, to read as follows:

PART 310—NEW DRUGS

§ 310.528 Drug products containing active ingredients offered over-the-counter (OTC) for oral use as an aphrodisiac.

(a) Gotu kola, ginseng, licorice, sarsaparilla, cantharides, estrogens, methyltestosterone, nux vomica, Pega Palo, strychnine, testosterone, and yohimbine hydrochloride have been present as ingredients in drug products for internal use as an aphrodisiac. Androgens (e.g., testosterone and methyltestosterone) and estrogens are powerful hormones when administered internally and are not safe for use except under the supervision of a physician. There is a lack of adequate data to establish the safety and effectiveness of any of these ingredients for OTC use as an aphrodisiac. Labeling claims for OTC aphrodisiacs (any drug which is claimed to arouse or increase sexual desire or improve sexual performance) are either false, misleading, or unsupported by scientific data. The following claims are examples of some that have been made for OTC aphrodisiac drug products: "acts as an aphrodisiac"; "arouses or increases sexual desire and improves sexual performance"; "helps restore sexual vigor, potency, and performance"; "improves performance, staying power, and sexual potency"; "builds virility and sexual potency"; "creates an uncontrollable desire for immediate sexual gratification"; and "expands nature's gift of love." Based on evidence presently available, there are no ingredients that can be generally recognized as safe and effective OTC for internal use as an aphrodisiac.

(b) Any OTC drug product labeled, represented, or promoted for internal use as an aphrodisiac is misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act and is regarded as a new drug within the meaning of section 201(p) of the act for which an approved new drug application under section 505 of the act and Part 314 of this chapter is required for marketing.

(c) A completed and signed "Notice of Claimed Investigational Exemption for a New Drug" (Form FD–1571), as set forth in § 312.1 of this chapter, is required to cover clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted OTC as an aphrodisiac for internal use is safe and effective for the purpose intended.

(d) After the effective date of the final regulation, any such drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

Interested persons may, on or before December 30, 1982, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this advance notice of proposed rulemaking. Three copies of any comments are to be submitted, except that individuals may submit one compy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments replying to comments may also be submitted on or before January 31, 1983. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

Dated: September 22, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

[FR Doc. 82–27055 Filed 9–30–82; 8:45 am]

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federal register

Friday
October 1, 1982

Part IX

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Payment for Physician Services Furnished in Institutional Providers of Services

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Payment for Physician Services Furnished in Institutional Providers of Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: These proposed rules would, in part, implement section 1887 of the Social Security Act, which was established by section 108 of the Tax Equity and Fiscal Responsibility Act of 1982. We are proposing to revise the regulations that govern Medicare coverage and reimbursement for services of physicians who practice in institutional providers (hospitals and skilled nursing facilities). The proposed regulations would set forth basic criteria for reasonable charge payment for those services, and would clarify how reasonable charges would be determined for physician services furnished by physicians in a provider setting. The regulations also would specify the conditions under which Medicare will pay on a reasonable cost basis for physician services to providers, and would provide improved tests of reasonableness for Medicare carriers and intermediaries to follow in determining payment. In addition, the proposed regulations would establish more specific conditions for payment for the services of anesthesiologists, radiologists, and pathologists.

DATE: In order to assure consideration, comments should be received on or before November 1, 1982.

ADDRESS: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17073, Baltimore, Maryland 21235.

In commenting, please refer to BPP-192-P.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Ave., S.W., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection, beginning approximately three weeks after publication, in Room 309-G of the Department's office at 200 Independence Ave., S.W., Washington, D.C., 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT: Leonard Peshkin, (301) 594-1115.

SUPPLEMENTARY INFORMATION:

I. General Background

The Medicare law (Title XVIII of the Social Security Act) generally provides separate coverage and payment rules for provider services (including hospital and skilled nursing facility (SNF) services), and for physician services. Under Medicare, inpatient hospital services and SNF services are covered under Hospital Insurance (Part A) and are paid for from the Part A Trust Fund. Outpatient hospital services are covered under Supplementary Medical Insurance (Part B), and are paid for from the Part B Trust Fund. Provider services are paid for through fiscal intermediaries (generally Blue Cross plans or commercial insurance companies), on a reasonable cost basis.

Part B services (other than outpatient hospital services, and certain services of interns, residents, and teaching physicians), such as physician services and other "medical and other health services" as defined in section 1861(s) of the Act, generally are paid for through the carriers (generally Blue Shield plans or commercial insurance companies) on a reasonable charge basis from the Part B Trust Fund.

To administer the Medicare program in accordance with the statute, we must be able to distinguish clearly between physician services and provider services, and to pay for each on the proper basis (costs or charges) from the correct trust fund (Part A or Part B). We also must develop billing and payment procedures that permit us to meet these requirements, that are administratively sound, simple, and efficient, that ensure that Medicare payments are reasonable in amount, and that avoid duplicate payment.

Since the beginning of the Medicare program, we have had difficulty in ensuring that these goals are met and the statute is implemented properly in the case of payment for services furnished by physicians in provider settings. These problems were highlighted in a report issued in December 1980, by the Department's Office of Inspector General (OIG) Audit Agency entitled "Report on Need for More Restrictive Policy and Procedures Covering Medicare Reimbursement for Medical Services Provided by Hospital-Based Physicians." (Audit No. 06-02001) This study found that Medicare frequently pays "hospital-based" or "provider-based" physicians (that is, physicians who practice in a provider, usually a hospital setting, and who are compensated by or through the provider), particularly in the medical specialties of radiology, anesthesiology, and pathology, at levels that bear little relationship to the reasonable cost or reasonable charge standards applicable to other providers and practitioners. OIG recommended in that report that Medicare procedures be revised to ensure that, in the future, program payments for the services of these physicians are made according to the reasonableness standards required by the Medicare law for all physicians.

One reason why reasonableness standards for determining payment for the services of these physicians have not been effective has been the relative lack of specificity in the procedures for distinguishing between the services of physicians in providers that qualify for charge payment, and those that are to be paid for only on a cost basis. The Medicare law originally did not differentiate explicitly between services of physicians in provider settings and services of physicians furnished in nonprovider settings. However, our regulations, at 42 CFR 405.483(a), have stated that payment will be made on a reasonable charge basis for services of physicians to provider patients only if the services require performance by a physician in person and contribute to the diagnosis or treatment of individual patients.

In the current regulations at § 405.483(a), we have distinguished between physician services to individual patients and physician services to the provider. There was some risk of confusion in this approach, since section 1861(q) of the Social Security Act defines "physicians' services" broadly as "professional services performed by physicians, including surgery, consultation, and home, office, and institutional calls (but not including services * * * [of interns and residents])." Although the statute did not explicitly refer to such services as being furnished by a physician in person to an individual patient, we believed it was intended to be interpreted in this way, and framed our regulations accordingly.

This intent was affirmed when Congress provided in section 108 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248; enacted September 3, 1982) for the addition of a new section 1887 of Title XVIII of the Social Security Act, dealing explicitly with distinguishing between services to patients and services to providers in reimbursing provider-based physicians. (Generally, physicians are considered "based" in a hospital or other provider if they receive compensation from the

provider or another entity for services furnished in the provider.) Section 1887(a)(1) authorizes the Secretary to issue regulations setting forth criteria for services furnished by physicians in institutional providers that distinguish services:

(A) which constitute professional medical services which are personally rendered for an individual patient by a physician and which contribute to the diagnosis or treatment of an individual patient and which may be reimbursed as physicians' services under part B, and

(B) which, constitute professional services which are rendered for the general benefit to patients in a hospital or skilled nursing facility and which may be reimbursed only on a reasonable cost basis.

The statutory language differs from our current regulations, which define, at 42 CFR 405.483(a), a physician's professional service to a patient as "an identifiable service requiring performance by a physician in person, which contributes to the diagnosis of the condition of the patient * * *, or contributes to the treatment of such patient." Senator Robert Dole, chairman of the Senate Finance Committee, explained the intent of this provision when he presented the bill's final version for Senate approval:

While this provision has been slightly modified in conference, the intent in making this change remains the same. Under the amendment, the Secretary is required to differentiate those services that require a physician to personally perform in the diagnosis or treatment of a patient's illness from those activities that are of a general administrative nature. General administrative services—such as supervision of personnel who perform clinical laboratory tests—and those services that do not require a physician to perform in person are to be reimbursed as a hospital service on a cost basis. These distinctions will assure the appropriate source of payment, while continuing to reimburse physicians a reasonable amount for the services they perform. Our intention was not to penalize but rather to create some equity between the way we pay physicians generally and the way we pay those who are hospital based. (Congressional Record, vol. 128, No. 15, August 19, 1982. S10902.)

Therefore, the intent underlying section 1887(a)(1) is closely related to that expressed in our current regulations.

This new statutory provision expresses the long-standing intent to treat physician services to individual patients differently from physician services to providers. By so amending the statute, Congress has recognized the need for clarifying this distinction to administer properly the part A and Part B trust funds.

Physicians services to providers, that is, services of physicians that do not meet the conditions for charge payment but benefit a provider or its patients generally, are considered provider services under our current regulations at 42 CFR 405.482(a). The costs of these services are allowable as provider costs, and are reimbursable only on a reasonable cost basis. However, these regulations have not been implemented uniformly enough in all parts of the country or in all settings in the same part of the country. In addition, physicians in some specialties consider this to be inconsistent with their established practices, in that they consider all professional activities of physicians to be physicians' services reimbursable under Part B. We believe this problem has led to improper payments for some services because carriers and intermediaries have difficulty making the comparisons needed to ensure that cost and charge payments are reasonable and do not duplicate each other.

The new section 1887 of the Act, in addition to requiring improved distinctions between physicians' services to individual patients and to providers, includes provisions requiring that, in determining reasonable cost reimbursement for physician services to providers, only those costs be recognized as reasonable that:

- Are related to the amount of time actually spent by a compensated physician in furnishing such services (section 1887(a)(2)(A)); and
- Do not exceed the reasonable compensation equivalent for such services, as established in regulations (section 1887(a)(2)(B)).

Section 1887(a)(2)(C) provides authority to grant exceptions to providers that cannot recruit or maintain an adequate number of physicians on account of these reimbursement limits (that is, the reasonable compensation equivalents). Such an exception would allow the provider to provide a compensation level higher than the limit in order to ensure adequate physician services.

Another factor affecting the application of reasonableness standards to payments for physician services is the variety and complexity of the billing procedures that are used for these services. Bills for some types of physician services may be submitted either to the intermediary or to the carrier, and in some instances payment may be made on either a cost or charge basis. Some billing methods, as discussed in more detail in section IV of this preamble, do not permit carriers to determine whether the services for which charges are billed may already have been paid for in part or in full on a reasonable cost basis, making it difficult to ensure that the statutory requirements are met. A specific example of this problem involves the use of the HCFA-1554 billing form, which is used by some providers to bill for physician services. Since the services billed for on this form are frequently not separately itemized, use of the form has severly restricted carriers' ability to compare actual charges billed to customary and prevailing charges for similar services. (Making these comparisons is an essential part of our methodology for determining reasonable charges—see 42 CFR 405.502.) The use of various billing procedures has resulted in payment of inconsistent amounts for similar services, and has proved to be complex and costly to administer.

A third factor limiting the effectiveness of the current reasonableness standards for payment for physician services is the differences in practices, reimbursement, and coverage between the various medical specialties (e.g., anesthesiology, radiology, and pathology) practiced in provider settings. Our current regulations on payment for services of hospital-based physicians (see 42 CFR 405.480–405.488) treat all physicians who practice primarily or entirely in hospitals and SNF's as a single, homogeneous group. However, as explained later in this preamble, different payment issues arise with respect to certain specialized services of physicians, and we believe refined tests of reasonableness are needed to determine payment appropriately for these services.

II. Developments Relating to Payment for Services of Physicians in Providers

A. *Payment Practices Before Enactment of Medicare Law.* Although most physicians furnish some services in hospitals or other providers, the largest volume of services provided in these facilities are radiology and pathology services. Before the Medicare law was enacted, services of radiologists and pathologists furnished to hospital patients were more frequently treated by hospitals and health insurance companies as hospital services. Hospitals often included the costs of these physicians' services with other costs (e.g., capital, overhead, and nurses' and other employees' salaries) and billed patients (or their insurance companies) aggregate charges for all services of each type. In these instances, radiologists and pathologists did not bill charges for their services to hospital patients, and payors generally did not recognize charges of this type.

Unlike radiologists and pathologists, anesthesiologists historically have billed charges for their services directly to patients. These services generally have been considered physician services rather than hospital services. As explained below, however, many types of anesthesia procedures are often performed by certified registered nurse anesthetists (CRNAs) under the direction of an anesthesiologist or other physician performing anesthesiology services.

B. *Statutory Background.* The Medicare law, Title XVIII of the Social Security Act, provides separate definitions of hospital services and physician services, and separate payment rules for each type of service.

Section 1861(b) of the Act defines inpatient hospital services, and explicitly excludes physician services to hospital inpatients from that definition. Physician services are also excluded from the Part B coverage provision applicable to outpatient hospital services in section 1832(a)(2) of the Act.

Section 1861(q) of the Social Security Act sets forth the basic definition of physician services. The basic rules on payment of reasonable charges for physician services are set forth in section 1842(b)(3) of the Act. Although the definition of "physicians' services" given in 1861(q) of the Act does not clearly exclude services which a physician furnishes to a provider from Part B reimbursement, we have always held, as explained above, that those physicians' services that are reimbursable on that basis are services that a physician personally furnishes for individual patients. This has been reaffirmed by section 1887(a)(1) of the Act.

Section 1887(a)(1) requires the Secretary to establish, by regulations, criteria for distinguishing between services that are professional medical services (which are personally furnished to an individual patient by a physician, and which contribute to the diagnosis or treatment of that patient) and professional services that are furnished for the general benefit of patients, such as quality control activities, are furnished to the provider, and, as provider services, must be paid for on the basis of provider costs.

The basic rules on payment of reasonable costs for services of hospitals and other providers are set forth in section 1861(v)(1)(A) of the Act. However, section 1887(a)(2) of the Act establishes new requirements, in addition to section 1861(v)(1), for determining reasonable cost related to physician services to the provider. Section 1887(a)(2)(A) requires that such costs be apportioned on the basis of the amount of time actually spent by a physician in furnishing services to the provider. Section 1887(a)(2)(B) specifies that the costs attributable to physician services to the provider (that is, the cost of compensating physicians to furnish such services) may not exceed the reasonable compensation equivalent for such services, and authorizes the Secretary to determine the applicable reasonable compensation equivalents by regulation. Section 1887(a)(2)(C) authorizes an exception to the reasonable compensation equivalent limits set under section 1887(a)(2)(B) for a provider that shows it cannot recruit or maintain an adequate number of physicians under those limits.

C. *Current Medicare Regulations.* Our current regulations on payment for services of physicians in providers are set forth at 42 CFR 405.480–405.488. These regulations were first issued in 1966, and have never been revised. The regulations set forth basic principles regarding payment for services of physicians in providers, as follows:

- *Conditions for payment of charges.* The carrier will pay on a reasonable charge basis for services of a physician to an individual patient of the provider only if those services require performance by a physician in person, and contribute to the disgnosis or treatment of the patient. Other services of physicians that do not meet these conditions but benefit a provider, or its patients generally, are allowable as provider costs, and the provider is paid for them on a reasonable cost basis by the intermediary. (42 CFR 405.482(a) and 405.483(a).)
- *Allocation of physician compensation.* The salary or other compensation a physician receives from a provider is usually for both services to individual patients and services to the provider. To determine Medicare reimbursement accurately, this compensation must be allocated between the two types of services. The part of the physician's compensation that relates to services to individual patients is used in determining Part B payments on a reasonable charge basis for those services. (42 CFR 405.484)
- *Determination of compensation-related charges.* Under the Medicare statute and the general rules on determination of reasonable charges (at 42 CFR 405.501 through 405.508), a carrier determines whether a physician's charge for a Part B service furnished to a beneficiary is reasonable by taking into consideration both the physician's customary charge for such a service and the prevailing charges of other physicians in the locality for similar services. When a physician is compensated by a provider for Part B services furnished in the provider, and neither the physician nor the provider charges any patients (or patients' insurers) separately for the physician's services, there are no identifiable customary charges for the physician's services. In order to establish and apply the required standards of reasonableness to Part B services furnished by compensated physicians, the current regulations at 42 CFR 405.480 through 405.488 require that compensation-related (customary) charges be computed based on the assumption that the part of a physician's compensation allocated to patient care services represents, to the extent that it is reasonable, the aggregation of the physician's customary charges for patient care services. Under these regulations, various methods of computing compensation-related customary charges are allowed (e.g., per diem, uniform percentage, and item-by-item methods), provided that the method used by a provider systematically and rasonably relates the physician's compensation to the range of physician services furnished under that compensation. (42 CFR 405.485)
- *Charges for services furnished in leased hospital departments.* If a physician assumes some or all of the costs of operating a hospital department, the charges billed by the physician should reflect those costs. However, costs which the hospital bears (and for which it should be reimbursed by the intermediary) are not to be reflected in the charges billed by the physician. (42 CFR 405.486.)

D. *Changes in Physician Practice Patterns Since 1966.* After the publication of the current regulations in 1966, several developments in physician practice patterns occurred that greatly affected the manner in which services of physicians in provider settings were reimbursed. First, many radiologists and pathologists who previously had been paid by providers for their services to provider patients began to bill charges to the Medicare carrier or the patient for their services. Second, physicians' financial agreements with providers became more complex. Finally, it became a common practice for anesthesiologists to involve CRNAs more extensively in the delivery of anesthesia services, and to bill the carrier or the patient for the CRNAs' services as physician services. We believe these developments in many cases have resulted in increases in the level of Medicare payment for services of physicians in provider settings

beyond appropriate levels of "reasonableness".

E. *Need for Revised Regulations and Payment Procedures.* We believe our current regulations set forth valid general principles for implementing the statutory requirements regarding payment for services of physicians in providers. However, the payment rules contained in those regulations are not sufficiently detailed and explicit to fully implement the Medicare law, and, of course, do not take into account all of the provisions of new section 1887 of the Act. In order to implement section 1887, it is necessary to more clearly distinguish between the services of physicians in providers that are to be paid for on a charge basis, and those that are to be paid for on a cost basis as provider services. Also, the current regulations do not deal with the differences in the ways certain specialists (such as anesthesiologists, radiologists, and pathologists) practice medicine in provider settings. For these reasons it has been difficult, under current regulations, to develop and apply effective tests of reasonableness that can be used in determining payment for services of physicians in providers.

Therefore, we are proposing to issue revised regulations that set forth general conditions for reasonable charge payments for services of all physicians in providers and provide additional conditions and tests of reasonableness for determining Part B payments for anesthesiology, radiology, and laboratory services. In addition, we plan to reform our current billing procedures by eliminating billing by a provider on behalf of a physician of compensation-related charges for physician services on the HCFA–1554 billing forms, and by required additional information to be submitted with certain other billings.

III. Major Features of Proposed Regulations

A. *Scope of Regulations.* These proposed regulations would apply to all services a physician furnishes in a hospital or SNF. (After proper **Federal Register** notice, they may also be applied, as appropriate, in other provider settings, such as comprehensive outpatient rehabilitative facilities.) Additional rules may apply when teaching physicians, interns or residents are involved in the delivery of the physician's services. In these cases, payment for the services also must be consistent with the regulations set forth at 42 CFR 405.520 through 405.525. In addition, if the provider is a teaching hospital, it may elect reasonable cost reimbursement for all physician services to its Medicare patients, under the regulation at 42 CFR 405.465.

Because of problems related to the administration of the regulations relating specifically to teaching hospitals, and to implement section 1861(b)(7) of the Social Security Act (as amended by section 948 of Pub. L. 96–499), we also plan to publish, in a separate document, proposed regulations which would establish special new rules on charge payment for services of physicians in teaching hospitals. Those new rules would supersede 42 CFR 405.520 and 405.521 when they become effective.

B. *Payment for Physician Services to Providers.* (1) *General rules.* The proposed regulations specify that services of physicians that are furnished in providers but do not meet the proposed conditions for reasonable charge reimbursement would be paid for as provider services on a reasonable cost basis. Generally, a physician's services to the provider represent activities that benefit the provider or the patient population as a whole, or that do not require performance by a physician. These services include, but are not limited to, teaching or supervision of professional or technical personnel, administration or management of a hospital department, quality control activities, and work schedule planning. The costs of these services would be considered allowable if—

- The services do not meet the conditions for reasonable charge reimbursement;
- The services do not include physician availability and standby services (except for reasonable standby services furnished for emergency rooms); [1]
- The provider has incurred a cost for the services; and
- The costs of the services meet the requirements in our regulations at 42 CFR 405.451 regarding costs related to patient care.

(2) *Allocation agreements.* To determine payment properly under the Medicare law, it is necessary to allocate the costs for allowable physician compensation to physician services to the provider, physician services to patients, and activities of the physician that are not reimbursable under Medicare. Section 1887(a)(2)(A) requires that only the part of the total physician compensation cost that is allocated to services of the physician to the provider be considered an allowable provider cost and taken into account in determining reimbursement to the provider.

We realize that many, if not all, compensated physicians have some administrative and supervisory responsibilities related to services they furnish in a provider. However, in many cases physician services to the provider do not constitute a significant or easily measurable portion of a physician's activities. In these cases, the physician's compensation is almost entirely related to services he or she furnishes to individual patients, rather than services to the provider.

We believe that many compensated physicians furnish few services to the provider (that is, professional services of general benefit to patients that are reimbursable only on a reasonable cost basis). Many physicians only spend 2 to 5 percent of their time on such services to the provider. The difficulty of identifying those services and documenting the time devoted to them may be excessive considering the relatively small amount of compensation cost that would be allocated to those services.

Therefore, to achieve an accurate allocation of physician compensation cost without imposing burdensome paperwork requirements on physicians and providers, we are proposing to presume that 100 percent of the services of compensated physicians in providers are services to individual patients that are reimbursable on a reasonable charge basis under Part B. Under our proposal, payment for the services of the physician in the provider would be made based on this presumptive allocation unless an allocation agreement is submitted to show that a different allocation would be more accurate because a significant and measurable portion of the physician's time is devoted to services to the provider, as described below.

To deal with situations in which our presumptive allocation would not lead to accurate payment, we are proposing to permit a provider to obtain payment for physician compensation cost if it can demonstrate to the satisfaction of its Medicare intermediary that a significant and measurable proportion of the physician's time is devoted to services to the provider. To be paid on this basis, the provides would have to submit a written allocation agreement between the provider and the physician showing the respective amounts of time the physician spends in furnishing physician services to the provider, physician services to patients, and services that are not reimbursable under Medicare.

[1] We plan to study the issues involved in determining allowable provider costs for physician standby services. This may result in either revised program operating instructions or proposed regulations in the **Federal Register**.

Time records, or other documentation that supports the allocation, would have to be available for verification by the intermediary upon request.

We are proposing to generally recognize only those allocations that are agreed to by both the provider and the physician (rather than an allocation from solely the physician or provider) because we believe doing otherwise could involve the intermediary inappropriately in disagreements between providers and physicians, and could call into question the accuracy of whatever allocation the intermediary accepted. Effort reports would nto be acceptable as documentation, since effort cannot be quantified.

Providers that obtained payment based on an allocation agreement and supporting documentation would be required to maintain the time records, or other information they used to prepare the allocation, in a form that permits it to be validated by the intermediary or the carrier. In addition, the provider would be required to report the time allocation data to the intermediary or carrier on an annual basis on a form developed by HCFA, and to retain each allocation, and the information on which it is based, for at least five years after the end of the cost reporting period to which it applies.

We believe these requirements are needed to ensure the proper implementation of the Medicare law. By requiring hospitals and other providers that obtain payment for physician compensation costs to calculate and report those costs accurately, the regulations would ensure that payments for these costs are in the appropriate amount and do not duplicate reasonable charge payments.

Example: A diagnostic radiologist entered into an agreement with a hospital. Under this agreement, the radiologist would receive an annual compensation package worth $100,000. For this compensation, the radiologist would:

- Interpret diagnostic X-rays;
- Supervise the hospital's radiologic technicians; and
- Administer and direct the daily activities of the hospital's radiology department.

The hospital and the radiologist agree, and submitted an allocation agreement to show that 80 percent of the radiologist's time was devoted to interpreting diagnostic X-rays (services contributing to the diagnosis or treatment of individual patients) and 20 percent was devoted to supervising the technicians and managing the department. Under this set of facts, 20 percent of the compensation package ($20,000) would be allowable provider costs. Amounts reimbursable on a reasonable cost basis would be based on Medicare's share of these allowable costs. (Note that in the absence of this allocation agreement, we would presume that 100 percent of the compensation was related to services for individual patients reimbursable on a reasonable charge basis.)

C. *Reasonable Charge Payment for Physician Services to Patients.* (1) *General Conditions.* The proposed regulations would establish three basic criteria for reasonable charge payments for all services of physicians in providers, as follows:

- The services must be personally furnished for an individual patient by a physician;
- The services ordinarily require performance by a physician, and are not frequently and consistently furnished by nonphysicians; and
- The services must contribute directly to the diagnosis or treatment of an individual patient.

The first and third of these criteria echo the phrasing of section 1887(a)(1)(A), quoted above. We are proposing to add the second criterion, in accordance with section 1887(a)(1), which authorizes the Secretary to establish such criteria as needed to implement the section. Our regulations at 42 CFR 405.483(a) have always clearly stated that physician services must require performance by a physician in person in order to be reimbursable on a reasonable charge basis. It has been a key point of our policies since the beginning of the Medicare program that services commonly performed by nonphysicians should not be paid for as physicians' services. We believe this requirement is necessary to distinguish between services reimbursable on a reasonable charge basis and those that must be paid on a reasonable cost basis in accordance with section 1887(a)(1).

This second criterion clarifies and expands on the current regulation by adding qualifying language to the physician performance requirement, stating that such services must not be frequently and consistently furnished by nonphysicians, for two reasons. First, we wish to avoid the appearance of precluding coverage as physicians' professional medical services of any services that are sometimes performed by nonphysicians. Second, we wish to avoid paying for services at a level appropriate for physicians if those services are frequently and consistently (and more economically) furnished by nonphysicians.

Although phrased differently, these basic charge payment rules are similar in effect to those now set forth at 42 CFR 405.483, and are needed to ensure that payments for specific types of services are made from the appropriate Medicare trust fund (Part A or Part B) and are determined on the correct basis (costs or charges). We believe these criteria accurately reflect current medical practice in the United States, and we intend to apply these principles consistently in determining payment for all services furnished in providers by physicians, including anesthesiologists, radiologists, pathologists, cardiologists, and other specialists.

(2) *Customary and prevailing charges.* Carriers must determine whether physicians' charges for Part B services are reasonable, taking into consideration each physician's customary charge for specific services, and the prevailing charges of other physicians billing for services furnished to beneficiaries in the locality. The current regulations for determining customary charges in general are at 42 CFR 405.503, and the regulations on prevailing charges are at 42 CFR 405.504. Under these regulations, carriers have flexibility in determining customary and prevailing charges, since they have substantial discretion in seeking sources of data, establishing comparison groupings, and using relative value scales. (A relative value scale is the result of an analysis of the comparative values of the various physician services in relation to some base service.)

When a physician's service is furnished in a provider, the operating costs going into the delivery of the service are not all borne by the physician, as they are when a similar service is furnished in the physician's office. In order to take this into account, we are proposing to require the carriers to establish separate customary and prevailing charges for services for which there are two separate payment levels, such as is the generally accepted practice in billing for electrocardiograms (EKGs) and other services.

We would require carriers to accummulate the charge data for these physician services separately based on setting. If a particular physician had both an office-based practice and a provider-based practice, the carrier would keep the charge data for such services furnished in each practice separately. Based on data for these services, the carrier would establish separate customary charge profiles and would calculate separate customary and prevailing charges (in accordance with the general rules on reasonable charge payment at 42 CFR 405.501 through 405.508), based on setting.

(3) *Compensation-related charges.* When a physician is compensated by a provider or other entity (such as a medical school or other organization related to the provider) for physician services furnished to patients in the provider, on a salary, percentage of charges, or other basis, the physician (or the provider or other entity) may bill charges to the carrier on the HCFA–1500. (Alternatively, if it is feasible, the provider may include charges for physicians' services to patients on its standard Medicare billing form, as discussed below.) As under current rules, the carrier would develop customary charges for those services on a basis related to the compensation the physician receives for the services. (The carrier would also include compensation-related customary charges billed on the HCFA–1500 in determining prevailing charges for the services of physicians.) This compensation would be allocated between services to the provider and services to patients, as discussed above. Subject to the compensation limits described in section III. D. of this preamble, the carrier would develop charges, based on the portion of the compensation allocated to patient services, on an item-by-item basis considering the frequency with which the various services are furnished, and the relative values assigned to each service. (An example of how the limits affect the calculation of compensation-related charges is given in section III.C.3.)

4. *Combined billing.* As explained in greater detail in section IV. A of this preamble, combined billing is a special type of billing arrangement that was developed to avoid the need to prepare and process separate bills for physician services furnished in hospital departments, such as radiology departments, in which patients receive large numbers of services, relative to other departments. Under combined billing, the charges for both the physician services and the hospital services furnished in a hospital department are aggregated (i.e., "combined") and billed for by the hospital on its inpatient or outpatient billing forms (the HCFA–1453 and the HCFA–1483, respectively). Payment for both types of services is made by the Medicare intermediary and, at settlement of the hospital's cost report, an adjustment is made to assure that payment for physician services is made from the part B trust fund, as required by the Medicare law.

We have permitted combined billing only for hospital inpatient or outpatient services (excluding psychiatric services) furnished by departments in which all physicians are compensated by the hospital on a salary or uniform percentage of charges basis. With respect to inpatient services, combined billing has been available only for radiology and pathology services.

We are proposing to extend inpatient combined billing to physician specialties other than radiology or pathology (e.g. cardiology) provided the physicians in such departments are compensated on a salary or uniform percentage of departmental charge basis and this represents the only method of billing for physicians' services in such departments. Since the Medicare program pays only 80 percent of the reasonable charges for these physicians' services, it will be necessary for the hospital to identify on the hospital claim form the aggregate charges for physician services. The hospital will be allowed to use the per diem or uniform percentage methods to compute these physician charges.

(5) *Change of agreement.* A physician who has been compensated by or through a provider (or other entity, such as a medical school or other organization related to the provider) for physician services to patients may choose to end his or her compensation agreement applicable to services furnished to all patients and bill all patients, or their insurers, directly for his or her services. (If all the patients are not billed on the same basis, or if some patients or their insurors do not pay the charges, Medicare reimbursement would be determined on a compensation-related basis, as under current rules.) In this case, we propose to require the carrier to continue to determine the physician's customary charges on the basis of the former compensation agreement until sufficient charge data have been accumulated to enable the carrier to establish a customary charge profile. The proposed regulations specify that the carrier must have charge data from at least 3 months of the calendar year preceding the annual resonable charge update (which is required by law to occur on July 1 of each year) before establishing a customary charge profile on the basis of the physician's actual charges to his or her patients.

(6) *Effect of physician's assumption of operating costs.* Some physicians (or entities to which physicians are related or by which they are employed) enter into an agreement (such as a lease or concession) with the provider, under which the physician furnishes physician services in the provider and assumes some or all of the operating costs of the department in which the services are furnished. In the past, we have permitted physicians who have entered into agreements of this type to claim Medicare Part B reasonable charge payment for all services furnished in the provider department.

We are now proposing to change this policy, since we believe it results in Part B charge payment for some services (i.e., services that are not physician services to individual patients) that should, under the Medicare law, be classified as provider services and paid on a reasonable cost basis.

We now propose to require the carrier to pay the physician (or entity) *only* for the physician's own services to an individual patient as discussed in section III. C. above.

We believe our proposed approach is preferable to current policy because it will better implement the Medicare law. In addition, because leased departments are part of the provider and operate under its licensure, we believe it is appropriate to pay for services of these departments on the same reasonable cost basis that is used to pay for the services of the other hospital departments.

The basis for payment for operating costs incurred in furnishing the services would be the reasonable cost incurred by the leasing entity; that is, the costs of the other inputs involved in the delivery of the service (space, equipment, nonphysician personnel, etc.) would be reimbursed by the intermediary to the provider, *not* the physician or entity assuming these operating costs, on a reasonable cost basis. As is the case with other costs generally, we would recognize these costs only if the provider actually incurred them, that is, had a legal obligation to reimburse the lessee for them. Our proposed regulations would also require the physician or entity to make books and records available to both the provider and the intermediary, to permit verification of these costs.

(7) *Effect of billing charges for physican services to a provider.* When services are covered under Part A, we make payments only to the provider. We wish to ensure that when we make such payments for services that do not meet the conditions for Part B reasonable charge payments, neither the physician nor the provider seeks further payment from either the program or beneficiaries. This particularly applies to physician services that are determined to be services to the provider rather than services to individual patients. Therefore, we propose to treat

inappropriate billing of the carrier or the beneficiary, by the physician, the provider, or another entity, as a violation of the provider agreement of the provider in which the services were furnished. In this event, the provider agreement could be terminated in accordance with the regulations at 42 CFR Part 489. (A provider participating in the Medicare program must have entered into a provider agreement under section 1866 of the Act. Under the provider agreement, the hospital agrees not to charge any individual for services for which the individual is entitled to have payment made under Medicare, except for appropriate deductible and coinsurance amounts.)

(8) *Elimination of separately identified independent charges by hospitals for physician services.* Under current regulations at 42 CFR 405.480(c), a hospital may bill for physician services furnished by its compensated physicians. These provisions have not been included in our proposed revision of these regulations.

Our reasons for proposing this change are as follows. Some hospitals bill amounts for services of compensated physicians that exceed the compensation the physicians receive for the services. The inclusion in charges of amounts that exceed the physicians' compensation for the services enables the hospital to realize a profit from the use of compensated physicians. While we believe that charges that include this element of profit cannot be considered inherently reasonable under the Medicare law and regulations, our usual reasonable charge rules (under which carriers generally consider only the customary, prevailing, and actual charges for services) have not been effective in preventing payment of unreasonably high charges. Further, it is not reasonable to pay more for a service than the physician receives for furnishing it. Therefore, we believe it is necessary to prohibit the billings that result in these charges.

In making this proposal, we are relying on the broad discretion granted the Secretary of HHS by the Medicare law to determine the level of charges that will be considered reasonable. This authority is implemented in part by our current regulations at 42 CFR 405.502(a)(7), which specifically authorize consideration of unspecified factors that may be found necessary and appropriate in judging whether charges for specific items or services are inherently reasonable. In our opinion, the inclusion of a profit factor for hospitals in charges for compensated physicians' services is one factor that, in the absence of specific statutory direction (as exists for such services furnished in teaching hospitals) regarding the treatment of those charges, requires that the charges not be considered reasonable.

As noted above, we are planning separate proposed regulations revising our regulations for reimbursement for the services of teaching physicians, interns and residents. These regulations would implement the provisions of section 948 of the Omnibus Reconciliation Act of 1980, and make other needed changes. We expect these proposed rules to make adequate provision for the great majority of hospitals currently charging independently for these physician services. We do not believe there is a need for any such additional methods of paying for physician services furnished in non-teaching hospitals.

(9) *Costs of Certain Provider Services to Physicians.* Some physicians and providers have entered into agreements under which the providers furnish office space for private practice or perform billing and furnish collection services for the physician. In these cases, the physician is not being compensated by the provider for furnishing services to provider patients. Rather, we assume the physician's established customary charges for the medical and surgical services furnished include these overhead expenses.

Although these services (office space, billing, collection) are furnished by the provider to the physician, they are related to the physician's services to individual patients, not provider services to patients. The services are reimbursed as physician, not provider, services. Therefore, the costs incurred by the provider in performing these functions are not allowable costs for provider reimbursement. However, we believe that some providers are including these costs in their cost reports as if they were allowable costs.

We wish to make clear that this practice has not been acceptable. We intend to ensure that the costs for these services to physicians are excluded from a provider's allowable costs.

D. *Limits on Medicare Reimbursement for Compensation for Physician Services in Providers.* 1. *General rules.* We propose to require that allowable compensation for services performed by physicians in providers be subject to limits for Medicare reimbursement purposes. Under these limits, Medicare program reimbursement would be determined based on the lower of the actual cost of the services to the provider (that is, the compensation to the physician, whatever the form) or a reasonable compensation equivalent (RCE).

We plan to limit both reasonable cost and reasonable charge reimbursement for physician services to providers and individuals if the physicians receive any compensation from the provider for those services. If a physician is compensated only for services to the provider, the RCE limit would be applied only to reimbursement to the provider on a reasonable cost basis for the cost of compensating the physicians for those services. We wish to make it clear that the RCE limit would be applied to reimbursement for services furnished to individual patients *only* if the physician agrees to accept compensation (e.g., from a hospital) for those services. The RCE limit would not be applied to reimbursement for services to individual patients for which the physician is not compensated and bills either the patient or carrier directly. Section 1887(a)(2)(B) of the Act explicitly requires the use of such reasonable compensation equivalent limits to determine reimbursement on a reasonable cost basis for physician services to providers as described in section 1887(a)(1)(B). We believe that such limits can be most effectively implemented if they are extended to all reimbursable services furnished under the affected compensation, including services reimbursed on a reasonable charge basis.

Although the law does not require reasonable compensation equivalent limits to be applied to reimbursement for physician compensation for services to individual patients, the Secretary has the authority to apply these limits to that reimbursement. The Act requires that all payment on the basis of charges be reasonable. The reasonableness of charges currently is determined, under regulations at 42 CFR 405.502 in light of: (1) The physician's actual charge; (2) the physician's customary charge for the service; (3) the prevailing charge for similar services [furnished by other physicians] in the locality; and (4) other factors that may be found necessary and appropriate, with respect to a specific item or service, to use in judging whether the charge is inherently reasonable. The statutory amendment neither creates new authority, nor repeals existing authority. Rather, it explicitly directs the Secretary to apply these reasonable compensation limits to reimbursement for physician compensation for services to providers.

Therefore, in addition to so limiting reasonable cost reimbursement for physician services to providers, we

propose to apply RCE limits in determining Medicare reimbursement for physicians' services to individual patients where the physicians are compensated by hospitals and skilled nursing facilities. Customary charges are not usually established for such physicians' services and we have not been able to adequately evaluate the compensation of such physicians for reasonableness. We propose to derive Medicare's reasonable charge payments from the lower of the physician's actual compensation or the appropriate reasonable compensation limits. This avoids the anomalous result of Medicare disallowing under part A a portion of compensation that is unreasonable under RCE standards, while funding under part B another portion of the same unreasonable compensation. For these reasons, we propose to apply the RCE limits in the aggregate to the reimbursement for physicians' services to both individuals and the provider.

While we are proposing to establish limits on allowable compensation for purposes of determining Medicare reimbursement, based on reasonable compensation equivalents, we wish to emphasize that these limits are in no way intended to force physicians or providers to adopt any particular type of compensation agreement. Physicians and providers would continue to be free to negotiate the kind of financial agreement that best suits their circumstances, such as salary, fees, or compensation based on a percentage of either gross or net charges.

The policy we are proposing would deal only with how Medicare reimbursement should be computed. It would be neutral both as to financial agreements and as to the manner in which medicine is practiced. We believe this policy implements both the noninterference provisions in section 1801 of the Act, in that the regulations would not interfere with physician and provider decisions to utilize their resources in any manner they choose, and the statutory requirement that Medicare reimbursement be reasonable. The regulations would more clearly provide for how Medicare reimbursement would be computed, and what types and levels of costs and charges would be recognized for that purpose. In order to apply the limits, we would need to limit Medicare billing methods, and sometimes use additional information (which should already exist in the provider's records), so that we can accurately determine costs and charges and clearly separate Part A and Part B services.

The limits would apply equally to all physician services in providers that are reimbursable under Medicare and for which physicians are compensated by the provider, not just to services of radiologists, anesthesiologists, and pathologists.

For purposes of applying these limits, "physician compensation" would include monetary payments, fringe benefits, deferred compensation, and other items of value (but excluding free office space related to treatment of private patients, or billing and collection services), a provider or other entity furnishes a physician in return for the physician's services to it. Other provider costs related to the services, including the capital and operating costs for the space (including office space), equipment, personnel, and other resource inputs necessary to produce the services, would not be covered by these compensation equivalence limits.

In situations in which the physician's compensation is for a full range of services, including patient care, the physician's customary charges for patient care shall be related to the portion of the actual compensation or of the RCE, whichever is less, that is attributable to such services.

Our proposed regulations would establish a general authority to develop and apply these limits, but would not include a specific methodology as a part of the regulation text itself. Instead, the proposed regulations state that we would establish these limits on the best data available. The methodology we plan to use for setting the limits is described in the following section of the preamble. We will consider all comments we receive on this methodology, and will respond to them in the preamble to the final rule. That preamble will include a description of the methodology for the limits we will implement, and an explanation of their application and effective date.

(2) *Proposed Methodology.* We are proposing to set RCE limits based on our estimates of reasonable annual compensation levels for full-time equivalent practices of certain categories of physician specialities. The methodology and estimates discussed in this proposal are based on an internal working paper developed by HCFA's Office of Research and Demonstrations, "A Methodology for Determination of Reasonable FTE Compensation for Hospital-Based Physicians", by James R. Cantwell and Williams J. Sobaski (Working Paper #OR-32, January 1982). Copies of this paper are available on request from: ORD Publications, Office of Research and Demonstrations, Health Care Financing Administration, Oak Meadows Building, 1-E-9, 6340 Security Boulevard, Baltimore, MD 21207, (301) 597-2422.

Our proposed methodology for establishing reasonable levels of compensation includes five steps, as follows:

a. We estimated the national average (mean) income for all physicians using 1979 physician net incomes from the American Medical Association (AMA) Periodic Survey of Physicians (PSP), published by the AMA in its *Profile of Medical Practice, 1981.* We also review other data sources and found these to be generally consistent with the PSP data. However, considering the type of compensation limits we propose to establish, we found the PSP data to be the best available for our purposes.

b. We then projected physicians' 1979 base net income levels to an appropriate future year (that is, to 1982) to account for changes in net income levels occurring after the period for which we have data. To make this calculation, we needed to determine an appropriate inflation factor to project 1982 estimated net income levels on the basis of the 1979 data. We considered several methods, including using the compound growth rate found in the PSP averages for the period 1970 to 1979, or using the medical component of the Consumer Price Index (CPI). However, we believe we can achieve more accurate projections by using the historical relationship (1970–1979) between physician incomes and the CPI, and projecting this using forecasts of the CPI for future years.

c. We then determined the relationship between average net income for all physicians (estimated in step 1) and net incomes of certain categories of specialist physicians that are commonly compensated by providers for services furnished to Medicare beneficiaries.

