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federal register

Friday
November 5, 1982

Selected Subjects

Biologics
Food and Drug Administration

Cosmetics
Food and Drug Administration

Crop Insurance
Federal Crop Insurance Corporation

Employee Benefit Plans
Pension and Welfare Benefit Programs Office

Excise Taxes
Internal Revenue Service

Food Assistance Programs
Food and Nutrition Service

Food Ingredients
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Foreign Trade
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Freedom of Information
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Selected Subjects

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Presidential Documents

Title 3—

The President

Proclamation 4995 of November 2, 1982

National Christmas Seal Month, 1982

By the President of the United States of America

A Proclamation

Chronic diseases of the lung afflict well over 18 million Americans, cause more than 200,000 deaths annually, and cost the Nation more than $45 billion each year in lost wages, productivity and direct costs of medical care.

Emphysema and related pulmonary diseases have been the fastest rising cause of death in the United States in the past 14 years. Over six million Americans, including two million children, suffer from asthma. It is expected that lung cancer will soon surpass breast cancer as the leading cause of cancer deaths among American women.

Leading the fight to prevent illness, disability and death from lung disease in the voluntary sector is the American Lung Association, a nonprofit health organization supported by individual contributions to Christmas Seals and other donations. Beginning in 1907, Christmas Seals were used to raise funds through private contributions to provide education to Americans with the disease.

Today, the American Lung Association works with the National Institutes of Health to support research, training, and demonstration programs relevant to diseases of the lung. This year, the Association's Christmas Seals will be in 60 million American homes.

The Congress, by Senate Joint Resolution 262, has designated the month of November as "National Christmas Seal Month."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate the month of November, 1982, as "National Christmas Seal Month."

I call upon all government agencies and the American people to observe this month with appropriate activities supporting the Christmas Seal program.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of Nov., in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and seventh.

Ronald Reagan

[FR Doc. 82-30660
Filed 11-4-82; 10:29 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 4996 of November 2, 1982

National Alzheimer's Disease Week

By the President of the United States of America

A Proclamation

Alzheimer's disease, a major brain disorder, results in the progressive loss of mental faculties, often beginning with impairment of memory, learning, attention, and judgment. While some types of dementia are curable, Alzheimer's disease is not. In time, it erodes thought, feeling, and behavior and leads to death. Family members and friends of the afflicted fully comprehend the special suffering imposed by this depersonalizing illness.

Alzheimer's disease and related disorders represent a health problem of enormous dimensions. Thanks to progress in neurobiological research, we know that Alzheimer's disease is not, as once thought, a normal consequence of aging. Rather, it is a pathological deviation from the norm—and as such must be susceptible to prevention or treatment once its underlying cause or causes are known. Alzheimer's disease is being fought through several approaches; promising early studies are spurring further vigorous research.

The fight against Alzheimer's disease needs many allies. I salute the many Americans who are working for increased public awareness of this baffling disorder and the scientists whose research holds the promise of hope.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, in accordance with House Joint Resolution 496, do hereby proclaim the week beginning November 21 through November 27, 1982, as "National Alzheimer's Disease Week," and I call upon government agencies and the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of Nov., in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and seventh.

Ronald Reagan

[FR Doc. 82-30661
Filed 11-4-82; 10:30 am]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 272

[Amdt. No. 228]

Food Stamp Program; Waiver to Monthly Reporting Rules

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule allows State agencies to request waivers of Food Stamp Program rules on monthly reporting, The Omnibus Budget Reconciliation Act of 1982 (Pub. L. 97–253) provides the Secretary the authority, with certain exceptions, to waive the monthly reporting rules to allow State agencies to establish monthly reporting systems for the Food Stamp Program which are similar to monthly reporting systems which they have established for the Aid to Families with Dependent Children (AFDC) Program. As a consequence, State agencies will have substantially more flexibility in monthly reporting systems and will be able to control administrative costs of such systems.