We did this by calculating adjustment factors based on the 1979 PSP average net income by specialty. This resulted in separate specially adjustors for the following specialty categories:

- General and family practice;
- Internal medicine;
- Surgery;
- Pediatrics;
- Obstetrics/Gynecology;
- Radiology;
- Psychiatry; and
- Anesthesiology.

In order to develop an adjustment factor for pathologists, who are not separately reported in the PSP data, we used compensation relationships between the income of radiologists and

pathologists as reported in a HCFA sponsored study. (Bruce Steinwald, "Hospital Based Physicians: Current Issues and Descriptive Evidence". *Health Care Financing Review,* Volume 2, Issue 1, Summer 1980. Pages 63–75.) Based on this study, we set the pathologist adjustment factor at 93 percent of the radiology adjustment factor.

d. Using the specialty-specific adjustors, we also adjusted for differences in costs between types of geographic locations. Again, we used the PSP data on income differences according to location in three types of areas:

- Metropolitan Greater than One Million (includes all counties in Standard Metropolitan Statistical Areas (SMSAs) with 1,000,000 or more inhabitants),
- Metropolitan Less than One Million (includes all counties in SMSAs with 50,000 to 999,999 inhabitants, and all counties considered potential SMSAs in AMA's master data file), and
- Non-Metropolitan (includes all counties not in either of the above groups).

This step yielded a set of three specialty-location adjustors for each specialty category.

e. Finally, we modified the specialty-location adjustors for variations among specialities in hours worked per year. Because of significant variations in the number of hours worked per year by specialty, this step is necessary to make accurate estimations of FTE specialty average incomes by location based on the average income of all physicians. We made this calculation using PSP data on hours practiced per week and year, by specialty and location.

This allowed us to calculate the average hours practiced per year by specialty and location, which we then related to a standard full-time-equivalent work year of 2080 hours. We used these ratios to weight the specialty-location adjustors from step 4.

By proceeding through these five steps we were able to produce an array of estimated 1982 average annual FTE compensation levels for 9 specialty categories by type of location. This array is given in Table I. We considered several different levels of reasonable compensation limits, using some percentage of these FTE levels. We are proposing to set RCE limits, adjusted by the proportion of a FTE year actually worked, at these average annual incomes, because we believe they represent reasonable levels of net annual income by specialty and location.

TABLE I.—ESTIMATES OF 1982 FTE AVERAGE ANNUAL NET COMPENSATION LEVELS[1]

Specialty	Nonmetropolitan area	Metropolitan areas less than 1 million	Metropolitan areas greater than 1 million
Total	$87,400	$93,700	$96,900
GP/FP	77,900	74,800	75,800
Int Med	82,100	84,200	90,600
Surgery	100,000	111,600	113,700
Pediatrics	71,600	83,200	76,900
Ob/Gyn	109,500	106,400	107,400
Radiology	119,000	126,400	123,200
Psychiatry	75,800	77,900	84,200
Anesthesiology	91,600	109,500	109,500
Pathology	110,600	117,900	114,800

[1] Rounded to the nearest $100.

(3) *Updating the limits.* We propose to update the RCE limits annually on the basis of updated economic index data. If we did this without revising the methodology for computing the limits, we would ordinarily publish a single general notice in the **Federal Register,** setting forth the new limits and their effective date. We would not necessarily publish a notice proposing revised limits for public comment.

If we propose to change the methodology by which limits are calculated, we would publish the proposed changes in methodology in a **Federal Register** notice in accordance with the Department's established rulemaking procedures.

This proposed update procedure is dependent on accurate, timely, and reliable economic index data, and a good method of updating the base year limits. We considered several different options for annually updating the limits, taking into account two major aspects of forecasting physician compensation levels: (1) Base year data on physicians' incomes, and (2) expected changes from a selected base level.

In the months since we first developed our proposed RCE limits, the AMA has begun publication of socioeconomic data on physicians, collected through a quarterly telephone survey and called the *Socioeconomic Monitoring System.* This quarterly survey replaces AMA's annual Periodic Survey of Physicians. We cannot use this data to update the limits for two reasons. First, only quarterly data have been published, with annualized estimates obtained by multiplying by four. Obtaining annualized estimates in this way may introduce potentially serious error because of seasonal variation in physician's incomes. Second, the survey is new and still in a transitional phase.

We believe that retaining the PSP data for calendar 1979, as discussed in the previous section, as the base year is appropriate for the next few years. We will continue to monitor available data on this subjects. As the specialty and location-specific supply and demand for physicians change over time, it may become necessary to move to a more current base, but until monitoring demonstrates the need, we believe the 1979 base should be used.

Our research (see ORD Working Paper #32 cited above) indicates that physician net income deflated by the Consumer Price Index (CPI) is nearly constant over time. Consequently, it was suggested that near term physician net income could be estimated from forecasts of the CPI. We used a Data Resources, Inc. (DRI) forecast to project the PSP 1979 data to 1982, providing the base for the proposed limits. We propose to use a method similar to that in the RCE methodology (see pages 5 and 6 of the above-cited working paper). Thus we would apply Data Resources, Inc. CPI forecasts for 1983 and subsequent years from *Data Resources Cost Forecasting Review* to the 1980 Periodic Survey of Physicians (1979 income data) in the same manner that the 1982 estimates were generated.

In developing Table I, we used a forecast made during the fourth quarter of 1981 of All Urban Consumer Price Index (CPI-U) for the second quarter of 1982. DRI publishes forecasts of the CPI-U ever three months. Their current CPI-U estimates for the second quarter of 1982 and 1983 are 287.3 and 306.7, respectively.

We propose to use these DRI forecasts and the methodology set out in the working paper to forecast physician net income for each forthcoming year. (Alternative forecasts, such as those of the Council of Economic Advisors, could be used for this purpose. However, the Council's forecasts (which are a part of the economic assumptions underlying the President's budget) are available only in January and July of each year, and the January forecasts would not be available for use until the President's budget was released. Because the DRI forecasts are released more frequently than those of the Council, we are proposing to use the DRI forecasts.) For example, physician net income for 1983 would be estimated as follows:

Total physician net income for all physicians for calendar year 1983 would equal

$$\frac{1}{.9966} \times \frac{306.7}{217.4} \times \$78{,}400 \text{ which yields } \$110{,}981$$

FTE (2080 hours per year) specialty-location adjustors would then be applied to the 1983 forecast of physician net income to calculate specialty-location specific net incomes for 1983,

yielding the incomes given in Table II. (Note that all the following examples and discussion of application of the proposed RCE limits use figures from Table I, not Table II.)

TABLE II.—ESTIMATES OF 1983 FTE AVERAGE ANNUAL NET COMPENSATION LEVELS [1]

Specialty	Nonmetropolitan Areas	Metropolitan areas less than 1 million	Metropolitan areas greater than 1 million
Total	$91,00	$98,800	$102,100
GP/FP	82,100	78,80	79,900
Int Med	86,600	88,800	95,400
Surgery	105,400	117,600	119,900
Pediatrics	75,500	87,700	81,000
OB/Gyn	115,400	112,100	113,200
Radiology	125,400	133,200	129,800
Psychiatry	79,900	82,100	88,800
Anesthesiology	96,600	115,400	115,400
Pathology	116,500	124,200	121,000

[1] Rounded to the nearest $100.

(4) *Application of Limits.* We propose to use the RCE levels as discussed above to compute the Medicare program's reimbursement when the physician is compensated by the provider or other entity (such as a medical school or other organization related to the provider) for medical/surgical services or administrative/supervisory services that are reimbursable under Medicare. In applying the RCE limits, the intermediary will assign each compensated physician to the most appropriate specialty category. If no specialty category is appropriate, for example, in determining reasonable compensation for a full-time emergency room physician, the intermediary will use the RCE level for the "Total" category, which is based on income data for all physicians. The intermediary will determine the appropriate geographic area classification using Table III, given in an appendix to this document.

If the physician's contractual compensation covers all duties, activities, and services furnished to the provider or to its patients and the physician is employed full-time, the appropriate specialty compensation limit will be used and adjusted by the physician's allocation agreement to arrive at the program's allowable Part A and Part B amounts for physician compensation. (In the absence of an allocation agreement, we would presume that 100 percent of the compensation was related to Part B services, as explained in section III. B. above.)

When a physician's compensation represents payment only for administrative/supervisory services (that is, the physician bills fees for all medical/surgical services), then the appropriate specialty compensation limit will be used and adjusted by the percentage of the physician's time spent in furnishing administrative/supervisory services.

If a physician is employed by a provider to furnish the full range of services on other than a full-time-equivalent basis, then the reasonable compensation limit will be adjusted to reflect the percentage of time his or her actual hours related to a full-time-equivalent work year of 2080 hours.

Further, when a provider (or a department of a provider) has more than one compensated physician, the RCE limits may be aggregated and applied to the compensation of all the physicians as a group, taking into consideration the reduction of each physician's workload to a FTE standard. When this is done, and some of the compensation under consideration is allocated to part A services, the Part A/Part B allocation may be aggregated in either of two ways. First, the group's aggregate allocation may be computed as the mean of allocations for all the individual physicians in the group, presuming that any physician that has no allocation agreement devotes 100 percent of his or her time to Part B services. Alternatively, the provider and group may establish a single allocation for the group as a whole, in which case the provider must have supporting documentation, including time records, for each physician in the group. (The following examples presume that the physician(s) furnish only inpatient services in a hospital.)

Example A: A Single Physician Compensated Only for Services to Patients.

- Under a contract with a hospital in a non-metropolitan area, a cardiologist receives $90,000 annually to interpret electrocardiograms (EKGs) on a full-time basis.
- The cardiologist and the hospital agree to accept the presumptive allocation, allocating 100 percent of the cardiologist's services to Part B.
- The hospital estimates that the cardiologist will interpret 5,000 EKGs during the hospital's fiscal year.
- The hospital bills its intermediary for the cardiologist's services using the hospital billing form.
- The intermediary would reimburse the hospital Medicare's proportionate share of the lesser of the cardiologist's actual compensation ($90,000) or the appropriate RCE level ($52,100).
- The hospital would collect from the Medicare beneficiaries the part B coinsurance amounts attributed to EKG services.

Example B: A Single Physician Compensated Only for Services to the Provider.

- An anesthesiologist is employed by a non-metropolitan hospital to furnish only administrative/supervisory services.
- He or she bills the carrier or the patient on a fee-for-fee service basis for all physicians' services to individual patients.
- The physician spends 20 percent of a full-time work year in the hospital providing administrative/supervisory services.
- In this case, the adjusted reasonable compensation would equal 20 percent of the RCE derived from the $91,600 FTE amount shown in Table I. That is, the adjusted reasonable compensation would be $18,520.

Example C: A Group of Physicians Compensated for Services to Both the Provider and Patients.

- A group of five radiologists contracts with a hospital in a large metropolitan area to interpret all x-rays for provider patients, and to administer and supervise the hospital's radiology department.
- In the group, the physicians agree that one physician will devote 50 percent of his or her time to performing all of the administrative/supervisory services. The remaining 50 percent of that physician's time and 100 percent of the other physicians' time will be devoted to diagnostic radiologic services on a full-time basis.
- The head of the department, who devotes 50 percent FTE to administrative/supervisory services, receives $200,000 per year. Each of the other radiologists receives $100,000 per year. The total compensation is $600,000 per year.
- The RCE for a single FTE radiologist is $123,200 per year. The total RCE limit for the department is $616,000.
- The mean allocation to Part A services for the group is 10 percent. Therefore, the allowable cost for provider services is $60,000 for the year.
- The mean allocation to Part B services for the group is 90 percent. Therefore, the allowable compensation-related charges for physician services for the year will be based on 90 percent of the lesser of the RCE limit ($616,000) or the actual compensation cost ($600,000). In this example, the basis for physician charges is 90 percent of $600,000, or $540,000.
- In this case, the resulting compensation-related charges for an x-ray interpretation would be derived from this.

(5) *Exceptions for Special Situations, Including Small and Rural Hospitals.* Some hospitals, particularly but not exclusively small or rural hospitals, may be unable to recruit or maintain an adequate number of physicians at a compensation level within the prescribed limits. In accordance with section 1887(a)(2)(C) of the Act, if a hospital is able to demonstrate to the intermediary its inability to recruit or maintain physicians at a compensation level allowable under the RCE limits (as documented, for example, by unsuccessful advertising through national medical or health care publications), then the intermediary may grant an exception to the reasonable

compensation limits established under these proposed rules.

E. *Determining Reasonable Charges for Anesthesiology Services.* 1. *Concurrent anesthesia procedures.* Because of the predominant practice pattern, we use the term "anesthesiologist" in this preamble to denote any physician functioning in the capacity of an anesthesiologist. However, these proposed rules would apply to any physician who furnishes, directs, or supervises anesthesia services regardless of that physician's practice specialization or board-certification. This could include not only a doctor of medicine or osteopathy but also a doctor of dental or oral surgery, or a doctor of podiatry, provided that the physician directing or supervising the anesthesia is legally authorized to perform such a function in the particular State.

In many hospitals, actual administration of anesthesia to patients is done by certified registered nurse anesthetists, (CRNAs), who work under the direction of an anesthesiologist or, as noted above, by physicians who do not specialize in anesthesiology. Frequently, the directing physician is the surgeon or oral surgeon who is performing the surgical procedure for which anesthesia is required.

By using the services of more than one CRNA, an anesthesiologist may direct or supervise anesthesia administration to two or more patients at the same time. We consider "medical direction" to include substantial direct involvement of the anesthesiologist in each anesthesia procedure, as explained below. "Supervision" is a more general activity, primarily concerned with monitoring performance of the anesthetists, with significantly diminished direct involvement of the anesthesiologist in delivery of services to the patient. Under these circumstances, the level of the anesthesiologist's involvement in each procedure necessarily is reduced because of the time he or she must spend on other procedures that are being conducted concurrently. As the number of concurrent procedures increases, a question arises as to whether the level of the physician's involvement in each procedure is sufficient to justify classifying the services as physician services to individual patients and paying for them on a reasonable charge basis. If an anesthesiologist is performing essentially supervisory duties, rather than furnishing physician services to an individual patient, the services should be paid for on a reasonable cost basis.

Our current regulations do not limit the number of concurrent anesthesia procedures for which an anesthesiologist may bill the carrier or the beneficiary. Further, the claims form does not require the anesthesiologist to specify whether a service involved a CRNA, or whether it was performed concurrently with other services. Thus, our current payment rules and procedures may provide an unintended financial incentive for some anesthesiologists to supervise and bill for several concurrent procedures as physician services. We believe this situation has unnecessarily and inappropriately increased overall levels of Medicare payment for anesthesiology services and that, in some cases where large numbers of services are furnished concurrently, it may have resulted in diminished personal physician involvement in patient care.

To deal with these problems, we are proposing to establish specific conditions that we believe will ensure that the physician's involvement in each service is adequate to justify treating the services as physician services to individual patients and thus warrant payment on a reasonable charge basis to the beneficiary, the physician, or an appropriate reassignee (see our regulations at 42 CFR 405.1680 for limitations or reassignment). The anesthesiologist's services would meet our definition of "medical direction" and qualify for charge reimbursement if the anesthesiologist:

- Performs a pre-anesthetic examination and evaluation;
- Prescribes the anesthesia plan;
- Personally participates in the most demanding procedures in the anesthesia plan, including induction and emergence;
- Ensures that any procedures in the anesthesia plan that he or she does not perform are performed by a qualified individual;
- Monitors the course of anesthesia administration at frequent intervals;
- Remains physically present and available for immediate diagnosis and treatment of emergencies;
- Provides indicated postanesthesia care;
- Directs no more than two anesthesia procedures concurrently; and
- Does not perform any other services personally while he or she is directing those procedures.

(Although our proposed regulations would explicitly require these criteria to be met only in regard to concurrent anesthesia services, we wish to make clear that these reflect basic standards of medical practice. Because of the problems discussed above, we are making these explicit conditions for a physician to meet in order to be paid on a reasonable charge basis for concurrent anesthesia services. However, a physician furnishing anesthesia services without a CRNA should be performing these same functions.)

Our proposed regulations further specify that if an anesthesiologist meets the other conditions for charge payment but supervises more than two anesthesia procedures concurrently, the anesthesiologist's services are considered supervisory (as opposed to medical direction) services furnished to the provider in which the procedures are performed. The provider would be paid for the allowable costs of those services on a reasonable cost basis by the intermediary.

We believe our proposed requirements are consistent with the way anesthesia services are furnished in most providers, and that the level of physician involvement required in services to each patient is consistent with high quality care. They also would remove the financial incentive that now may exist for some anesthesiologists to furnish many concurrent services. At the same time, however, our approach would permit Medicare to pay on a cost basis for services furnished in providers where an anesthesiologist chooses to supervise more than two procedures concurrently. We also believe these requirements would better implement the intended statutory distinctions between provider and physicians' services, and Part A and Part B costs.

2. *Use of CRNAs employed by providers.* A second problem connected with determining payment for anesthesiology services concerns the employment status of the CRNA who is involved in the delivery of anesthesiology services. Our current policy is that an anesthesiologist may include a charge for the services of a CRNA if the CRNA is employed by the anesthesiologist and the anesthesiologist personally directed the CRNA when the services were furnished. Hospitals and other providers who employ CRNAs may claim reasonable cost reimbursement for the salary and other compensation costs they incur for the CRNAs' services. However, we believe some anesthesiologists have been billing charges under Medicare Part B for services of CRNAs they supervise but who are not their employees.

Our current billing procedures do not require anesthesiologists to specify on their claim forms or their bills whether or not the services involved the use of a

CRNA, or whether a CRNA is employed by the physician. Two problems may result from this. First, because Medicare is simultaneously paying the provider for the costs of employing the CRNAs, physicians who use the services of provider-employed CRNAs may be receiving excessive payments. Second, some physicians who use the services of provider-employed CRNAs may inadvertantly be receiving excessive payments by setting their charges at the same level as for services involving physician-employed CRNAs.

To better implement the statutory distinction between provider and physicians' services, we propose to adjust the amount of charge payment for physician services that involve the use of CRNAs not employed by the physician. This adjustment is needed to take into account the costs of compensating the CRNAs that are borne by the hospital. We would continue to pay the physician on the basis of reasonable charges for the professional services furnished to an individual patient, including the concurrent direction of not more than two CRNAs.

Currently, most anesthesiologists base their charges for patient services on a combination of procedure-specific unit values plus units for factors such as time, risk, and age of patient. These units are generally drawn from studies of the relative values of medical and surgical services, by groups such as the Blue Shield Association, the American Society of Anesthesiologists, or the California Medical Association. Where anesthesiologists base their charges on this method, the Medicare carriers use the same method to determine reasonable charges for anesthesiology services.

Under this method, a physician's charge for a particular service is constructed by:

- Determining the base value units for the specific procedure performed;
- Adding units representing related specific considerations such as patient condition; and
- Adding time units representing the period from the time beginning when the anesthesiologist prepares the patient for induction, and ending when the anesthesiologist is no longer in personal attendance on the patient.

The sum is then multiplied by a conversion factor representing the physician's customary charge for a unit of professional service. The resulting dollar figure is the physician's actual charge for the service. Each time unit generally represents a 15 minute interval per patient. For example, if a physician devotes 90 minutes to a normal patient undergoing a procedure with a base value of 3, the physician's charge would be nine (3 base units +6 time units) times that physician's conversion factor.

We propose to allow reasonable charge payment for physician-directed anesthesia services furnished by no more than two provider-employed CRNAs by calculating the procedure unit values plus no more than one time unit for each half hour, or fraction thereof, devoted to a given procedure. We considered other possible time unit adjustments, particularly allowing only one time unit per hour. However, we wished to maintain neutrality as to physicians' decisions. Paying only one time unit per hour would result in the physician being paid less for directing two concurrent procedures than for furnishing one anesthesia service procedure personally. We wished to avoid establishing such incentives.

We would require the anesthesiologist (or other entity legally entitled to bill for the services) to state on the billing form or on the claim for payment whether the CRNA was employed by the physician, and whether no more than two concurrent procedures were furnished by CRNAs under the physician's direction. If the physician (or other billing entity) affirmed that both conditions were met, the carrier would pay Part B charges for the administration of anesthesia at the usual rate. If the physician did not employ the CRNA, the carrier would pay Part B charges determined at the adjusted rate. In both cases, the procedure-specific values of the base units would be the same. Only the time-unit component of the charge would be adjusted if the physician did not employ the CRNA. Neither the "shared servant" nor the "borrowed servant" doctrines would affect the use of adjusted reasonable charge standards in these cases. We wish to make clear that we would pay the physician on the basis of one time unit for each 15 minute interval or fraction thereof, only if the CRNA is the actual employee of the physician. If the CRNA is an independent contractor, then he or she would seek payment through the provider, not the physician or the Medicare patient.

Although we are proposing to use a smaller number of time units to adjust charges where the CRNAs are not employed by the physician, we are aware that other methods could be used to adjust the charges in these circumstancs. We wish to obtain comments on the time unit method we are proposing, and on whether other specific methods might be more appropriate.

If more than two concurrent procedures have been supervised by the physician, the carrier would deny Part B charge payment for administration of anesthesia. In this case, we would pay the provider through the intermediary for the reasonable costs it incurs in compensating the physician for administrative and supervisory services furnished to the provider, and for its costs of compensating the CRNA.

F. *Determining Reasonable Charges for Radiology Services.* 1. *Identifying Physician Radiology Services.* In the field of radiology, there are particular difficulties in determining which services furnished in a radiology department constitute physician services to individual patients and may be reimbursed on a reasonable charge basis. These difficulties arise in determining whether services "ordinarily require performance by a physician, and are not frequently and consistently furnished by nonphysicians." Many routine radiological services are commonly performed by qualified technical personnel, although they may on some occasions also be performed by a physician.

In the case of radiology services furnished in a physician's private office or another nonprovider setting, this distinction is unimportant for Medicare reimbursement purposes, since all payments are made to the radiologists on a Part B reasonable charge basis, and are calculated in part on the basis of the prevailing charges for similar services of other radiologists in the locality. However, because provider services (in this case, services commonly furnished by nonphysician technical personnel) must be paid for on a reasonable cost basis, identifying physician radiology services is important in the case of radiology services furnished in providers.

In applying statutory principles in determining Medicare payment for those services, only services that meet our conditions would be classified as physician services and paid for on a reasonable charge basis from the Part B Trust Fund. Activities commonly performed by nonphysician personnel, even when performed by a physician, would be classified as provider services and be paid for on a reasonable cost basis.

2. *Level of payment for radiology services.* Radiologists (that is, physicians who function in the capacity of radiologists in furnishing radiology services to Medicare beneficiaries) currently may choose among different methods of billing under the Medicare program. Bills may go to either the intermediary or the carrier. Carriers

have indicated that at times they have difficulty determining if the charges submitted cover only physician services, or both physician and provider services. Where physicians choose combined provider billing for both provider and physician services in radiology departments, our procedures require that a "time allocation rationale" be submitted to the intermediary. However, this procedure precludes subjecting such physicians' charges to the prevailing charge screens generally applied to physician services billed by other methods, and contractors are not able to determine whether the payment is reasonable.

Most radiologists who practice in providers do not seek payment from the provider for their services to the provider, but instead bill charges to the carrier or to the patient that cover all services they furnish in the provider. Generally, these radiologists devote more than 90 percent of their time to furnishing physicians' services to individual patients, and they consider their income from charges for these services to be compensation for all the services they furnish. Their practice in provider settings is similar to practice in nonprovider settings. However, in provider settings the costs of many of the inputs required to produce radiologic services, such as supervision, administration and quality control, supplies, medical equipment, and technical assistants, are not borne by the radiologists but by the provider. Provider costs of this type are reimbursed by the intermediary on a reasonable cost basis. (This is not all of the overhead. We assume that any physician, regardless of practice setting, will experience some practice costs, such as billing, professional memberships, and so forth.) We believe that there should be different levels of payment for radiology services furnished in a physician's office and similar services furnished in a provider. This will ensure that the payment level for radiology services furnished in a provider is reasonable and related to the component of charges for services furnished in an office setting that is attributable to the physician's own services to individual patients, and that Medicare does not pay twice for the same component of a physician's service.

Under these proposed regulations, a carrier would determine payment for radiology services furnished in a provider using, where feasible, prevailing charge screens that reflect charges for similar services furnished in provider settings. In addition, under this proposal, physicians' charges for each radiology service furnished in a provider would be subject to a special test of reasonableness. This test would be a percentage of the prevailing charge for that service used for the office-based setting. Specifically, we are proposing to require that the reasonable charge determined for a physician radiology service furnished in a provider not exceed 40 percent of the prevailing charge established for the same procedure furnished in an office setting. We believe that this will assure that the payment level for radiology serices furnished in the provider is reasonable and related to the component of charges for services furnished in an office setting that is attributable to the physician's own services to individual patients.

This special test of reasonableness would not be applied to any services for which a prevailing charge for office-based services does not exist because the service is performed only in provider settings. Payment for these services would be made under the usual reasonable charge rules.

Our reasons for proposing a special test of reasonableness for radiology services in provider settings are as follows. Radiology, unlike most other specialties, can be practiced in provider or nonprovider settings. In some parts of the country, radiologists whose services in providers previously were reimbursed under combined billing (see section III.C. of this preamble for a discussion of combined billing) have recently begun to bill charges to the Medicare carriers for those services. In these cases, the charges billed for services in providers are equal to or greater than the charges for similar services in office settings.

This change in the manner of billing for radiology services in providers creates an anomaly that cannot be dealt with solely by establishing separate prevailing charge screens for services in providers and for office-based services. This is true because in cases where combined billing arrangements (which do not permit charges to be developed on a service-by-service basis) were used in the past, the carrier would not have any charges for services in providers that could be used to develop customary and prevailing charges for those services. The special test of reasonableness would provide an effective way of dealing with this problem.

In proposing this special test, we are relying on the broad statutory discretion to determine reasonable charges that is granted to the Secretary, and on our regulations at 42 CFR 405.502(a)(7), which authorize Medicare contractors to consider factors other than actual, customary, and prevailing charges in determining that charges are "inherently reasonable." In our opinion, the ineffectiveness of the usual reasonable charge rules in dealing with the special problems of payment for radiology services in providers makes it imperative that a special test of the reasonableness of payment for those services be applied.

We realize that specialists other than radiologists also bear lesser costs for services they furnish in a provider. To the extent that we are able to identify these situations in regard to other specialties, we expect to develop similar tests of reasonableness. At present, however, we have the greatest experience, and the greatest need to control expenditures, in regard to radiology services.

We particularly request comments, including reports of studies or other analyses, from radiologists and other physicians engaged in a similar practice, regarding reasonable charges for radiologists' services in both hospital and office settings, and the relative cost of nonphysician inputs in establishing office practice charges for radiology services.

Some, but not all, carriers have established prevailing charge screens that differentiate between hospital and non-hospital radiology practices. We conducted a survey of Medicare carriers who had established prevailing charges for similar radiology services both in hospital radiology practice and office radiology practice. For 10 commonly performed radiology procedures, we found that the ratio of the prevailing charge for the radiology service of the in-hospital radiology practice to the prevailing charge of the same service of the office radiology practice clustered in the 30 percent–50 percent range. Based on these results, we are proposing that a figure of 40 percent reasonably approximates the difference between the reasonable charges in the two different practice settings, and that this difference reflects the relative amounts of practice costs borne by physicians in each type of setting.

Although, in computing the Medicare economic index, we assume that the expenses of the physician's practice absorb approximately 40 percent of gross receipts of practice, we believe that, in relation to other office-based practices, radiology office practice costs represent a percentage of physician revenue substantially greater than 40 percent. This difference may be partially attributed to the cost of medical equipment for radiology practice. We

are aware, however, that some studies indicate that office-based radiology practice costs may approximate 40 percent, rather that 60 percent, of the office based radiology charges. Therefore, we are obtaining further information from the Medicare carriers regarding existing differences between specific prevailing charges they have developed in radiology services on provider and office settings. We will evaluate this information along with the comments and recommendations we receive on this issue, before a final rule is published.

We considered using a range of differing percentages to relate prevailing office-based charges to reasonable charges for separate categories of radiological procedures furnished in providers. Under that approach, the specific percentage for each procedure category would be based on estimates of the relative proportion of the charge for each procedure category that would represent the component of charges that is attributable to the physician's own services to an individual patient for each procedure. However, we currently do not have data that are adequate to enable us to make reasonable estimates for each category. In addition, an "across-the-board" percentage is significantly simpler for the carriers to implement and administer. Therefore, we are not now planning to use differing percentages.

Although we are not proposing the use of differing percentage of office-based charges for different categories of procedures, we wish to invite comments on whether use of a variable percentage methodology would improve the accuracy and reasonableness of payment for radiology services furnished in a provider, and on how the data needed to develop reasonable charge determination of this type could be obtained. We also wish to obtain comments on how a specific methodology for calculating variable percentage adjustments could be developed.

Under the proposed regulations, payment for services of radiologists that are performed in providers but do not qualify, for charge payment would be made to the provider on a reasonable cost basis. Allowable provider costs would include specific departmental activities of radiologists, such as work schedule planning, and quality control activities. For purposes of determining reimbursement on a reasonable cost basis, the allowable cost of these services would not be permitted to exceed the lower of the actual cost or a reasonable compensation equivalent, within limits we will set as discussed in section III. D.

G. *Special Rules on Payment for Laboratory Services Furnished in a Provider.* (1) *Differentiating Physician and Provider Services: Anatomical Pathology.* The laboratory services received by provider patients can be classified either as anatomical pathology services, or as clinical pathology services. Anatomical pathology generally requires examination of body tissue, fluid or cells by the pathologist (or another physician functioning in the capacity of a pathologist) or other direct participation by the pathologist in the performance of the service. Anatomical pathology services would generally fall in three subcategories:

- Histopathology (gross and microscopic examination of organ tissue or bone);
- Cytopathology (examination of fluid or cells, including cytogenetics, but excluding hematology); and
- Oral pathology.

Since anatomical pathology services are personally furnished for an individual by a physician, ordinarily require performance by a physician, are not frequently and consistently furnished by nonphysicians, and contribute to the diagnosis of an individual patient's condition, these services are classified under Medicare as physician services, and are paid for on a reasonable charge basis under Medicare Part B.

(2) *Differentiating Physician and Provider Services: Clinical Laboratory Services.* Clinical laboratory services include microbiological, serological, chemical, hematological, biophisical, cytological, immunohematological, and pathological examinations performed on material derived from the human body. These services are performed to provide information for the diagnosis, prevention, or treatment of a disease, or for assessment of a medical condition, and may be performed either in an independent laboratory or in a hospital laboratory. Most clinical laboratory services can be performed by nonphysicians, such as medical technologists, laboratory technicians or, in the case of some tests, by automated laboratory equipment, and do not require performance by a physician.

(3) *Implementation of Current Regulations.* To the extent that clinical laboratory services do not require performance by a physician, our current regulations, at 42 CFR 405.483(a), prohibit paying for them on a Part B reasonable charge basis. However, those regulations have not been implemented uniformly, and carriers in some areas have improperly paid Paid B reasonable charges to physicians for clinical pathology services to provider patients.

On March 11, 1980, we published a notice in the **Federal Register** (45 FR 15550) that announced that we would, effective July 1, 1980, resume uniform enforcement of the regulations at 42 CFR 405.483(a) with respect to hospital-based physicians, especially regarding payments to pathologists for clinical laboratory services. The intent of the notice was to preclude Part B reasonable charge payment to pathologists for clinical laboratory services furnished to provider patients, based on our understanding of the intended statutory and regulatory distinctions between physician services and hospital services.The College of American Pathologists, along with other group and individuals, filed a lawsuit in the U.S. District Court for the Eastern District of Arkansas, Western Division, challenging the effect of the March 11, 1980, notice. In June 1980, the court entered a preliminary injunction against the Department preventing implementation of the notice to deny reimbursement under Medicare Part B for a physician's professional component of clinical laboratory procedures until the issues raised in the lawsuit were decided. Following a request by HCFA for clarification of the preliminary injunction, a revised injunction was issued in November 1980. The revised injunction limited the scope of application of the original injunction to instances in which, prior to the court's preliminary injunction, a pathologist was receiving reimbursement under Part B of Medicare for a professional component of clinical pathology procedures, had received such reimbursement, or had applied to receive such reimbursement.

On October 6, 1981, HCFA published a notice in the **Federal Register** (45 FR 41635) withdrawing the March 11, 1980, notice so that the policies governing reimbursement for the services of hospital-based physicians could be reassessed through rulemaking (46 FR 49126). At the same time, HHS filed a motion with the U.S. District Court to dismiss the May 1980 suit. The lawsuit is still pending.

In regard to pathology services, the intent of the March 11, 1980 notice was to preclude Part B charge payment for all services in connection with clinical pathology services furnished to provider patients. We have reconsidered this position and we are now proposing to consider some clinical laboratory

services (that is, consultations and services performed by a pathologist in personal administration of test devices, isotopes, or other materials to an individual patient) to be physician laboratory services reimbursable under Part B. We now believe that these proposed regulations will better implement the basic statutory requirements.

(4) *Proposed Regulation Changes.* To resolve the controversy that now exists with respect to payment for pathology services, and to ensure that our policy on payment for these services is consistent with the Medicare law, we are proposing to revise our current regulations to specify that under certain conditions Medicare will pay Part B reasonable charges for some clinical laboratory services. The proposed rules governing payment for laboratory services would apply to all such services furnished in the provider, including, for example, a pulmonary function department. Under the regulations we are proposing, the carrier would pay for clinical laboratory services on a charge basis only if the services are personally furnished for an individual patient by a physician, ordinarily require performance by a physician, are not frequently and consistently furnished by non-physicians, and directly contribute to the diagnosis or treatment of an individual patient.

The proposed regulations list the following as physician laboratory services:

- Anatomical pathology services;
- Consultations (including those in connection with clinical laboratory services) that are requested by the patient's attending physician, relate to a test result that lies outside the normal range established by the laboratory, result in a written narrative report, and require the exercise of medical judgment by the pathologist; and
- Services performed by a pathologist in personal administration of test devices, isotopes, or other materials to an individual patient.

The last two items on this list include those clinical laboratory services that would meet our tests for payment on the basis of reasonable charges.

We believe that by applying these conditions, we will be able to appropriately identify all those laboratory services, including clinical laboratory services, that meet our definition of physician laboratory services payable on the basis of reasonable charges under Part B. Other clinical laboratory services furnished to provider patients would be covered as provider services, and paid for on a reasonable cost basis. The services of pathologists that benefit the provider, or its patients generally, would be classified as physician services to the provider, and paid for on a reasonable cost basis. Examples of these services include administration, teaching, quality control, and other services of physicians that do not meet the conditions for charge payment. The amount of payment would be subject to the limits discussed in section III. D.

We believe this approach will avoid inappropriate charge payment for services of pathologists, while also providing payment conditions that are consistent with sound fiscal administration and statutory intent. In particular, we believe our payment conditions are reasonable because they recognize that certain clinical laboratory services are personally furnished for an individual patient by a physician, ordinarily require performance by a physician, are not frequently and consistently performed by nonphysicians, and contribute to the diagnosis or treatment of individual patients.

IV. Changes in Billing Procedures

A. *Summary of Current Billing Methods.* The administrative problems attendant to physician reimbursement for services furnished in providers are partly due to the nature of the Medicare billing methods. The program allows for the use of three billing methods for these medical and surgical services. These billing methods are not interchangeable; rather, they are designed to accommodate specific circumstances. Two of these billing methods, the HCFA–1554 and HCFA–1490 (the latter recently replaced by the HCFA–1500) were introduced with the Medicare program's inception the other method, commonly called combined billing, uses the standard hospital inpatient and outpatient billing forms, (the HCFA–1453 and HCFA–1483, respectively) and was introduced subsequent to the 1967 amendments to the Medicare statute (Pub. L. 90–248, enacted January 2, 1968).

The HCFA–1500 is used when it is the practice of the provider or its physicians to identify specific charges for specific physician services. The HCFA–1500 (and its predecessor, the HCFA–1490) has been the most widely used billing method for radiology and anesthesiology service.

The HCFA–1554, "Provider Billing for Medical and Other Health Services", is used by some providers to bill for physician services when it is not the practice of the hospital or the physician to identify a separate charge for each physician service. Using the HCFA–1554, the Medicare compensation-related customary charge for the physician service can generally be computed in one of three ways: the per diem method, the uniform optional percentage method, or the item-by-item method. (See section 8017 of the *Medicare Carriers Manual,* HCFA Pub.-14.) Under the per diem method or the uniform optional percentage method, no specific physician service or its charge is identified; the identification occurs only under the item-by-item method. Upon receipt of the claim, the carrier simply checks the reported billed amounts with the physician compensation data on record and makes appropriate payments. The primary advantage of the HCFA–1554, from the viewpoint of the hospital, is that it accommodates the charges of physicians from various hospital departments. In other works, for a particular patient the hospital can list on the HCFA–1554 the charges of various ancillary service departments, such as radiology, cardiology, and laboratory.

Medicare recognition of billing in which provider and physician charges are combined using the HCFA–1453 and HCFA–1483, was encouraged by Pub. L. 90–248. Although physician and provider services must usually be billed separately, in order to facilitate payment from the correct trust fund and application of deductible and coinsurance requirements, under combined billing, the services and the charges of the provider and the physician are combined. Under section 131 of Pub. L. 90–248, the reimbursement rate for radiological or pathological services furnished to hospital inpatients by a physician in the field of radiology or pathology was set at 100 percent of the reasonable charges, as opposed to 80 percent under the original Medicare statute. Since there is no need in these cases to determine beneficiary liability for deductible and coinsurance amounts, the payments for these services are included on the provider's bill, and there is no identification of separate charges for physician services. Program guidelines permit the use of combined billing only where the departmental physicians are compensated by the hospital on a salary or a single uniform percentage of charges basis. The principal advantages of combined billing are that (1) it frees the hospital from having to compute charges for hospital-based physician services, and (2) billing for departmental services can be carried out through a single billing form.

B. *Elimination of HCFA–1554 Billing.* At the time of the 1967 amendments, it was the program's expectation that the

combined billing method would virtually eliminate the need for the use of HCFA–1554. The HCFA-1554 would be appropriate only where the hospital had a combined charge for the departmental service but combined billing was not possible (e.g., inpatient cardiology services). However, this form has also been inappropriately used to bill fees for services that are not related to compensation.

Under the proposed regulations, we plan to discontinue use of the HCFA-1554. Since the services billed for on this form are frequently not separately itmeized, use of the form severely restricts carriers ability to compare actual charges billed to the customer and prevailing charges for similar services in the locality. This has contributed to the payment problems described above. We believe use of the HCFA–1500 or HCFA–1453 (used for combined billing for inpatient radiology and pathology services) will enable carriers to evaluate more effectively the requests for payment they receive. In the case of all-inclusive-rate hospitals (which generally charge patients a single per diem rate that covers both physician and hospital services, and which, therefore, do not separate these costs on a patient-by-patient basis), we believe that the hospital cost report provides all information needed to determine payment accurately, and that elimination of HCFA–1554 billing will help reduce paperwork for both hospital and carriers.

V. Miscellaneous

A. *Reporting and Recordkeeping Requirements.* Sections 405.481, 405.522, and 405.553 of this proposed regulation contain information collection requirements that are subject to OMB review under section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). As required by the Act, we have submitted a copy of this proposed rule to OMB for their review of the information collection requirements. The specific information collection requirements contained in this proposed rule are:

1. A provider would be required to retain each allocation agreement, and the time records or other documentation on which the agreement was based, for a period of at least five years following the close of the cost reporting period to which the allocation applies. In addition, the provider would be required to report the physician's time allocation data to the intermediary or carrier on an annual basis.

2. In submitting a claim for payment, an anesthesiologist (or a physician functioning in the capacity of an anesthesiologist) would be required to indicate on the claim form: (i) Whether (and how many) other anesthesia services were furnished at the same time; and (ii) whether the anesthesia service was furnished by a CRNA employed by the physician.

3. Since we would eliminate the HCFA–1554 claim form, the services which would have been claimed on that form would have to be claimed on the HCFA–1500 or under combined billings using either the HCFA–1453 or HCFA–1483. Providers and physicians switching from the HCFA–1554 to combined billing would not experience any greater burden. However, the HCFA–1500 does required significantly greater information than the HCFA–1554, and physicians and providers may find the use of the HCFA–1500 more burdensome.

B. *Other Changes.* The following proposed regulations text includes minor changes not discussed in this preamble. These changes are not substantive. They concern mainly titles, coding, and authority citations, and are needed to conform these proposed rules to other amendments of the Medicare regulations that we plan to propose in separate **Federal Register** documents.

In addition to the substantive changes we are proposing in the following proposed regulations text, we are considering reorganizing these payment rules when we publish them in final. This may result in establishing a new subpart in which we could centralize all the rules for paying for services of physicians in providers and teaching hospitals.

C. *Public Comments.* Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to them in the preamble to that rule.

D. *Impact Analyses.* Appendix I, which is printed immediately following the text of the regulations we are proposing, sets forth our analyses of the projected impact and effect on small businesses of these proposed regulations.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

42 CFR Part 405 is proposed to be amended as set forth below:

1. The title of Subpart D is revised and the table of contents amended by revising §§ 405.480 through 405.482 and removing §§ 405.483 through 405.488, as follows:

Subpart D—Principles of Reimbursement for Providers, Outpatient Dialysis, and Services Furnished by Physicians in Institutional Providers

* * * * *

405.480 Payment for services of physicians to providers: General rules.
405.481 Allocation of physician compensation costs.
405.482 Limits on compensation for services of physicians in providers.

2. The authority citation for Subpart D is revised to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, 1395ww, and 1395xx).

3. In Subpart D, §§405.480 through 405.482 are revised, and §§405.483 through 405.488 are removed, as follows:

Subpart D—Principles of Reimbursement for Providers, Outpatient Dialysis, and Services Furnished by Physicians in Institutional Providers

* * * * *

§ 405.480 Payment for services of physicians to providers: General rules.

(a) *Allowable costs.* Except as specified otherwise in §§ 405.426, 405.465, or 405.466, costs a provider incurs for services of physicians are allowable only if the following conditions are met:

(1) The services do not meet the conditions in § 405.550(b) regarding reasonable charge reimbursement for services of physicians to an individual patient of a provider;

(2) The services do not include physician availability and standby services (except for reasonable standby services furnished for emergency rooms);

(3) The provider has incurred a cost for salary or other compensation it furnished the physician for the services; and

(4) The costs incurred by the provider for the services meet the requirements in

§ 405.451 regarding costs related to patient care.

(b) *Allocation of costs.* In determining its costs of services that meet the conditions for payment in paragraph (a) of this section, the provider must follow the rules in § 405.481 regarding allocation of physician compensation costs.

(c) *Limits on allowable costs.* In determining its payments to a provider for the costs of services that meet the conditions for payment in paragraph (a) of this section, the intermediary must apply the limits on compensation set forth in § 405.482.

§ 405.481 Allocation of physician compensation costs.

(a) *Definition.* For purposes of this subpart, "physician compensation costs" means monetary payments, fringe benefits, deferred compensation and any other items of value (excluding office space related to treatment of private patients, or billing and collection services), a provider or other entity (such as a medical school or other organization related to the provider) furnishes a physician in return for the physician's services.

(b) *General rule on allocation of physician compensation costs.* Except as provided in paragraph (d) of this section, each provider that incurs physician compensation costs must allocate those costs, in proportion to the percentage of total time that is spent in furnishing each category of services, between:

(1) Physician services to the provider (as described in § 405.480);

(2) Physician services to patients (as described in § 405.550); and

(3) Activities of the physician, such as funded research, that are not reimbursable under either Part A or Part B or Medicare.

(c) *Allowable physician compensation costs.* Only costs allocated to reimbursable physician services to the provider (as described in § 405.480) are allowable costs to the provider under this subpart.

(d) *Attribution of compensation.* Generally, the total physician compensation received by a physician will be attributed to all services furnished by the physician, unless:

(1) The provider certifies that the compensation is attributable solely to the physician's services to the provider; and

(2) The physician bills all of his or her patients for the physician services he or she furnishes to those patients, and retains the payments for those services.

(e) *Presumptive allocation.* If the provider and physician agree to accept the presumptive allocation of all the physician's services to direct services to individual patients as described under § 405.550(b), a written allocation agreement is not required.

(f) *Determination and payment of allowable physician compensation costs.* (1) Except as provided under paragraph (e) of this section, the intermediary will reimburse the provider for these costs only if:

(i) The provider submits to the intermediary a written allocation agreement between the provider and the physician that specifies the respective amounts of time the physician spends in furnishing physician services to the provider, physician services to patients, and services that are not reimbursable under this part; and

(ii) The compensation is reasonable in terms of the time devoted to these services.

(2) In the absence of a written allocation agreement, the intermediary will assume, for purposes of determining reasonable costs of the provider, that 100 percent of the physician's compensation cost is allocated to services to patients as specified in paragraph (b)(2) of this section.

(g) *Recordkeeping requirements.* Except for services furnished in accordance with a presumptive allocation under paragraph (e) of this section, each provider that claims payment for services of physicians under this subpart must:

(1) Maintain the time records or other information it used to allocate physician compensation in a form that permits the information to be validated by the intermediary or the carrier;

(2) Report the information on which the physician compensation allocation is based to the intermediry or the carrier on an annual basis; and

(3) Retain each physician compensation allocation, and the information on which it is based, for at least five years after the end of each cost reporting period to which the allocation applies.

§ 405.482 Limits on compensation for services of physicians in providers.

(a) *Compensation to be limited.* HCFA will establish limits on the amount of compensation, paid to physicians by providers, that will be recognized as reasonable in determining the amount of reimbursement for both physician services to providers, as described in § 405.480(a), and physician services to individual patients, as described in § 405.550(b). Compensation that a physician receives for activities that are not reimbursable under Medicare will not be considered in applying these limits.

(b) *Methodology for establishing limits.* HCFA will establish a methodology for determining reasonable annual compensation equivalents, considering average physician incomes by specialty and type of location, to the extent possible using the best available data.

(c) *Application of limits.* If the level of compensation exceeds the limits established under paragraph (b) of this section, Medicare payment will be based on the level established by the limits.

(d) *Exception to limits.* An intermediary may grant a provider an exception to the limits established under paragraph (b) of this section only if the provider can demonstrate to the intermediary that it is unable to recruit or maintain an adequate number of physicians at a compensation level within those limits.

(e) *Notification of changes in methodologies and payment limits.* (1) Before the start of a cost reporting period to which limits established under this section will be applied, HCFA will publish a notice in the **Federal Register** that sets forth the amout of the limits and explains how the limits were calculated.

(2) If HCFA proposes to revise the methodology by which payment limits under this section are established, HCFA will publish a notice to that effect in the **Federal Register**. The notice will explain the proposed basis for setting limits, specify the limits that would result, and state the date of implementation of the limits.

(3) Changes in limits resulting from application of economic index data without revision of the limit methodology will be published in a notice in the **Federal Register** without prior publication of a proposal or public comment period.

4. The table of contents of Subpart E is amended by adding new §§ 405.550–405.557, and a center heading immediately preceding them, as follows:

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervisory Physicians

* * * * *

Services of Physicians in Providers

405.550 Conditions for payment of charges for physician services to patients in providers: General provisions.

405.551 Reasonable charges for physician services in providers: General provisions.

405.552 Conditions for payment of charges: Concurrent anesthesiology services.

405.553 Reasonable charges for anesthesiology services.
405.554 Conditions for payment of charges: Radiology services.
405.555 Reasonable charges for radiology services.
405.556 Conditions for payment of charges: Physician laboratory services.
405.557 Reasonable charges for physician laboratory services.

* * * * *

5. The authority citation for subpart E is revised to read as follows:

Authority: Secs. 1102, 1832, 1833(a), 1842(b), 1861(b), 1871, 1881, and 1887 of the Social Security Act, as amended (42 U.S.C. 1302, 1395k, 1395l(a), 1395u(b), 1395x(b), 1395hh, 1395rr and 1395xx).

6. In Subpart E, §§ 405.550 through 405.557, and a center heading immediately preceding them, are added to read as follows:

* * * * *

Services of Physicians in Providers

§ 405.550

Conditions for payment of charges for physician services to patients in providers: General provisions.

(a) *Scope.* This section implements section 1887(a)(1) of the Act by providing general conditions that must be met in order for services furnished by physicians in providers to be paid for on the basis of reasonable charges under this subpart. Section 405.551 sets forth general requirements for determining the amounts of payment for services that meet the conditions of this section. Sections 405.552 through 405.557 set forth additional conditions for payment and rules for determining reasonable charges for physician services in the specialties of anesthesiology, radiology, and pathology (laboratory services).

(b) *Conditions for payment for services of physicians to provider patients.* The carrier will pay for services of physicians to patients of providers on a reasonable charge basis only if the following requirements are met:

(1) The services are personally furnished for an individual patient by a physician;

(2) The services ordinarily require performance by a physician, and are not frequently and consistently furnished by nonphysicians;

(3) The services must contribute directly to the diagnosis or treatment of an individual patient; and

(4) In the case of anesthesiology, radiology, or laboratory services, the additional requirements in §§ 405.552, 405.554, or 405.556 must be met.

(c) *Services of physicians to providers.* If a physician furnishes services in a provider that do not meet the requirements in paragraph (b) of this section but are related to the provision of patient care by the provider, the intermediary will pay for those services under the rules in §§ 405.480 and 405.481 on reasonable cost payment for physician services to providers.

(d) *Effect of billing charges for physician services to a provider.*

(1) If services performed by a physician are paid for under the reasonable cost rules in §§ 405.480 and 405.481, neither the provider nor physician may seek charge payment from the carrier, beneficiary, or another insurer.

(2) The carrier will not pay on a reasonable charge basis for services furnished by a physician to an individual patient, that do not meet the conditions in §§ 405.552, 405.554, and 405.556.

(3) If the physician, the provider, or another entity bills the carrier or the beneficiary for physician services to the provider, as described in section § 405.480(a), the provider in which and to which the services were furnished will be considered to have violated its provider participation agreement, and that agreement may be terminated. See Part 489 of this chapter for rules governing provider agreements.

(e) *Effect of physician's assumption of operating costs.* If a physician or other entity enters into an arrangement (such as a lease or concession) with a provider, under which the physician (or entity) assumes some or all of the operating costs of the provider department in which the physician furnishes physician services in the provider, the following rules will apply:

(1) The carrier will make reasonable charge payments only for a physician's services to an individual patient.

(2) The intermediary will reimburse the provider, to the extent the provider incurs a cost, on a reasonable cost basis for the costs associated with producing these services, including overhead, supply, and equipment costs, and the costs of employing nonphysician personnel.

(3) The physician (or other entity) will make its books and records available to the provider and the intermediary.

§ 405.551 Reasonable charges for physician services in providers: General provisions.

(a) *Scope.* The carrier will determine reasonable charges for physician services to patients in providers in accordance with the general rules governing reasonable charge payment in §§ 405.501 through 405.508, except as provided in the following paragraphs of this section.

(b) *Teaching hospitals.* In determining the amount of payment for physician services to patients in a teaching hospital, the carrier will also apply the rules in § 405.521.

(c) *Customary and prevailing charges for physician services in provider settings.*

(1) The carrier will calculate customary and prevailing charges for physician services furnished to individual patients in providers, in accordance with the general rules in §§ 405.501 through 405.508, separating, when appropriate, charges for physician services furnished in provider-based practices and physician services furnished in office-based practices.

(2) The carrier will apply the appropriate prevailing charge screens in determining reasonable charges for physician services, considering the setting.

(d) *Compensation-related charges.*

(1) In developing customary charges for physician services furnished in providers by physicians compensated by the provider for those services, the carrier will establish a schedule of charges related to that part of the physician's compensation that is allocated to physician services to patients under § 405.481.

(2) In determining the amount of compensation to be considered in computing compensation-related charges, the carrier will apply the limits established under § 405.482.

(3) The carrier will develop compensation-related charges on an item-by-item basis, considering the frequency with which the various services are furnished, and the relative values assigned to each service in a relative value study.

(4) The intermediary may pay the provider, for a physician's services to an individual patient, on the basis of a per diem, per visit, or other time-related rate, subject to the limits established under § 405.482, if the provider, or the particular department in which the services are furnished, has a uniform all-inclusive rate for services to patients.

(5) The intermediary may pay the provider for radiology, laboratory, or outpatient services furnished by a physician to an individual patient on the basis of a single uniform percentage of charges, subject to the limits established under § 405.482, if all physician services furnished in the particular department are paid on the same percentage basis.

(e) *Change of agreements.* If a physician who has been compensated by or through a provider (or other entity)

for physician services to patients ends his or her compensation agreement and instead bills all patients, or their insurers, directly for his or her services, the carrier will determine the physician's customary charges on the basis of the former compensation agreement until the carrier has accumulated charge data from at least 3 months of the calendar year preceding the annual reasonable charge update.

(f) *Rules for certain specialities.* In determining the amount of payment for anesthesiology or radiology services furnished by a physician to an individual patient, the carrier will apply the rules in this section and in §§ 405.553 and 405.555 in addition to the general rules governing reasonable charges at §§ 405.501 through 405.508.

§ 405.552 Conditions for payment of charges: Concurrent anesthesiology services.

(a) *Direction of concurrent procedures.* The carrier will reimburse a Physician for concurrent anesthesiology services furnished to patients in a provider on a reasonable charge basis only if the services meet the conditions for reasonable charge payment in § 405.550(b) and the following additional conditions are met:

(1) For each patient, the physician—

(i) Performs a pre-anesthetic examination and evaluation;

(ii) Prescribes the anesthesia plan;

(iii) Personally participates in the most demanding procedures in the anesthesia plan, including induction and emergence;

(iv) Ensures that any procedures in the anethesia plan that he or she does not perform are performed by a qualified individual;

(v) Monitors the course of anesthesia administration at frequent intervals;

(vi) Remains physically present and available for immediate diagnosis and treatment of emergencies; and

(vii) Provides indicated postanesthesia care.

(2) The physician directs no more than two anesthesia procedures concurrently, and does not perform any other services while he or she is directing the concurrent procedures.

(b) *Supervision of more than two procedures concurrently.* If the conditions in paragraph (a)(1) of this section are met but the physician is involved in furnishing more than two procedures concurrently, the concurrent anesthesia services are physician services to the provider in which the procedures are performed. In these cases, the intermediary will pay for the services under the rules in §§ 405.480 and 405.481 on reasonable cost payment for physician services to providers.

§ 405.553 Reasonable charges for anesthesiology services.

(a) *General rule.*

In determining reasonable charge payment for anesthesiology services that meet the conditions in § 405.552(a), the carrier will follow the rules in paragraph (b) or (c) of this section.

(b) *Anesthetist employed by anesthesiologist.* If the anesthetist who administers anesthesia under the direction of the anesthesiologist is employed by the anesthesiologist, the carrier will determine the amount of payment for the services under the reasonable charge rules for physician services in providers in § 405.551 and the general reasonable charge rules in §§ 405.501 through 405.508. In determining reasonable charges for these anesthesia services, the carrier will allow for no more than one time unit for each 15 minute interval, or fraction thereof, beginning from the time the anesthetist begins to prepare the patient for induction of anesthesia, and ending when the patient may be safely placed under post-operative supervision and the anesthetist is no longer in personal attendance.

(c) Anesthetist not employed by anesthesiologist. If the anethestist who administers anesthesia under the direction of the anesthesiologist is not employed by the anesthesiologist, the carrier will determine reasonable charges for the services by allowing no more than one time unit for each 30 minute interval, or fraction thereof, beginning from the time the anesthetist begins to prepare the patient for induction of anesthesia, and ending when the patient may be safely placed under post-operative supervision and the anesthetist is no longer in personal attendance.

§ 405.554 Conditions for payment of charges: Radiology services.

(a) *Services to patients.* The carrier will reimburse radiology services furnished by a physician to an individual inpatient on a reasonable charge basis only if the services meet the conditions for reasonable charge payment in § 405.550(b) and are identifiable, direct, and discrete diagnostic or therapeutic services to an individual patient, such as interpretation of X-ray plates, angiograms, myelograms, pyelograms, or ultrasound procedures.

(b) *Services to providers.* The carrier will not pay on a reasonable charge basis for physician services to the provider (for example, administrative or supervisory services) or for provider services needed to produce the X-ray plate or other item that is interpreted by the radiologist. However, allowable costs for such services will be paid to the provider by the intermediary. (See § 405.480 for provider costs, and § 405.551(e)(2) for costs borne by a physician, such as under a lease or concession arrangement.)

§ 405.555 Reasonable charges for radiology services.

(a) *General rules.* In determining payment for radiology services that meet the conditions for payment of charges in § 405.554, the carrier will follow the rules in paragraph (b) or (c) of this section.

(b) *Services not furnished in providers.* If the services are furnished in a radiologist's office, a freestanding radiology clinic, or any other setting that is not part of a provider, the carrier must determine the amount of payment for the services under the general reasonable charge rules in §§ 405.501 through 405.508.

(c) *Services furnished in providers.* If the services are furnished in a hospital radiology department or any other setting that is part of a provider, the following rules apply:

(1) The carrier must determine the amount of payment under the reasonable charge rules for physician services in providers in § 405.551 and the general reasonable charge rules in §§ 405.501 through 405.508.

(2) The carrier may not reimburse a physician for a radiology service furnished in a provider an amount that exceeds 40 percent of the prevailing charge for a similar service furnished in a nonprovider setting.

§ 405.556 Conditions for payment of charges: Physician laboratory services.

(a) *Physician laboratory services.* The carrier will reimburse laboratory services furnished to an individual inpatient by a physician on a reasonable charge basis only if the services meet the conditions for reasonable charge payment in § 405.550(b) and are—

(1) Anatomical pathology services;

(2) Consultative pathology services that meet the requirements in paragraph (b) of this section; or

(3) Services performed by a physician in personal administration of test devices, isotopes, or other materials to an individual patient.

(b) *Consultative pathology services.* For purposes of this section, consultative pathology services must—

(1) Be requested by the patient's attending physician;

(2) Relate to a test result that lies outside the normal range established by the laboratory;

(3) Result in a written narrative report for inclusion in the patient's medical record; and

(4) Require the exercise of medical judgment by the consultant physician.

§ 405.557 Reasonable charges for physician laboratory services.

The carrier will reimburse a physician for laboratory services that meet the conditions for reasonable charge payment in § 405.556(a) under the reasonable charge rules for physician services in providers in § 405.551 and the general reasonable charges rules in §§ 405.501 through 405.508.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance Program; No. 13.774, Medicare-Supplementary Medical Insurance Program)

Dated: September 13, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: September 27, 1982.

Richard S. Schweiker,

Secretary.

Appendix I—Regulatory Impact Analysis and Regulatory Flexibility Analysis

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I. Introduction/Summary

The following analysis examines the expected effect of these proposed rules. It considers the reductions in projected program expenditures, the benefits and costs experienced by affected parties, and the impact on small businesses. In addition, we describe several possible alternative means of accomplishing the objectives of the proposal.

We believe that physicians furnishing radiology, anesthesiology, and pathology services would be the most heavily affected by the implementation of this proposal. However, Medicare institutional providers (that is, hospitals, and skilled nursing facilities) and other physicians who are compensated by or through those providers would also be affected.

The aggregated projected effects of the provisions discussed in this analysis are as follows (Note that the fiscal year 1983 estimates are based on a January 1, 1983 implementation date, and that all estimates are rounded to the nearest $5 million.):

PATHOLOGY, RADIOLOGY, AND ANESTHESIOLOGY SERVICE PROJECTED CHANGE IN EXPENDITURES

(In millions)

Fiscal year	Part A	Part B	Net savings
1983	$180	−$230	−$50
1984	305	−385	−80
1985	375	−475	−100
1986	430	−540	−110
1987	485	−610	−125

These figures do not include the effect of the RCE limits on physicians other than those furnishing pathology, radiology, and anesthesiology services, since we do not have adequate data on their current compensation by hospitals.

In addition to the projected reductions in program expenditures, the proposed regulations would generate an estimated $31 million per year reduction in claims processing costs. Assuming a January 1, 1983 implementation date, this would yield administrative savings in fiscal year 1983 of approximately $23 million, resulting in total fiscal year 1983 savings of $73 million.

Our analysis projects that the benefits of these proposed regulations will exceed their costs. Further, our analysis indicates that the projected effect of these regulations on physicians and institutional providers is not significant, considering the size of revenue reductions relative to their total revenues.

II. Purpose of Analysis

A. Executive Order 12291

Executive order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would:

- Result in annual effect on the national economy of $100 million or more;
- Result in a major increase in costs or prices for consumers, any industries any governmental agencies, or any geographic regions; or
- Have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act requires that a regulatory flexibility analysis be prepared unless the proposed regulation would not have a significant impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, small entities are:

- Small businesses, defined as small business concerns under the Small Business Act;
- Small organizations, defined as not-for-profit enterprises which are independently owned and operated and not dominate in their field; or,
- Small governmental jurisdictions, which are defined as jurisdictions of less than fifty thousand population.

C. Discussion

We do not believe these proposed regulations would have effects in FY 1983 that would meet the criteria for determining that an impact or regulatory flexibility analysis is required. However, these proposals would affect program expenditures for physicians' services which currently exceed $1.5 billion per year, and our projections do show that implementation of these provisions could produce annual program savings of $100 million by FY 1985. Since it is difficult to estimate the exact effects of these proposed regulations, we have prepared this analysis. We welcome public comments on this issue, as well as on any other aspects of this analysis.

III. Nature of Problem

Studies have shown that some physicians who provide services to hospitals or hospital patients receive very high compensation relative to the value of the services provided or the income received by other physicians.

For example, a September 24, 1980 report by the Office of the Inspector General (Audit Control No. 06–02001) states that:

- Average fiscal year 1978 compensation per full-time equivalent radiologist in one Louisiana hospital reached $306,602.
- Average cost of compensation to pathologists in audited hospitals per patient day in fiscal year 1978 ranged from $2.72 to $13.15.
- At some hospitals, over a two-year period, compensation to pathologists increased by 102 percent, compensation to radiologists 74 percent and compensation to anesthesiologists by 111 percent.

The report concluded that: "There were extreme variations in the amounts of compensation paid hospital-based specialists at hospitals of similar size, type, and location.

While some of these variations may be explained by differences in the scope of services rendered and the intensity of care, our analysis showed that most of the variations are the result of the widely differing compensation agreements."

In a HCFA working paper, "A Methodology for Determination of Reasonable FTE Compensation for Hospital-Based Physicians" (#OR-32; January 1982) Cantwell and Sobaski projected annual compensation in 1982 for physicians in metropolitan areas over 1,000,000 population, based on American Medical Association data. (See Table I in the preamble of these proposed regulations.) The mean projected compensation for all physicians was $96,900. However, anesthesiologists' mean compensation was $109,500; pathologists' mean compensation was $114,800; and radiologists' mean compensation was $123,200. The only other specialties with mean compensation higher than the mean for all physicians were surgery at $113,700 and ob-gyn at $107,400.

We believe that there are several factors which account for the relatively high compensation for physicians who provide services to hospitals and hospital patients:

(1) There are barriers to competition. Hospitals that compensate physicians have little incentive to constrain the costs of this compensation, since retrospective cost reimbursement covers the portions of those costs attributable to services furnished to Medicare beneficiaries.

(2) There is a trend among physicians whose practices are based in hospitals to bill on a fee-for-service basis, instead of seeking compensation through the hospital under salary and percentage compensation arrangements. Regardless of the method of billing or compensation, hospitals often pay much of the overhead and equipment costs associated with the services of physicians providing services in hospitals. Many of these physicians charge fees lower than those of physicians providing services in offices, whose revenue from charges must cover overhead and equipment costs. However, not all of the savings associated with lower overhead are passed along to the consumer.

(3) Physicians providing services in hospitals provide services to hospitals as well as to patients, such as administrative and quality control activities. Other examples of such services would include pathologists who supervise the performance of routine laboratory tests and anesthesiologists who supervise the administration of anesthesia by certified registered nurse anesthetists. This contributes to two problems. First, under Medicare, physicians' services to individual patients must be paid for on the basis of reasonable charges, while physicians' services to hospitals must be paid for on a reasonable cost basis. Therefore, even when a hospital and a physician view the physician's compensation as a whole, for purposes of Medicare reimbursement, we need to have an adequate mechanism for allocating this compensation to different types of services. Second, our experience shows that there have been many instances in which services furnished by hospital personnel have been billed for as physicians' services, as if a supervising physician had furnished the services personally. As a result, we may be paying for these services twice: once to the hospital for the costs of the technical personnel and other inputs involved in producing the services, and a second time to the supervising physician. To prevent such duplicate payments in these cases, all payment should flow through the hospital.

(4) Because physicians compensated by hospitals may use three different billing methods, it is administratively difficult to determine their prevailing charges, and to determine whether charges are reasonable.

IV. Proposed Regulations

The proposed regulations would deal with the problem of excessive and duplicate compensation to physicians providing services in hospitals by making some fundamental changes in reimbursement for their services. (The regulations would also apply to services provided by physicians in skilled nursing facilities. Although this would assure consistency in reimbursement principles for both types of institutions, we are not aware at this time of problems in physician compensation practices in skilled nursing facilities. Therefore, we are limiting our analysis to physicians providing services in hospitals.)

These proposed regulations would:

- Establish prospective reasonable compensation equivalent (RCE) limits, adjusted by specialty and location, on the amount of physician compensation we would consider reasonable in determining Medicare payments for physician services to both providers and individual patients. (We would allow exceptions to the compensation limits for providers unable to recruit physicians at a cost below the established limit levels.)
- Establish specific conditions for services performed by physicians to be considered services to individual patients (as opposed to services to hospitals), which may be paid on a charge basis, as well as rules for determining the amounts of reasonable charge payments for certain specialized medical services, as follows:

—Radiology services—apply a special test of reasonableness to physicians' charges to account for the differences between services furnished in offices, where the physician incurs overhead costs, and services furnished in a provider, where the provider bears much of those costs.

—Anesthesiology services—allow reasonable charge payment for a physician's service only when the physician directs no more than two concurrent anesthesia procedures; adjust reasonable charges when services are furnished by a nurse anesthetist employed by the provider.

—Pathology services—specify those pathology services that are considered to meet the conditions for reasonable charge payment as "physicians' services", excluding clinical laboratory services that do not require performance by a physician in person.

—Other services—provide that when physician services are furnished through a leased department, only "physicians' services" may be paid for on a reasonable charge basis, and that the costs of the nonphysician inputs must be paid through the provider on a reasonable cost basis.

- Eliminate a billing form (HCFA 1554), used by providers to bill for physicians' services, which does not permit carriers to separately identfy those services appropriately paid on a charge basis, in order to make the comparisons necessary in determining reasonable charges.

V. Benefits and Costs of Provisions Affecting Pathology Services

A. Introduction

Some pathologists are now paid a salary or other aggregate compensation by hospitals. This salary or aggregate compensation may include payment for services to individual patients and for services benefiting the hospital. With the physician's authorization, the hospital may use combined billing. Under this billing method, the hospital bills the intermediary a single charge for departmental services which does not differentiate the physician's services to patients from hospital services.

Alternatively, the hospital may submit bills for physician services to patients to the carrier and bills for hospital services to the intermediary. Pathologists not paid a salary or other aggregate compensation for their services to individual patients may bill the carrier or the beneficiary directly for those services if they are physicians' services reimbursable on a charge basis.

Some pathologists have been billing a physician's fee (usually a small amount) for clinical laboratory services that seldom actually require personal performance by a physician. The customary practice has been to charge these relatively small amounts for all such services, instead of charging a single larger amount only in those instances in which physician involvement is actually required. The proposed regulations would make it clear that this practice violates our rules, and would specify when it would be allowable for a physician to charge for clinical laboratory services.

B. Benefits and Costs

1. *Benefits.* a. The proposed regulations would result in most of a hospital's clinical laboratory services being reimbursed as hospital services on a reasonable cost basis from the Part A trust fund. This would reduce the reimbursement to pathologists on the basis of charges, while increasing reimbursement to providers on a cost basis. (However, reimbursement for hospitals' costs of compensating pathologists for furnishing these provider services would be subject to RCE limits.) For purposes of estimating the program savings resulting from these provisions, we have assumed that roughly 50 percent of the reimbursement for pathology services currently billed as charges on a HCFA-1500 or HCFA-1554 would be shifted to cost reimbursement. We also assumed that roughly 50 percent of the amounts reimbursed through combined billing arrangements would be shifted from Part B charge payment to Part A cost reimbursement.

b. The proposed regulations also would limit Federal reimbursement to hospitals for the costs of pathologists' compensation. The Federal savings related to hospitals in which pathologists are now receiving salary or other

aggregate compensation would be the difference, if any, between the total hospital compensation to pathologists and the appropriate RCE limits as set by these regulations, times the proportion of Medicare patients in the hospital. For purposes of estimating savings, we have assumed that these provisions would reduce by ten percent the amounts reimbursed to hospitals for the costs of pathologist compensation.

c. Federal savings described in the two preceding paragraphs would be reduced to the extent that hospital pathologists direct hospital business to independent laboratories (with which they may be associated), thereby decreasing the services performed in hospitals which would be subject to these provisions. We have no data on which to base a quantitiative estimate of these effects.

d. These regulations, by requiring reimbursement to hospitals on a cost basis for many pathologists' services, instead of by separate claims submitted to Medicare, would reduce Federal costs to process these claims.

2. *Costs.* a. We believe the primary effect of these regulations would be to reduce the compensation that some pathologists would otherwise be paid by hospitals. However, to the extent that a hospital chooses to compensate pathologists more than the applicable RCE limits set by these regulations, revenues of the hospital would be reduced instead. The total revenue reduction for pathologists and hospitals combined would be an amount identical to the Federal savings described in paragraphs 1.a. and 1.b. above.

b. Carriers would have a first-year cost of $7–10 per pathologist to develop the necessary new screens to enable them to determine reasonable charges for those clinical laboratory and consultation services reimbursable on a charge basis.

C. Discussion

Of all hospital-based physicians, pathologists are now most likely to be paid a salary or other aggregate compensation. Further, our proposed regulations would classify the majority of pathology services as services to hospitals, rather than services to patients. Therefore, nearly all pathology services would be subject to the limits to be set under these proposed regulations. According to American Medical Association (AMA) data, there are approximately 11,000 hospital-based pathologists. HCFA's actuaries project total Medicare reimbursement to pathologists and radiologists. Using AMA data regarding the relative number of pathologists and radiologists and Cantwell's estimate that pathologists average 93 percent of the income of radiologists, we estimate that Medicare pays approximately $440 million annually for the services of hospital-based pathologists.

We project that these proposed regulations would have the following effects on program expenditures for pathology services furnished in providers (Note that the fiscal year 1983 estimates are based on a January 1, 1983 implementation date, and that all estimates are rounded to the nearest $5 million.):

PATHOLOGY SERVICES, PROJECTED CHANGE IN EXPENDITURES

[In millions]

Fiscal year	Part A	Part B	Net savings
1983	$85	−$100	−$15
1984	135	−160	−25
1985	165	−200	−35
1986	190	−225	−35
1987	215	−250	−35

These program savings will be reflected in a corresponding reduction in physician revenues from pathology services. However, we believe that most physicians will not be significantly affected. We project that the average fiscal year 1984 net income for pathologists will be $135,700. Based on projected program savings, we estimate that these proposed regulations would reduce the average pathologist's income by only 1.7 percent. We expect that the small proportion of very high-earning pathologists may be most strongly affected, and that many physicians of average or lower income will experience no revenue reductions.

We also estimate that HCFA now receives approximately 15 million pathology claims annually and that it costs HCFA approximately $31 million annually to process these claims. Elimination of these claims, and the cost of processing them, is a benefit without any off-setting cost.

We further estimate that it will cost less than $100,000 to develop prevailing charge screens. These screens are necessary to eliminate the possibility that pathologists would seek to recover revenue lost in other areas by charging excessive amounts for clinical laboratory and consultation services that these regulations would establish as reimbursable on a charge basis.

VI. Benefits and Costs of Provisions Affecting Radiology Services

A. Introduction

Some radiologists are now paid a salary or other aggregate compensation by hospitals. This salary or aggregate compensation may include payment for services to patients and for services benefiting the hospital. With the physician's authorization, the hospital may use combined billing. Under this billing method, the hospital bills the intermediary a single charge which does not differentiate physician services to patients from hospital services. Alternatively, the hospital may submit bills for physician services to individual patients to the carrier and bills for hospital services to the intermediary. Radiologists not paid a salary or other aggregate compensation for their services to patients bill the carrier directly for these services.

B. Benefits and Costs

1. *Benefits.* a. These proposed regulations would reduce Federal reimbursement on a charge basis for radiology services furnished to individual patients in a provider setting. For radiologists using fee-for-service billing, the Federal savings with respect to any radiologist's service would be the difference, if any, between the radiologist's actual charge and 40 percent of the prevailing charge for the same procedure in an office setting.

b. The proposed regulations would also limit Federal reimbursement to hospitals for the costs of radiologists' compensation. The Federal savings related to hospitals in which radiologists are now receiving salary or other aggregate compensation would be the difference, if any, between the total hospital compensation to radiologists and the appropriate RCE limits set by these regulations, times the proportion of Medicare patients in the hospital. For purposes of estimating savings, we have assumed that this provision would reduce by ten percent the amounts reimbursed to hospitals for the costs of radiologist compensation.

c. Federal savings described in the previous paragraph would be affected to the extent that radiologists moved to fee-for-service billing for Part B services. We assumed for purposes of estimating savings that 5 percent of radiology services now paid for under combined billing arrangements would shift to a fee-for-service basis, and that the 40 percent screen would reduce reasonable charge payments by 11 percent. This would create an incentive for radiologists to establish compensation arrangements with hospitals.

2. *Costs.* a. The regulation may reduce revenues of radiologists by an amount identical to the Federal savings described in paragraph 1.a. above.

b. We believe that the proposed regulations would reduce the compensation that some radiologists would otherwise be paid by hospitals. However, to the extent that a hospital chooses to compensate anesthesiologists more than the applicable RCE limits set by these regulations, revenues of the hospital would be reduced instead. The total reduction of revenues of hospitals and radiologists would be an amount similar to the Federal savings described in paragraph 1.b. above.

C. Discussion

Radiologists generally use fee-for-service billing rather than be paid a salary or other aggregate compensation. We believe the RCE limits set by these proposed regulations may increase the incentives for some radiologists now receiving a salary or aggregate compensation to change to fee-for-service billing. However, salaried radiologists generally receive less income than radiologists paid on another basis. Further, physician services to hospitals will be subject to the limits set by this regulation regardless of the method of compensation. Therefore, we expect the majority of the Federal savings achieved by this regulation to result from limiting the reasonable charge for radiology services furnished in hospitals to 40 percent of the prevailing charge for similar services furnished in an office setting.

According to AMA data, there are approximately 10,850 hospital-based radiologists. HCFA's actuaries project total reimbursement to pathologists and radiologists for inpatient services. Using AMA data regarding the relative number of pathologists and radiologists and Cantwell's estimate that pathologists average 93 percent

of the income of radiologists, we estimate that Medicare pays approximately $467 million annually for the services of hospital-based radiologists.

We project that these proposed regulations would have the following effects on program expenditures for radiology services furnished in providers. (Note that the fiscal year 1983 estimates are based on a January 1, 1983 implementation date, and that all estimates are rounded to the nearest $5 million):

RADIOLOGY SERVICES PROJECTED CHANGE IN EXPENDITURES

[In millions]

Fiscal year	Part A	Part B	Net savings
1983	$30	−$35	−$5
1984	55	−65	−10
1985	70	−80	−10
1986	80	−95	−15
1987	90	−105	−15

These program savings may be reflected in a corresponding reduction in physician revenues from radiology services. However, we believe that most physicians will not be significantly affected. We project that the average fiscal year 1984 net income for radiologists will be $146,000. Based on projected program savings, we estimate that these proposed regulations would reduce the average radiologist's income by only 0.6 percent. We expect that the small proportion of very high-earning radiologists will be most strongly affected, and that many physicians of average or lower income will experience no revenue reductions.

VII. Benefits and Costs of Provisions Affecting Anesthesiology Services

A. Introduction

Some anesthesiologists are now paid a salary or other aggregate compensation by hospitals. Other anesthesiologists bill patients on a fee-for-service basis.

B. Benefits and Costs

1. *Benefits.* a. The proposed regulations would reduce Federal reimbursement for many anesthesiology services furnished to patients by CRNAs under the direction or supervision of a physician. More than two concurrent services would no longer be reimbursable on a charge basis, shifting payment for these services to a Part A cost basis, subject to applicable RCE limits. The Federal savings would be the difference, if any, between the total amount paid on a fee-for-service basis and the aggregate RCE limits set by this regulation, times the proportion of Medicare patients in the hospital. In estimating savings, we have assumed that this will result in 20 percent of the reimbursement for anesthesia services being shifted to reimbursement through the hospital on a Part A cost basis.

b. For any procedure billed on a fee-for-service basis in which the anesthesiologists supervised a nurse anesthetist employed by a hospital, the Federal savings, if any, would be the difference between the anesthesiologist's fee and the fee which would have been charged if each time unit used to construct the charge represented each half-hour, or fraction thereof, of duration of the procedure. (Each time unit would generally represent 15 minutes without this regulation.) In estimating savings, we have assumed that this provision would reduce total inpatient anesthesiology reimbursement by 5 percent.

c. The proposed regulations would limit Federal reimbursement to hospitals for the costs of anesthesiologists' compensation. The Federal savings related to hospitals in which anesthesiologists are now receiving a salary or other aggregate compensation, would be the difference, if any, between the total hospital compensation to anesthesiologists and the appropriate RCE limits set by these regulations, times the proportion of Medicare patients in the hospital. For purposes of estimating savings, we have assumed that this provision would reduce by ten percent the amounts reimbursed to hospitals for the costs of anesthesiologist compensation.

d. To the exstent that anesthesiologists continue to supervise more than two procedures concurrently, beneficiaries will have reduced copayments, since Medicare pays 100 percent of the cost of hospital services but only 80 percent of the charge for physician services.

e. To the extent that anesthesiologists do not continue to supervise more than two procedures concurrently, patient anesthesia risk will be reduced to the more intensive professional supervision of the procedure.

2. *Costs.* a. The proposed regulations may reduce revenues of anesthesiologists by an amount equal to the Federal savings described in paragraphs 1.a. and b. above.

b. We believe that the proposed regulations would reduce the compensation that some anesthesiologists would otherwise be paid by hospitals. However, to the extent that a hospital chooses to compensate anesthesiologists more than the applicable RCE limits set by these regulations, revenues of the hospital would be reduced instead. The total reduction of revenues of hospitals and anesthesiologists would be an amount similar to the Federal savings described above in paragraph 1.c.

c. The regulations would increase Federal costs by an amount equal to the reduction in beneficiary copayment described in paragraph 1.d. above.

d. To the extent that anesthesiologists do not continue to supervise more than two procedures concurrently, this will reduce the capacity of anesthesiologists to perform procedures. This may result in delays in providing medical services requiring anesthesia.

C. Discussion

Compared to radiologists and pathologists, anesthesiologists are more likely to use fee-for-service billing. We believe the Federal savings generated by this regulation will stem primarily from treating the supervision of more than two concurrent procedures as services to hospitals and reducing reimbursement if a nurse anesthetist not employed by the anesthesiologist is used.

According to AMA data, there are approximately 14,400 hospital-based anesthesiologists. HCFA's actuaries project that Medicare reimbursement to anesthesiologists for inpatient services will total $606 million in fiscal year 1983.

We project that these proposed regulations would have the following effects on program expenditures for anesthesiology services furnished in providers. (Note that the fiscal year 1983 estimates are based on the January 1, 1983 implementation date, and that all estimates are rounded to the nearest $5 million):

ANESTHESIOLOGY SERVICES PROJECTED CHANGE IN EXPENDITURES

(In millions)

Fiscal year	Part A	Part B	Net savings
1983	$65	$−95	$−30
1984	115	−160	−45
1985	140	−195	−55
1986	160	−220	−60
1987	180	−255	−75

These program savings may be reflected in a corresponding reduction in physician revenues from anesthesiology services. However, we believe that most physicians will not be significantly affected. We project that the average fiscal year 1984 net income for anesthesiologists will be $136,100. Based on projected program savings, we estimte that these proposed regulations would reduce the average anesthesiologist income by only 2.3 percent. We expect that the small proportion of very high-earning anesthesiologists will be most strongly affected, and that many physicians of average or lower income will experience no revenue reductions.

VIII. Benefits and Costs of Provisions Affecting Other Specialties

A. Introduction

Some physicians other than those in the specialties of pathology, radiology, and anesthesiology are paid a salary or other aggregate compensation by hospitals. These physicians would also be affected by the RCE limits and criteria for reasonable charge payment that would be established under these proposed regulations.

B. Benefits and Costs

1. *Benefits.* The proposed regulations would limit Federal reimbursement to hospitals for the costs of compensation for the services of these physicians. The Federal savings in any hospital would be the difference, if any, between the total hospital compensation to these physicians and the appropriate RCE limits set by these regulations, times the proportion of Medicare patients in the hospital.

2. *Costs.* The proposed regulations would reduce revenues of hospitals by an amount equal to the Federal savings described in the preceding paragraph, and may, as a result, reduce the compensation these hospitals choose to pay to physicians.

C. Discussion

HCFA does not have data on the amounts now paid to hospitals for the compensation of physicians other than those in the specialties of pathology, radiology, and anesthesiology. Therefore, we cannot quantitatively estimate

the costs and benefits of these provisions of the proposed regulations.

IX. Net Benefits

A. Quantifiable Net Benefits

As discussed above, the initial effect of these proposed regulations would result in a variety of reductions in Medicare spending, which, in estimating net benefits, are offset by corresponding reductions in hospital and physician revenues. In the near term, therefore, these changes would have no net effect on the economy as a whole. However, these proposals do include a provision that results in substantial administrative cost reductions in processing claims for payment for pathology services on a charge basis. This benefit is not offset by a corresponding cost. Thus, the quantifiable net benefits of these proposed regulations would equal this $31 million estimated annual cost savings.

B. Non-Quantifiable Net Benefits

Although most of the quantifiable benefits of these proposed regulations would be offset by equivalent costs, several other net benefits can be identified.

1. These proposed regulations would better assure that Medicare reimbursement is limited to the reasonable costs of hospitals and reasonable charges of physicians as required by the Medicare statute.

2. The regulation would provide disincentives for continued high inflation in the cost of services of hospital-based physicians. Hospitals would not be reimbursed for unreasonable costs of salaries or other aggregate compensation of hospital-based physicians. This would increase their motivation to negotiate reasonable compensation arrangements. Further, the regulation would result in a clearer definition in the nature of services to individual patients for which hospital-based physicians may charge. This would facilitate comparison by consumers and increase the degree to which hospital-based physicians are subject to marketplace forces.

3. The proposed regulations, by defining more clearly what are services to hospitals and what are services to patients, would provide for the continued integrity of the Part A and Part B trust funds.

4. A reduction in Medicare expenditures would also improve the integrity of the trust funds.

5. A reduction in Federal Expenditures in the near term would reduce the Federal deficit, with associated benefits to the economy.

X. Effect on Small Entities

A. Magnitude of Medicare Reimbursement Reductions

Although these proposed regulations would affect many hospitals and physicians, the net effect on particular entities will usually be quite small. The expected fiscal year 1983 net savings of $50 million must be considered in comparison to the total reimbursement to pathologists, radiologists, and anesthesiologists, which is near $1.5 *billion* per year. Similarly, the shift of payment from a charge to a cost basis, which is expected to increase Part A expenditures by $180 million in fiscal year 1983, must be seen in relation to total Part A payments, which will exceed $20 billion that year. Thus, though the absolute value of the projected savings ($73 million in combined reductions in program and administrative costs for fiscal year 1983) may seem large, they are not substantial when viewed as a proportion of the total costs of these programs.

B. Effect on Physicians

For purposes of the Regulatory Flexibility Act, we consider all self-employed physicians to be small entities (Physicians compensated by hospitals commonly consider themselves independent contractors, not employees.). We believe that these proposed regulations will have a significant effect on only a small number of self-employed physicians.

First, available data show that mean compensation for hospital-based physicians is considerably higher than median compensation. Because a small number of physicians have dramatically high incomes, skewing the average, the majority of physicians compensated by hospitals earn less than the average. We expect that these proposed regulations will primarily affect the small group of high-earning physicians. For physicians now providing services on a charge basis which these regulations would define as services to hospitals, the effect of these regulations will depend on the compensation they negotiate with the hospitals to which they provide these services.

Second, as discussed above, we have made estimates of fiscal year 1984 income of pathologists, radiologists, and anesthesiologists, and projected the amount by which our expected program savings would reduce the average revenue of certain specialist physicians. (Note again that average income is significantly above median income for these physician groups, so that the majority of physicians would be affected by even lesser amounts.) These estimates and projected effects are as follow:

Speciality	Net income	Distributed program saving as percent of income
Pathology	$135,700	1.7
Radiology	146,000	0.6
Anesthesiology	136,100	2.3

C. Effect on Hospitals

For purposes of the Regulator Flexibility Act, we consider all non-profit hospitals and most for-profit hospitals to be small entities. We estimate that these proposed regulations will have a significant impact on only a small number of these hospitals.

As explained in the preceding section, most physicians earn less than the limits set by this regulation. Further, these proposed regulations would limit reimbursement to a hospital for the costs of physician compensation only if the mean salary or aggregate compensation to physicians in the hospital exceeded the limits. Finally, there is an exception to the limits for hospitals which can show they were unable to obtain the services of needed physicians at compensation levels less than the limits.

XI. Alternative Options Considered

A. Anesthesiology

1. We considered requiring that a physician personally perform all anesthesiology services to be covered as physician's services, instead of allowing physicians to bill for medical direction of up to two CRNAs as physicians' services. We rejected this option because it could be detrimental to those hospitals in which the majority of anesthesia services are furnished by CRNAs. If it were chosen, many anesthesiologists could choose to provide only Part B covered services, thereby providing less supervision and direction to patients who continue to receive anesthesia services from CRNAs.

2. We also considered covering medical direction as a physician's service when an anesthesiologist provides concurrent medical direction to more than two CRNAs, reimbursing each service at a lesser level. This option is similar to the one recommended except for the number of CRNAs to be directed and the reduction in reimbursement. We rejected this option because it would be administratively complex to implement and monitor.

3. We gave consideration to covering concurrent medical direction of up to two CRNAs at the same time. We monitor and prevent fraud and abuse if the physician is receiving payments from Part A and Part B for simultaneously supervising and directing the services of CRNAs. In addition, quality of care could suffer if reimbursement incentives lead the anesthesiologists to favor Part B physicians' services and diminish involvement in supervisory services.

B. Radiology

1. We considered reimbursing radiologists under Part B only for services to patients, not allowing payment for supervisory or administrative services. We rejected this option because it would not recognize legitimate hospital costs when the physician furnishes services to the hospital for which he or she is compensated.

2. We considered allowing the current array of lease arrangements. Most lease arrangements, however, currently allow the radiologist to bill for both services to patients and services to the hospital. We rejected this option because we would still be unable to determine if the component of the charge relating to patients services was reasonable. Further, we would be unable to determine whether our payment for the resource inputs exceeds actual costs.

C. Pathology

1. An option we reviewed was to cover physicians' services under Part B, but to not allow additional reimbursement for supervisory and administrative services on a reasonable cost basis. We rejected this option because it is not consistent with the

current practice of medicine and would result in a decrease in quality of care.

2. Another option included covering clinical consultations and anatomical services as physicians' services payable on a charge basis. In addition, charge payments under Part B would also be made for a limited number of clinical laboratory services. This would involve continually determining whether selected tests may involve new technology or be of such complexity that performance or interpretation by a physician may be required. Under this approach, we would publish or otherwise promulgate lists of these tests for use by carriers and others. Cost payments would be available through the hospital for administration, supervision and quality control. We rejected this option because it would have been extremely difficult and expensive to develop, maintain, revise and monitor the list of tests.

3. We considered proposing that laboratory services obtained for hospital inpatients always be provided under "arrangements," under section 1861(w) of the Social Security Act. The reasonable cost for a laboratory service obtained under "arrangement" would be the lesser of the amount billed by the supplier, the amount paid by the hospital, or 100 percent of the prevailing charge for similar services reimbursed on a charge basis. We rejected this option because it would disadvantage independent laboratories, since they would no longer have billing options for inpatient clinical laboratory services.

Appendix II—Geographic Area Classification for RCE Limits

As discussed in section III. D. of the preamble, we are proposing to adjust the reasonable compensation equivalent (RCE) limits to account for differences in salary levels by location, as well as by specialty. In our proposed methodology for establishing limits, and in the proposed limits as set forth in Table I, we have classified geographic areas into three types: non-metropolitan, metropolitan areas with less than one million population and metropolitan areas with greater than one million population. The following table identifies by type of location the geographic areas affected, enabling providers, physicians, Medicare fiscal intermediaries and carriers, and other members of the public to determine which RCE limit level would apply in specific areas. Table II lists all Standard Metropolitan Statistical Areas (SMSAs) and potential SMSAs [2] and their constituent counties, and identifies whether their population is less than or greater than one million. Potential SMSAs are designated by asterisks in Table II. All counties not listed in Table II, and all other affected U.S. possessions and territories not part of a State, are considered non-metropolitan areas.

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[2] A potential SMSA is one that does not meet all the requirements of the Office of Statistical Policy and Standards of the U.S. Department of Commerce, but which is considered a prime candidate to achieve SMSA status in the near future. The SMSA compositions and potential SMSA designations are based on those used by the American Medical Association (AMA) in its Periodic Survey of Physicians.

TABLE III

SMSA	Counties	Type of Location: Less than one million	Type of Location: Greater than one million
Abilene, Texas	Callahan, Jones, Taylor	X	
Akron, Ohio	Portage, Summit	X	
Albany, Georgia	Dougherty, Lee	X	
Albany, New York	Albany, Montgomery, Rensselaer, Saratoga, Schenectady	X	
Albuquerque, New Mexico	Bernalillo, Sandoval	X	
Alexandria, Louisiana	Grant, Rapides	X	
Allentown, Pennsylvania	Pennsylvania — Carbon, Lehigh, Northampton, New Jersey — Warren	X	
Altoona, Pennsylvania	Blair	X	
Amarillo, Texas	Potter, Randall	X	
Anaheim, California	Orange		X
Anchorage, Alaska	3rd Judicial Division	X	
Anderson, Indiana	Madison	X	
*Anderson, South Carolina	Anderson	X	
Ann Arbor, Michigan	Washtenaw	X	
Anniston, Alabama	Calhoun	X	
Appleton, Wisconsin	Calumet, Outagamie, Winnebago	X	
Asheville, North Carolina	Buncombe, Madison	X	
*Athens, Georgia	Clarke, Madison, Oconee, Oglethorp	X	
Atlanta, Georgia	Butts, Cherokee, Clayton, Cobb, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, Walton		X
Atlantic City, New Jersey	Atlantic	X	
Augusta, Georgia	Georgia — Columbia, Richmond South Carolina — Aiken	X	
Austin, Texas	Hays, Travis, Williamson	X	
Bakersfield, California	Kern	X	
Baltimore, Maryland	Anne Arundel, Baltimore Baltimore City, Carroll, Harford, Howard		X
*Bangor, Maine	Penobscot	X	
Baton Rouge, Louisiana	Ascencion, East Baton Rouge, Livingston, West Baton Rouge	X	

TABLE III

SMSA	Counties	Type of Location: Less than one million	Type of Location: Greater than one million
Battle Creek, Michigan	Barry, Calhoun	X	
Bay City, Michigan	Bay	X	
Beaumont, Texas	Hardin, Jefferson, Orange	X	
*Benton Harbor, Michigan	Barrien, Cass	X	
Billings, Montana	Yellowstone	X	
Biloxi, Mississippi	Hancock, Harrison, Stone	X	
Binghamton, New York	New York — Broome, Tioga Pennsylvania — Susquehanna	X	
Birmingham, Alabama	Jefferson, Shelby, St. Clair, Walker	X	
Bismarck, North Dakota	Burleigh, Morton	X	
Bloomington, Illinois	McLean	X	
Bloomington, Indiana	Monroe	X	
Boise, Idaho	Ada	X	
Boston, Massachusetts	Massachusetts — Essex, Middlesex, Norfolk, Plymouth, Suffolk New Hampshire — Rockingham		X
Bradenton, Florida	Manatee	X	
*Bremerton, Washington	Kitsap	X	
Bridgeport, Connecticut	Fairfield	X	
Brownsville, Texas	Cameron	X	
Bryan, Texas	Brazos	X	
Buffalo, New York	Erie, Niagara		X
Burlington, North Carolina	Alamance	X	
*Burlington, Vermont	Chittenden		
Canton, Ohio	Carroll, Stark	X	
Cedar Rapids, Iowa	Linn	X	
Champaign, Illinois	Champaign	X	
Charleston, South Carolina	Berkeley, Charleston, Dorchester	X	
Charleston, West Virginia	Kanawha, Putnam	X	
Charlotte, North Carolina	Gaston, Mecklenburg, Union	X	

TABLE III

SMSA	Counties	Type of Location: Less than one million	Type of Location: Greater than one million
Chattanooga, Tennessee	Tennessee — Hamilton, Marion, Sequatchie Georgia — Catoosa, Dade, Walker	X	
*Cheyenne, Wyoming	Laramie	X	
Chicago, Illinois	Cook, Du Page, Kane, Lake, McHenry, Will		X
Cincinnati, Ohio	Ohio — Clermont, Hamilton, Warren Indiana — Dearborn Kentucky — Boone, Campbell, Kanton		X
Clarksville, Tennessee	Tennessee — Montgomery Kentucky — Christian	X	
Cleveland, Ohio	Cuyahoga, Geauga, Lake, Medina		X
Colorado Springs, Colorado	El Paso, Teller	X	
Columbia, Missouri	Boone	X	
Columbia, South Carolina	Lexington, Richland	X	
Columbus, Georgia	Georgia — Chattahoochee, Muscogee (or Columbus) Alabama — Russell	X	
Columbus, Ohio	Delaware, Fairfield, Franklin, Madison, Pickaway		X
Corpus Christi, Texas	Nueces, San Patricio	X	
Dallas, Texas	Collin, Dallas, Denton, Ellis, Hood, Johnson, Kaufman, Parker, Rockwall, Tarrant, Wise		X
*Danville, Illinois	Vermilion	X	
*Danville, Virginia	Pittsylvania	X	
Davenport, Iowa	Iowa — Scott Illinois — Henry, Rock Island	X	
Dayton, Ohio	Greene, Miami, Montgomery, Preble	X	
Daytona Beach, Florida	Volusia	X	
Decatur, Illinois	Macon	X	
Denver, Colorado	Adams, Arapahoe, Boulder, Denver, Douglas, Gilpin, Jefferson		X

TABLE III

SMSA	Counties	Type of Location: Less than one million	Type of Location: Greater than one million
Des Moines, Iowa	Polk, Warren	X	
Detroit, Michigan	Lapeer, Livingston, Macomb, Oakland, St. Clair, Wayne		X
Dubuque, Iowa	Dubuque	X	
Duluth, Minnesota	Minnesota — St. Louis Wisconsin — Douglas	X	
Eau Claire, Wisconsin	Chippewa, Eau Claire	X	
Elkhart, Indiana	Elkhart	X	
Elmira, New York	Chemung	X	
El Paso, Texas	El Paso	X	
*Enid, Oklahoma	Garfield	X	
Erie, Pennsylvania	Erie	X	
Eugene, Oregon	Lane	X	
Evansville, Indiana	Indiana — Gibson, Posey, Vanderburgh, Warrick Kentucky — Henderson	X	
Fargo, North Dakota	North Dakota — Cass	X	
Fayettevile, Arkansas	Benton, Washington	X	
Fayetteville, North Carolina	Cumberland	X	
Flint, Michigan	Genesee, Shiawassee	X	
Florence, Alabama	Colbert, Lauderdale	X	
Fort Collins, Colorado	Larimer	X	
Fort Lauderdale, Florida	Broward		X
Fort Myers, Florida	Lee	X	
Fort Smith, Arkansas	Arkansas — Crawford, Sebastian Oklahoma — Le Flore, Sequoyah	X	
Fort Wayne, Indiana	Adams, Allen, Dekalb, Wells	X	
Fresno, California	Fresno	X	
Gadsden, Alabama	Etowah	X	
Gainesville, Florida	Alachua	X	
Galveston, Texas	Galveston	X	
Gary, Indiana	Lake, Porter	X	
Grand Forks, North Dakota	North Dakota — Grand Forks Minnesota — Polk	X	

TABLE III

SMSA	Counties	Type of Location: Less than one million	Type of Location: Greater than one million
Grand Rapids, Michigan	Kent, Ottawa	X	
Great Falls, Montana	Cascade	X	
Greeley, Colorado	Weld	X	
Green Bay, Wisconsin	Brown	X	
Greensboro, North Carolina	Davidson, Forsyth, Guilford, Randolph, Stokes, Yadkin	X	
Greenville, South Carolina	Greenville, Pickens, Spartanburg	X	
*Hagerstown, Maryland	Washington	X	
Hamilton, Ohio	Butler	X	
Harrisburg, Pennsylvania	Cumberland, Dauphin, Perry	X	
Hartford, Connecticut	Hartford, Middlesex, Tolland		X
*Hattiesburg, Mississippi	Forrest, Lamar	X	
Honolulu, Hawaii	Honolulu	X	
Houston, Texas	Brazoria, Fort Bend, Harris, Liberty, Montgomery, Waller		X
Huntington, West Virginia	West Virginia — Cabell, Wayne Kentucky — Boyd, Greenup Ohio — Lawrence	X	
Huntsville, Alabama	Limestone, Madison, Marshall	X	
Indianapolis, Indiana	Boone, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, Shelby		X
*Iowa City, Iowa	Johnson	X	
Jackson, Michigan	Jackson	X	
Jackson, Mississippi	Hinds, Rankin	X	
*Jackson, Tennessee	Madison	X	
Jacksonville, Florida	Baker, Clay, Duval, Nassau, St. Johns	X	
*Jamestown, New York	Chautauqua	X	
Janesville, Wisconsin	Rock	X	

TABLE III

SMSA	Counties	Type of Location: Less than one million	Type of Location: Greater than one million
Jersey City, New Jersey	Hudson	X	
Johnson City, Tennessee	Tennessee — Carter, Hawkins, Sullivan, Unicoi, Washington Virginia — Bristol, Scott, Washington	X	
Johnstown, Pennsylvania	Cambria, Somerset	X	
*Joplin, Missouri	Jasper, Newton	X	
Kalamazoo, Michigan	Kalamazoo, Van Buren	X	
Kankakee, Illinois	Kankakee	X	
*Kannapolis, North Carolina	Cabarrus, Rowan	X	
Kansas City, Missouri	Missouri — Cass, Clay, Jackson, Platte, Ray Kansas — Johnson, Wyandotte		X
Kenosha, Wisconsin	Kenosha	X	
Killeen, Texas	Bell, Coryell	X	
Knoxville, Tennessee	Anderson, Blount, Knox, Union	X	
Kokomo, Indiana	Howard, Tipton	X	
La Crosse, Wisconsin	La Crosse	X	
Lafayette, Indiana	Tippecanoe	X	
Lafayette, Louisiana	Lafayette	X	
Lake Charles, Louisiana	Calcasieu	X	
Lakeland, Florida	Polk	X	
Lancaster, Pennsylvania	Lancaster	X	
Lansing, Michigan	Clinton, Eaton, Ingham, Ionia	X	
Laredo, Texas	Webb	X	
*Las Cruces, New Mexico	Dona Ana	X	
Las Vegas, Nevada	Clark	X	
Lawrence, Kansas	Douglas	X	
Lawton, Oklahoma	Comanche	X	
Lewiston, Maine	Androscoggin	X	
Lexington, Kentucky	Bourbon, Clark, Fayette, Jessamine, Scott, Woodford	X	

TABLE III

SMSA	Counties	Type of Location: Less than one million	Type of Location: Greater than one million
Lima, Ohio	Allen, Auglaize, Putnam, Van Wert	X	
Lincoln, Nebraska	Lancaster	X	
Little Rock, Arkansas	Pulaski, Saline	X	
Long Branch, New Jersey	Monmouth	X	
Longview, Texas	Gregg, Harrison	X	
Lorain, Ohio	Lorain	X	
Los Angeles, California	Los Angeles		X
Louisville, Kentucky	Kentucky — Bullitt, Jefferson, Oldham Indiana — Clark, Floyd		
Lubbock, Texas	Lubbock	X	
Lynchburg, Virginia	Amherst, Appomattox, Campbell	X	
Macon, Georgia	Bibb, Houston, Jones, Twiggs	X	
Madison, Wisconsin	Dane	X	
Manchester, New Hampshire	Hillsborough	X	
*Manitowoc, Wisconsin	Maintowoc	X	
Mansfield, Ohio	Richland	X	
*Marion, Indiana	Grant	X	
McAllen, Texas	Hidalgo	X	
Melbourne, Florida	Brevard	X	
Memphis, Tennessee	Tennessee — Shelby, Tipton Arkansas — Crittenden Mississippi — Desoto	X	
*Meridian, Mississippi	Lauderdale	X	
Miami, Florida	Dade		X
*Michigan City, Indiana	La Porte	X	
Midland, Texas	Midland	X	
Milwaukee, Wisconsin	Milwaukee, Ozaukee, Washington, Waukesha		X
Minneapolis, Minnesota	Minnesota — Anoka, Carver, Chisago, Dakota, Hennepin, Ramsey, Scott, Washington, Wright Wisconsin — St. Croix		X
*Missoula, Montana	Missoula	X	
Mobile, Alabama	Baldwin, Mobile	X	

TABLE III

SMSA	Counties	Type of Location: Less than one million	Type of Location: Greater than one million
Modesto, California	Stanislaus	X	
Monroe, Louisiana	Quachita	X	
Montgomery, Alabama	Autauga, Elmore, Montgomery	X	
Muncie, Indiana	Delaware	X	
Muskegon, Michigan	Muskegon, Oceana	X	
Nashville, Tennessee	Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Williamson, Wilson	X	
Nassau, New York	Nassau, Suffolk		X
New Bedford, Massachusetts	Bristol	X	
New Brunswick, New Jersey	Middlesex	X	
New Haven, Connecticut	New Haven	X	
New London, Connecticut	New London	X	
New Orleans, Louisiana	Jefferson, Orleans, St. Bernard, St. Tammany		X
New York, New York	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland, Westchester New Jersey — Bergen		X
Newark, New Jersey	Essex, Morris, Somerset, Union		X
*Newark, Ohio	Licking	X	
*Newburgh, New York	Orange	X	
Newport News, Virginia	Gloucester, Hampton City, James City, Newport News, York	X	
Norfolk, Virginia	Virginia — Chesapeake, Nansemond, Norfolk, Portsmouth, Virginia Beach City North Carolina — Currituck	X	
Northeast Pennsylvania, Pennsylvania	Lackawanna, Luzerne, Monroe	X	
Odessa, Texas	Ector	X	

TABLE III

SMSA	Counties	Type of Location: Less than one million	Type of Location: Greater than one million
Oklahoma City, Oklahoma	Canadian, Cleveland, McClain, Oklahoma, Pottawatomie	X	
*Olympia, Washington	Thurston	X	
Omaha, Nebraska	Nebraska — Douglas, Sarpy Iowa — Pottawatomie	X	
Orlando, Florida	Orange, Osceola, Seminole	X	
Owensboro, Kentucky	Daviess	X	
Oxnard, California	Ventura	X	
Panama City, Florida	Bay	X	
Parkersburg, West Virginia	West Virginia — Wirt, Wood Ohio — Washington	X	
Pascagoula, Mississippi	Jackson	X	
Paterson, New Jersey	Passaic	X	
Pensacola, Florida	Escambia, Santa Rosa	X	
Peoria, Illinois	Peoria, Tazewell, Woodford	X	
Petersburg, Virginia	Dinwiddie, Prince George	X	
Philadelphia, Pennsylvania	Pennsylvania — Bucks, Chester, Delaware, Montgomery, Philadelphia New Jersey — Burlington, Camden, Gloucester		X
Phoenix, Arizona	Maricopa		X
Pine Bluff, Arkansas	Jefferson	X	
Pittsburgh, Pennsylvania	Allegheny, Beaver, Washington, Westmoreland		X
Pittsfield, Massachusetts	Berkshire	X	
*Pocatello, Idaho	Bannock, Power	X	
Portland, Maine	Cumberland, Sagadahoc	X	
Portland, Oregon	Oregon — Clackamas, Multnomah, Washington Washington — Clark		X
Poughkeepsie, New York	Dutchess	X	
Providence, Rhode Island	Bristol, Kent, Providence, Washington	X	
Provo, Utah	Utah	X	
Pueblo, Colorado	Pueblo	X	

TABLE III

SMSA	Counties	Type of Location: Less than one million	Type of Location: Greater than one million
*Quincy, Illinois	Adams	X	
Racine, Wisconsin	Racine	X	
Raleigh, North Carolina	Durham, Orange, Wake	X	
*Rapid City, South Dakota	Meade, Pennington	X	
Reading, Pennsylvania	Berks	X	
Reno, Nevada	Washoe	X	
Richland, Washington	Benton, Franklin	X	
Richmond, Virginia	Charles City, Chesterfield, Goochland, Hanover, Henrico, Powhatan, Richmond	X	
Riverside, California	Riverside, San Bernardino		X
Roanoke, Virginia	Botetourt, Craig, Roanoke	X	
Rochester, Minnesota	Olmsted	X	
Rochester, New York	Livingston, Monroe, Ontario, Orleans, Wayne	X	
Rockford, Illinois	Boone, Winnebago	X	
Sacramento, California	Placer, Sacramento, Yolo		X
Saginaw, Michigan	Saginaw	X	
St. Cloud, Minnesota	Benton, Sherburne, Stearns	X	
St. Joseph, Missouri	Andrew, Buchanan	X	
St. Louis, Missouri	Missouri — Franklin, Jefferson, St. Charles, St. Louis, St. Louis City Illinois — Clinton, Madison, Monroe, St. Clair		X
Salem, Oregon	Marion, Polk	X	
Salinas, California	Monterey	X	
Salt Lake City, Utah	Davis, Salt Lake, Tooele, Weber	X	
San Angelo, Texas	Tom Green	X	
San Antonio, Texas	Bexar, Comal, Guadalupe		X
San Diego, California	San Diego		X
San Francisco, California	Alameda, Contra Costa, Marin, San Francisco, San Mateo		X
San Jose, California	Santa Clara		X
Santa Barbara, California	Santa Barbara	X	

TABLE III

SMSA	Counties	Type of Location: Less than one million	Type of Location: Greater than one million
Santa Cruz, California	Santa Cruz	X	
*Santa Fe, New Mexico	Santa Fe	X	
Santa Rosa, California	Sonoma	X	
Sarasota, Florida	Sarasota	X	
Savannah, Georgia	Bryan, Chatham, Effingham	X	
Seattle, Washington	King, Snohomish		X
*Sheboygan, Wisconsin	Sheboygan	X	
Sherman, Texas	Grayson	X	
Shreveport, Louisiana	Bossier, Caddo, Webster	X	
Sioux City, Iowa	Iowa — Woodbury Nebraska — Dakota	X	
Sioux Falls, South Dakota	Minnehaha	X	
South Bend, Indiana	Marshall, St. Joseph	X	
Spokane, Washington	Spokane	X	
Springfield, Illinois	Menard, Sangamon	X	
Springfield, Massachusetts	Hampden, Hampshire	X	
Springfield, Missouri	Christian, Greene	X	
Springfield, Ohio	Champaign, Clark	X	
Steubenville, Ohio	Ohio — Jefferson West Virginia — Brooke, Hancock	X	
Stockton, California	San Joaquin	X	
Syracuse, New York	Madison, Onondaga, Oswego	X	
Tacoma, Washington	Pierce	X	
Tallahassee, Florida	Leon, Wakulla	X	
Tampa, Florida	Hillsborough, Pasco, Pinellas		X
Terre Haute, Indiana	Clay, Sullivan, Vermillion, Vigo	X	
Texarkana, Arkansas	Arkansas — Little River, Miller Texas — Bowie	X	
Toledo, Ohio	Ohio — Fulton, Lucas, Ottawa, Wood Michigan — Monroe	X	
Topeka, Kansas	Jefferson, Osage, Shawnee	X	
Trenton, New Jersey	Mercer	X	
Tucson, Arizona	Pima	X	

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BILLING CODE 4120-03-C

TABLE III

SMSA	Counties	Type of Location: Less than one million	Type of Location: Greater than one million
Tulsa, Oklahoma	Creek, Mayes, Osage, Rogers, Tulsa, Wagoner	X	
Tuscaloosa, Alabama	Tuscaloosa	X	
Tyler, Texas	Smith	X	
Utica, New York	Herkimer, Onieda	X	
Vallejo, California	Napa, Solano	X	
*Victoria, Texas	Victoria	X	
Vineland, New Jersey	Cumberland	X	
Waco, Texas	McLennan	X	
Washington, D.C.	D.C. — District of Columbia Maryland — Charles, Montgomery, Prince Georges Virginia — Alexandria, Arlington, Fairfax, Loudoun, Prince William		X
Waterloo, Iowa	Black Hawk	X	
*Wausau, Wisconsin	Marathon	X	
West Palm Beach, Florida	Palm Beach	X	
Wheeling, West Virginia	West Virginia — Marshall, Ohio Ohio — Belmont	X	
Wichita, Kansas	Butler, Sedgwick	X	
Wichita Falls, Texas	Clay, Wichita	X	
Williamsport, Pennsylvania	Lycoming	X	
Wilmington, Delaware	Delaware — New Castle Maryland — Cecil New Jersey — Salem	X	
Wilmington, North Carolina	Brunswick, New Hanover	X	
Worcester, Massachusetts	Worcester	X	
Yakima, Washington	Yakima	X	
York, Pennsylvania	Adams, York	X	
Youngstown, Ohio	Mahoning, Trumbell	X	

federal register

Friday
October 1, 1982

Part X

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Limitation of Reasonable Charges for Services in Hospital Outpatient Settings

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Limitation of Reasonable Charges for Services in Hospital Outpatient Settings

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: These Regulations limit reasonable charge reimbursement for certain physicians' services furnished in hospital outpatient settings. This will be accomplished by refining the application of Medicare reasonable charge screens to reflect more accurately the reasonable charges for physicians' professional medical services in hospital outpatient settings. The regulations are needed to implement recent legislation that is designed to prevent duplicate payment for overhead expenses associated with the delivery of those services.

DATES: *Effective date:* Effective for services rendered on or after October 1, 1982. Although these regulations are final, comments may be submitted as described below.

Comment date: To assure consideration, comments should be mailed by November 30, 1982.

ADDRESS: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17073, Baltimore, Maryland 21235.

In commenting, please refer to file code BPP–215–FC.

If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland, 21207.

Comments will be available for public inspection, beginning approximately three weeks after publication, in Room 309–g of the Department's offices at 200 Independence Ave., SW., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: Leonard Nowacki, 301–594–2871.

SUPPLEMENTARY INFORMATION:

I. Background

A. *General Information.* In the past fifteen years, the number of hospital outpatient department visits has more than doubled. In addition, there has been a significant increase in the number of ambulatory services being provided by clinics. According to American Hospital Association (AHA) data, outpatient gross revenues increased during the 10-year period from 1969 through 1978, from $1.5 billion (8.3 percent of total hospital revenue) to $8.5 billion (12.8 percent of total hospital revenue). This represents almost a six-fold increase in absolute terms.

The increase in the volume and cost of outpatient services has prompted Congress to question the amounts of reimbursement made for services furnished in hospitals and clinics as compared to reimbursement for similar services provided by office-based physicians. Congress has also expressed increasing concern that the limits placed on hospital inpatient expenditures may have encouraged hospitals to shift reimbursable costs to outpatient departments. The congressional concern with these issues led to enactment of legislation (section 2142 of Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981 and section 104(a) of Pub. L. 97–248, the Tax Equity and Fiscal Responsibility Act of 1982) described later in this preamble.

B. *Current Rules on Payment for Services in Hospital Outpatient Departments and Emergency Rooms.* Under Medicare payment for medical and other health services provided on an outpatient basis generally is made at 80 percent of the reasonable cost of the services as determined under section 1861 (v)(1) of the Act (42 U.S.C. 1395x(v)(1)). The statutory requirements in section 1861(v) that govern Medicare reasonable cost reimbursement to providers for these services are implemented under the regulations at 42 CFR Part 405, Subpart D.

With respect to a physician's services, including physicians' services in an outpatient setting, section 1833(a)(1) of the Act (42 U.S.C. 1395(a)(1)) requires that payments be made at 80 percent of the reasonable charges for the services, after the Part B deductible is satisfied. Section 1842(b)(3) of the Act (42 U.S.C. 1395u(b)(3)) requires that, in determining the reasonable charges payable for a physician's services, the Secretary consider, among other things, the customary charges for services generally made by the physician for similar services as well as the prevailing charges in the locality for similar services. The prevailing charges are based on the customary charges of physicians in a locality for covered services. In the development of prevailing charges, customary charges are weighted to reflect the frequency with which the physician has rendered the service during the period for which data is collected. An annual economic index is then applied to the unadjusted prevailing charges to limit the increase in prevailing charges from year to year. The regulations governing general Medicare reasonable charge reimbursement policies for physicians' services are set forth at 42 CFR 405.501–405.508.

Under these regulations, the reasonable charge is the lowest of the actual, customary, or prevailing charges. These regulations, at 42 CFR 405.502(a)(7), also require consideration of other factors that may be found necessary and appropriate, with respect to an item or service, in judging whether the charge for the service is inherently reasonable. However, the current regulations, which are based on the law in effect before enactment of section 2142 of Pub. L. 97–35, and section 104(a) of Pub. L. 97–248, do not specifically require the carrier to consider the site in which a service is furnished (i.e., a physician's office, or a hospital outpatient department) in determining whether the charge for the service is inherently reasonable. Thus, Medicare currently makes no distinction between a physician's office and a hospital outpatient setting in determining reasonable charges for physicians' services.

However, the location of service has an important bearing on whether the physician charges only for a professional service, or whether there are additional overhead costs associated with the services for which the physician is financially responsible. If a service is furnished in a physician's office, the physician's charge includes not only the physician's professional service but also the overhead costs, such as office rent and employee salaries, required to produce the service. If a similar service is provided in a hospital outpatient setting, (i.e., an outpatient department, emergency room or clinic) Medicare pays the physician the same amount it would pay for the office-based service, and also reimburses the hospital on a reasonable cost basis for the overhead costs required to produce the service.

Thus, because Medicare does not consider the site of the service in making reasonable charge computations, both hospitals and physicians are being reimbursed for amounts attributable to the overhead costs of physicians' services furnished in hospital outpatient settings.

C. *Recent Legislation.* Section 2142 of Pub. L. 97–35 enacted Section 1861(v)(1)(K) of the Social Security Act

(42 U.S.C. 1395x(v)(1)(K)), and amended section 1842(b)(3) (42 U.S.C. 1395u(b)(3)). The new sections require the Secretary to issue regulations that provide, to the extent feasible, for the establishment of specific limitations on the costs or charges that would be considered reasonable for outpatient services provided by hospitals, and by physicians utilizing these facilities.

In regard to limitations on the charges, the legislation provides that limits are to be developed using charges reasonably related to the charges in the same area for similar services provided in physicians' offices. These specific limitations are not applicable to (i) bona fide emergency hospital services provided in an emergency room, and (ii) outpatient services in rural health clinics. The statute further states that the regulations shall provide for exceptions to the limits in situations when similar services are not available to Medicare beneficiaries in physicians' offices in the area.

The Conference Committee Report that accompanied Pub. L. 97–35 states that, in recommending enactment of section 2142, the conferees intended that reimbursement be the same for similar services provided in differing ambulatory settings to remove any incentive to provide services at any one particular location.

The Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, was enacted on September 3, 1982. Section 104 of this legislation specified that the Secretary may, in establishing the reasonable charge for services subject to limits under section 1842(b)(3), limit the reasonable charge for physicians' services furnished in hospital outpatient departments to a percentage of the amount of the prevailing charge for similar services furnished in a physician's office, taking into account the extent to which overhead costs associated with such outpatient services have been included in the reasonable cost or charge of the facility. Section 104 specifies that this amendment is to be effective with respect to services furnished on or after October 1, 1982.

Section 104 originated in the Senate, and there was no comparable House provision. The Senate Finance Committee Report on H.R. 4961 notes that the Secretary is now required to calculate an overhead factor in order to determine the percentage by which physicians' prevailing charges may increase under the economic index provisions. (These economic index provisions are implemented under the authority in section 1842(b)(3) of the Social Security Act and the regulations at 42 CFR 405.504. The amount of the economic index applicable to each full screen year is published annually in a **Federal Register** notice.) The Senate Finance Committee Report further notes that currently it is estimated that approximately 40 percent of physicians' fees are for overhead, and states that the committee expects that refined prevailing charge screens for physicians who practice in settings where they are not personally responsible for overhead expenses will be reduced by the same percentage as that used in implementing the economic index.

II. Revised Regulations

A. *Major Provisions.* The revised regulations set forth below provide a methodology for carriers to follow in developing and applying limits on the reasonable charges for physicians' services provided in hospital outpatient settings, including outpatient departments, emergency rooms, and clinics in which overhead costs are reimbursed to the hospital under the provider reimbursement regulations in 42 CFR Part 405, Subpart D. The limits will:

- Apply to those types of services that are routinely provided in a physician's private office;
- Exclude services provided in a rural health clinic;
- Exclude bona fide emergency room services;
- Exclude outpatient anesthesiology and diagnostic and therapeutic radiology services; and
- Be established based on a percentage of Medicare prevailing charges.

B. *Services Included.* As noted above, these limits are designed to prevent duplicate payment, to both hospitals and physicians, for the overhead costs of certain types of services. Therefore, these limits will apply only in those hospital outpatient settings in which the hospital incurs overhead costs that are reimbursed on a cost basis under Medicare. The new limits will not apply to services in settings where duplicate payment could not occur because the physician bears all overhead costs of the services. For example, if a physician rented office space in buildings owned by a hospital and bore all overhead costs of the services furnished in that space, the new limits would not apply to those services.

We are requiring carriers to establish limits only for those services that are routinely provided in a physician's private office. Listed below are examples of these services:

- Examination for acute tonsillitis.
- Review of recent history, determination of blood pressure, ausculation of heart and lungs, and adjustment of medication in essential hypertension.
- Brief history and examination, initiation of diagnostic and treatment programs.
- Treatment of an acute respiratory infection.

These examples are not intended to be all-inclusive because we are aware that the types of physician services that are routinely performed in physicians' offices will vary from area to area, depending on local medical practice. We believe the limits should be applied in a way that is consistent with local medical practice. Since each carrier is familiar with local medical practice, the carrier will be responsible for establishing a list of the services that are considered routine physician office services in its locality, for notifying physicians and hospitals of the services determined to be routine and of the limit established for each service, and for applying the proposed limits only to those services.

In some areas, a shortage of physicians may exist. For this reason, certain physician services that in other areas are usually furnished in an office setting may, in these areas, be available only in a hospital outpatient setting. Under these circumstances, the carrier could determine that these services are not available in physicians' offices in the locality in which the hospital is located. The carrier will not include these services in the list of services that are considered routine office services in the locality, nor will it develop limits for these services.

C. *Services Excluded.* Section 1861(v)(1)(K) gives the Secretary the authority to establish limits on payment for hospital costs of outpatient services as well as physician charges for services in outpatient settings. At this time, we will apply payment limits only to physician charges, rather than to hospital costs. The statute gives us authority to establish limits to the extent feasible. We are still examining the feasibility of establishing limits on outpatient hospital costs. At some future date, we may proceed to establish these limits, and develop a regulation that would set forth the methodology for establishing these limits.

In addition, these regulations will not apply to payment for covered surgical procedures performed in an outpatient setting. We believe this exclusion is needed to avoid inconsistency with the provisions of section 934 of Pub. L. 96–499, which encourages the use of

ambulatory settings for certain surgical procedures that are now frequently furnished on an inpatient hospital basis. In the August 5, 1982 **Federal Register** (47 FR 34082), we published final regulations to implement the provisions of section 934. If a payment limit were imposed for surgical procedures furnished in an outpatient setting, there would be no incentive for physicians to perform surgical procedures in an outpatient setting rather than in the more costly inpatient setting. Therefore, we decided to exclude covered surgical procedures in an outpatient setting from the limits established by this regulation.

These new limits also will not apply to services for which Medicare pays on a compensation-related charge basis. We now pay for these services under the current regulations at 42 CFR 405.480 through 405.488. In general, carriers determine the customary charges for the services of physicians who receive compensation, other than fee-for-service billing, for their services to patients based on the assumption that the part of a physician's compensation allocated to patient care services represents, to the extent that it is reasonable, the aggregation of the physician's customary charges for patient care services. (Customary charges determined in this manner are called compensation related charges.) The regulations at 42 CFR 405.485 currently allow various methods of computing compensation-related customary charges (e.g. per diem, uniform percentage, and item-by-item methods), provided that the method used by a provider systematically and reasonably relates the physician's compensation to the range of physician services furnished under that compensation.

We plan to propose in a separate **Federal Register** document to revise our current reimbursement regulations to provide further, more specific tests of reasonableness that would be used in determining reasonable charge payment for services of physicians in institutional providers of services, including physicians compensated by the provider or a related entity for their services to provider patients. Because our regulations now contain special provisions for determining payment to compensated physicians and because we expect to apply new, more refined tests of reasonableness to payment for their services in the near future, we have decided to exclude services paid for through the use of compensation-related charges from the limits established under the regulations set forth in this document.

We are also excluding anesthesiology services and diagnostic and therapeutic radiology services from the new limits. Anesthesiology services are generally not among the types of services routinely provided in physicians' offices. We are excluding radiology services from the new limits because the proposed new regulations referred to in the preceding paragraph will contain special tests of reasonableness for radiology services in provider settings, including hospital outpatient settings.

Section 1861(v)(1)(K), as added by section 2142 of Pub. L. 97–35, specifically prohibits establishment of limits for bona fide emergency services in a hospital emergency room. For purposes of this regulation, we are defining "bona fide emergency services" as all services performed in a hospital emergency room that are necessary to prevent the death or serious impairment of the health of the individual. Payment limits will not be established for services. However, the limits will apply to services that are performed in an emergency room but are not necessary to prevent the death or serious impairment of the health of the individual, unless the services are otherwise excluded from the limits. We are soliciting comments on the appropriateness of our definition of bona fide emergency room services.

Since services provided in a rural health clinic were also expressly excluded from these limits by the 1981 legislation, the regulations set forth below also will not apply to them.

D. *Methodology for Developing Limits.* Section 1861(v)(1)(K) states that the outpatient "limitations shall be reasonably related to the charges in the same area for similar services in physicians' offices". To determine the percentage of the charge that is related to the professional service and the percentage that is related to overhead expense, we adopted the weights of 60 percent physician income and 40 percent practice (overhead) expense. As noted earlier, the legislative history of section 104(a) explicitly supports use of these weights. These weights, which have been used in updating the Medicare economic index since its implementation in 1976, were initially based upon data published in *Medical Economics* and the American Medical Association's (AMA's) *Profile of Medical Practice.* To validate these ratios, HCFA conducted independent surveys of office-based physician's costs from 1975 through 1978. These surveys support the use of this 60–40 split between income and overhead expense. Additionally, the December 5, 1980 *Journal of the AMA* included a report of physician expense which shows that for the 10-year period 1970 through 1979 physician practice costs have not varied significantly from 40 percent. In this same article, the Center for Health Services Research and Development, AMA, using preliminary data from the most recent Periodic Survey of Physicians, projects 1980 practice expense at 40.3 percent. Thus, all available data indicate that, although the weights of sub-components of office practice costs have shifted slightly, the gross income split of 60 percent net physician compensation to 40 percent practice expense has changed little over the years.

The conference committee report accompanying section 2142 of Pub. L. 97–35 suggested that the limits be based, to the extent feasible, on actual charges, not Medicare-determined reasonable charges. However, section 104(a) of Pub. L. 97–248 further amended section 1842(b)(3) to permit the Secretary to establish limits on physician charges in outpatient settings using a percentage of the prevailing charge for similar services in a physician's office. The limits must account for the overhead costs already included in the reasonable cost or charge of the facility. Our methodology will meet the requirements of section 104(a) by using the current nonspecialist prevailing charge, adjusted by the economic index, as the basis for developing limits for each service. This prevailing charge is based on, and thus reflects,the actual charges submitted for each service furnished to Medicare patients in an office setting within the locality. These prevailing charges, which are used as a charge base, are recalculated each fee screen year (July 1 through June 30).

By adopting these weights and using prevailing charges for office-based services to compute these limits, we believe the methodology set forth in the following regulations fulfills the congressional directive to relate the limits to the charges for similar services in a physician's office, and to use prevailing charges adjusted to establish limits on outpatient services.

Our methodology for developing these limits is as follows:

1. The carrier will determine the types of services that are routinely furnished in physicians' offices in the area, and are not excluded from limitation by the revised regulations.

2. The carrier will determine the prevailing charge, as adjusted by the Medicare economic index, for each service.

3. The carrier will multiply the prevailing charges determined in step 2

by .60 to determine a limit for each service under this provision.

E. *Application of Limits.* In calculating payment for the types of services covered by the proposed limits, the carrier will consider the amount charged for the services, the physician's customary charge, the prevailing charge, and the outpatient physician charge limit. The carrier will determine the reasonable charge for each service to be the lowest of the actual billed charge, the customary charge, the prevailing charge, or the limit determined under these rules. This is necessary to assure that payment levels for physician services in hospital ambulatory settings do not exceed amounts otherwise determined reasonable for similar services in the locality.

F. *Billing Procedures.* Physician services (except for services of compensated physicians who bill on billing form HCFA–1483, Provider Billing for Medical and other Health Services) will be submitted on billing form HCFA–1500, Health Insurance Claim Form. The reasonable charge limit will not apply if the billing form has been annotated to show that a routine service in a hospital emergency room was a bona-fide emergency service as defined in these regulations.

III. Impact Analysis

A. *Executive Order 12291 and Regulatory Flexibility Act Analysis of Proposed Rule. Introduction/Summary.* The following analysis examines the expected effect of these proposed rules. In it, we consider reductions of projected program expenditures, benefits and costs experienced by affected parties, and the impact on small businesses. In addition, we described several possible alternatives considered in accomplishing the objectives of the proposals.

Our actuaries estimate that this regulation could save the Federal government $75 million in program expenditures in FY 83, $135 million in FY 84 and $175 million in FY 85. By establishing a limit on Medicare payment for certain types of physician services furnished in hospital outpatient settings, we can better determine the reasonableness of costs and charges for the outpatient services provided by hospitals, or clinics, and by physicians utilizing these facilities. These limits will generate the estimate savings for FY 83 in two ways. First, they will reduce or eliminate the amount of duplicate payments for overhead expenses for these services. Second, they will remove the current financial incentive for physicians to furnish services in hospital outpatient departments rather than in less costly office settings.

Our analysis shows that the benefits of these regulations exceed their costs. Further, our analysis shows the effect of the regulation on physicians and providers is not significant, considering the size of potential revenue reductions relative to the total revenues of physicians and providers providing these services.

B. *Purpose of Analysis.* 1. *Executive Order 12291.* Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would:

- Result in an annual effect on the national economy of $100 million or more;
- Result in a major increase in costs of prices for consumers, any industries, any governmental agencies, or any geographic regions; or
- Have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

2. *Regulatory Flexibility Act.* The Regulatory Flexibility Act requires that a regulatory flexibility analysis be prepared for a regulation unless the regulation will not have a significant impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, small entities are:

- Small businesses, defined as small business concerns under the Small Business Act;
- Small organizations, defined as not-for-profit enterprises which are independently owned and operated and not dominant in their field; or
- Small governmental jurisdictions, which are defined as jurisdictions of less than 50,000 population.

3. *Discussion.* From the information available to us, we believe the regulations meet the threshold criteria of the Executive Order. Our actuaries have estimated FY 83 savings at $75 million. For FY 84 and 85, the savings estimates are $135 million and $175 million, respectively. Because the FY 84 and 85 estimates exceed the $100 million threshold criteria, we are required to perform an impact analysis, which we have included below. However, for the reasons stated elsewhere in this analysis, we do not believe that the threshold criteria of the Regulatory Flexibility Act will be met. Thus, a regulatory flexibility analysis is not required.

We welcome public comment on the issues noted below in this analysis.

C. *Nature of Problem.* When a service is provided in an outpatient department, Medicare reimburses the hospital for the facility costs, which include overhead such as rent, utilities, staff and supplies. As noted earlier in this preamble, Medicare does not now consider the site of physicians' services in determining the reasonable charges for the services. Thus, the Medicare program is paying twice for the overhead costs of certain physician services.

In addition, if a physician is paid the same amount for a service without regard to whether he or she bears overhead costs, this creates an unintended incentive for physicians to furnish services in hospital outpatient departments rather than in less costly office settings.

D. *Purpose of the Regulation.* The revised regulations deal with the problems of payment for duplicate overhead payments and the misplaced economic incentive in the furnishing of medical services. These problems will be alleviated by providing carriers with a methodology for developing and applying the limits to individual physician services.

We believe that by applying the limits to individual physician bills, the amount of duplicate payments should be reduced greatly or eliminated and the economic incentive to furnish services in less costly office settings will be established.

E. *Benefits and Costs.* The primary effect of this regulation will be on physicians who continue to furnish services in hospital outpatient settlings that could be provided in private office settings. We also anticipate that the Medicare program, hospitals, and beneficiaries will realize some costs and benefits from this regulation.

1. *Physicians.* Some physicians could experience a reduction in revenues as a result of the limits. If physicians continue to provide certain types of services in the hospital outpatient settings, the reasonable charge limit will apply, resulting in a revenue reduction for the physician in assigned claims. The carrier has the responsibility to determine the services for which a reasonable limit will be established and to furnish a list to the hospital and to the physician of the services that will be subject to a reasonable charge limit. The actual reduction will depend on whether the carrier determines that the reasonable charge limit will be the lowest of the actual, the customary, the prevailing, or the new charge limit. The specific revenue reductions are now indeterminate, but they will equal the difference between payments received

prior to this revised rule and payments that will be subject to the limits.

2. *Medicare Program.* The Medicare program will realize several benefits from this regulation. HCFA actuaries estimate a $75 million savings in program expenditures for FY 1983. These savings will be generated by the application of the limit to each individual service submitted by physicians for services provided in outpatient departments. The limit will reduce duplicate overhead payments.

We also anticipate that a greater degree of program efficiency will be realized. Through the clarification of this reimbursement policy, payment determination, based on the site of the service, will be more precise.

3. *Hospitals.* Services in outpatient settings may be shifted to the private office setting, since physicians who practice outside the hospital will have an incentive to provide routine services in the private office setting. However, these are services that should have been provided in the less costly office setting. To the extent such shifts may occur, resulting reduction in hospital revenue will be associated with reductions in hospital costs.

In developing these regulations, we took into account the possibility that imposing limits on payment to physicians for services performed in outpatient settings could cause physicians to begin performing some services in inpatient settings, thus defeating the purpose of the new limits and increasing hospital costs. To deal with this potential problem, we have exempted certain types of services that could be shifted in this way (e.g., surgical services) from the limits. We believe this will reduce the incentive for physicians to shift services from outpatient to inpatient settings. Moreover, we believe hospitals and their utilization review committees will question the appropriateness of inpatient admissions that appear to be designed only to avoid the effect of the new limits. Therefore, we do not expect these regulations to result in any significant shifting of services from outpatient to inpatient settings.

4. *Beneficiaries.* In developing the regulations to eliminate duplicate payment of overhead expenses, we have anticipated the possibility that physicians may be less likely to accept Medicare assignment. Physicians may choose to continue to bill for overhead costs even though they do not bear them directly, and may recover these costs from beneficiaries through billing on unassigned claims. If a physician does not accept assignment, and bills patients directly, then beneficiaries are liable for added expenses. However, adequate information is not available to estimate the extent to which this would occur. We do believe that the impact of any additional expenses could be minimized by beneficiaries "shopping" around for physicians who accept assignment, or otherwise are less expensive.

F. *Net Benefits.* This regulation has benefits outweighing corresponding costs. The major benefit of this regulation will be a reduction in Medicare spending of $75 million in FY 83. This is a benefit to society for several reasons:

- This will provide a control on continued high inflation in the health care sector. By providing a clearer definition of reasonable charges for payment of physician's professional services in hospital outpatient settings, inapropriate program expenditures would be reduced, thus helping to slow the rate of inflation.
- These regulations will better assure that Medicare reimbursement is related to the reasonable charges of physicians as required by the Medicare statute.
- A reduction in Medicare expenditures will improve the integrity of the trust funds.
- A reduction in Federal expenditures in the near term will also reduce the Federal deficit, with associated benefits to the economy.

G. *Effect on Small Entities.* 1. *Effect on Physicians.* The secretary certifies under 5 U.S.C., 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that these regulations will not result in a significant impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, we consider all self-employed physicians to be small entities. We estimate that there are 230,000 physicians who furnish medical services that are routinely provided in office-based settings, and therefor may be affected by these limits. We are assuming that the impact will fall equally on most of these physicians. While we recognize that the actual impact will vary among these physicians, data are not available to estimate individual impacts. The $75 million Federal savings represents a reduction to these affected physicians, averaging out to only $325 per physician in FY 83. The $135 million savings in FY 84 would result in an average reduction of $590 per physician. This is not a significant impact in FY 83, especially since it represents a reduction of .4 percent from the estimated average net income of $80,000 per physician in 1980. Using this same salary base, the estimated revenue reduction, in FY 1984, would be .7 percent.

2. *Effect on Hospitals.* For purposes of the Regulatory Flexibility Act, we consider all non-profit hospitals and all for-profit hospitals of less than 100 beds to be small entities.

These proposed limits are established for physician services only. These limits will not be applied to Part B hospital costs or to payment for covered surgical procedures in outpatient settings. Hospitals will continue to receive payment for overhead costs associated with the delivery of outpatient services. Therefore, hospitals will not be significantly affected by these proposed regulations.

H. *Alternatives Considered.* 1. *Limits on Hospital Outpatient Costs.* Because the Medicare law authorizes limits, to the extent feasible, on both hospital costs and physician charges for services in hospital outpatient departments, we considered developing both types of limits. This alternative, if adopted, would have enabled us to implement the recent legislation fully. However, as explained earlier in this preamble, we are still studying the feasibility of applying limits to hospital outpatient costs. Until we have made an analysis, we do not believe that establishing hospital outpatient cost limits is warranted.

2. *Services Excluded from Limits.* Because section 2142 specifies that certain types of services are to be excluded from the limits, we considered proposing limits for all services not specifically excluded by the statute. As explained earlier, however, imposing limits on certain types of services could result in inconsistencies with other parts of the Medicare law and regulations, or in unreasonably low payment levels. For example, applying limits to surgical services performed in outpatient settings could undermine the purpose of section 934 of Pub. L. 96–499, which encourages the use of ambulatory settings for certain surgical procedures that are now frequently performed in inpatient hospital settings. Applying these limits to services of physicians who receive compensation by or through the hospital (and for which Medicare pays on a compensation-related charge basis) could create at least the potential for inconsistency between those limits and the special rules on payment for those services that are set forth in 42 CFR 405.480–405.488. Since we are proposing separate revisions to the regulations governing payment to physicians providing outpatient anesthesiology and diagnostic and therapeutic radiology services, these limits will not apply to services provided by these physicians.

To avoid these problems, we will exclude the three types of services described above from these limits.

3. *Use of Prevailing Charges to Develop Limits.* Section 104 gave the Secretary the authority to establish limits on physician charges using prevailing charges as the basis. The legislative history of this amendment indicates that a further adjustment is to be done to the prevailing charges to exclude the overhead factor currently included in the prevailing charges. Therefore, we are using prevailing charges to establish a charge base for the limits. Prevailing charges are based on actual charge data submitted to the carriers by physicians, and their use will minimize the need for additional calculations. The private sector will incur no additional cost because bills are already being submitted to the carriers for these routine physician services. The carriers will experience little administrative expense because no additional data will be collected; instead, another calculation will be performed on data already being collected.

I. *Waiver of Proposed Rulemaking and of 30-Day Delay in Effect.* The Tax Equity and Fiscal Responsibility Act of 1982, including the provisions in section 104 relating to limits on charges for outpatient services, was enacted to provide revenue increases and expenditure reductions necessary to meet the budget objectives for FY 1983 and following years. The law relies on the immediate implementation of section 104 to meet the budget goals by specifying that the section shall be effective with respect to services furnished on or after October 1, 1982, and the savings estimates on which the legislation was predicated assumed that section 104 would be implemented as of that date. Because it would take at least several months to conduct a rulemaking procedure, the use of notice and comment procedures would violate congressional intent and prevent the achievement of the budget savings sought by enactment of section 104. Accordingly, we find that it would be impractical and contrary to the public interest to utilize a notice of proposed rulemaking in this case. Moreover, in light of the directions provided in the Senate Finance Committee report as to the level of the limits to be imposed, we are simply implementing clear congressional instruction by these rules, rather than exercising a significant measure of administrative discretion. In light of these legislative constraints on the principal aspects of the rules, we find good cause to waive the usual 30-day delay in effective date, and to make these revised regulations effective services rendered on or after October 1, 1982. We will, however, consider any comments on this rule that are mailed by the date specified above in the "DATES" section and make any further changes that may be necessary.

IV. Other Required Information

A. *Public Comments.* Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. If we determine a revised final rule is necessary after receiving the comments, we will respond to the comments in the preamble of the revised final rule.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

42 CFR Part 405 is amended as set forth below:

1. The authority citation for Subpart E is revised to read to follows:

Authority: Secs. 1102, 1814(b), 1833(a), 1842(b), 1861(v)(1)(K) and 1871 of the Social Security Act as amended (42 U.S.C. 1302, 1395F(b), 1395l(a), 1395u(b), 1395x(v)(1)(K), 1395hh, unless otherwise noted.

2. In Subpart E, § 405.502 is revised by adding a new paragraph (f) to read as follows:

§ 405.502 Criteria for determining reasonable charges.

* * * * *

(f) *Determining charge payments for certain physicians' services provided in hospital outpatient departments.* (1) *General Rule.* Carriers will determine the reasonable charges for physicians' services of the type routinely furnished in physicians' offices by applying the limits described in paragraph (4) of this section when those services are provided in hospital outpatient settings.

For purposes of this paragraph, "hospital outpatient settings" means hospital clinics, outpatient departments, and emergency rooms in which overhead costs are reimbursed to the hospital under the rules in Subpart D of this Part.

(2) *Services covered by limits.* The carrier will establish a list of services routinely provided in physicians' office in the area. The carrier has the discretion to determine which professional services are routinely provided in physicians' offices, based on current medical practice in the area. Listed below are some examples of routine services provided by office-based physicians.

Examples

Review of recent history, determination of blood pressure, ausculation of heart and lungs, and adjustment of medication is essential hypertension.

Brief history and examination, and initiation of diagnostic and treatment programs.

Treatment of an acute respiratory infection.

(3) *Services excluded from limits.* The limits established under this paragraph will not apply to:

(i) Services furnished in a rural health clinic.

(ii) Surgical services furnished in an ambulatory setting.

(iii) Services provided in a hospital emergency room that are necessary to prevent the death or serious impairment of the health of the individual.

(iv) Services provided by physicians who are compensated by or through the hospital and whose services are reimbursed on a compensation related charge basis as specified in 42 CFR 405.485; or

(v) Anesthesiology services and diagnostic and therapeutic radiology services.

(4) *Methodology for developing limits.* (i) *Development of a charge base.* The carrier will establish a charge base for each service identified as a routine office-based physician service. The charge base will consist of the prevailing charge in the locality for each such service adjusted by the economic index. The carrier will use the prevailing charges that apply to services by nonspecialists in office practices in the locality in which the hospital is located.

(ii) *Calculation of the outpatient limits.* The carrier will calculate the charge limit for each service by multiplying the charge base amount for each service by .60.

(5) *Application of limits.* The reasonable charge for physicians' services of the type described in paragraph (f)(2) of this section that are furnished in a hospital outpatient setting will be the lowest of the actual charges, the customary charges in accordance with § 405.503, the prevailing charges

applicable to these services in accordance with § 405.504, or the charge limits calculated in paragraph (f)(4)(ii) of this section.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance Program; No. 13.774, Medicare Supplementary Medical Insurance Program)

Dated: September 17, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: September 22, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-27110 Filed 9-30-82; 8:45 am]

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Friday
October 1, 1982

Part XI

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Elimination of Inpatient Routine Nursing Salary Cost Differential

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Elimination of Inpatient Routine Nursing Salary Cost Differential

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: Because patients age 65 and over had been presumed to require more nursing services than the general patient population, the Medicare reimbursement principles have, since 1969, recognized an inpatient routine nursing salary cost differential for hospitals and skilled nursing facilities (SNFs). Legislation enacted in 1981 limits this differential rate for hospitals to no more than 5 percent.

Recent studies have cast serious doubt on the assumption that aged patients require more nursing services than do hospital patients generally. In view of these studies and in the interest of avoiding payments to providers of services that exceed the providers' reasonable costs, Pub. L. 97–248, the Tax Equity and Fiscal Responsibility Act of 1982, was enacted on September 3, 1982. Section 103 of this legislation eliminates the inpatient routine nursing salary cost differential as an element of reimbursable cost under Medicare for hospitals or SNFs.

DATES: Effective date: October 1, 1982. Although this regulation is final, comments may be submitted as described below.

Comment Date: To assure consideration, comments should be mailed by November 30, 1982.

ADDRESS: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17073, Baltimore, Maryland 21235.

In commenting, please refer to BPP–209–FC.

If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave., S.W., Washington, D.C. or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection, beginning approximately three weeks after publication, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: William Goeller, (301) 597–1802.

SUPPLEMENTARY INFORMATION:

I. Background

A. *Overview.* Under Part A of the Medicare program (title XVIII of the Social Security Act), hospitals and skilled nursing facilities (SNFs) are reimbursed based on the reasonable cost of health care items and services furnished to beneficiaries. The current Medicare rules for calculating reimbursable costs of these providers include an inpatient routine nursing salary cost differential (42 CFR 405.430). Medicare adopted this differential on the basis of a study that was conducted in 1966. This study indicated that, on the average, elderly patients in an institutional setting required more general routine nursing services than did other patients. The differential was applied also to pediatric and maternity patients, who also were assumed to require a greater amount of routine nursing services than other patients.

The differential is not an add-on to the total routine nursing salary costs incurred by a provider, but rather it is a reallocation of the actual routine nursing salary costs between aged, pediatric and maternity patients and all other classes of patients.

The effect of the nursing differential is that the Medicare program recognizes a higher than average routine per diem cost for aged, pediatric and maternity patients and a lower than average per diem cost for other classes of patients. (Disabled Medicare beneficiaries are counted in the "all other" category unless they are otherwise pediatric or maternity patients.) The total impact of the differential on a particular provider's Medicare reimbursement will vary, depending on the provider's patient mix. If all of the provider's patients were aged, pediatric and maternity, no differential would be applicable.

We originally published regulations in the **Federal Register** on July 2, 1971 (36 FR 12606) to establish the principle of an inpatient routine nursing salary cost differential as an element of reimbursable cost. The differential was effective for services furnished on or after July 1, 1969. We set the rate of the differential at 8.5 percent.

B. *Legislative History.* During its consideration of Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), Congress expressed its concerns about whether aged patients actually use more nursing services. The following excerpt from the Senate Finance Committee Report (Senate Report 97–139) reflects their concerns: "Under the present law, medicare reimburses hospitals on the basis of their 'reasonable costs'. Since July 1, 1969, the Secretary has by regulation paid an 8.5 percent plus factor for inpatient routine nursing salary costs on the theory that older patients require more nursing care than the average patient. There was no objective, convincing evidence in 1969, that this plus factor was warranted. Moreover, in the years since 1969, there have been changes in medicare law, changes in the way services are furnished, and changes in the way medicare reimburses for routine services that make the cost differential even less tenable today than when it was adopted. For example, the inclusion in 1972 in medicare of disabled beneficiaries who are below age 65 has made an average routine per diem amount for all beneficiaries (without recognition of any differential) more appropriate. Also, with the growth of special-care beds (intensive care, coronary care, etc.), there has been a shift of the intensely ill from general routine-care areas to these special-care units. It has been noted that since intensive nursing care is now being given in these special-care units, the nursing cost differential for routine services may have become less necessary than in the past. However, despite these considerations, many institutions have stated that a differential is still justified."

In recognition of the industry's position that a nursing differential exists, Congress enacted Section 2141 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), entitled Limitation on Routine Nursing Differential. Section 2141 amended section 1861(v)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)) to require that the Secretary, through regulations, allow an inpatient routine nursing salary cost differential as a reimbursable cost of hospitals, at a rate not to exceed 5 percent and using already established methodology. The amendment applies to services furnished after September 30, 1981.

Section 2141 also required the Comptroller General to conduct a study of the extent, if any, to which the average cost of efficiently providing routine inpatient nursing care to Medicare beneficiaries exceeds the average cost of furnishing that care to other patients. Because of the very short period of time between the passage of the legislation (August 13, 1981) and the effective date of section 2141 (October 1, 1981), we did not have time to fully evaluate the current nursing differential situation. Therefore, in issuing regulations to implement this legislation,

we decided as an interim measure to set the differential at the maximum allowed by law until the results of the Comptroller General's report were available.

On October 1, 1981, we published regulations in the **Federal Register** to implement this legislation (46 FR 48544). Those regulations establish the routine nursing salary cost differential for hospitals at 5 percent, the maximum rate allowed by the statute, for services furnished after September 30, 1981. In order to apply the reduced rate only to services furnished after that date, the revised regulations specify that for hospital cost reporting periods that began before October 1, 1981, the reduced rate is imposed only in proportion to the part of the cost reporting period that occurs after September 30, 1981. (This means that for the portion of the cost reporting period that occurs before October 1, 1981, the differential rate is 8.5 percent, and for the portion of the cost reporting period that occurs after September 30, 1981, the rate is 5 percent.)

Historically, we have applied the routine nursing salary cost differential uniformly to hospitals and skilled nursing facilities (SNFs). However, the amendment was silent as to treatment of the differential regarding SNFs. Consequently, we did not alter the rate for SNFs when we revised the regulations in October 1981. The rate of SNFs remained at 8.5 percent. Instead, we decided to wait for the General Accounting Office (GAO) report before making any major changes that were not required by the statute.

C. *The Comptroller General's Report.* In response to the congressional direction cited in section 2141, the GAO analyzed existing studies relating to the existence and size of a routine nursing salary cost differential. (GAO Report HRD–82–32, January 20, 1981). The GAO concludes that "Overall, GAO believes that, on balance, evidence tends to be against the existence of an industry-wide nursing cost differential."

The GAO report proposed a methodology to conduct a work-sampling study that would yield statistically reliable data to determine if a nationwide Medicare routine nursing salary cost differential exists and, if so, to determine its size. However, this GAO study would cost approximately $8.3 million.

D. *Elimination of the Nursing Differential.* Congress considered the GAO study's conclusion that, on balance, evidence tended to be against the existence of an industry-wide nursing differential. The Senate Finance Committee (Report 97–494) states, "The Committee does not feel, based on existing information, that there is a compelling reason for the differential. The amendment, therefore, provides for its repeal."

Thus, Section 103 of Pub. L. 97–248, the Tax Equity and Fiscal Responsibility Act of 1982 amended section 1861(v)(1)(J) of the Social Security Act to provide that Medicare is precluded from recognizing any inpatient routine nursing salary cost differential as an element of reimbursable cost for hospitals or SNFs. The amendment specifies that this change is to be effective with respect to cost reporting periods ending after September 30, 1982. As with the 1981 legislation, Section 103 specifies the reductions in reimbursement for cost reporting periods that straddle the effective date will be only in proportion to the part of the period which occurs after September 30, 1982.

II. Regulatory Changes

We are, therefore, amending the regulations in 42 CFR 405.430 as follows:

A. *Section 405.430(a)—Principle.* This paragraph currently states that an inpatient routine nursing salary cost differential is allowable as a cost for hospitals and SNFs, and that the amount of the differential is 8.5 percent for hospital and SNF services furnished before October 1, 1981. The paragraph further states that the applicable rate for services furnished on or after that date will be 8.5 percent for SNFs, and 5 percent for hospitals. We are amending this paragraph to specify that effective for services furnished on or after October 1, 1982, the inpatient routine nursing salary cost-differential is no longer applicable to either hospitals or SNFs.

B. *Section 405.430(c)(2)—Application.* We are revising this paragraph to conform to the specific differential percentages in effect and the time periods to which they apply.

C. *Section 405.430(d)—Effective dates.* We are proposing to revise paragraph (d) by providing a chart showing the appropriate nursing differential rate in effect for each type of facility for each time period. The regulation indicates that hospitals and SNFs with cost reporting periods that straddle the effective date for changing the differential will calculate the differential for each portion of the reporting period at the appropriate rate.

For those cost reporting periods, the individual calculations are simplified by computing a composite nursing differential percentage that is weighted to reflect both the number of months in the cost reporting period for which the 5 percent (hospital) or 8.5 percent (SNF) factor is applicable, and the number of months in the time period for which no differential factor applies. An example of how we are requiring providers to compute the weighted percentage, is as follows:

Example—Calculation of Nursing Differential Percentage for 12-month Hospital Cost Reporting Period Ending March 31, 1983.

$$\frac{(\text{Total months in cost reporting period before October 1, 1982}) \ 6\times 1.05 + (\text{Total months in cost reporting period after September 31, 1982}) \ 6\times 1.00}{12 \text{ calendar months}} =$$

Nursing differential percentage = 1.025

(To calculate the weighted percentage for SNFs, a factor of 1.085 (reflecting an 8.5 percent differential) could be substituted for 1.05 in the above equation.)

The following is a table showing the appropriate composite percentage to be used for each 12-month cost reporting period that ends on the last day of a month and straddles the effective date of this reduction (October 1, 1982).

Composite Nursing Differential Percentage for 12-month Cost Reporting Periods Ending on the Last Day of the Month.

Cost report ending	Percentage differential for hospitals	Percentage differential for SNF's
Oct. 31, 1982	1.046	1.078
Nov. 30, 1982	1.042	1.071
Dec. 31, 1982	1.038	1.064
Jan. 31, 1983	1.033	1.057
Feb. 28, 1983	1.029	1.050
Mar. 31, 1983	1.025	1.043
Apr. 30, 1983	1.021	1.035
May 31, 1983	1.017	1.028
June 30, 1983	1.013	1.021
July 31, 1983	1.008	1.014
Aug. 31, 1983	1.004	1.007
Sept. 30, 1983	1.000	1.000

For cost reporting periods ending on a day other than the last day of the month, the table is not appropriate. Also, the table is not appropriate for short cost reporting periods (periods of less than 12 months). The appropriate composite percentage for either type of period is developed using the above formula, and substituting calendar days for calendar months.

III. Impact Analysis

A. *Executive Order 12291.* Executive Order 12291 requires that a regulatory impact analysis be performed for any "major rule". A major rule is one that:

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

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

—Has 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 import markets.

Our actuaries estimate the program savings resulting from this elimination in the hospital inpatient routine nursing salary cost differential during fiscal year 1983 will be approximately $93 million. Fiscal year 1984 savings are estimated to reach $115 million.

Although the annual economic impact is close to the $100 million threshold criterion for FY 1983 and exceeded in FY 1984, we have determined that Section 103 of Pub. L. 97–248, the Tax Equity and Fiscal Responsibility Act of 1982 has occasioned this impact, and not these regulations which merely implement the statutory provision. Therefore, a regulatory impact analysis is not required.

B. *Regulatory Flexibility Analysis.* The Secretary certifies, under 5 U.S.C. Section 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that these regulations will not result in a significant impact on a substantial number of small entities.

A substantial number of hospitals may experience a reduction in Medicare revenue through implementation of this rule. However, the amount of the reduction for any individual provider will not meet the threshold criteria to be considered significant. (In general, we consider a change to be significant only if it results in a difference in Medicare payments to an entity that equals or exceeds 5 percent of the entity's total revenue.)

The elimination of the nursing differential will reduce Medicare reimbursement to hospitals by less than 5 percent. First, the differential applies to general routine nursing salaries only, which constitute approximately 18 percent of total reimbursable costs for inpatient hospital services. Thus, the anticipated reduction in Medicare hospital reimbursement would be less than .9 percent (.18 x .05).

The actual reduction will depend on the proportion of aged, pediatric and maternity patients in an individual facility and among its Medicare patients. This is because the differential is a reallocation of nursing salary costs between aged, pediatric and maternity patients, and all other classes of patients rather than an add on to Medicare reimbursement. The result is that Medicare pays a slightly higher than average per diem routine cost for aged patients and a lower than average per diem routine cost for disabled beneficiaries. Elimination of the inpatient nursing differential results in Medicare payment at the average per diem routine service cost for all beneficiaries. The effect of this rule is to reduce Medicare payment for the nursing salary cost of one class of patients and increase it for another. In any event, the net effect would be less than a .9 percent reduction in Medicare payments to the hospital.

Since patients in SNFs are generally aged, there has been little difference between the average per diem routine costs for all patients and the average per diem routine cost for aged, pediatric and maternity patients. As a result, we estimate few SNFs will be significantly affected by the elimination of the nursing differential.

However, even if there were a significant effect on a substantial number of small entities, we have determined that this effect is the result of the statutory provision, and not these regulations which merely implement these provisions. Therefore, a regulatory flexibility analysis is not required.

IV. Waiver of Proposed Rulemaking

These amendments are technical in nature and merely implement the clear language of Section 103 of Pub. L. 97–248 which requires elimination of the use of the inpatient routine nursing salary cost differential for hospitals and SNFs for services furnished after September 30, 1982. In our view, publishing a notice of proposed rulemaking is unnecessary for the immediate and proper implementation of this provision and would not contribute to the clarification of any issues. The statutory language does not provide any alternatives to the elimination of the nursing differential and is clear in requiring that these changes to the regulations be effective October 1, 1982; consequently, it would be impractical to delay implementation to permit public comment prior to implementing the law. Moreover, this rule will result in budget savings. Therefore, any delay caused by such a notice would not serve the public interest. We, therefore, find good cause to waive proposed rulemaking procedures. We will, however, consider any comments on this rule that are mailed by the date specified above in the "DATES" section and make any further changes that may be necessary. We also find good cause to waive the 30-day delayed effective date for these amendments, based on the statutorily mandated effective date.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

The authority citation for 42 CFR Part 405, Subpart D reads as follows:

Authority: Secs. 1102, 1814(b), 1833(a), 1861(v), and 1871, 49 Stat. 647, as amended, 79 Stat. 296, 79 Stat. 302, 79 Stat. 322, 79 Stat. 331; 42 U.S.C. 1302, 1395 et seq., unless otherwise noted.

42 CFR Part 405, Subpart D is amended as follows:

1. The Table of Contents for Subpart D is amended by revising the title of § 405.430 to read as follows:

* * * * *

Sec.

405.430 Inpatient routine nursing salary cost differential for services furnished before October 1, 1982.

* * * * *

2. 42 CFR 405.430 is amended by revising the section title and paragraphs (a), (c)(2) and (d) to read as follows:

§ 405.430 Inpatient routine nursing salary cost differential for services furnished before October 1, 1982.

(a) *Principle.* An inpatient routine nursing salary cost differential, with regard to care furnished to aged, pediatric and maternity patients, is reimbursable at the rate of 8½ percent for services furnished by hospitals and skilled nursing facilities before October 1, 1981. For services furnished after September 30, 1981 and before October 1, 1982 the applicable rate will be 8½ percent for skilled nursing facilities and 5 percent for hospitals. For inpatient hospital services and skilled nursing facility services furnished on or after October 1, 1982, no inpatient routine

nursing salary cost differential will be recognized. Recognition of the differential by the health insurance program is accomplished through an inpatient routine nursing salary cost differential adjustment factor as specified in paragraph (b)(8) of this section.

* * * * *

(c) *Application.*

* * * * *

(2) Although the inpatient routine nursing salary cost differential under the health insurance program is established at a rate of 8½ percent for skilled nursing facilities and hospitals through September 30, 1981, at 8.5 percent for skilled nursing facilities and 5 percent for hospitals for services furnished after September 30, 1981 and before October 1, 1982, the effect of the differential on reimbursement to a particular provider is also a function of the relationship that total aged, pediatric, and maternity patient days of service bears to total patient days of service (excluding nursery days) rendered by that provider.

(d)*Effective dates*—(1) The appropriate inpatient routine nursing salary cost differential applicable for the reporting period as an element in the computation of a hospital's or skilled nursing facility's reimbursable cost will be determined in accordance with paragraphs (d) (2) and (3) of this section.

(2) Chart of effective dates:

For services furnished—	The amount of the inpatient routine nursing salary cost differential (percent) is—	
	SNFs	Hospitals
Before Oct.1, 1981	8.5	8.5
Oct. 1, 1981 to Sept. 30, 1982	8.5	5.0
On or after Oct. 1, 1982	0.0	0.0

(3) For cost reporting periods that fall entirely within one of the time periods specified in the chart in paragraph (d)(2) of this section, the amount of the inpatient routine nursing salary cost differential for a hospital or SNF will be the amount shown in that chart.

Example: For hospitals with cost reporting periods beginning on October 1, 1981 and ending on September 30, 1982, the amount of the inpatient routine nursing salary cost differential will be 5.0 percent.

(4) (i) For cost reporting periods that straddle one of the time periods specified in the chart in paragraph (d)(2) of this section, the amount of the inpatient routine nursing salary cost differential for a hospital or SNF will be determined, as described in paragraphs (d)(4)(ii) or (d)(4)(iii), by prorating the appropriate amounts shown in that chart for each portion of the cost reporting period.

(ii) For 12-month cost reporting periods ending on the last day of a month, a composite nursing differential percentage will be determined based on the number of months in the reporting period occurring before the effective date of a rate change and the number of months in the reporting period occurring after the effective date of the rate change.

Example: For hospitals with cost reporting periods beginning on December 1, 1981 and ending on November 30, 1982, the amount of the inpatient routing nursing salary cost differential will be 4.2 percent (10 months at 5 percent plus 2 months at no differential).

(iii) For cost reporting periods other than those described in paragraph (d)(3) or (d)(4)(ii), a composite nursing differential percentage will be determined based on the number of calendar days, instead of months, occurring before the effective date of a rate change, and the number of calendar days in the cost reporting period occurring after the effective date of the rate change.

(Catalog of Federal Domestic Assistance Programs; No. 13.773; Medicare, Hospital Insurance)

Dated: September 16, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: September 17, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-27111 Filed 9-30-82; 8:45 am]

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federal register

Friday
October 1, 1982

Part XII

Department of Agriculture

Office of the Secretary

Plant Biology and Human Nutrition; Competitive Research Grants Program for Basic Research for Fiscal Year 1983; Solicitation of Applications

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Plant Biology and Human Nutrition; Competitive Research Grants Program for Basic Research for Fiscal Year 1983; Solicitation of Applications

Notice is hereby given that under the authority contained in Section 2(b) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(b)), the Cooperative State Research Service (CSRS), through its Competitive Research Grants Office (CRGO) anticipates awarding competitive grants for mission-oriented basic research in four areas of plant sciences (biological nitrogen fixation, biological stress on plants, photosynthesis, genetic mechanisms for crop improvement) and in human nutrition (nutrient requirements) contingent on Congressional appropriation of funds for this purpose in Fiscal Year 1983. Proposals may be submitted through their parent organizations by scientists associated with State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals.

The award of any grants under the provisions of this Notice is subject to the availability of appropriations.

The Guide to Proposal Preparation for these competitive grants consists of three parts:

I. Types of Research To Be Supported in FY 1983;
II. Proposal Submission;
III. Proposal Review and Evaluation.

A Grant Application Kit has been developed which provides the forms, instructions, and other relevant information needed to apply for research grants under the programs described herein. To obtain a copy(ies) of the Grant Application Kit, write or call the Grants Administrative Management Office (Address and telephone number below):

Grants Administrative Management Office, Attention: Proposal Services Unit, Science and Education Management Staff, USDA, Suite 103, Rosslyn Commonwealth Building, 1300 Wilson Boulevard, Arlington, Virginia 22209, telephone: (703) 235–2638

Additional instructions relating to proposal preparation are included in Part II of the Guide to Proposal Preparation.

Proposals will be selected for funding after review of all proposals by a scientist serving as a CRGO Program Manager, by *ad hoc* reviewers, and by an assembled panel of scientists who constitute a spectrum of expertise for the program to which each proposal is assigned (See Part III of the Proposal Preparation Guide). Recommendations of the peer panels on proposals to be considered for funding will be reviewed by the Administrator of Cooperative State Research Service prior to awarding any grants.

This Notice incorporates suggestions from various agencies of the U.S. Department of Agriculture (USDA), from liaison representatives of other Federal agencies and prospective performing organizations, and from *ad hoc* groups on plant sciences and on human nutrition.

According to the requirements for Federal assistance program announcements under Pub. L. 95–220, The Federal Program Information Act, the following information is provided with respect to the areas of research described in this announcement for which project grants will be awarded:

(1) As outlined by OMB Circular No. A–89, the official program number and title for these grants are: 10.206, Grants for Agricultural Research, Competitive Research Grants.

(2) OMB Circular No. A–95, regarding State and local clearinghouse review of Federal and Federally assisted programs, does not apply.

The grants awarded under this Program will be administered in accordance with the USDA Uniform Federal Assistance Regulations (7 CFR Part 3015; 46 FR 55636, November 10, 1981), applicable OMB Circulars and Form S&E–638, General Provisions for Grants and Cooperative Agreements. A copy of Form S&E–638 is included in the Grant Application Kit.

The determination of allowable costs shall be made in accordance with the following applicable Federal Cost Principles in effect on the effective date of the Agreement:

Educational Institutions—OMB Circular A–21;
Nonprofit Organizations—OMB Circular A–122;
Commercial Firms—FPR 1–15.2;
State and Local Governments—OMB Circular A–87.

Most of the grants awarded in Fiscal Year 1983 will be for a duration of one to three years. The total amount awarded for each of these grants will be from Fiscal Year 1983 funds. A number of continuation grants will be made for three to five years where longer term studies are required. The continuation grants will be funded in increments covering a one-year period. The initial increment will be funded from Fiscal Year 1983 appropriations.

When an original grant award includes a provision for more than one budget period within the project period, CSRS presumes that continuation grants for the subsequent budget periods will be awarded subject to availability of funds, if the grantee:

(1) Has demonstrated satisfactory performance during all previous budget periods; and

(2) Submits no later than 90 days prior to the end of the budget period a continuation grant application (Form S&E–661) which includes a detailed progress report; a financial statement for the current budget period, including an estimate of the amount of unspent, uncommitted funds which will be carried over beyond the term of the last funding period; a budget (Form S&E–55) for the new budget period; an updated work plan revised to account for actual progress accomplished during the current budget period; and any other reports as may be required by the grant agreement.

Review of continuation applications will be conducted expeditiously. Generally, no extramural review will be required.

Neither the approval of a project nor the award of any grant shall commit or obligate the United States to award any continuation grant or enter into any grant amendment, including grant increases to cover cost overruns, with respect to any approved project or portion thereof.

Section 2(b) of Pub. L. 89–106, as amended, states that these competitive grants shall be awarded without regard to matching funds by the recipient(s) of such grants.

It has been determined that, because of the need to implement this program so that research relating to plant production can be initiated in the Spring of 1983, compliance with the Notice and public procedure provisions of 5 U.S.C. 553 is impracticable and contrary to the public interest. Further, this action has been reviewed under Executive Order 12291 and it has been determined that this is not a major rule. Although this Notice establishes the procedures and criteria under which the recipients of competitive grants in Fiscal Year 1983 will be selected, and the terms and conditions under which such grants will be administered, it does not involve a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. There will be no major increase in cost or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions.

Done at Washington, D.C., this 23 day, of September, 1982.

T. B. Kinney, Jr.,

Acting Assistant Secretary for Science and Education.

Guide to Proposal Preparation

I. Types of Research To Be Supported in Fiscal Year 1983

The Cooperative State Research Service will award both standard research grants and a small number of continuation grants for periods not to exceed five years, on a competitive basis, to support basic research underlying the mission of the USDA. Basic research grants will be considered in selected areas of plant science and human nutrition, which have been considered by a number of scientific groups to possess exceptional opportunity for fundamental scientific discovery and for contributing, in the long run, to applied research and development vitally needed on important food and nutrition problems. This grants program results from the recognition that new, innovative approaches and enhanced levels of funding are needed as we seek ways to increase food production and improve human nutrition.

Consideration will be given to research proposals which address fundamental questions in the areas noted below and which are consistent with the long-range missions of USDA. While basic guidelines are provided to assist members of the scientific community in assessing their interest in the program areas and to delineate certain important areas where new information is vitally needed, the guidelines are not meant to provide boundaries or to detract from the creativity of potential investigators. Accordingly, it is hoped that innovative projects in the so-called "high-risk" category as well as those which may have a higher payoff potential will be submitted.

The following guidelines are thus provided as a base from which proposals may be developed:

A. *Plant Science.* 1. *Biological Stress on Plants.* Plants are exposed to many stresses that may adversely affect their productivity and usefulness to man. This grants program will support research on stresses on plants arising from their interactions with other plants or with other biological agents such as weeds, insects, nematodes, fungi, bacteria, viruses, and mycoplasma-like organisms. The ultimate goal of the research supported in this area is to reduce losses in plant productivity from damage caused by biologically generated stresses. The program area will emphasize studies that enhance our understanding of (a) how stressful interactions are established between plants and other biological agents, (b) how such interactions are influenced by environmental and other factors inherent to the interacting organisms, (c) how the interactions reduce plant productivity and usefulness to man, (d) how plants react to stresses generated by such interactions, and (e) how damage from such interactions may be reduced or eliminated. The interactions may be studied at any number of levels: i.e., population, organismal, cellular and molecular; and by various approaches including genetics, molecular biology, and biochemistry. These may include studies on plants separated from stress-causing organisms or on stress-causing organisms separated from their target plants. However, such studies should provide information that will be relevant to the understanding of the causes, consequences, and avoidance of biologically generated stresses on plants. The research supported in this program area will focus on the identification of new approaches that will be both effective and compatible with social and environmental concerns.

2. *Genetic Mechanisms for Crop Improvement.* The major aim of this program area is to encourage innovative or unique genetic approaches directed to the development of genetically superior varieties of agricultural crops. The approaches should be aimed at obtaining novel genetic combinations or gene modifications difficult or impossible to achieve using conventional plant breeding techniques. This research area will emphasize the following: (a) Cell culture studies including the regeneration of plants from single cells, cell/protoplast fusion, mutagenesis, and incorporation of foreign DNA, chromosome, or organelle; (b) development of effective cellular and molecular methods for identification of plant characteristics or genes which are significant targets for genetic manipulation; (c) development of methods for producing, selecting, and transferring desired genetic traits including both qualitative and quantitative traits; (d) acquisition of basic information on nuclear and organelle plant gene expression and diversity at the molecular, cellular, or developmental level to facilitate application to plant improvement; and (e) basic genetic studies on maintenance, alteration, and utilization of unadapted and wild germplasm. Proposals to conduct well-defined basic plant genetic studies in support of plant breeding programs and designed to improve understanding of basic genetic mechanisms of the crop are encouraged. These guidelines are not meant to exclude other new or unusual approaches to crop improvement.

3. *Biological Nitrogen Fixation.* The most common limiting nutrient for plant growth is nitrogen. The presence of soil nitrogen is due to past accretions in nature, biological nitrogen fixation or the application of nitrogenous fertilizer. The latter represents a significant energy input in cropping and ultimately increases food costs. Thus, the enhancement of biological nitrogen fixation capacity in plant-soil microbial associations is of major importance. Research aimed at understanding nitrogen fixing mechanisms and related nitrogen metabolism in both symbiotic and free living organisms as well as the fate of fixed nitrogen is of high priority.

In general, the objectives in this program area include building a foundation of basic information concerning nitrogen fixation as it relates to enhancing the process in currently known systems and in providing a base for developing new nitrogen fixing associations, by genetic transfer or other means, for crop species not now possessing such capability. Moreover, the process of nitrification (the oxidation of ammonia to nitrate), the assimilation and utilization of ammonia and nitrate, and denitrification (the reduction of nitrate to volatile forms of nitrogen which are lost from the soil) all play important roles in plant growth. Soil nitrogen, whether supplied by biological nitrogen fixation or as chemical fertilizer serves to increase food production only when it is present in an available form which is not lost from the plant-soil ecosystem.

Examples of research encompassed in this program area include: (a) Structure and mechanism of action of nitrogenase; the regulation of nitrogenase activity and synthesis; the relationship between nitrogenase and hydrogenase activities in nitrogen fixing organisms; (b) energetics of the nitrogen fixation process including competitive processes within the plant; (c) infection by *Rhizobium* and conditions for effective nodulations; basis of the recognition process between symbiotic organisms; factors controlling symbiont specificity; competition in the soil; (d) study of the nitrogen fixing capabilities of Actinomycetes, *Azospirillum* ssp., Cyanobacteria and other organisms potentially important to supplying nitrogen needs of plants; (e) relation between the fixation process and the

processes of assimilation, nitrification and denitrification; (f) the development of methods for the *in situ* measurement of nitrification and denitrification, and determination of the actual extent of these processes in nature; (g) an analysis of the distribution of denitrifying and nitrifying bacteria and elucidation of control mechanisms operative on nitrogen transformations in the major species; (h) studies of the metabolism of fixed nitrogen including the enzymes involved in the assimilation and dissimilation of fixed nitrogen in bacteria and crop plants and the partitioning of fixed nitrogen into various gene products or plant organs; and (i) the efficiency of nitrogen utilization by crop plants in the production of food proteins.

Emphasis in program priorities will be on innovative approaches which may contribute to a thorough understanding of nitrogen cycling encompassing biochemistry, cellular and developmental biology, genetics and genetic manipulation, and other relevant life science disciplines. An understanding of these processes is essential to the development of strategies which maximize nitrogen fixation, minimize inputs of nitrogenous fertilizers and optimize their utilization in agriculture.

4. *Photosynthesis.* There are many indications that productivity of crop plants may be enhanced by increasing their photosynthetic efficiency. Basic research which provides greater understanding of limiting processes of photosynthesis and associated carbon metabolism will help guide how increased crop productivity might be achieved.

Research is needed in the following major subareas: (a) Aspects of photosynthetic energy conversion including such areas as early events in photon capture by photosynthetic systems and the mechanisms of charge separation, the structure and function of photosynthetic membranes and membrane constituents, and the associated chemical and physical reactions, (b) photosynthetic carbon assimilation including CO_2 fixation, biochemistry of photosynthetic pathways, photorespiration, and aspects of cellular metabolism regulating these reactions, (c) control of photosynthate partitioning and translocation by hormones or other metabolic factors, (d) factors controlling development and senescence of photosynthetic competence, (e) genetic and cellular manipulation to improve photosynthetic efficiency in plants including studies of the chloroplast genome, of nuclear genes regulating photosynthesis, and analysis of regulatory steps controlling both nuclear and cytoplasmic genome expression and their interactions, (f) the photosynthetic process in leaves and whole plants including but not limited to involvement of the stomatal aperture, and water and temperature extremes.

Other research designed to generate new information leading to further understanding of photosynthesis and its accompanying processes may also be considered a part of this area.

B. *Human Nutrition.* Proposals are invited in the area of human requirements for nutrients. Support will not be provided for clinical research nor for demonstration and action projects.

Research in this program area is intended to contribute to the improvement of human nutritional status by increasing our understanding of requirements for nutrients. The objective is to support basic, creative research that will help to fill gaps in the knowledge about nutrient requirements, bioavailability, the interrelationships of nutrients, and the nutritional value of foods that are consumed in the U.S. and of the nutritional status of population groups, as all of these relate to human nutrient requirements. Special attention will be given to applications involving innovative approaches designed to improve methods of research and investigation that will increase the reliability and validity of data concerned with the quantitative evaluation of nutrient requirements and nutritional status.

Proposals dealing with processing techniques in food technology should be clearly oriented towards determination of human nutrient requirements. Proposals which concern utilization or production of a food commodity should emphasize the relationship to specific human nutrient requirements. It is especially important that proposals emphasize innovative (creative) fundamental (basic) research.

II. Proposal Submission

A. *Proposal Purpose.* The purpose of a proposal is to persuade the reviewing peer scientists and the CRGO staff that the proposed project is feasible and sufficiently meritorious to warrant support under the criteria enumerated in Part III B. It should be clear, concise, technically correct, and relevant to the competitive grants program. The qualifications for the investigator, the institution facilities, and the level of funding to be devoted to the proposed project should be clearly delineated.

B. *Who May Submit Proposals.* Proposals for support under the competitive research grants program may be submitted by qualified scientists associated with the State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals. Proposals from scientists at non-United States organizations will not be considered for support. Only in special situations, where it can be demonstrated that a proposed project will contribute directly to breakthroughs in the food and agricultural sciences, will proposals from unaffiliated scientists be given favorable consideration.

Section 1404 of Pub. L. 95–113, as amended (7 U.S.C. 3103) defines "college" and "university" as "an educational institution in any State which (A) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, (B) is legally authorized within such State to provide a program of education beyond secondary education, (C) provides an educational program for which a bachelor's degree or any other higher degree is awarded, (D) is a public or other nonprofit institution, and (E) is accredited by a nationally recognized accrediting agency or association."

C. *Where and When to Submit Research Proposals.* Twenty copies of each research proposal must be submitted by the time limits set below to: Grants Administrative Management Office (GAMO), ATTENTION: Competitive Research Grants Program, Science and Education Management Staff, USDA, Suite 103, Rosslyn Commonwealth Building, 1300 Wilson Boulevard, Arlington, Virginia 22209.

Proposals will be reviewed by peer panels (as described in Part III) which will assemble on specific dates. In order to be considered for funding during Fiscal Year 1983, the proposals must be postmarked by the following dates:

February 26, 1983 for Biological Nitrogen Fixation;

February 11, 1983 for Genetic Mechanisms for Crop Improvement;

February 26, 1983 for Photosynthesis;

December 1, 1982 for Biological Stress on Plants;

January 15, 1983 for Human Nutrient Requirements.

D. *What to Submit.* Your submission should include an original and 19 copies of the proposal and Form S&E–661, Grant Application, which is included in the Grant Application Kit. The Form S&E–661 submitted with the original proposal should have original signatures

of the Principal Investigator(s) and the Authorized Organizational Representative. S&E must have original signatures on file for each application.

The applicable specific area of inquiry (program area) should be indicated in Block 8 of Form S&E-661 provided in the Grant Application Kit. *Select one program area only.* Indicating more than one program area does not mean the proposal will be considered under more than one. It only delays processing of the proposal in GAMO. The final determination of the area and change (if any) will be made by the program staff and/or the appropriate panel. The numbers assigned to the programs are seen below and must be cited in Block 8 of Form S&E–661.

Number and program area

1 Biological Stress on Plants
2 Genetic Mechanisms for Crop Improvement
3 Biological Nitrogen Fixation
4 Photosynthesis
5 Human Requirements for Nutrients

All copies of the proposal should be mailed in one package, if at all possible. Due to the volume of proposals received, proposals submitted in several packages are very difficult to identify. If copies of the proposal are mailed in more than one package, the number of packages should be marked on the outside of each. It is important that *all packages be mailed at the same time.* The acknowledgement of receipt of the proposal will contain a proposal number and the title. Later inquiries, addenda, etc., should include this information, However, every effort should be made to *assure* that the *proposal contains* all *pertinent information when initially submitted.* Prior to mailing, compare your proposal with the Application Requirements checklist contained in the Grant Application Kit and instructions in Part II E, Format for Research Proposal, which follows.

E. *Format for Research Proposal.* the Grant Application Kit (available from GAMO) includes forms, instructions, and other information to be used in applying for research grants which will be awarded in the areas described in Part I, Types of Research to be Supported in Fiscal Year 1983.

Additional information and/or instructions relating to the format and content of the research proposal follow:

1. *Title of Proposal.* The title (80 characters maximum) will be used for the USDA Current Research Information System (CRIS), for information to Congress and for press releases. Therefore, it should not contain highly technical words. Phrases such as "Investigation of" or "Research on" should not be used.

2. *Approval Signatures of Appropriate Officials.* All proposals from a university, college, or institution must be signed by an authorized official.

3. *Research Involving Special Considerations.* A number of situations frequently encountered in the conduct of research require special information and supporting documentation before funding can be approved for the project. If special information or supporting documentation is involved, the proposal should so indicate. Since some types of research targeted for CSRS support have a high probability of involving either recombinant DNA or human subjects, special instructions follow:

Recombinant DNA. Principal investigators and endorsing performing organization officials must comply with the guidelines of the National Institutes of Health (See NIH "Guidelines for Research Involving Recombinant DNA Molecules" (43 FR 50108–50131) and subsequent revisions).

Human Subjects. Safeguarding the rights and welfare of human subjects used in research supported by CSRS grants it the responsibility of the performing organization. The informed consent of the human subject is a vital element in this process. Guidance is contained in Pub. L. 93–348, as implemented by Part 46, Subtitle A of Title 45 of the Code of Federal Regulations, as amended (45 CFR Part 46).

If the project involves human subjects at risk, the grantee must furnish CSRS with a statement that the research plan has been reviewed and approved by the appropriate Institutional Review Board at the grantee organization, and that the grantee is in compliance with Department of Health and Human Services (DHHS) policies, as amended, regarding the use of human subjects. Form S&E–84, Protection of Human Subjects, may be used for this purpose.

4. *Project Summary.* The Research Proposal should include a one-page Project Summary to focus on: Overall objectives and project goals; relevance and significance of the project; and experimental methods and approaches.

The Project Summary is not intended for the general reader so should be couched in language which will be meaningful to others in the field of science.

5. *Project Description* (15-page maximum). a. Introduction—State overall objective(s) and long-term goal(s) of the proposed research. Review the most significant previous work, including your own, and describe the current status of research in this field. Document with references.

b. Rationale and Significance—Present concisely the rationale behind the proposed research and list specific objectives for the total period of requested support. Show how these objectives relate to potential long-range improvements in food production or human nutrition. What is the potential importance of the proposed research? Discuss any novel ideas or contributions which the project offers.

c. Experimental Plan—State clearly your hypotheses or the questions you will ask and give details of the research plan. Include a description of the experiments or other work proposed; the methods and techniques to be employed and their feasibility; the kinds of results expected; and the means by which the data will be analyzed or interpreted. Include, if appropriate, a discussion of pitfalls that might be encountered, and limitations of the procedures proposed. Insofar as possible, describe the principal experiments or observations in the sequence in which it is planned to carry them out, and indicate, if possible, a tentative schedule of the main steps of the investigations within the project period requested.

d. Facilities and Equipment—Describe the facilities available for this project, including laboratories. Point out any procedures, situations, or materials that may be hazardous to personnel and the precautions to be exercised. List major items of instrumentation and those major items of nonexpendable equipment needed to complete the work.

e. Collaborative Arrangements—If the proposed project requires collaboration with other research organizations, describe the collaboration and provide evidence to assure the reviewers that the organizations involved agree. If separate written assurances are to be included, they should be placed after the References to the Project Description. Indicate specifically whether or not such collaborative arrangements might have the potential for any conflict of interest. Projects involving collaboration should indicate which organizaiton is to receive the grant since only one submitting organization can be the recipient of a grant for each proposal. Subcontract arrangements of research work should be indicated under Item I of the Proposal Budget, Form S&E–55.

6. References to Project Description. These references shoudl follow an accepted journal format.

7. Vitae and Publications List(s) of Principal Investigator(s). Vitae of the principal investigator, senior associates, and other professional personnel should

be provided to assist reviewers in evaluating the competence and experience of the project staff. This seciton should include curricula vitae of all key persons who will work on the project, whether or not Federal funds are sought for their support. Provide for each person a chronological list of the most representative publications during the preceding 5 years including those in press. List the authors in the same order as they appear on the paper, the full title, and the complete reference as these usually appear in journals.

8. Additions to Project Descriptions. Each project description is expected by the members of review committees and the staff to be complete in itself. Distribution of additional material, other than for the records, is limited to the principal reviewers. In those instances where additional material is necessary (as for example: Photographs which do not reproduce well, and reprints or other especially pertinent material which are not suitable for inclusion in the proposal), 6 copies or sets or this material, identified by title of the research project and name of the Principal Investigator, should accompany the proposal.

III. Proposal Review and Evaluation

A. *Proposal Review.*—Research proposals recieved by CRGO will be acknowledged and assigned to the appropriate program for scientific evaluation.

All proposals will be carefully review by a scientist serving as CRGO Program Manager and by additional scientists who are experts in the particular field represented by the proposal. Program Managers will also conduct discussions and obtain comments from assembled peer panels of scientists before recommending proposals for funding.

B. *Criteria for Selection of Projects.*—The following criteria or factors are considered in the evaluation of research proposals:

1. The scientific merit of the proposal, including the suitability and feasibility of the approaches and methodology.

2. The probability that the research will contribute to important discoveries or significant breakthroughs in food production or human nutrition in relation to the mission of this program.

3. The qualifications of the Principal Investigator and other senior personnel, such as training, demonstrated awareness of previous and alternative approaches to the problem, and performance record and/or potential for future accomplishment.

4. The probable adequacy of available or obtainable facilities, equipment, instrumentation, and technical support.

C. *Revisions to Proposals During Review Process.*—Prior to recommending whether or not CSRS should support a particular project, the Program Manager may engage in discussions with the proposing Principal Investigator. Should such discussions result in proposed changes which exceed 10 percent of the proposed grant amount or $10,000, whichever is less, a revised proposal budget, signed by both the proposing Principal Investigator and by the Authorized Organizational Representative, must be submitted on Form S&E–55 in an original and two copies to the cognizant CRGO Program Manager for incorporation into the proposal file.

Should such discussions result in changes in the basic objectives or scope of the project as originally proposed, an appropriate proposal modification, signed and endorsed as above, must be submitted to the CRGO Program Manager.

D. *Disposition of Proposals.*—After the grants are awarded, DRGO will retain one copy of unfunded proposals on file for 5 years. The remaining copies will be destroyed. Confidential business information in applications will be protected to the extent allowable by law from disclosure under the Freedom of Information Act, Pub. L. 93–502 (5 U.S.C. 552).

E. *Grant Award.*—The applicants submitting proposals judged most meritorious under the criteria in III B above will be awarded grants for periods not to exceed five years, within the limitations of available funds.

[FR Doc. 82–27134 Filed 9–30–82; 8:45 am]

BILLING CODE 3410–03–M

federal register

Friday
October 1, 1982

Part XIII

Department of Health and Human Services

Office of the Secretary

Medicare Program; Inpatient Hospital Deductible for 1983

Friday
October 6, 1989

Part XIII

Department of Health and Human Services

Office of the Secretary

Medicare Program; Inpatient Hospital Deductible for 1990

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Medicare Program; Inpatient Hospital Deductible for 1983

AGENCY: Health and Human Services Department (HHS).

ACTION: General notice.

SUMMARY: This notice announces the inpatient hospital deductible and coinsurance amounts for calendar year 1983 under Medicare's Hospital Insurance Program. The Medicare statute specifies the formula to be used to determine these amounts. The inpatient hospital deductible will be $304. The daily coinsurance amounts will be: (a) $76 for the 61st through 90th days of hospitalization; (b) $152 for lifetime reserve days; and (c) $38 for the 21st through the 100th days of extended care services in a skilled nursing facility. Each figure represents an increase of approximately 17 percent over the corresponding 1982 figure.

EFFECTIVE DATE: January 1, 1983.

FOR FURTHER INFORMATION CONTACT: Sol Mussey, Supervisory Actuary Office of Financial & Actuarial Analysis, 1–C–11 Oak Meadows Building, 6325 Security Blvd., Baltimore, Maryland 21207; (301) 594–1024.

SUPPLEMENTARY INFORMATION: Under the authority in section 1813(b)(2) of the Social Security Act (42 U.S.C. 1395e(b)(2)), the Secretary has determined that the Medicare inpatient hospital deductible for 1983 will be $304.

Section 1813 provides for an inpatient hospital deductible and certain coinsurance amounts to be deducted from the amount payable by Medicare for inpatient hospital services and extended care services furnished and individual. Section 1813(b)(2) requires the Secretary of HHS to determine and publish, between July 1 and October 1 of each year, the amount of the inpatient hospital deductible applicable for the following calendar year.

Because the coinsurance amounts in section 1813 are fixed percentages of the inpatient hospital deductible for services furnished in the same calendar year, the increase in the deductible has the effect of also increasing the amount of coinsurance the Medicare beneficiary must pay. Thus, for inpatient hospital services or extended care services furnished in 1983, the daily coinsurance for the 61st through 90th days of hospitalization (¼ of the inpatient hospital deductible) will be $76; the daily coinsurance for lifetime reserve days (½ of the inpatient hospital deductible) will be $152; and the daily coinsurance for the 21st through the 100th days of extended care services in a skilled nursing facility (⅛ of the inpatient hospital deductible) will be $38.

Under the formula in the law, the deductible for calendar year 1983 must be equal to $45 multiplied by the ratio of (1) the current average per diem rate for inpatient hospital services for calendar year 1981 to (2) the average per diem rate for such services in 1966. The amount so determined is rounded to the nearest multiple of $4. The average per diem rates are based on the amounts paid to participating hospitals by Medicare for inpatient services to insured individuals, plus the deductible and coinsurance amounts.

The average per diem rate for a calendar year is computed from the inpatient hospital bills for all beneficiaries. Each bill shows the number of inpatient days of care and the interim cost (the sum of interim reimbursement, deductible, and coinsurance). The data are summarized for each year, and an average interim per diem rate computed that accurately reflects interim costs on an accrual basis.

In order to reflect the change n the average per diem hospital cost under the program properly, the average interim cost must be adjusted to show the effect of final cost settlements made with each participating hospital after the end of its accounting year. The final settlements adjust the interim payment to the hospital to the actual full cost of providing covered services to beneficiaries. To the extent that the ratio of final cost to interim cost for 1981 differs from the ratio of final costs to interim cost for 1966, the increase in average interim per diem costs will not coincide with the increase in actual cost that has occurred.

The current average interim per diem rate for inpatient hospital services for calendar year 1981, based on tabulated interim costs, is $258.79; the corresponding amount for 1966 is $37.92. The averages are based on approximately 103 million days of hospitalization in 1981 and 30 million days in 1966 (last 6 months of the year). The ratio of final cost to interim cost is approximately 1.047 for 1981 and 1.055 for 1966. Thus, the inpatient hospital deductible is $45x(258.79x1.047)/(37.92x1.055)=$304.78, which is rounded to $304.

Impact Analyses

The inpatient hospital deductible and coinsurance amounts for calendar year 1983 will be 17 percent higher than the 1982 amounts. The inpatient hospital deductible increased from $260 to $304; the daily coinsurance for the 61st through 90th days of hospitalization increased from $65 to $76; the daily coinsurance for lifetime reserve days increased from $130 to $152; and the daily coinsurance for the 21st through 100th days of extended care services in a skilled nursing facility increased from $32.50 to $38.

The estimated cost to beneficiaries due to these increases is $450 million. This amount is based on an estimated 7.5 million beneficiaries who will have 8.5 million benefit periods and use 4.9 million coinsurance days and 1.2 million lifetime reserve days in 1983.

HCFA computed the 1983 inpatient hospital deductible and coinsurance amounts in the same manner as in previous years as required by section 1813 of the Act. The costs associated with this notice are the result of legislative requirements implemented by this notice. Since this notice merely announces amounts required by legislation and is not a proposed rule or final rule issued after a proposal, no analysis is required under Executive Order 12291 or the Regulatory Flexibility Act.

(Sec. 1813(b)(2) of the Social Security Act (42 U.S.C. 1395e(b)(2)))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 27, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-27149 Filed 9-30-82; 8:45 am]

BILLING CODE 4120-03-M

federal register

Friday
October 1, 1982

Part XIV

Office of Personnel Management

Government Employees; Excepted Service; and Retirement

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Interim rulemaking, with comments requested.

SUMMARY: Positions filled by National Guard Technicians who are eligible for or receiving an annuity based on a disability that disqualifies them from National Guard membership or from holding a military grade required by their technician employment are excepted from the competitive service under Schedule A because it is impracticable to examine for them. Establishment of the exception is necessary to implement a provision of the Omnibus Budget Reconciliation Act of 1982 (Pub. L. 97–253).

DATES: Effective: October 1, 1982. Comments must be received on or before November 30, 1982.

ADDRESS: Written comments may be sent to Richard B. Post, Associate Director, Staffing Group, U.S. Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, or delivered to Room 6F08, 1900 E Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Wiliam Bohling, 202–632–6000.

SUPPLEMENTARY INFORMATION: Section 302(a) of Public Law 97–253, the Omnibus Budget Reconciliation Act of 1982, which will be codified as 5 U.S.C. 8337(h), provides: (1) That a National Guard Technician who is required as a condition of employment to be a member of the National Guard or to hold a certain military grade may be eligible for disability retirement based on a disability that disqualifies the individual from membership in the National Guard or from holding the required military grade; and (2) that any individual aplying for or receiving an annuity under this provision "shall, in accordance with regulations prescribed by the Office, be considered by any agency of the Government before any vacant position in the agency is filled if—(A) the position is located within the commuting area of the individual's former position; (B) the individual is qualified to serve in such position as determined by the head of the agency; and (C) the position is at the same grade or equivalent level as the position from which the individual was separated." Instructions for referral and consideration of such Technicians for appropriate vacancies will be published in the Federal Personnel Manual. However, because National Guard Technicians are appointed under 32 U.S.C. 709(a), which confers no status or eligibility for movement to other positions, a special appointing authority is needed to permit their placement in other agencies. Schedule A appointing authority, under which agencies determine qualifications for their positions, is appropriate in view of the language of the Reconciliation Act.

The Director finds that good cause exists to waive the general notice of proposed rulemaking and to make this amendment effective in less than 30 days. The regulation is being made effective immediately because it is needed to implement 5 U.S.C. 8337(h), which becomes effective on October 1, 1982.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains solely to conditions for appointment of certain employees by Federal agencies.

Lists of Subjects in 5 CFR Part 213

Government employees.

Office of Personnel Management.

Donald J. Devine,

Director.

PART 213—EXCEPTED SERVICE

Accordingly, the Office of Personnel Management is amending 5 CFR Part 213 by adding § 213.3102(j) to read as follows:

§ 213.3102 Entire executive civil service

* * * * *

(j) Positions filled by appointment of persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) who are eligible and applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment.

* * * * *

(5 U.S.C. 3301, 3307, 8337(h)))

[FR Doc. 82–27146 Filed 9–29–82; 11:18 am]

BILLING CODE 6325–01–M

5 CFR Part 831

Retirement; Implementation of Public Law 97–253

AGENCY: Office of Personnel Management.

ACTION: Interim rulemaking, with comments requested.

SUMMARY: The Omnibus Budget Reconciliation Act of 1982 (Public Law 97–253 enacted on September 8, 1982) amends the retirement provisions of chapter 83 of title 5, U.S. Code. It will decrease Federal expenditures and increase Federal Revenues by rounding annuities down, delaying commencing dates for most annuities, capping annuities, reducing annuity cost-of-living adjustments (COLA's), restricting eligibility for early retirement annuities, reducing possible abuse of the disability retirement program, requiring deposits for credit for certain civilian and military service, and increasing interest rates payable on voluntary contributions and interest rates charged on deposits and redeposits. The law also provides for lesser reductions to the annuities of certain retirees with post-1956 military service.

Since many of the changes are effective on October 1, 1982, interim regulations are necessary to permit timely implementation of these provisions and achievement of the intended savings to the Federal Government. This interim rule revision contains changes pertaining to discontinued service retirement, interest charged on deposits and redeposits to the Civil Service Retirement Fund, commencing dates of annuities, disability retirement and rules on making deposits for military service.

DATES: Interim rules effective October 1, 1982. Comments must be received on or before November 30, 1982.

ADDRESS: Written comments may be sent to Craig B. Pettibone, Office of Pay and Benefits Policy, Compensation Group, P.O. Box 57, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20044, or delivered to Room 4351.

FOR FURTHER INFORMATION CONTACT:

Interest—Mary Angel, (202) 632–4684

Deposit for military service—Patricia A. Rochester, (202) 632–4634

Discontinued service retirement—Doris Reeves, (202) 632–4634

Commencing date of annuity—Jane Lohr, (202) 632–4634

Disability retirement—Eugene R. Littleford, (202) 632–4634.

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1982 (Public Law 97–253) made extensive changes in the Civil Service Retirement System to decrease costs to the Federal Government and increase the amount of money paid into the Civil Service Retirement Fund. Many of the statutory provisions, such as those concerning cost of living increases, are detailed and require no regulations to implement them. However, new or revised regulations are necessary to implement provisions on interest rates on deposits, redeposits, and voluntary contributions to the Civil Service Retirement Fund, making deposits for military service, discontinued service retirement, and commencing dates of annuities. The Office of Personnel Management is issuing interim regulations to implement these provisions because the statute is effective October 1, 1982, and firm guidelines are required for OPM and agencies to proceed with timely implementation of the changes.

1. *Discontinued service retirement.* Section 308 of Public law 97–253 restricts eligibility for discontinued service retirement. Prior to October 1, 1982, Federal employees who were involuntarily separated from the service other than for misconduct or delinquency were eligible for discontinued service retirement at age 50 with 20 years of service, or any age with 25 years of service, even if they declined offers of positions at the same grade and pay. After October 1, 1982, employees who decline reasonable offers of other positions will no longer be eligible for discontinued service annuities.

The amendment to 5 U.S.C. 8336(d) describes a "reasonable offer" as another position in the employee's agency and commuting area for which the employee is qualified, and which is not more than two grades or pay levels below the employee's current grade or pay level. Since the law makes no exception for occupied positions, whether the offered position is occupied or vacant would have no bearing on whether it constitutes a reasonable offer.

We are adding a new § 831.504 to further clarify the term "reasonable offer." "Employee's agency" is clarified as including the agency to which the employee with his or her function is transferred in a transfer of function. A cross-reference is added to incorporate the existing definition of "commuting area" in 5 CFR 831.502(a) and 5 CFR 351.203(d). (The existing prohibition on eligibility for discontinued service retirement when an employee who is under a geographic mobility requirement declines a position outside the commuting area is continued. See FPM Supplement 831–1, S11–2.e.)

The regulations also provide that the offer must be made in writing and the employee must meet established qualification requirements. Also, the offered position must be of the same tenure. An appointment of the same tenure means the same expectations of continued employment; i.e., same service (competitive, excepted, or Senior Executive Service) and same type (career, permanent, indefinite, etc.). An offer to a member of the Senior Executive Service of a position in the General Schedule would not be an offer of a position of the same tenure. In addition, reasonable offers would have to be of the same work schedule (full-time, part-time, or intermittent). For example, a full-time employee must be offered a full-time position.

Finally, "grade or pay level" for an employee who is not currently under grade retention because of a previous RIF or reclassification action is clarified as being the grade or pay level of the position currently occupied, without consideration of the employee's eligibility to retain the current grade or pay under 5 CFR Part 536 or other authority. In addition, for an employee who is currently under grade retention because of a previous RIF or reclassification action, the retained grade, not the grade of the position actually occupied, will be used to determine whether a position offered is two grades or pay levels lower. In order to determine a grade level equivalent when the position offered is under a different pay schedule or system, we have extended the current rule for reduction-in-force, grade and pay retention, and disability retirement, which uses a comparison of representative rates of the two positions.

2. *Commencing Dates of Annuities.* Section 305 of Public Law 97–253 provides that annuities of employees and Members shall commence on the first day of the month after the month in which the employee retires or meets the age and service requirements for annuity. Affected annuities include regular voluntary annuities; early voluntary retirement under a major reduction-in-force, reorganization or transfer of function; special formula retirements such as those for law enforcement, firefighter, and air traffic personnel; supplemental annuities; and deferred annuities. Under existing law, such annuities generally commence on the day following an employee's separation; deferred annuities commence on an individual's 62nd birthday.

This provision would not apply to survivor annuities, disability annuities, or annuities based on involuntary separation.

The amendment applies to annuities which commence on or after October 1, 1982.

Conforming changes are made in 5 CFR 831.701(a) and 831.802(c).

3. *Interest Rates, Deposits, and Redeposits.* Section 303 amends the Retirement law by increasing the interest rates paid by the Fund on voluntary contributions effective January 1, 1985. It also increases the interest rates charged on deposits for service performed on and after October 1, 1982, in positions not covered by the Retirement law and for redeposits of refunds paid by OPM on and after October 1, 1982. The increased interest rates will be equal to the average rate of earnings on investments purchased by the Retirement Fund in the preceding year, as determined by the Secretary of the Treasury. It is anticipated that higher interest rates will make voluntary contributions a more attractive investment opportunity for Federal employees and encourage employees to make deposits for periods of noncontributory service performed on or after October 1, 1982.

In addition, Section 303 provides that service credit for annuity computation purposes will not be allowed for periods of noncontributory service performed on or after October 1, 1982, unless a deposit is made for that service. The law currently in effect will continue to apply to noncontributory service performed before October 1, 1982, i.e., employees who choose to make deposits for such service will be charged interest at the rate of 4 percent per year through December 31, 1947, and 3 percent per year thereafter compounded annually and credit will be allowed for such service, subject to an annuity reduction of 10 percent of the amount of deposit plus interest unpaid at the time of retirement.

Section 303 also provides that an employee must be separated from covered service for at least 31 days to receive a refund of retirement contributions. This provision gives longstanding OPM policy a statutory basis. The current rates of interest payable for refunds, 4 percent per year through December 31, 1947, and 3 percent per year thereafter, compounded annually, continue to apply.

Conforming changes are made in 5 CFR 831.105 and in 5 CFR Part 831, Subpart C.

4. *Disability Retirement.* Section 302 of the Act amends existing provisions concerning termination of disability annuities based on earnings of the annuitant. In the past, a disability retiree's annuity would be terminated if, for two consecutive years, he or she earned more than 80 percent of the current salary of the position from which retired. The annuity continued for a one-year grace period before actual termination of payments. The two-year earnings test is now reduced to one year, and the grace period is reduced to six months. This change is effective for income earned during calendar year 1983 and beyond. Conforming changes are made in § 831.502(e).

In addition, Section 302 also makes certain former National Guard Technicians eligible for disability retirement if they are disqualified for their military positions because they do not meet military medical standards. This change applies to individuals who were separated after December 1979. Conforming changes are made in § 831.502(f)(6). OPM will issue separate regulations at a later date concerning the special placement provisions for these individuals.

5. *Service Credit for Post-1956 Military Service.* Section 306 amends 5 U.S.C. 8332(c) so that credit for a period of military service (performed before the separation giving title to annuity) is allowed for individuals not receiving military retired pay who first become employees or Members on or after October 1, 1982, only if a deposit is made for such period of military service performed after December 1956. This provision does not apply if the retired pay is awarded because of a service-connected disability either incurred in combat with an enemy of the United States or caused by an instrumentality of war and incurred in line of duty during a period of war as defined by section 301 of title 38, United States Code, or awarded under chapter 67 of title 10, United States Code. Individuals may received such retired pay and still get credit for military service after making the necessary deposit for post-1956 service. The deposit must be in an amount equal to 7 percent of the individual's basic pay under 37 U.S.C. 204. Individuals who were employees or Members before October 1, 1982, will continue to receive credit for such military service after December 31, 1956 without making a deposit; however, they will have an option to make the deposit in order to avoid elimination of credit for military service after December 31, 1956, at age 62.

The provisions for making the deposit for military service are prescribed in a new subsection (j) which has been added to 5 U.S.C. 8334. The amount of the deposit will not include interest if it is completed by October 1, 1984, or 2 years after the date the individual making the deposit first becomes an employee or Member, whichever comes later. If completion of the deposit for service performed after December 31, 1956, but before October 1, 1982, is delayed beyond the prescribed period, interest will be compounded annually at the rate of 3 percent of the unpaid balance from October 1, 1984, and thereafter. For service performed on or after October 1, 1982, interest will be compounded annually at the rate of 3 percent of the unpaid balance from October 1, 1984 to December 31, 1984, and at the variable rate to be determined by the Secretary of the Treasury thereafter.

The amount to be deposited is to be computed by the employing agency, the Secretary of the Senate, or the Clerk of the House of Representatives, as appropriate, based on basic pay information to be certified by the Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health and Human Services, as appropriate. Based on its computation, the agency is to collect the deposit and remit the payments immediately to OPM for deposit to the Fund. OPM is required to notify the Secretary of the Treasury of the yearly disbursement for annuities attributable to military service, less an amount determined to be the value of deposits made to the Fund under 5 U.S.C. 8332(j).

The Reconciliation Act does not contain a provision which would permit survivors to make a deposit or redeposit for military service. Survivors of employees and Members who die without making the total deposit will not be permitted to make the deposit.

Section 306 has also amended 5 U.S.C. 8332(j), to make an exception to the requirement that military service performed after December 1956 be excluded from the computation of an individual's annuity at age 62, if that individual is entitled or would be entitled upon filing the proper application to benefits under 42 U.S.C. 402 based on his or her wages and self-employment income. Now individuals who complete the deposit for military service performed after December 1956 (as provided in 5 U.S.C. 8334(j)) will not have military service eliminated from the annuity computation.

The amounts deposited for military service are refundable as a part of the employee's or member's "lump sum credit" (i.e., all retirement contributions plus the deposit will be paid; they will not be refunded separately) but only if all the requirements for a refund in 5 U.S.C. 8342(a) are met. The amendments to §§ 831.105 and 831.301 are principally to ensure that the regulations conform to the statutory amendments enacted in Pub. L. 97–253. In addition, the regulations clarify some points in the law.

Section 831.301(b)(3) in the interim regulations clarifies that an individual with military service after December 1956 must deposit 7 percent of basic pay for each period of military service after December 1956 in order to receive credit for that period of military service. Credit will be allowed for service performed prior to January 1957 regardless of whether a deposit is made for post-1956 military service.

New subpart U to Part 831 establishes the procedural requirements for agencies to process deposits for military service after December 1956 to conform to the provisions of Pub. L. 97–253.

Section 831.2107 of the interim regulations allows the agency to use a "tentative" computation to counsel the employee who is potentially interested in making a deposit for military service.

Once the employee or Member has decided to make the deposit, an initial payment of at least one hundred dollars (if the total deposit is less than one hundred dollars, the full estimated deposit should be paid) will be required before the agency has to compute the actual payment due and bill the employee or Member.

The employee or Member is encouraged to make the deposit in one lump-sum payment to the agency; however, agencies may accept installment payments of no less than one hundred dollars each. Such payments may be made by payroll allotments, if desired. (See § 831.2108 of the interim regulations.)

If the employee or Member pays in installments, the payments should be completed within 12 months.

A reconsideration right to OPM and a subsequent appeal right to the Merit Systems Protection Board are provided for individuals who receive an agency decision denying credit for a period of military service. (See § 831.2109 of the interim regulations.)

6. *Proposed Extension of Procedures for Military Deposits to Deposits for Civilian Service.* In a document

published in the Proposed Rule section of todays's issue of the **Federal Register**, we are requesting comments on a proposal to extend procedures in Subpart U of Part 831 for military deposits established by these interim regulations to deposits and redposits for civilian service. Upon evaluation of comments received, we may then extend the final regulations to cover deposits and redeposits for civilian service.

The law requires agencies to perform the same function for military service credit as OPM currently performs for civilian service. Permitting agencies to handle the civilian service credit function would allow a single process for deposits, redeposits, and credit for both military and civilian service. Agencies would report collections and credited service to OPM in a uniform manner, and individuals' claims for service could be more easily resolved in advance of retirement. There would also be a significant side benefit of faster collection of money since applicants would not have to come to OPM before a deposit could be made. Agencies already are required to verify service and provide employees with tentative computations of amounts owed for civilian service, and OPM is exploring ways to minimize their workload in regard to processing military service credit applications which would be equally applicable to civilian service applications.

In addition, utilizing the same procedures for both civilian and military service will permit an agency to handle the entire process for an individual who has a payment to be made for both types of service. Under current procedures, an individual with both types of service would have to make two payments—a payment for military service through his or her employing agency and a payment for civilian service through OPM.

Pursuant to sections 553, 1103, and 1105 of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective in less than 30 days because many of the provisions of Pub. L. 97–253 become effective on October 1, 1982, and implementing regulations must be in place by that time.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that within the scope of the Regulatory Flexibility Act, this regulation will not have a significant economic impact on a substantial number of small entities because it affects Federal employees and retirees only.

List of Subjects in 5 CFR Part 831

Government employees, Administrative practice and procedure, Claims, Firefighters, Handicapped, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management.

Donald J. Devine

Director.

PART 831—RETIREMENT

For the reasons set out in the Preamble, Part 831 of Chapter I, Title 5 of the Code of Federal Regulations, is amended as shown:

1. Section 831.104 is revised to read as follows:

§ 831.104 Application.

With exception noted below, applications under subchapter III of chapter 83 of title 5, United States Code, shall be filed with OPM and shall be on forms prescribed by OPM. Applications for deposit for military service shall be filed with the appropriate office in the employing agency, or, for Members and Congressional employees, with the Secretary of the Senate, or the Clerk of the House of Representatives, as appropriate.

2. In 5 CFR 831.105, paragraphs (b), (c) and (d) are revised and paragraphs (e), (f) and (g) are added to read as follows:

§ 831.105 Computation of interest.

* * * * *

(b) Interest is allowed on current deductions and deposits at the rate of 4 percent per year to December 31, 1947, and 3 percent per year thereafter, compounded annually, to December 31, 1956. However, if an employee or Member, before completing 5 years' civilian service, becomes separated from sevice or if he or she is transferred to a position in which he or she is not subject to subchapter III of chapter 83 of title 5, United States Code, interest is allowed after December 31, 1956, at the rate of 3 percent per year, compounded annually, to date of final separation or transfer. Interest is not allowed for 1 year or less of covered service and interest is not allowed for any fractional part of a month in the total service.

(c) Interest at the rate of 3 percent per year through December 31, 1984 and, thereafter, at the yearly rate determined by the Secretary of Treasury, compounded annually, is allowed on voluntary contributions during periods of employment and, after the employee or Member has completed at least 5 years' civilian service, during periods of separation until the beginning date of annuity or death, whichever is earlier. For refund purposes, however, interest on voluntary contributions terminates on the date of the employee's or Member's final separation or on the date of the employee's or Member's last transfer to a position in which he or she is not subject to subchapter III of chapter 83 of title 5, United States Code.

(d) For noncontributory service performed before October 1, 1982, and for redeposits of refunds paid before October 1, 1982, interest at the rate of 4 percent per year to December 31, 1947, and at the rate of 3 percent per year thereafter, compounded annually, is charged. Interest is charged on the outstanding balance of a deposit from the midpoint of each service period for which deposit is involved; interest in charged on the outstanding balance of a refund from the date the refund was paid. Interest is charged to the date of deposit or commencing date of annuity, whichever is earlier, except that interest is not charged for any period of separation from the service which began before October 1, 1956.

(e) For noncontributory service performed on or after October 1, 1982, and for redeposits of refunds paid on or after October 1, 1982, interest is charged at the rate of 3 percent per year through December 31, 1984, and, thereafter, at the yearly rate determined by the Secretary of Treasury, compounded annually. Interest is charged on the outstanding balance of a deposit from the midpoint of each service period for which deposit is involved; interest is charged on the outstanding balance of a refund, from the date the refund was paid. Interest is charged to the date of deposit.

(f) No interest is charged on a deposit for military service if that deposit is made before October 1, 1984, or within 2 years of the date that an individual first becomes an employee or Member, whichever is later. When interest is charged on a deposit for military service, for service performed before October 1, 1982, it is charged on the outstanding balance at the rate of 3 percent per year from October 1, 1984 (or 2 years from the date the individual first becomes an employee or Member, whichever is later), and, thereafter, compounded annually, until payment is completed. For service performed on or after October 1, 1982, it is charged on the outstanding balance at the rate of 3 percent per year from October 1, 1984 (or 2 years from the date the individual first becomes an employee or Member,

whichever is later) through December 31, 1984, compounded annually, and, thereafter, at the yearly rate determined by the Secretary of the Treasury, compounded annually.

(g) For calendar year 1985 and for each subsequent calendar year, OPM will publish a notice in the **Federal Register** to formally notify the public of the interst rate that will be in effect during that calendar year.

3. § 831.301 is revised to read as follows:

§ 831.301 Military Service.

(a) *Service of individuals who are employees or Members before October 1, 1982.* A period of honorable active service in the Army, Navy, Marine Corps, Air Force, or Coast Guard of the United States, or, after June 30, 1960, in the Regular Corps or Reserve Corps of the Public Health Service, or, after June 30, 1961, as a commissioned officer of the National Oceanic and Atmospheric Administration (formerly Coast and Geodetic Survey and Environmental Science Service Administration), performed before the date of separation on which civil service annuity entitlement is based shall be included in the computation of the annuity (subject to the provisions of § 8332(j) of title 5, United States Code) provided—

(1) The employee or Member has completed 5 years' civilian service;

(2) The employee or Member is not receiving military retired pay awarded for reasons other than (i) service-connected disability incurred in combat with an enemy of the United States, (ii) service-connected disability caused by an instrumentality of war and incurred in line of duty during a period of war (as that term is used in chapter 11 of title 38, United State Code), or (iii) under chapter 67 of title 10, United States Code.

(b) *Service of individuals who become employees or Members on or after October 1, 1982.* A period of honorable active service after December 31, 1956, in the Army, Navy, Marine Corps, Air Force, or Coast Guard of the United States, or, after June 30, 1960, in the Regular Corps or Reserve Corps of the Public Health Service, or, after June 30, 1961, as a commissioned officer of the National Oceanic and Atmospheric Administration (formerly Coast and Geodetic Survey and Environmental Science Services Administration), performed before the date of separation on which civil service annuity entitlement is based shall be included in the computation of the annuity provided—

(1) The employee or Member has completed 5 years' civilian service;

(2) The employee or Member is not receiving military retired pay awarded for reasons other than (i) service-connected disability incurred in combat with an enemy of the United States, (ii) service-connected disability caused by an instrumentality of war and incurred in line of duty during a period of war (as that term is used in chapter 11 of title 38, United States Code), or (iii) under chapter 67 of title 10, United States Code; and

(3) The employee or Member has completed a deposit in an amount equal to 7 percent of his or her basic pay under § 204 of title 37, United States Code (plus interest, if any) for each full period of such military service performed after December 1956. No deposit is required to have military service performed prior to January 1957 included in the computation of the annuity.

(c) An applicant for annuity who otherwise meets all conditions for receiving credit for military service, but who is in receipt of retired pay which bars credit for military service, may elect to waive the retired pay and have the military service added to civilian service to obtain a higher annuity payment. An applicant for disability retirement, who is receiving a Veterans' Administration pension or compensation in lieu of military retired pay, may elect to waive the retired pay and renounce the Veterans' Administration pension or compensation and have the military service added to civilian service to obtain a higher annuity payment.

(d) For individuals who are employees or Members before October 1, 1982, periods of military service performed after December 31, 1956 (other than periods of military service covered by military leave with pay from a civilian position), are excluded from credit from and after the first day of the month in which the individual or his or her widow(er) or his or her child becomes entitled, or upon application would be entitled, to monthly old-age or survivors benefits under § 202 of the Social Security Act (42 U.S.C. 402) based on the individual's wages or self-employment income, unless the individual has completed a deposit in accordance with Subpart U of this part, for each full period of such military service performed after December 1956. No deposit is required to have military service performed prior to January 1957 included in the computation of annuity.

4. Section 831.303 is added to read as follows:

§ 831.303 Civilian serivce.

(a) *Periods of civilian service performed before October 1, 1982, for which retirement deductions have not been taken.* Periods of creditable civilian service performed by an employee or Member after July 31, 1920, but before October 1, 1982, for which retirement deductions have not been taken shall be included in determining length of service to compute annuity under subchapter III of chapter 83 of title 5, United States Code; however, if the employee or Member does not elect either to complete the deposit described by section 8334(c) of title 5, United States Code, or to eliminate the service from the annutiy computation, his or her annuity is reduced by 10 percent of the amount which should have been deposited (plus interest) for the period of noncontributory service.

(b) *Periods of civilian service performed on and after October 1, 1982, for which retirement deductions have not been taken.* Periods of creditable civilian service performed by a Federal employee on or after October 1, 1982, for which retirement deductions have not been taken shall be included in determining length of service to compute annuity under subchapter III of chapter 83 of title 5, United States Code, *only* if—

(1) The employee or Member subsequently occupies a position subject to subchapter III of chapter 83 of title 5, United States Code; and

(2) The employee or Member makes a deposit for the service.

5. § 831.502, paragraph (e) is revised and paragraph (f)(6) is added to read as follows:

§ 831.502 Disability retirement.

* * * * *

(e) *Income limitation.* (1) Each disability annuitant who, on December 31 of any calendar year, is under 60 years of age shall report to OPM, in a format acceptable to OPM, on or before the following February 15, his or her income from wages or self-employment for that calendar year. If the annuitant fails to submit the report, OPM may suspend annuity payments until the report is received and the annuitant's entitlement to continued annuity is determined on the basis of that report.

(2) In regard to income earned prior to January 1, 1983: When, in each of two succeeding calendar years, a disability annuitant under age 60 has received income from wages and/or self-employment, equaling at least 80 percent of the current rate of basic pay of the position from which he or she retired, the annuitant's earning capacity is

deemed restored. If earning capacity is restored, OPM shall discontinue payment of the annuity at the expiration of 1 year from the end of the 2-year period. When the disability annuitant is reemployed by a department or agency within this 1-year period, OPM shall discontinue payment of the annuity from the date of reemployment.

(3) In regard to income earned after December 31, 1982: When, in any calendar year, a disability annuitant under age 60 has received income from wages and/or self-employment, equaling at least 80 percent of the current rate of basic pay of the position from which he or she retired, the annuitant's earning capacity is deemed restored. If earning capacity is restored, OPM shall discontinue payment of the annuity 180 days from the end of the calendar year. One hundred and eighty days shall be computed on the basis that each month has 30 days. When the disability annuitant is reemployed by a department or agency within the 180-day period, OPM shall discontinue the annuity from the date of reemployment.

(f) *Reemployment.* * * *

(6) A disability annuity awarded to a former National Guard Technician under the provisions of 5 U.S.C. 8337(h), in addition to being subject to the provisions of subsections (d) and (e) of this section, shall terminate when:

(i) The annuitant is reemployed by a department or agency, or

(ii) The annuitant declines an offer of employment with a department or agency which is in the same commuting area and of the same grade or equivalent level as the position from which the annuitant retired.

6. Section 831.504 is added to read as follows:

§ 831.504 Retirement based on involuntary separation.

(a) *General.* An employee who would otherwise be eligible for retirement based on involuntary separation from the service is not entitled to an annuity under section 8336(d)(1) of title 5, United States Code, if the employee has declined a reasonable offer of another position.

(b) *Criteria for reasonable offer.* For the purposes of determining entitlement to annuity based on such involuntary separation, the offer of a position must meet all of the following conditions to be considered a reasonable offer:

(1) The offer must be made in writing;

(2) The employee must meet established qualification requirements;

(3) The offered position must be:

(i) In the employee's agency, including an agency to which the employee with his or her function is transferred in a transfer of functions between agencies;

(ii) Within the employee's commuting area as defined in § 831.502(a) of this subpart, unless geographic mobility was a condition of the employee's employment;

(iii) Of the same tenure and work schedule; and

(iv) Not lower than the equivalent of two grades or pay levels below the employee's current grade or pay level, without consideration of the employee's eligibility to retain his or her current grade or pay under Part 536 of this chapter or other authority. In movements between pay schedules or pay systems, the representative rate of the grade or pay level that is two grades below that of the current position shall be compared with the representative rate of the grade or pay level of the offered position. For this purpose, "representative rate" has the meaning given that term in § 536.102 of this chapter.

7. Section 831.701 is revised to read as follows:

§ 831.701 Effective dates of annuities.

(a) An annuity of an employee or Member commences on the first day of the month after—

(1) separation from the service; or

(2) pay ceases and the service and age requirements for title to annuity are met.

(b) An annuity of—

(1) an employee involuntarily separated from service, except by removal for cause on charges of misconduct or delinquency; and

(2) an employee or Member retiring due to a disability—shall commence on the day after separation from the service or the day after pay ceases and the service and age or disability requirements for title to annuity are met.

(c) Any other annuity payable from the Fund commences on the first day of the month after the occurrence of the event on which payment thereof is based.

(d) Except as provided in § 831.502, annuity terminates on the day of death or on the date of any other terminating event in each case when OPM (1) terminates the annuity, or (2) allows survivor annuity commencing the day after the annuitant's death.

(e) Annuity accrues on a daily basis, one-thirtieth of the monthly rate constituting the daily rate. Annuity does not accrue for the thirty-first day of any month, except in the initial month, if the employee's annuity commences on the 31st of a 31-day month. For accrual purposes, the last day of a 28-day month constitutes 3 days and the last day of a 29-day month constitutes 2 days.

8. Paragraph (c) of § 831.802 is revised to read as follows:

§ 831.802 Supplemental annuity and redetermined annuity.

* * * * *

(c) The supplemental or redetermined annuity commences (1) on the first day of the month after separation from such employment or (2) on the first day of the month after the annuitant is converted to an intermittent status and meets the service requirements.

* * * * *

9. Subparts S and T are reserved and Subpart U is added to read as follows:

Subpart U—Deposits for Military Service.

Sec.

831.2101 Purpose.
831.2102 Scope.
831.2103 Definitions.
831.2104 Eligibility to make deposits.
831.2105 Required elections.
831.2106 Filing an application to make deposit.
831.2107 Agency processing of employee applications for deposit.
831.2108 Payments on deposits.
831.2109 Reconsideration of an agency decision to deny credit for service.

Authority: 5 U.S.C. 8347.

§ 831.2101 Purpose.

This subpart prescribes the procedures to be followed by agencies when an employee or Member wishes to make a depoit for military service.

§ 831.2102 Scope.

This subpart applies to all agencies with employees occupying positions subject to subchapter III of chapter 83 of title 5, United States Code.

§ 831.2103 Definitions.

"Fund" is the Civil Service Retirement and Disability Fund.

"Office" is the Office of Personnel Management.

"Period of service" is the total years and months from date of enlistment to date of discharge for enlisted military service (less any lost time); and total years and months from date of entry into active duty to date of release from active duty for military officers and reservists.

"Service" is military service performed after December 1956.

§ 831.2104 Eligibility to make deposits.

(a) Employees and Members who occupy positions subject to subchapter III of chapter 83 of title 5, United States Code, may make deposits for periods of military service performed before the separation on which title to civil service annuity is based.

(b) A person who is eligible to make a deposit may do so at any time before separation for retirement.

§ 831.2105 Required elections.

(a) Retiring employees and Members who have performed military service after December 31, 1956 should indicate in writing, before separation for immediate retirement, if they do not wish to make a deposit for all or part of that service.

(b) If an employee or Member indicates that he or she wishes to make a deposit, the procedures in § 831.2106 and § 831.2107 must be followed. OPM will not accept deposits for military service after an individual is separated.

§ 831.2106 Filing an application to make deposit.

An application for deposit shall be filed with the appropriate office in the employing agency, or, for Members and Congressional employees, with the Secretary of the Senate, or the Clerk of the House of Representatives, as appropriate.

§ 831.2107 Agency processing of employee applications for deposits for military service.

(a) Upon receipt of an application for deposit, the employing agency, the Secretary of the Senate, or the Clerk of the House of Representatives, as appropriate, obtains the information necessary to compute an estimate of the amount of the deposit owed from the appropriate Federal agency.

(b) The employing agency, Secretary of the Senate, or Clerk of the House of Repesentatives, as appropriate, must then estimate the amount of the deposit owed and advise the employee or Member of the amount due for deposit.

(c) If, after being advised of the approximate amount of deposit due, the employee or Member elects to make a deposit to the Fund and makes an initial payment of at least one hundred dollars (if the total payment has been estimated as less than $100, the entire amount must be paid in a lump sum), the agency must verify the information used to estimate the deposit and compute the exact amount due.

§ 831.2108 Payments on deposits.

(a) Deposits should be collected in full in one lump sum whenever this is possible. However, if the employee or Member is unable to pay the deposit in one lump sum, payment may be made in installments which will complete the total payment over a 12 month period. In no case should payments for a single deposit period extend over more than a 36-month period.

(b) If payment is not to be made to the agency in a lump sum, the agency may accept installment payments (by allotments or otherwise) of no less than $100 each. However, if the amount of the total deposit is large, minimum installment payments shall be increased, so that payments do not extend beyond the periods specified in paragraph (a) of this section.

(c) Payments received by the employing agency, the Secretary of the Senate, or the Clerk of the House of Representatives shall be remitted immediately to the Office for deposit to the Fund.

(d) Once the deposit has been paid in full, the employing agency shall submit all documentation pertaining to the deposit to OPM.

(e) Deposits must be made for a full period of military service.

§ 831.2109 Reconsideration of an agency decision to deny credit for service.

(a) *Who may file.* An employee or Member may request OPM to reconsider an agency decision that a period of military service is not creditable.

(b) *Agency decision.* An agency decision that a period of service is not creditable shall be in writing, shall provide reasons for the decision, and shall state the employee's or Member's right to request reconsideration by OPM within 30 days from the date of the agency's written decision. OPM may extend the time limit as provided in paragraph (d) of this section.

(c) *Reconsideration.* A request for reconsideration must be made in writing, must include the claimant's name, address, date of birth, claim number, if applicable, and reasons for the request.

(d) *time limit.* A request for reconsideration of an agency decision must be postmarked within 30 calendar days from the date of the agency's written decision. OPM may extent the time limit for filing when the individual shows that he/she was not notified of the time limit or that he/she was prevented by circumstances beyond his/her control from making the request within the time limit.

(e) *Final decision.* After reconsideration, OPM shall issue a decision which shall be in writing, shall fully set forth the findings and conclusions of the reconsideration, and shall contain notice of the right to request an appeal as provided in § 831.110. Copies of the final decision shall be sent to the individual and the employing agency.

[FR Doc. 82-27144 Filed 9-29-82; 11:18 am]
BILLING CODE 6325-01-M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement; Proposed Rulemaking

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend the Civil Service Retirement Fund collection regulations to extend the procedures for processing military deposits to deposits and redeposits for civilian service. This regulation will delegate to the agencies authority to compute and collect deposits and redeposits for civilian service, a function currently performed by OPM. Permitting agencies to handle the civilian service credit function would allow a single process for deposits, redeposits, and credit for both military and civilian service. Agencies would report collections and credited service to OPM in a uniform manner, and individuals' claims for service could be more easily resolved in advance of retirement.

DATES: Comments must be received on or before November 30, 1982.

ADDRESS: Send written comments to Mr. Craig B. Pettibone, Director, Office of Personnel Management, 1900 E. Street, NW., Washington, D.C. 20044, or deliver to Room 4351.

FOR FURTHER INFORMATION CONTACT: Patricia Rochester, (202) 632–4634.

SUPPLEMENTARY INFORMATION: We are requesting comments on a proposal to extend procedures in Subpart U of Part 831 for military deposits established by interim regulations in today's edition of the **Federal Register** to deposits and redeposits for civilian service. The supplementary information section of the interim regulation explains the provisions.

The Omnibus Budget Reconciliation Act of 1982 (Public Law 97–253) requires agencies to perform the same function for military service credit as OPM currently performs for civilian service. Permitting agencies to handle the civilian service credit function would allow a single process for deposits, redeposits, and credit for both military and civilian service. Agencies would report collections and credited service to OPM in a uniform manner, and individuals' claims for service could be more easily resolved in advance of retirement. There would also be a significant side benefit of faster collection of money since applications would not have to come to OPM before a deposit could be made. Agencies already are required to verify service and provide employees with tentative computations of amounts owed for civilian service, and OPM is exploring ways to minimize their workload in regard to processing military service credit applications which would be equally applicable to civilian service applications.

In addition, utilizing the same procedures for both civilian and military service will permit an agency to handle the entire process for an individual who has a payment to be made for both types of service. Under current procedures, an individual with both types of service would have to make two payments—a payment for military service through his or her employing agency and a payment for a civilian service through OPM.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act. I certify that within the scope of the Regulatory Flexibility Act, this regulation will not have a significant economic impact on a substantial number of small entities because it affects Federal employees and retirees only.

List of Subjects in 5 CFR Part 831

Government employees, Administrative practice and procedure, Claims, Firefighters, Handicapped, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management.

Donald J. Devine,

Director.

PART 831—RETIREMENT

For the reasons set out in the Preamble, it is proposed to add Subpart V to Part 831 of Chapter I, Title 5 of the Code of Federal Regulations, as follows:

Subpart V—Deposits and Redeposits

Sec.

831.2201 Purpose.
831.2202 Scope.
831.2203 Definitions.
831.2204 Eligibility to make deposits and redeposits.
831.2205 Required elections.
831.2206 Filing an application to make deposit and/or redeposit.
831.2207 Agency processing of employee applications for deposit and/or redeposit.
831.2208 Payments on deposits and redeposits.
831.2209 Reconsideration of an agency decision to deny credit for service.

Authority.—5 U.S.C. 8347.

§ 831.2201 Purpose.

This subpart prescribes the procedures to be followed by agencies when an employee or Member wishes to make a deposit or redeposit for military or civilian service.

§ 831.2202 Scope.

This subpart applies to all agencies with employees occupying positions subject to subchapter III of chapter 83 of title 5, United States Code.

§ 831.2203 Definitions.

"Covered service" is service as an employee for which civil service retirement contributions were taken from basic pay earned by the employee or Member.

"Fund" is the Civil Service Retirement and Disability Fund.

"Noncontributory service" is service which meets the criteria in § 2105 of title 5, United States Code, including military service after December 1956, for which no retirement contributions were taken from the basic pay earned by the employee or Member.

"Office" is the Office of Personnel Management.

"Period of service" is the total years, months and days from date of appointment to date of separation or termination for civilian service; total years and months from date of enlistment to date of discharge for enlisted military service (less any lost time); and total years and months from date of entry into active duty to date of release from active duty for military officers and reservists.

§ 831.2204 Eligibility to make deposits.

(a) Employees and Members who occupy positions subject to subchapter III of chapter 83 of title 5, United States Code, may make deposits and redeposits for periods of service performed before the separation on which title to civil service annuity is based.

(b) A person who is eligible to make a deposit and/or redeposits may do so at any time before separation for retirement.

§ 831.2205 Required elections.

(a) Retiring employees and Members who have performed noncontributory service after December 31, 1956 should indicate in writing, before separation for immediate retirement, if they do not wish to make a deposit and/or redeposit for all or part of that service.

(b) If an employee or Member indicates that he or she wishes to make a deposit and/or redeposit, the procedures in § 831.2206 and § 831.2207

must be followed. OPM will not accept deposits and/or redeposits for service after an individual is separated.

§ 831.2206 Filing an application to make deposit and/or redeposit.

An application for deposit and/or redeposit shall be filed with the appropriate office in the employing agency, or, for Members and Congressional employees, with the Secretary of the Senate, or the Clerk of the House of Representatives, as appropriate.

§ 831.2207 Agency processing of employee applications for deposits and/or redeposits.

(a) Upon receipt of an application for deposit or redeposit, the employing agency, the Secretary of the Senate, or the Clerk of the House of Representatives, as appropriate, obtains the information necessary to compute an estimate of the amount of the deposit and/or redeposit owed. Information about an employee's noncontributory service must be obtained from the appropriate Federal agency unless it is contained within the Official personnel Folder; information about refunds must be obtained from the Office.

(b) The employing agency, Secretary of the Senate, or Clerk of the House of Representatives, as appropriate, must then estimate the amount of the deposit and/or redeposit owed and advise the employee or Member separately of the amount due for deposit and redeposit.

(c) If, after being advised of the approximate amount of deposit and/or redeposit due, the employee or Member elects to make a deposit or redeposit to the Fund and makes an initial payment of at least one hundred dollars (if the total payment has been estimated as less than $100, the entire amount must be paid in a lump sum), the agency must verify the information used to estimate the deposit or redeposit and compute the exact amount due.

§ 831.2208 Payments on deposits or redeposits.

(a) Deposits and redeposits should be collected in full in one lump sum whenever this is possible. However, if the employee or Member is unable to pay the deposit or redeposit in one lump sum, payment may be made in installments which will complete the total payment over a 12-month period. In no case should payments for a single deposit or redeposit period extend over more than a 36-month period.

(b) If payment is not to be made to the agency in a lump sum, the agency may accept installment payments (by allotments or otherwise) of no less than $100 each. However, if the amount of the total deposit or redeposit is large, minimum installment payments shall be increased, so that payments do not extend beyond the periods specified in paragraph (a) of this section.

(c) Payments received by the employing agency, the Secretary of the Senate, or the Clerk of the House of Representatives shall be remitted immediately to the Office for deposit to the Fund.

(d) Once the deposit or redeposit has been paid in full, the employing agency shall submit all documentation pertaining to the deposit or redeposit to OPM.

(e) Deposits must be made for a full period of noncontributory service and for all periods of service upon which a single refund payment was made.

§ 831.2209 Reconsideration of an agency decision to deny credit for service.

(a) *Who may file.* An employee or Member may request OPM to reconsider an agency decision that a period of military service is not creditable.

(b) *Agency decision.* An agency decision that a period of service is not creditable shall be in writing, shall provide reasons for the decision, and shall state the employee's or Member's right to request reconsideration by OPM within 30 days from the date of the agency's written decision. OPM may exend the time limit as provided in paragraph (d) of this section.

(c) *Reconsideration.* A request for reconsideration must be made in writing, must include the claimant's name, address, date of birth, claim number, if applicable, and reasons for the request.

(d) *Time limit.* A request for reconsideration of an agency decision must be postmarked within 30 calendar days from the date of the agency's written decision. OPM may extend the time limit for filing when the individual shows that he/she was not notified of time limit or that he/she was prevented by circumstances beyond his/her control from making the request within the time limit.

(e) *Final decision.* After reconsideration, OPM shall issue a decision which shall be in writing, shall fully set forth the findings and conclusions of the reconsideration, and shall contain notice of the right to request an appeal as provided in § 831.110. Copies of the final decision shall be sent to the individual and the employing agency.

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federal register

Friday
October 1, 1982

Part XV

Department of Health and Human Services

Health Care Financing Administration

Medicaid Program; Liens, Adjustments and Recoveries; Final Rule With Comment Period

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 433, 435, and 436

Medicaid Program; Liens, Adjustments, and Recoveries

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: We are revising Medicaid regulations to provide the conditions under which States may impose liens against the real property of certain individuals receiving Medicaid benefits in intermediate care and skilled nursing facilities. These individuals are those who the State determines, after notice to the individual and opportunity for a hearing, are unlikely to be discharged from the facility and return to their homes. These regulations also specify the conditions under which States may recover the amount of Medicaid payments made on behalf of individuals through foreclosure on liens on an individual's property, or adjustments or recoveries from their estate.

These regulations implement Section 132 of Pub. L. 97–248, the Tax Equity and Fiscal Responsibility Act of 1982. The purpose of this provision is to permit States to recover the cost of Medicaid payments from an individual's property, and thereby reduce the public cost of supporting that individual in a long term care facility.

EFFECTIVE DATE: October 1, 1982. Although these regulations are being published as final regulations for reasons described in the Supplementary Information section, comments may be submitted by November 30, 1982.

State agencies have until December 30, 1982 to submit their preprinted plan amendments and required attachments. HCFA will not hold a State to be out of compliance with the requirements of these final regulations if it submits the necessary preprint plan material by that date.

ADDRESS: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17073, Baltimore, Maryland 21235.

In commenting, please refer to BPP–237–FC.

If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, D.C., or to Room 132 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Comments will be available for public inspection, as they are received, beginning approximately three weeks after publication, in Room 309–G of the Department's office at 200 Independence Ave., SW., Washington, D.C. 20201 on Monday through Friday of each week from 8:30 to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: Marinos Svolos, (301) 594–9050.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicaid program provides medical assistance to the categorically needy, that is, those individuals who are eligible to receive cash payments under one of the existing welfare programs established under the Social Security Act (the Act). In addition, States may provide Medicaid to the medically needy, that is, to those individuals who have sufficient income to meet basic living expenses and are ineligible for a cash assistance program, but who have insufficient income to pay for their medical expenses. In administering its Medicaid program, each State has flexibility in the design of its program, including establishing eligibility requirements and determining the type of services to be offered and the methods of reimbursement.

An applicant's ownership of homestead property does not usually make him or her ineligible for Medicaid. At the same time, even though the property represents a potential resource to the individual which, upon sale or transfer, could be used to defray the costs of medical care, imposition of liens or institution of recovery or adjustment actions have been restricted by section 1902(a)(18) of the Act. Section 1902(a)(18) provided that States were prohibited from imposing liens against any recipient's property prior to his or her death for Medicaid claims paid on the individual's behalf, except when the lien was the direct result of a court judgement for claims incorrectly paid. The law also precluded States from making an adjustment or recovery at any time, even after death, in the case of recipients who were under age 65 when the Medicaid claims were correctly paid. For those recipients aged 65 or older, the law permitted States to make an adjustment or recover Medicaid funds correctly paid only after a recipient's death, with the stipulation that recovery be from the estate, and only after the death of the surviving spouse and when there was no surviving child under the age of 21 or blind or disabled (as defined in the State plan). This latter provision was difficult for States to administer because they could initiate activities to identify and place liens on property only after an individual's death. One result of this provision was that an elderly individual who anticipated the need for nursing home care could transfer his or her home to a family member or friend, and thereby assure that the home would not be part of his or her estate, and, therefore, would not be subject to any recovery action initiated by the State after the individual's death.

New Legislation

Section 132 of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, amended section 1902(a)(18) of the Social Security Act and added a new section 1917 to the Act.

Section 1917 contains two provisions intended to assure that all of the resources available to an institutionalized individual, including equity in a home, which are not needed for the support of a spouse or dependent children, will be used to defray the costs of supporting the individual in the institution. In doing so, it seeks to balance government's legitimate interest in recovering its Medicaid costs against the individual's need to have the home available in the event discharge from the institution becomes feasible.

One provision allows States to deny Medicaid eligibility temporarily to patients in medical institutions who dispose of resources for less than fair market value, even though such disposal would not make them ineligible for the Supplemental Security Income (SSI) program. We intend to publish a separate rule implementing this provision in the near future.

The second provision allows States to impose liens on the real property, including the home, of Medicaid recipients who are permanently institutionalized in nursing homes or other long term care medical institutions. That is, the legislation rescinds the prior statutory prohibition in section 1902(a)(18) and now allows States to impose liens against real property, including the home, prior to the recipient's death when the State determines that a recipient cannot reasonably be expected to be discharged from a medical institution and return home. The provision restricts applicability of liens to situations where the recipient is an inpatient in a skilled nursing facility (SNF), intermediate care facility (ICF) or other medical institution where he or she would be required as a condition of receiving services in such an institution under the State plan, to spend for medical care costs, all but a minimal amount of his or her income required for personal needs. When the State agency chooses to impose a lien under this new provision, the agency is required to notify the recipient of its

intention to make a determination that he or she is not expected to return home, and must offer the recipient an opportunity for a hearing. The burden of proof that the recipient is unlikely to be discharged to his home is on the State, and the determination is to be conducted in accordance with procedures established by the State. The legislation provides that any lien imposed by the State upon a recipient's real property will dissolve when the recipient is discharged from the medical institution to his home.

The legislation also restricts States from placing liens on recipients' homes if the spouse, or a child under age 21, or a disabled child is lawfully living in the home. Further, no lien may be imposed by the State if a sibling with an equity interest in the home who was residing in the individual's home for at least one year immediately before the date the individual was admitted to the medical institution is lawfully living in the home.

Further, the legislation provides that any lien cannot be foreclosed upon, and States cannot recover the cost of Medicaid benefits provided to the recipient unless the recipient sells the property or, after the recipient dies, from his estate. As under current law, no recovery would be permitted while the recipient's spouse or children (under age 21 or blind or disabled as defined in the State plan) are lawfully residing in the home. Prohibiting the State from foreclosing on the lien when there is a surviving spouse or child would reduce the likelihood that the spouse or child will become a public charge. In addition, the State may recover only when: (1) There is no sibling of the individual (who was residing in the individual's home for at least one year immediately before the date of the individual's admission to the medical institution) who is lawfully residing and has been lawfully residing in the home on a continuous basis since the date of the individual's admission to the medical institution; (2) there is no son or daughter of the individual (who was residing in the home for at least two years immediately before the date the individual was admitted to the medical institution, who establishes to the satisfaction of the State that the care that he or she provided during these two years permitted the individual to live at home rather than in an institution) who is lawfully residing and has been lawfully residing in the home on a continuous basis since the date of the individual's admission to the medical institution.

Provisions of the Regulations

A. Liens

Pub. L. 97–248 deletes the current lien, recovery and adjustment provisions on which former regulations were based and substitutes several new provisions. We are, therefore, amending the Medicaid State Fiscal Administration regulations which contain the basic provisions regarding liens and recoveries at 42 CFR Part 433, Subpart B, General Administrative Requirements, by revising § 433.36. We are also revising Medicaid eligibility regulations at 42 CFR Part 435, Subpart B, Mandatory Coverage of the Categorically Needy, by deleting cross references to liens in §§ 435.113 and 435.122 which are no longer appropriate under the new legislation. For the same reason, we are also revising the comparable part of 42 CFR Part 436, Subpart B, § 436.111, which contains a cross reference regarding the former restriction of liens in the eligibility provisions applicable to Guam, Puerto Rico, and the Virgin Islands.

We have not changed the substance of the provision in the current regulations (42 CFR 433.36(d), now § 433.36(g)(1)) under which a State may impose a lien on an individual's property following a court judgment due to incorrect Medicaid payments made on behalf of the individual. This provision was retained in the new legislation and, therefore, requires no change in the regulation (although we have made editorial and coding changes for clarity).

In summary, the new regulations provide that a State may impose a lien against the real property of an individual of any age who is a patient in a medical institution such as an ICF or SNF when the State has made a medical determination that the individual cannot reasonably be expected to be discharged from the facility and return home. The State is required to notify the individual of this determination and must provide an opportunity for a hearing on this determination, according to State established procedures as described in the State plan. The notice to the individual must explain what is meant by the term lien, and that imposing a lien does not mean that the individual will lose ownership of the home. To protect the institutionalized individual from loss of the home during his or her lifetime, any lien imposed on such an institutionalized individual will dissolve upon that individual's discharge from the medical institution and return home, as specified in the State plan. Finally, if the real property is the patient's home a lien may be imposed only when none of the following individuals are lawfully residing in the home: (a) A spouse; (b) a child who is either under age 21 or blind or disabled (as defined in the State plan); and (c) a sibling with an equity interest in the property who was residing in the individual's home for at least one year immediately before the date the individual was admitted to the institution.

B. Recoveries and Adjustments

These regulations further provide that States may recover funds for correctly paid Medicaid claims from the estate of an individual who was 65 years of age or older when he received Medicaid. In addition, States may adjust or recover Medicaid funds by foreclosing on a lien imposed on the real property of an institutionalized individual when an individual of any age dies, sells or transfers his or her property. Recoveries may occur only after the death of the surviving spouse or, when there is no surviving child under age 21, or who is blind or disabled (as defined in the State plan). As further conditions, the State may recover by foreclosing a lien on an individual's home only when: (1) There is no sibling of the individual (who was residing in the individual's home for at least one year immediately before the date of the individual's admission to the medical institution) who is lawfully residing, and has been lawfully residing in the home since the date of the individual's admission to the institution; and (2) there is no son or daughter of the individual (who was residing in the home for at least two years immediately before the date the individual was admitted to the medical institution and establishes, according to criteria included in the State plan, that he or she provided care which permitted the individual to reside at home rather than in an institution) who is lawfully residing, and has been lawfully residing in the home on a continuous basis since the date of the individual's admission to the institution.

C. State Plan Requirements

These regulations also contain revised State plan requirements. In the interest of State flexibility, where there is discretion in the law, we are permitting States to decide how they will implement these lien provisions.

We are considering whether it might be necessary to require that a State base a determination that an institutionalized individual cannot reasonably be expected to return home on medical evidence or other factors that would preclude the individual from being

discharged from the institution. We are also considering whether to require that before a State issues a notice to an individual that he or she is not expected to be discharged from the medical institution and that a lien is being placed on the home, the State must make a reasonable effort to inform the individual that his or her medical condition warrants this decision. Although we are not implementing these two provisions in these regulations, we are particularly interested in receiving comments on whether the regulations should be revised to include these provisions.

The State plan must specify the following:

(1) The process by which the State will determine that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home. The description of the process must include the type of notice to be given the individual (including an explanation of liens and the effect on the individual's ownership of property), the process by which the individual will be given the opportunity for a hearing, the hearing procedures, and by whom and what basis the determination that the individual cannot reasonably be expected to be discharged from the institution will be made.

(2) Define the following terms:

(a) Individual's home.

(b) Equity interest in home.

(c) Residing in the home for at least 1 (2) year(s).

(d) On a continuing basis.

(e) Discharge from the medical institution and return home.

(f) Lawfully residing.

(3) Specify the criteria by which a son or daughter can establish to the agency's satisfaction that he or she has been providing care which permitted the individual to reside at home rather than in an institution.

Impact Analysis

A. Executive Order 12291

We have determined that these regulations will not result in a cost impact of $100 million or more or meet other criteria of a major rule as defined in section 1(b) of Executive Order 12291.

We have made a careful effort to estimate the effects of the statutory provisions implemented by these regulations. Recoveries will be a factor of:

1. The number of unmarried Medicaid patients who die while in an ICF or SNF;

2. The percentage of these patients who own homes;

3. The amount of expenses Medicaid has paid on their behalf;

4. The equity value of homes owned by these patients; and

5. The degree to which States will aggressively seek recoveries.

We estimate that approximately 140,000 Medicaid patients die in ICFs and SNFs each year. Approximately 88 percent of ICF and SNF residents are single or widowed. Therefore, approximately 125,000 unmarried Medicaid patients die in ICFs and SNFs each year.

Nearly half of the elderly own homes, but some proportion of these will be likely to dispose of the home immediately before or immediately after entering an ICF or SNF to pay medical expenses or for other reasons. Of those unmarried individuals that keep their homes, some will have children or siblings who meet conditions that prevent a lien from being placed under these provisions, or will return home before death, which will dissolve the lien. Consequently, we estimate that about 20 percent of unmarried elderly patients in ICFs and SNFs have homes which will ultimately provide repayment for Medicaid expenses.

We computed Medicaid institutional expenses of unmarried patients in ICFs and SNFs for the period from the time they become eligible to their death based on length-of-stay data and estimates of ICF and SNF reimbursement rates for each year in which the stays occurred.

Based on the 1976 Retirement History Survey, we estimated the average equity in the home of an elderly person to be $45,500 in fiscal year 1983, $48,600 in fiscal year 1984, and $51,900 in fiscal year 1985.

We adjusted the resulting estimates based on an assumption that approximately six months will elapse between death and the date of collection of amounts owed.

Finally, we examined the extent to which States would aggressively seek recoveries. Since this is difficult to predict, we used a range, with the midpoint of this range representing our best estimate. The following chart presents these estimates:

EFFECTS OF LIENS PROVISION

[In millions]

Fiscal year	Low estimate		Mid-point estimate		High estimate	
	Total recoveries	Federal share	Total recoveries	Federal share	Total recoveries	Federal share
1983	$55	$30	$82	$45	$109	$60
1984	115	63	173	95	231	127
1985	129	71	193	106	256	141

Although, under some assumptions, we estimate that there will be an effect on the economy of $100 million or more, we have determined that it is Section 132 of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, that has occasioned this impact, and not these regulations which merely implement the statutory provision. Therefore, a regulatory impact analysis is not required.

B. Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this final rule will not result in a significant impact on a substantial number of small entities.

These regulations deal with State imposed liens against property owned by individuals eligible for Medicaid, and claims against their estates. Individuals are not considered small entities under Pub. L. 96–354. In addition, State Medicaid agencies do not fall into the category of small governmental jurisdictions. However, even if there were a significant effect on a substantial number of small entities, we have determined that this effect is the result of the statutory provision, and not these regulations which merely implement these provisions. Therefore, a regulatory flexibility analysis is not required.

Waiver of Proposed Rulemaking and Prospective Effective Date

We are publishing these regulations in final form because the legislative provisions we are implementing contain sufficient detail that minimal Secretarial discretion is permitted. Further, the legislation is effective on enactment, and our adherence to notice and comment procedures would cause unnecessary delays which would prevent States from taking advantage of the potential cost savings. Therefore, we find good cause to waive proposed rulemaking procedures and to issue these regulations in final form.

We also find that the same considerations discussed above provide

good cause to dispense with the usual thirty day delayed effective date. Therefore, this regulation is effective on publication. However, we will accept any comments mailed within the specified period and will make any changes in the regulation we believe necessary as a result of the comments.

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, if we publish changes in the regulations as a result of comments, we will respond to them in the preamble of that document.

Reporting Requirements

In accordance with the Paperwork Reduction Act of 980 (44 U.S.C. 3507), the reporting and/or recordkeeping provisions contained in this final rule with comment period in section 42 CFR 433.36 have been or will be submitted for approval to the Office of Management and Budget (OMB). The reporting and/or recordkeeping requirements are not effective until OMB approval has been obtained.

List of Subjects

42 CFR Part 433

Administrative practice and procedure, Assignment of rights, Claims, Contracts (agreements), Cost allocation, Federal financial participation, Federal matching provision, Grant-in-aid program—health, Mechanized claims processing and information retrieval systems, Medicaid, State fiscal administration, Third party liability.

42 CFR Part 435

Aid to families with dependent children, Aliens, Categorically needy, Contracts (agreements—State plan), Eligibility, Grant-in-aid program—health, Health facilities, Medicaid, Medically needy, Reporting requirements, Spend-down, Supplemental security income (SSI).

42 CFR Part 436

Aid to families with dependent children, Aliens, Contracts (agreements), Eligibility, Grant-in-aid program—health, Guam, Health facilities, Medicaid, Puerto Rico, Supplemental security income (SSI), Virgin Islands.

PART 433—STATE FISCAL ADMINISTRATION

A. 42 CFR Part 433, Subpart B, is amended as set forth below: 1. The authority citation is revised to read as follows:

Authority: Secs. 1102, 1902(a)(4), 1902(a)(18), 1902(a)(25), 1903(d)(2), 1903(o), 1903(p), 1912 and 1917 of the Social Security Act (42 U.S.C. 1302, 1396a(a)(4), 1396a(a)(18) 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), 1396k and 1396p), unless otherwise noted.

2. Section 433.36 is amended by revising paragraphs (a), (c), (d), (e), and (f), by redesignating current paragraph (g) as paragraph (i) and by adding new paragraphs (g) and (h) as follows:

§ 433.36 Liens and recoveries.

(a) *Basis and purpose.* This section implements sections 1902(a)(18) and 1917(a) and (b) of the Act, which describe the conditions under which an agency may impose a lien against a recipient's property, and when an agency may make an adjustment or recover funds in satisfaction of the claim against the individual's estate or real property.

* * * * *

(c) *State plan requirement.* If a State chooses to impose a lien against an individual's real property (or as provided in (g)(1), personal property), the State plan must provide that the provisions of paragraphs (d) through (i) of this section are met.

(d) *Procedures.* The State plan must specify the process by which the State will determine that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home as provided in paragraph (g)(2)(ii). The description of the process must include the type of notice to be given the individual, the process by which the individual will be given the opportunity for a hearing, the hearing procedures, and by whom and on what basis the determination that the individual cannot reasonably be expected to be discharged from the institution will be made. The notice to the individual must explain what is meant by the term lien, and that imposing a lien does not mean that the individual will lose ownership of the home.

(e) *Definitions.* The State plan must define the following terms used in this section:

(1) Individual's home.

(2) Equity interest in home.

(3) Residing in the home for at least 1 (or 2) year(s).

(4) On a continuing basis.

(5) Discharge from the medical institution and return home.

(6) Lawfully residing.

(f) *Exception.* The State plan must specify the criteria by which a son or daughter can establish to the agency's satisfaction that he or she has been providing care which permitted the individual to reside at home rather than in an institution, as provided in paragraph (h)(2)(iii)(B) of this section.

(g) *Lien provisions.* (1) *Incorrect Payments.* The agency may place a lien against an individual's property, both personal and real, before his or her death because of Medicaid claims paid or to be paid on behalf of that individual following a court judgement which determined that benefits were incorrectly paid for that individual.

(2) *Correct payments.* Except as provided in paragraph (g)(3) of this section, the agency may place a lien against the real property of an individual at any age before his or her death because of Medicaid claims paid or to be paid for that individual when—

(1) An individual is an inpatient of a medical institution and must, as a condition of receiving services in the institution under the State plan, apply his or her income to the cost of care as provided in §435.725, §435.832 and §436.832; and

(ii) The agency determines that he or she cannot reasonably be expected to be discharged and return home. The agency must notify the individual of its intention to make that determination and provide an opportunity for a hearing in accordance with State established procedures before the determination is made. The notice to an individual must include an explanation of liens and the effect on an individual's ownership of property.

(3) *Restrictions on placing liens.* The agency may not place a lien on an individual's home under paragraph (g)(2) of this section if any of the following individuals is lawfully residing in the home:

(i) The spouse;

(ii) The individual's child who is under age 21 or blind or disabled as defined in the State plan; or

(iii) The individual's sibling (who has an equity interest in the home, and who was residing in the individual's home for at least one year immediately before the date the individual was admitted to the medical institution).

(4) *Termination of lien.* Any lien imposed on an individual's real property under paragraph (g)(2) of this section will dissolve when that individual is discharged from the medical institution and returns home.

(h) *Adjustments and Recoveries.* (1) The agency may make an adjustment or recover funds for Medicaid claims correctly paid for an individual as follows:

(i) From the estate of any individual who was 65 years of age or older when he or she received Medicaid; and

(ii) From the estate or upon sale of the property subject to a lien when the individual is institutionalized as

described in paragraph (g)(2) of this section.

(2) the agency may make an adjustment or recovery under paragraph (h)(1) of this section only:

(i) After the death of the individual's surviving spouse; and

(ii) When the individual has no surviving child under age 21 or blind or disabled as defined in the State plan; and

(iii) In the case of liens placed on an individual's home under paragraph (g)(2) of this section, when there is no—

(A) Sibling of the individual residing in the home, who has resided there for at least one year immediately before the date of the individual's admission to the institution, and has resided there on a continuous basis since that time; or

(B) Son or daughter of the individual residing in the home, who has resided there for at least two years immediately before the date of the individual's admission to the institution, has resided there on a continuous basis since that time, and can establish to the agency's satisfaction that he or she has been providing care which permitted the individual to reside at home rather than in an institution.

(i) *Prohibition of reduction of money payments.* No money payment under another program may be reduced as a means of recovering Medicaid claims incorrectly paid.

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

B. 42 CFR Part 435, Subpart B, is amended as set forth below:

1. The authority citation reads as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

2. Section 435.113 is revised by removing the final parenthetical phrase and reads as follows:

§ 435.113 Individuals who are ineligible for AFDC because of requirements that do not apply under title XIX of the Act.

The agency must provide Medicaid to individuals who would be eligible for AFDC except for an eligibility requirement used in that program that is specifically prohibited under title XIX.

3. Section 435.122 is revised by removing the final parenthetical phrase and reads as follows:

§ 435.122 Individuals who are ineligible for SSI or optional State supplements because of requirements that do not apply under title XIX of the Act.

If an agency provides Medicaid to aged, blind, or disabled individuals receiving SSI or optional State supplements, it must provided Medicaid to individuals who would be eligible for SSI or optional State supplements except for an eligibility requirement used in those programs that is specifically prohibited under title XIX.

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

c. 42 CFR Part 436, Subpart B, is amended as set forth below:

1. The authority citation reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302, unless otherwise noted.

2. Section 436.111 is revised by removing the final parenthetical phrase and reads as follows:

§436.111 Individuals who are not eligible for cash assistance because of a requirement not applicable under Medicaid.

The agency must provide Medicaid to individuals who would be eligible for OAA, AFDC, AB, APTD, or AABD except for an eligibility requirement used in those programs that is specifically prohibited under title XIX.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: September 14, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: September 27, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82- 27147 Filed 9-30-82; 8:45 am]

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Friday
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Part XVI

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Assistants at Surgery

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Assistants at Surgery

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: These revised regulations provide that Medicare will pay on a reasonable charge basis for the services of a physician who actively assists the physician in charge of a case in performing a surgical procedure (i.e., an assistant at surgery) in teaching hospitals only under certain specific conditions. They also establish new rules for determining the amount of payment for services furnished by assistants at surgery in all settings. These revisions, which are needed to implement section 113 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248) will ensure that reasonable charge payments for services of assistants at surgery are made in conformity with the Medicare law, and are reasonable in amount.

DATES: Effective date: October 1, 1982. Although these regulations are effective on an interim basis, comments may be submitted as described below.

Comment date: To assure consideration, comments should be mailed by November 1, 1982.

ADDRESS: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17073, Baltimore, Maryland 21235.

In commenting, please refer to file code BPP–236–FC.

If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave., S.W., Washington, D.C. or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309–G of the Department's offices at 200 Independence Ave., S.W., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: William Morse, (301) 594–1160

SUPPLEMENTARY INFORMATION:

I. Background

General Background

The Medicare law (Title XVIII of the Social Security Act) provides separate coverage and payment rules for physician services to patients and for provider services (including inpatient hospital services).

Physicians' services to patients are covered under Supplementary Medical Insurance (Medicare Part B), and are paid for from the Part B Trust Fund. The definition of physicians services in section 1861(q) of the Act excludes the services of residents and interns in approved teaching programs that are described in section 1861(b)(6) of the Act.

Inpatient hospital services are covered under Hospital Insurance (Part A) and are paid for from the Part A Trust Fund. Inpatient hospital services are defined in section 1861(b) of the Act. Generally, physicians' services are excluded from this definition. However, under section 1861(b)(6), the services of interns and residents provided to inpatients are classified under Medicare Part A as inpatient hospital services.

Medicare pays for physicians' services through carriers on a reasonable charge basis, as described in section 1842(b)(3) of the Act. As required by section 1833 of the Act, Medicare pays 80 percent of the reasonable charges for these services after the beneficiary has satisfied the Part B deductible (currently $75.00). The beneficiary is responsible for paying the remaining 20 percent of the reasonable charges and, on unassigned claims, for any difference between the Medicare reasonable charge and the amount the physician actually charges for the service.

Our current regulations at 42 CFR 405.501 to 405.508 describe the general rules carriers use to determine reasonable charges. (Further more specific rules for physician reimbursement are found at § 405.480, et seq. for hospital-based physicians and at § 405.465 and §§ 405.520–405.521 for certain teaching physicians.) These regulations specify that the reasonable charge is the lowest of the customary, prevailing, or actual charges. The customary charge is the amount which the individual physician charges for a specific service or procedure in the majority of cases. The prevailing charge is based on statistical data and covers 75 percent of the customary charges made for similar services in the same locality. Under 42 CFR 405.504(a)(3)(i) increases above fiscal year 1973 levels in prevailing charges for physicians' services can be recognized for Medicare reimbursement purposes only to the extent they are justified by economic index data. The economic index reflects changes in physicians' costs of practice and in general earnings levels, and is published annually in the **Federal Register.** (See 47 FR 28796, July 1, 1982 for a detailed discussion of the latest index). The actual charge is the amount the physician charges the patient.

Medicare generally pays for hospital services, including services of interns and residents on a reasonable cost basis as described in section 1861(v)((1)(A) of the Act. Our current provider reimbursement regulations at 42 CFR, Part 405, Subpart D describe the general rules intermediaries use to determine reasonable costs.

Payment for Assistants at Surgery

Neither the previous Medicare law nor the current regulations or manual instructions have dealt specifically with payment for services of assistants at surgery (i.e., physicians who assist the primary surgeon during an operation). As a result, Medicare carriers have had considerable discretion in determining payment for these services.

Some insurers, including Medicare carriers in their private business, do not generally pay a charge for an assistant at surgery service in a teaching hospital. Where a charge for such services is paid in a teaching hospital or other setting, it is generally a percentage of the principal surgeon's charge or of the fee recognized by the insurer for the surgical service.

II. Recent Legislation

Section 113 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248), addresses the issue of reimbursement for assistants at surgery. The legislation amended section 1842(b)(6) of the Social Security Act by adding a new subparagraph (D)(i) that prohibits payment under Part B of Medicare for the services of assistants at surgery in teaching hospitals, unless one of four exceptions are met.

The new legislation defines "assistant at surgery" as a physician who actively assists the physician in charge of a case in performing a surgical procedure. The major provisions of the legislation are as follows:

First, the amendment generally prohibits reasonable charge payment for assistants at surgery in teaching hospitals that (1) have an approved teaching program as specified in section 1861(b)(6) of the Act; (2) have a training program related to the medical specialty required for the surgical procedure and (3) have a qualified individual on the

staff of the hospital available to serve as an assistant at surgery.

Second, the new legislation specifies that payment under Part B may be made for the services of assistants at surgery in such cases if those services:

(1) Are required due to exceptional medical circumstances;

(2) Are performed by team physicians needed to perform complex medical procedures;

(3) Constitute concurrent medical care relating to a medical condition which requires the presence of, and active care by, a physician of another specialty during surgery; or

(4) Are furnished under such other circumstances as the Secretary determines to be appropriate.

Third, the amendment directs the Secretary to determine appropriate methods of reimbursement of assistants at surgery in all settings in those instances where such services are reimbursable under Part B on a reasonable charge basis.

III. Provisions of the Regulations

We are adding a new § 405.580 to 42 CFR Part 405, Subchapter E. The provisions of the regulation are as follows:

A. Basis, Purpose and Scope

Section 405.580(a) describes the conditions under which Medicare will pay on a reasonable charge basis for the services of an assistant at surgery in a teaching hospital. This section of the regulation is based on section 1842(b)(6)(D) of the Social Security Act.

This provision applies only in hospitals that have an approved teaching program, i.e., a graduate education program approved by the committees or councils specified in section 1861(b)(6) of the Act and in regulations at 42 CFR 405.522(a). Specifically, the regulation provides that unless certain conditions are met, reasonable charge reimbursement is not available for assistants at surgery in such hospitals that also have the following:

1. A training program relating to the medical specialty required for the surgical procedure.

2. A qualified individual on the staff of the hospital (i.e., a resident in a training program relating to the specialty required for the surgery) available to serve as an assistant at surgery.

B. Definitions

Section 405.580(b) of the regulations defines "assistant at surgery" as a physician who actively assists the physician in charge of a case in performing a surgical procedure.

"Teaching hospital" is defined as a hospital with a graduate education program approved as specified in § 405.522(a). The term "team physicians" is defined as a group of physicians, each performing a unique discrete function integral to the performance of a complex medical procedure requiring the special skills of more than one physician.

This section also defines "qualified individual on the staff of the hospital" as a resident in a training program relating to the specialty required for the surgery.

C. Conditions for Payment

Section 405.580(c) of the regulations describes the conditions under which reasonable charge payment may be made for the services of assistants at surgery in such teaching hospitals. Payment may be made for the services of assistants at surgery in those teaching hospitals only if the services:

1. Are required due to exceptional medical circumstances;

2. Are performed by team physicians needed to perform complex medical procedures;

3. Constitute concurrent medical care relating to a medical condition which requires the presence of and active care by a physician of another specialty during surgery; or

4. Are furnished under such other circumstances as the Secretary determines to be appropriate.

The carrier will presume that a resident is available if the hospital has a teaching program relating to the medical specialty required for the surgical procedure, unless satisfactory documentation is furnished to the carrier that a resident was not available. Failure of the hospital to adequately schedule a resident's time does not constitute unavailability. (See 42 CFR 405.522 and 405.523 regarding reimbursement for residents' services.)

These four conditions are explained more fully below:

Exceptional Medical Circumstances

Reasonable charge payment may be made for the services of assistants at surgery in teaching hospitals if the carrier determines that exceptional medical circusmtances exist. Examples of such circumstances are life-threatening emergency situations and situations where multiple traumatic injuries must be treated immediately. In these types of situations, a physician working under the primary surgeon is an "assistant at surgery", and his or her services are reimbursed on that basis.

Complex Medical Procedures

These are exceptional procedures, including multi-stage transplant surgery and coronary bypass surgery, that warrant the presence of a team of physicians. In these unusual and infrequent situations, each of the physicians performs a unique, discrete function requiring special skills integral to the total procedure. Each physician is engaged in a different level of activity than simple assistance. Thus, reimbursement for this activity is on the basis of the full reasonable charge rather than under the assistant at surgery rule. (If reimbursement is made on the bais of a single team fee, individual physicians may not submit additional bills for their services.) If there are additional physicians involved in the surgical procedure who are actually furnishing simple assistance and charges for their services can be identified, the appropriate assistant is paid at the surgical assistant rate, as described in section D below.

Concurrent Medical Care

These are infrequent situation where the services of more than one physician are necessary and where each is required to play an active role in the patient's treatment, for example, because of the existence of more than one medical condition requiring diverse specialized medical services. For example, a cardiologist maybe present during the performance of abdominal surgery to monitor the patient's cardiac condition. In these types of situations, the physician performing the concurrent function is also functioning at a different level than that of simple assistance, and reimbursement for his or her service is on the basis of the full reasonable charge without applying the assistant at surgery rules. However, in instances where the physician is not performing a unique, specialized skill, payment is at the surgical assistant rate.

Other Circumstances Determined by the Secretary

At this time, the Secretary has not determined any other circumstances under which services could be furnished by assistants at surgery and reimbursed on the basis of reasonable charges. We are interested in receiving comments on other circumstances that the Secretary might consider.

Although we have generally defined the three specific circumstances discussed above, it may be that the actual circumstances will be sufficiently complex as to leave some doubt as to when they apply. Furthermore, their impact may depend in part on how they

are defined or applied. Therefore, we particularly invite comments on ways to more precisely define these exceptions to give uniform guidance to carriers, intermediaries, hospitals and physicians and to otherwise improve them.

D. Reimbursement for Assistants at Surgery

Although section 113 principally concerns conditions for payment for assistants at surgery in teaching hospitals, the statute at section 1842(b)(6)(D)(iii) requires the Secretary to determine "apppropriate methods of reimbursement of assistant at surgery where such services are reimbursable under this part" (emphasis added). Thus, we are required to establish reimbursement rules for the services of assistants at surgery performed in any setting where such services are reimbursable under Part B, whether or not the setting is a teaching hospital. Therefore, we are revising the regulations at 42 CFR 405.502 by adding a new subpargraph (a)(9) to provide that whenever the services of assistants at surgery are reimbursable on a reasonable charge basis in both teaching and non-teaching settings, the amount allowed will be no higher than 20 percent of the prevailing charge (adjusted by the economic index) for the surgical procedure.

In determining the amount payable for physician services furnished by an assistant at surgery, we have considered the payment policies of private insurers, including Medicare carriers in their own business. Many pay a percentage (usually 20%) of the primary surgeon's fee. Some base payment on a percentage of a fee schedule or consider the customary charges of other assistants at surgery in the area. The Committee on Finance, in its report which accompanied this amendment, cited 20 percent of the primary surgeon's fee as the amount that many carriers have historically allowed. The 20 percent factor is also consistant with guidelines developed with input from the physician community.

At the present time, Medicare carriers use different methods to determine the reasonable charge for the services of assistants at surgery. The carriers may continue to use the method they have adopted; however, the resonable charge may not exceed 20 percent of the prevailing charge, limited by the economic index, that is applicable to the surgical procedure. This approach will permit maximum flexibility for carriers, help reduce the costs of implementing this provision, and generally permit continuation of local billing practices.

Nontheless, given the variation in practice described above, we are unsure whether the 20 percent limit may substantially impinge on physician practice in particular hospitals or particular circumstances. Therefore, we particularly invite comments on the impact of, and alternatives to, the 20 percent limit, and will consider modification if appropriate.

We are also adding a new subparagraph (a)(10) to § 405.502 that clarifies that where the assistant at surgery rule does not apply because of complex medical procedures or concurrent medical care, the level of payment will be on the basis of the full reasonable charge for the physician's service.

E. Assistants at Surgery in Settings Other than Teaching Hospitals

Although not specifically mentioned in the regulation, carriers are directed to continue their current procedures for determining the medical necessity of assistant at surgery services furnished in settings other than teaching hospitals.

IV. Effective Date of the Regulations

These regulations are effective for services furnished on or after October 1, 1982.

V. Impact Analysis

Executive Order 12291

We have determined that this interim final rule is not likely to result in an annual economic impact of $100 million or more, or meet other threshold criteria of section 1(b) of the Order.

As noted above, this rule addresses the issue of Medicare payment on the basis of reasonable charges for assistants at surgery furnished by physicians in teaching hospitals when qualified residents are present on the hospital's staff. Hospitals are reimbursed on a reasonable cost basis for the salaries of these hospital staff. Thus, a duplicate payment system has evolved because these types of services have not been specifically dealt with by law, regulation or manual instructions. Medicare has been paying, in some cases, both the reasonable charge for the assistants at surgery and the reasonable cost associated with hospital personnel capable of providing those services.

One provision of these rules eliminates payment on a reasonable charge basis for the services of assistants at surgery in teaching hospitals (unless exceptional circumstances exist). Our actuaries estimate that this provision will save the program $55 million in FY 1983 and $75 million in FY 1984. Another provision limits payment for the services of physicians of assistants at surgery in all settings to 20 percent of the prevailing charge of the primary physician. Because this provision is consistent with current practice, our actuaries estimate that this provision will result in negligible savings. However, these estimates are based on assumptions and on descriptions of current practice and we may modify our estimates based on changes in this rule. We particularly invite comment on these estimates and on the impact of these regulations on physician practice in both teaching and non-teaching settings.

Even though we believe there will not be an impact of $100 million or more, we have determined that section 113 of Pub. L. 97–248, the Tax Equity and Fiscal Responsibility Act of 1982, has occasioned this impact, and not these regulations which merely implement the statutory provision. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Analysis

The Secretary certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354) that this interim final rule will not result in a significant impact on a substantial number of small entities.

The primary impact of this rule will be on physicians who continue to serve as assistants at surgery in teaching hospitals. There will also be some effect on the level of reimbursement for services of assistants at surgery in non-teaching settings. The individual impact will be determined by the extent to which a physician continues to participate as an assistant. Actual Medicare revenue reduction will be the difference between the total Medicare payment physicians received prior to the implementation of this rule, and the Medicare payment physicians will or will not receive as a result of this rule.

We do not believe that a significant monetary impact will be generated. Payment record data indicate that payment for services of assistants at surgery represents only 2.6 percent of total reimbursement for Part B physicians' services to hospital inpatients. Thus, any revenue reduction to physicians resulting from these provisions should not be a significant reduction in total physician revenue. There may be effects on the willingness of physicians to participate as surgical assistants and we are interested in identifying and ameliorating any such effects. Even if there were a significant effect on a substantial number of small

entities, we have determined that this effect is the result of the statutory provisions, and not these regulations, which merely implement these provisions. Therefore, a regulatory flexibility analysis is not required.

To comply with these requirements, we are publishing this rule on an interim final basis. As required by section 113, we will consider all public comments we receive on the rule, determine whether changes in these regulations are needed, and publish final regulations implementing section 113 by January 31, 1983.

C. Waiver of Proposed Rulemaking and 30-Day Delay in Effective Date

We are publishing these regulations as an interim final rule with comment period without notice of proposed rulemaking procedures. In order for us to have implementing regulations in place by the October 1, 1982 effective date specified in the law it would be impracticable to publish a notice of proposed rulemaking. We also believe the rapid implementation of these regulations is desirable in order to eliminate unnecessary Medicare payment for assistants at surgery. Therefore, to delay the effective date of these regulations by following a proposed rulemaking procedure would be contrary to the public interest. Also, Congress expressly addressed the issuance of interim final regulations as an option for the development of these regulations. For the same reasons, we are waiving the usual 30-day delay in effective date, and are making these revised regulations effective on October 1, 1982.

We, therefore, find good cause to waive notice of proposed rulemaking procedures and the 30-day delay in effective date.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Assistants at surgery, Certification of compliance, Clinics, Contracts (Agreements), End-Stage Renal Diseases (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

42 CFR Chapter IV is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

The authority citation for Part 405, Subpart E reads as follows:

Authority: Secs. 1102, 1814(b), 1833(a), 1842 (b) and (h), and 1871, 49 Stat. 647, as amended, 79 Stat. 296; 79 Stat. 302, 79 Stat. 310, 79 Stat. 331; 42 U.S.C. 1302, 1395 et seq., unless otherwise noted.

1. The table of contents for Part 405 is amended by adding under Subpart E, § 405.580 to read as follows:

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement of Services of Hospital Interns, Residents, and Supervising Physicians

* * * * *

§ 405.580 Conditions of payment for assistants at surgery in teaching hospitals.

2. In § 405.502, the introductory language for paragraph (a) is reprinted for the convenience of the reader, and new paragraphs (a)(9) and (a)(10) are added to read as follows:

§ 405.502 Criteria for determining reasonable charges.

(a) *Criteria.* The law allows for flexibility in the determination of reasonable charges to accommodate reimbursement to the various ways in which health services are rendered and charged for. The criteria for determining what charges are reasonable include:

* * * * *

(9) Except as provided in paragraph (a)(10) of this section, in the case of services of assistants at surgery as defined in § 405.580 in teaching and non-teaching settings, charges that are not more than 20 percent of the prevailing charge in the locality, adjusted by the economic index, for the surgical procedure performed by the primary surgeon.

(10) In the case of services of assistants at surgery that meet the exception under § 405.580(c) (ii) or (iii) because the physician is performing a unique, necessary, specialized medical service in the total care of a patient during surgery, on the basis of the full reasonable charge for the service.

* * * * *

3. A new section 405.580 is added to read as follows:

§ 405.580 Conditions of payment for assistants at surgery in teaching hospitals.

(a) *Basis, purpose, and scope.* This section describes the conditions under which Medicare will pay on a reasonable charge basis for the services of an assistant at surgery in a teaching hospital. This section is based on section 1842(b)(D)(i) of the Social Security Act and applies only to hospitals with an approved teaching program. Except as specified in paragraph (c) of this section, reasonable charge reimbursement is not available for assistants at surgery in hospitals with—

(1) A training program relating to the medical specialty required for the surgical procedure; and

(2) A qualified individual on the staff of the hospital available to serve as an assistant at surgery.

(b) *Definitions.* "Assistant at surgery" means a physician who actively assists the physician in charge of a case in performing a surgical procedure.

"Teaching hospital" means a hospital with a graduate education program approved as specified in § 405.522(a).

"Team physicians" means a group of physicians, each performing a discrete, unique function integral to the performance of a complex medical procedure that requires the special skills of more than one physician.

"Qualified individual on the staff of the hospital" means a resident in a training program relating to the specialty required for the surgery.

(c) *Conditions for payment for assistants at surgery.* Payment on the basis of reasonable charges may be made for the services of an assistant at surgery in a teaching hospital only if the services—

(1) Are required due to exceptions medical circumstances;

(2) Are performed by team physicians needed to perform complex medical procedures;

(3) Constitute concurrent medical care relating to a medical condition which requires the presence of and active care by a physician of another specialty during surgery; or

(4) Are furnished under such other circumstances as the Secretary determines to be appropriate.

(Catalog of Federal Domestic Assistance Program No. 13,774, Medicare—Supplementary Medical Insurance)

Dated: September 16, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: September 27, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-27148 Filed 9-30-82; 8:45 am]

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Part XVII

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Treatment of Cost of Uncompensated Services Furnished in Fulfillment of a Hill-Burton Free Care Obligation; Final Rule With Comment Period

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Treatment of Cost of Uncompensated Services Furnished in Fulfillment of a Hill-Burton Free Care Obligation

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This rule revises the Medicare regulations concerning treatment of charity care costs (42 CFR 405.420) to state explicitly that Medicare will not share in the costs of uncompensated services furnished by a provider in fulfillment of a Hill-Burton free care obligation. This revision implements Section 106 of Pub. L. 97–248, the Tax Equity and Fiscal Responsibility Act of 1982.

DATES: Effective date: The rule is amended as of October 1, 1982. See section III of this preamble for discussion of the effective date.

COMMENT DATE: Although this regulation is final, comments may be submitted. To assure consideration, comments should be received by November 30, 1982.

ADDRESS: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17073, Baltimore, Maryland 21235. In commenting, please refer to file code BPP–203–FC.

If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection, beginning approximately three weeks after publication, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: Paul Trimble (301) 594–8640.

SUPPLEMENTARY INFORMATION:

I. General Background

A. Legislative History

The Hospital Survey and Construction Act of 1946 (commonly called the Hill-Burton Act) created Title VI of the Public Health Service Act. This title established a program of Federal financial assistance for the construction and modernization of hospitals and other medical facilities. In 1975, Pub. L. 93–641 created title XVI of the Public Health Service Act, which superseded Title VI. Under both titles, as amended, many facilities have received financial assistance in the form of grants, loans, and loan subsidies.

Under section 603(e) of title VI and section 1621(b)(1)(K) of title XVI, facilities applying for financial assistance are required to make assurances that they will make available "a reasonable volume of uncompensated services to persons unable to pay" for them. The Department's rules establishing standards of compliance with these assurances are found at 42 CFR 124.501 through 124.512. Under these rules, each facility that received Hill-Burton financing is obligated to furnish annually a certain volume of uncompensated services. The level of the facility's obligation is based on a percentage of either its operating costs or the amount of financial assistance it received. This annual Hill-Burton free care obligation must ordinarily be met each year for twenty years.

B. HCFA Policy on Free Care

Many Medicare providers have received Hill-Burton assistance, thereby incurring obligations to furnish a reasonable volume of free care annually. Traditionally, the Medicare program has not allowed the costs of services furnished under a Hill-Burton free care obligation in determining reimbursement to these providers. This position is based on our interpretation of provisions of the Social Security Act, and of Federal regulations that govern Medicare reimbursement and administration of the Hill-Burton program. Moreover, the Hill-Burton regulations provide that a hospital does not fulfill its Hill-Burton obligation to the extent it receives Medicare reimbursement for those costs (42 CFR 124.509).

Section 1861(v)(1)(A)(i) of the Act (42 U.S.C. 1395x(v)(1)(A)(i)) governs the determination of reasonable costs under Medicare. This provision of the Medicare law states that the costs with respect to individuals not covered by the Medicare program will not be borne by the program. This principle is restated in regulations at 42 CFR 405.402(a) and 405.451. We have interpreted this provision of the statute to exclude the costs of charity care, including Hill-Burton free care, because this care is not furnished to patients receiving Medicare benefits.

In deciding to exclude these costs, we reasoned as follows: To fulfill a Hill-Burton obligation, a provider must furnish uncompensated services to indigent patients. Persons receiving Medicare benefits, regardless of other income or resources, cannot be considered indigent for medical purposes by virtue of the fact that they are insured. Therefore, for the uncompensated services to qualify as meeting a Hill-Burton obligation, they must be furnished to patients who are not receiving Medicare benefits. It follows then that because the free care services were furnished to patients who are not receiving Medicare benefits, to allow Medicare reimbursement for the services would be contrary to the statutory provision prohibiting costs associated with non-Medicare patients from being borne by the Medicare program.

The Medicare regulations at 42 CFR 405.420 state the principle that charity allowances are deductions from revenue, and are not to be included in allowable cost. The regulations define charity allowances as reductions in charges made by the provider of services because of the indigence or medical indigence of the patient. Similarly, the Hill-Burton obligation requires that uncompensated services be provided to persons unable to pay. Therefore, the expenditures associated with these services meet the definition of charity allowances.

Moreover, it is impossible for services simultaneously to qualify for Medicare reimbursement, and to meet a Hill-Burton free care obligation. Regulations issued under the Hill-Burton Act, at 42 CFR 124.501 through 124.512, prohibit a facility from including amounts it is entitled to receive from another governmental program in computing its required level of uncompensated services. If Medicare were to allow such costs as reimbursable, the services would no longer be uncompensated and would be ineligible for meeting the Hill-Burton obligation.

C. Program Experience

Some providers and other parties have asserted that the costs of obligatory free care (as distinguished from true voluntary charity care) should be incidental allowable costs under Medicare. They argue that the cost of meeting the obligation incurred as a result of Hill-Burton financing is a long-term liability and, as such, is essentially a form of interest expense. These providers argue that uncompensated services, like interest expense, should be allowed for reimbursement.

We believe both the Medicare statute (as indicated above) and the Medicare regulations concerning interest expense

(see 42 CFR 405.419) prohibit treating the costs of a Hill-Burton obligation as interest. Although 42 CFR 405.419 states that necessary and proper interest on both current and capital indebtedness is an allowable cost, the definition of "proper" in 42 CFR 405.419(b)(3)(ii) excludes the cost of uncompensated services because they are not, as required by the regulation, paid to a lender.

It also is questionable whether uncompensated services furnished in meeting an obligation incurred under a Hill-Burton grant meet additional requirements for interest expense under 42 CFR 405.419. The definitions of "interest" and "necessary" require that costs be incurred for the use of borrowed funds and incurred on a loan, in order to be allowable under Medicare. We do not believe Hill-Burton grants meet these criteria.

Furthermore, under the Department's rules for establishing compliance with Hill-Burton assurances, the payments the Medicare program makes to a Hill-Burton provider may reduce the amount of the provider's obligation to furnish free care. The regulations at 42 CFR 124.503 specify that facilities have an annual free care obligation, the amount of which is the lesser of two alternative compliance levels. The first method for calculating the amount of the uncompensated services obligation specifies that the level be three percent of the operating costs for the most recent year for which an audited financial statement is available (42 CFR 124.503). These "operating costs" are determined by *subtracting* Medicare and Medicaid payments received in that year from the total operating expenses (42 CFR 124.502). Therefore, not only are Medicare payments considered in determining the level of the obligation, but if we did include the costs of free care as an allowable cost, the increased Medicare payments could also reduce the amount of the obligation. This is clearly not intended by either the Medicare or the Hill-Burton programs.

D. Administrative Appeals and Litigation

Many providers have disagreed with Medicare denials of the costs of uncompensated services furnished under a Hill-Burton obligation, and have appealed them to the Provider Reimbursement Review Board (PRRB). These administrative appeals have been denied.

There have also been several recent court decisions on this issue. Two cases tried at the district court level have upheld Medicare's position, while others have been decided in favor of the providers. The only Court of Appeals decision on the issue (*Presbyterian Hospital of Dallas* V. *Harris*, 638 F.2d 1381 (5 Cir. 1981.)) has been in favor of the provider.

E. Prohibition on Medicare Payment

Because of the court decisions against Medicare's position, we sought clarifying legislation to exclude the costs that providers incur in satisfying their free care obligations under the Hill-Burton program from Medicare reimbursement.

On September 3, 1982 the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248) was enacted. Section 106 of this legislation amended Section 1861(v)(1) of the Social Security Act by adding a new paragraph (M). The amendment confirms that the cost of free care furnished under a Hill-Burton obligation shall not be allowable as reasonable costs under Medicare. Section 106 is effective for costs incurred under Medicare except those costs recognized by the Court of Appeals in the Presbyterian Hospital decision mentioned above. The statutory language provides explicit support for disallowances of costs of all other providers (and for Presbyterian Hospital for all cost years other than those involved in the litigation) incurred both before and after enactment of the statute. Thus, the statue resolves outstanding provider disputes, including those district court decisions favorable to providers but currently under appeal by the government.

II. Regulation Revisions

We are revising 42 CFR 405.420(b)(2) and (g) to state explicitly that uncompensated services furnished in fulfillment of a Hill-Burton free care obligation are considered charity allowances and as such cannot be considered allowable costs in computing Medicare reimbursement for providers. This rule is consistent with long-standing Medicare policy in this area, and, as noted in the preceding section of this preamble, is explicitly required by Section 1861(v)(1) of the Act (as amended by Section 106 of Pub. L. 97–248). We believe this change will clarify our regulations and prevent further disputes with providers and others on this issue.

III. Effective Date

Section 106 of Pub. L. 97–248 is effective with respect to all costs incurred under Medicare, both before and after enactment of the amendment, except those specific costs allowed under court order in the Presbyterian Hospital decision. Consequently, this rule is applicable to all past disputes concerning Medicare disallowances of costs of free care furnished under a Hill-Burton obligation except those cost years specifically litigated in the Presbyterian Hospital case, as well as future treatment of these costs. Any Hill-Burton costs paid by Medicare under the principle of the Presbyterian decision, but not specifically litigated therein, are impacted by this statutory amendment. These cost reports will be reopened and the Hill-Burton free care costs will be disallowed.

IV. Impact Analysis

A. Executive Order 12291

We have determined that this final rule does not meet the criteria for a major rule that are set forth in section 1(b) of Executive Order 12291. That is, the rule will not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or

(3) Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete in domestic or export markets.

As mentioned earlier in the preamble, this rule would state explicitly in regulations the interpretation of existing regulations Medicare has been using with regard to uncompensated care furnished in meeting a provider's Hill-Burton obligation. This interpretation has been in effect since the beginning of the Medicare program, and is explicitly supported by section 106 of Pub. L. 97–248. Therefore, this regulation should have no economic effect for the vast majority of providers.

We have been, however, allowing costs of uncompensated care furnished in meeting a Hill-Burton obligation in the Fifth Circuit (Texas, Louisiana, and Mississippi) in accordance with the principle of the *Presbyterian* case. To date we have paid approximately $2.25 million for Hill-Burton charity care allowances in these States. Under this rule, we will disallow these costs in settling future cost reports and reopen all cost reports of providers in the Fifth Circuit other than Presbyterian Hospital (for cost years covered by the litigation only) to recover any payments we have made to them for costs associated with a Hill-Burton free care obligation. (All of these Medicare payments have been made within the time period allowed for reopening.)

The following table shows the estimates of HCFA's actuaries of the costs that would have been incurred under our policy of allowing costs of uncompensated care in the Fifth Circuit.

[Dollars in millions]

Fiscal year	Costs
1983	$15
1984	$15
1985	$15

We do not believe an economic impact analysis is required because the effect of this rule is considerably below the $100 million threshold and does not otherwise meet the criteria for a major rule.

However, even if we were to determine that there was an impact of $100 million or more, we would not classify it as a major rule for purposes of the Executive Order. This is because we have determined that Section 106 of Pub. L. 97–248, the Tax Equity and Fiscal Responsibility Act of 1982, has occasioned this impact, and not these regulations which merely implement the statutory provision. Therefore, a regulatory impact analysis is not required.

B. Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this proposed rule will not have a significant economic impact on a substantial number of small businesses, nonprofit entities or small local governments.

The reason for the Secretary's certification is that, as explained in the Executive Order discussion, this rule will not alter current Medicare reimbursement policy. Although under this rule we will cease allowing payment for the cost of free care furnished under a Hill-Burton obligation to providers in the Fifth Circuit, the number of providers who have actually received such payment is not substantial nor is the amount significant. However, even if there were a significant effect on a substantial number of small entities, we have determined that this effect is the result of the statutory provision, and not these regulations, which merely implement the recent amendment. Therefore, a regulatory flexibility analysis is not required.

V. Waiver of Proposed Rulemaking

As explained earlier in this preamble, this rule implements a statutory mandate that is set forth explicitly in Section 106 of Pub. L. 97–248. The language of the statute clearly precludes the allowance of the cost of free care furnished under a Hill-Burton obligation. There are no policy alternatives implicit in the legislation. Therefore, we believe it is unnecessary to publish a notice of proposed rulemaking. Further, we believe it would be both impractical and contrary to the public interest to delay implementation of Section 106 by the amount of time that would be needed to obtain and analyze public comments. Therefore, we find good cause to waive the requirement for publication of a notice of proposed rulemaking. However, as stated previously, we will consider any comments mailed within the specified period and will make any changes in the regulations we believe necessary as a result of the comments.

Additionally, Section 106(b) specifies that the statute is effective with respect to all costs incurred in meeting Hill-Burton obligations prior to enactment of this amendment, except where those costs have been paid pursuant to the Fifth Circuit court order. Moreover, the Conference Report indicates, with respect to providers other than Presbyterian Hospital, that only costs recognized by the final judgment of a Court of Appeals, and not other costs which may have been paid pursuant to such judgment, are to be paid. In the face of this statutory direction, we believe it is impractical and unnecessary to delay the effective date of this rule for 30 days, as is our usual procedure. Consequently, we find good cause to waive the delayed effective date.

VI. Other Required Information

A. Public Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, we will consider all comments and will respond to them in the preamble to a revised final rule if changes are necessary.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of Compliance, Clinics, Contracts (agreements), End-State renal disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health supplies, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

The authority citation for Part 405, Subpart D reads as follows:

Authority: Secs. 1102, 1814(b), 1833(a), 1861(v) and 1871, 49 Stat. 647, as amended, 79 Stat. 296, 79 Stat. 302, 79 Stat. 322, 79 Stat. 331; 42 U.S.C. 1302, 1395 et seq., unless otherwise noted.

42 CFR 405.420 is amended by revising paragraphs (b)(2) and (g) as set forth below:

§ 405.420 Bad debts, charity, and courtesy allowances.

* * * * *

(b) *Definitions.*—

* * * * *

(2) *Charity allowances.* Charity allowances are reductions in charges made by the provider of services because of the indigence or medical indigence of the patient. Cost of free care (uncompensated services) furnished under a Hill-Burton obligation are considered as charity allowances.

* * * * *

(g) *Charity allowances.* Charity allowances have no relationship to beneficiaries of the health insurance progam and are not allowable costs. These charity allowances include the costs of uncompensated services furnished under a Hill-Burton obligation. (Note: In accordance with Sec. 106(b) of Pub. L. 97–248 (enacted September 3, 1982), this sentence is effective with respect to any costs incurred under title XVIII of the Social Security Act, except that it does not apply to costs which have been allowed prior to September 3, 1982, pursuant to a final court order affirmed by a United States Court of Appeals.) The cost to the provider of employee fringe-benefit programs is an allowable element of reimbursement.

(Catalog of Federal Domestic Assistance Program No. 13.773 Medicare—Hospital Insurance)

Dated: September 7, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: September 23, 1980.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-27224 Filed 9-30-82; 8:45 am]

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Reader Aids

Federal Register
Vol. 47, No. 191
Friday, October 1, 1982

INFORMATION AND ASSISTANCE

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CFR Unit	202-523-3419 523-3517
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Corrections	523-5237
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FEDERAL REGISTER PAGES AND DATES, OCTOBER

43351-43658.....1

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER 1982

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (see 1 CFR 18.17)

A new table will be published in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
October 1	October 18	November 1	November 15	November 30	December 30
October 4	October 19	November 3	November 18	December 3	January 3
October 5	October 20	November 4	November 19	December 6	January 3
October 6	October 21	November 5	November 22	December 6	January 4
October 7	October 22	November 8	November 22	December 6	January 5
October 8	October 25	November 8	November 22	December 7	January 6
October 12	October 27	November 12	November 26	December 13	January 10
October 13	October 28	November 12	November 29	December 13	January 11
October 14	October 29	November 15	November 29	December 13	January 12
October 15	November 1	November 15	November 29	December 14	January 13
October 18	November 2	November 17	December 2	December 17	January 17
October 19	November 3	November 18	December 3	December 20	January 17
October 20	November 4	November 19	December 6	December 20	January 18
October 21	November 5	November 22	December 6	December 20	January 19
October 22	November 8	November 22	December 6	December 21	January 20
October 25	November 9	November 24	December 9	December 27	January 24
October 26	November 10	November 26	December 10	December 27	January 24
October 27	November 12	November 26	December 13	December 27	January 25
October 28	November 12	November 29	December 13	December 27	January 26
October 29	November 15	November 29	December 13	December 28	January 27

CFR CHECKLIST; 1981–82 ISSUANCES

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the revision date and price of the volumes of the Code of Federal Regulations issued to date for 1981/82. New units issued during the month are announced on the back cover of the daily **Federal Register** as they become available.

For a checklist of current CFR volumes comprising a complete CFR set, see the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $615 domestic, $153.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

CFR Unit (Rev. as of Jan. 1, 1982):

Title	Price
1–2	$5.50
3	7.00
4	7.50
5 Parts:	
1–1199	8.00
1200–end	6.00
7 Parts:	
0–45	8.50
46–51	7.50
52	8.50
53–209	8.50
210–299	8.00
300–399	6.50
400–699	7.50
700–899	7.50
900–999	9.50
1000–1059	7.50
1060–1119	7.50
1120–1199	6.50
1200–1499	7.50
1500–1899	6.50
1900–1944	8.50
1945–end	8.00
8	6.00
9 Parts:	
1–199	7.50
200–end	7.50
10 Parts:	
0–199	8.50
200–399	7.50
400–499	8.00
500–end	8.00
12 Parts:	
1–199	6.50
200–299	14.00
300–499	7.00
500–end	8.50
13	8.00
14 Parts:	
1–59	8.00
60–139	8.00
140–199	6.50
200–1199	8.50
1200–end	6.50
15 Parts:	
0–299	6.50
300–399	7.50
400–end	7.50
16 Parts:	
0–149	7.00
150–999	7.00
1000–end	7.50
CFR Index	9.50

CFR Unit (Rev. as of Apr. 1, 1982):

Title	Price
17 Parts:	
0–239	8.50
240–end	8.00
18 Parts:	
1–149	8.00
1–150–399	8.50
400–end	7.50
19	9.50
20 Parts:	
1–399	6.50
400–499	8.00
500–end	8.50
21 Parts:	
1–99	7.00
100–169	7.50
170–199	7.50
200–299	5.50
300–499	8.50
500–599	8.00
600–799	6.00
800–1299	7.00
1300–end	5.50
22	9.00
23	7.50
24 Parts:	
0–199	7.00
200–499	8.50
500–799	7.00
800–1699	7.50
1700–end	7.00
26 Parts:	
1 (§§ 1.0–1.169)	9.00
1 (§§ 1.170–1.300)	7.50
1 (§§ 1.301–1.400)	7.00
1 (§§ 1.401–1.500)	7.50
1 (§§ 1.501–1.640)	7.50
1 (§§ 1.641–1.850)	7.50
1 (§§ 1.851–1.1200)	8.50
1 (§§ 1.1201–end)	9.00
2–29	7.50
30–39	7.00
40–299	8.50
300–499	7.00
600–end	5.50
27 Parts:	
1–199	7.50

CFR Unit (Rev. as of July 1, 1982):

Title	Price
29 Parts:	
100–499	6.00
900–1899	6.50
31 Parts:	
0–199	7.00
32 Parts:	
700–799	8.50
35	6.50

CFR Unit (Rev. as of Oct. 1, 1981):

Title	Price
42 Parts:	
1–60	7.50
61–399	6.50
400–end	9.00
43 Parts:	
1–999	7.00
1000–3999	8.50
4000–end	6.50
44	7.50
45 Parts:	
1–199	7.00
200–499	6.00
500–1199	7.50
1200–end	7.00
46 Parts:	
1–29	5.50
30–40	5.50
41–69	7.50
70–89	6.00
90–109	6.50
140–155	6.50
156–165	7.00
166–199	6.50
200–399	8.00
400–end	8.00
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80–end	8.50
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1–99	6.00
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CFR ISSUANCES

Complete Listing of 1982 CFR Issuances

This list restates the publication plans for the January, April and July, 1982 quarters and projects the publication plans for the October, 1982 quarter. A projected schedule that will include the January, 1983 quarter will appear in the first **Federal Register** issue of January, 1983, immediately after the CFR checklist.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The monthly CFR checklist and the Annual Cumulative LSA will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

Titles revised as of January 1, 1982:

Title

CFR Index
1–2
3 Compilation
4
5 Parts:
1–1199
1200–end
7 Parts:
0–45
46–51
52
53–209
210–299
300–399
400–699
700–899
900–999
1000–1059
1060–1119
1120–1199
1200–1499
1500–1899
1900–1944
1945–end
8
9 Parts:
1–199
200–end
10 Parts:
0–199
200–399
400–499
500–end
11 (cover only)
12 Parts:
1–199
200–299
300–499
500–end
13
14 Parts:
1–59
60–139
140–199
200–1199
1200–end
15 Parts:
0–299
300–399
400–end
16 Parts:
0–149
150–999
1000–end

Titles revised as of April 1, 1982:

Title

17 Parts:
0–239
240–end
18 Parts:
1–149
150–399
400–end
19
20 Parts:
1–399
400–499
500–end
21 Parts:
1–99
100–169
170–199
200–299
300–499
500–599
600–799
800–1299
1300–end
1308 Table (Cover only)
22
23
24 Parts:
0–199
200–499
500–799
800–1699
1700–end
25
26 Parts:
1(§§ 1.0–1–1.169)
1(§§ 1.170–1.300)
1(§§ 1.301–1.400)
1(§§ 1.401–1.500)
1(§§ 1.501–1.640)
1(§§ 1.641–1.850)
1(§§ 1.851–1.1200)
1(§§ 1.1201–end)
2–29
30–39
40–299
300–499
500–599 (Cover only)
600–end
27 Parts:
1–199
200–end

Titles revised as of July 1, 1982:

Title

28
29 Parts:
0–99
100–499
500–899
900–1899
1900–1910
1911–1919
1920–end
30 Parts:
0–199
200–end
31 Parts:
0–199
200–end
32 Parts:
1–39, Vol. I (Revised as of September 1, 1982)
1–39, Vol. II (Revised as of September 1, 1982)
1–39, Vol. III (Revised as of September 1, 1982)
40–399
400–699
700–799
800–999
1000–end
33 Parts:
1–199
200–end
34 Parts:
1–399
400–end
35
36 Parts:
1–199
200–end
37
38 Parts:
0–17
18–end
39
40 Parts:
0–51
52
53–80
81–99
100–149
150–189
190–399
400–424
425–end
41 Parts:
Chap. 1 (1–1 to 1–10)
Chap. 1 (1–11 to App.)–2
Chap. 3–6
Chap. 7
Chap. 8
Chap. 9
Chap. 10–17
Chap. 18 Vol. I (To Be Announced)
Chap. 18 Vol. II (To Be Announced)
Chap. 18 Vol. III (To Be Announced)
Chap. 19–100
Chap. 101
Chap. 102–end

Titles revised as of October 1, 1982:

Title

42 Parts:
1–60
61–399
400–end
43 Parts:
1–999
1000–3999
4000–end
44
45 Parts:
1–199
200–499
500–1199
1200–end
46 Parts:
1–29
30–40
41–69
70–89
90–109
110–139
140–155
156–165
166–199
200–399
400–end
47 Parts:
0–19
20–69
70–79
80–end—48
49 Parts:
1–99
100–177
178–199
200–399
400–999
1000–1199 (Revised as of November 1, 1982)
1200–1299
1300–end
50 Parts:
1–199
200–end

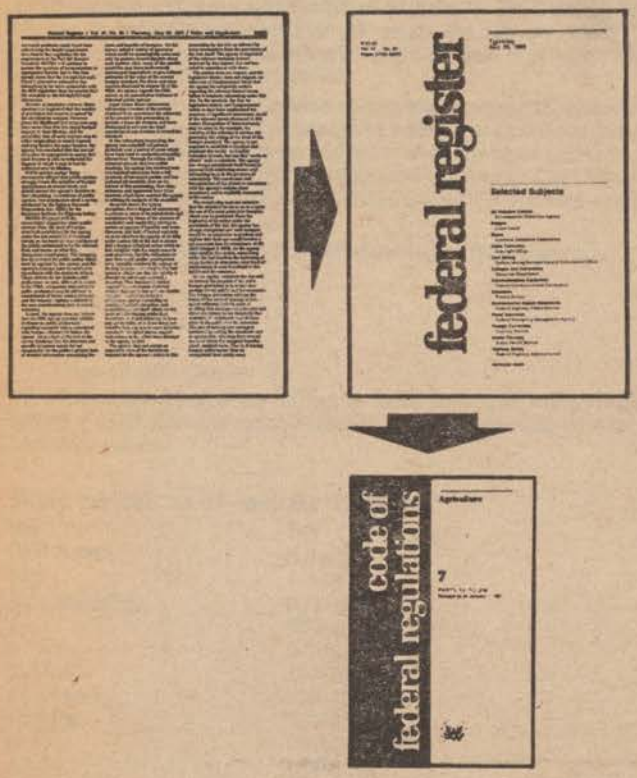
List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing September 30, 1982

The Federal Register

Regulations appear as agency documents which are published daily in the **Federal Register** and codified annually in the **Code of Federal Regulations**



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