DATES: This interim rule is effective November 5, 1982; comments must be received on or before February 3, 1983.

ADDRESS: Please submit comments to Thomas O'Connor, Supervisor, Policy and Regulations Section, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302: (703) 756–3429. Comments will be available for public inspection during regular business hours (8:30 a.m. to 5:00 p.m.) at the agency's offices: Room 708, 3101 Park Center Drive, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Supervisor, Policy and Regulations Section, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302; (703) 756–3429.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512–1. This action will not result in an annual effect on the economy of $100 million or more or in a major increase in costs or prices for consumers, individuals, Federal, State or local governments, or geographical regions. Additionally, this rule will not significantly affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has determined that this rule is not major.

Regulatory Flexibility Act

Samuel J. Cornelius, the Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. With this rule, State agencies will be able to implement monthly reporting at less administrative cost.

Paperwork Reduction Act.

This rule does not contain reporting and recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Publication

This rule is effective on publication because it is closely related to a rule on monthly reporting and retrospective budgeting (MRRB) which the Department published on May 25, 1982 (47 FR 22684). As discussed in its preamble, that rule was effective on publication in order to expedite State agency efforts to design and implement MRRB systems for both the AFDC and Food Stamp Program. On February 5, 1982, the Department of Health and Human Services (HHS) published a rule stating the MRRB for the AFDC Program was to have been implemented on October 1, 1981 (47 FR 5648).

Interim Rule

This rule is published without a prior public comment period because Section 156 of the Food Stamp Program provisions of the Omnibus Budget Reconciliation Act of 1982 which authorizes the Secretary to grant waivers of monthly reporting requirements, was effective upon enactment, September 8, 1982. Furthermore, as discussed in the preceding paragraph, the Department needs to assist State agencies in coordinating MRRB for the Food Stamp Program with the MRRB required in the AFDC Program.

Background of Policy

Section 107 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) amended the Food Stamp Act of 1977 to require that by October 1983 State agencies implement systems of MRRB. This legislation included authority for the Secretary to waive any provision of section 5(f) of the Food Stamp Act so that for households in retrospective budgeting systems State agencies could calculate income on the same retrospective basis for the Food Stamp Program as they do for MRRB households in AFDC Programs. The Department's interim rules on MRRB contain a paragraph (7 CFR 272.3(c)(7)) which states that the Food and Nutrition Service (FNS) may grant waivers as provided by Section 5(f). Now, parallel to this authority, Section 156 of the Omnibus Reconciliation Act of 1982 (Pub. L. 97–253) provides authority for waiver, with certain exceptions, of the provisions of section 6(c) of the Food Stamp Act relating to monthly reporting systems. Explaining this new provision the Senate Budget Committee stated: "This revision would make it easier for States to administer monthly reporting requirements for the substantial portion of the food stamp caseload that also receives AFDC payments and, by allowing States to conform the two reporting systems, is consistent with the committee's actions in other areas intended to grant States maximum administrative flexibility. In addition, it would remove an anomaly whereby the Secretary may waive Food Stamp Act provisions governing retrospective budgeting (a system closely linked with the monthly reporting system), but may not waive food stamp reporting requirements." (Senate Report No. 97–504, 2nd Session, page 37)

Discription of the Policy

Section 6(c) of the Food Stamp Act, as amended by Pub. L. 97–253, now privides that the Secretary may waive certain parts of the statute pertaining to monthly reporting (all of which parts are in section 6(c)). Such waivers must be at the request of State agencies and would be authorized only to the extent necessary to permit State agencies to establish monthly reporting requirements for the Food Stamp Program which are similar to those requirements established for the AFDC Program. Two provisions of section 6(c) may not be waived. These provisions exclude two types of households from monthly reporting: (1) migrant farmworker households and (2) households with no earned income and in which all members are elderly or disabled. The Department is amending 7 CFR 272.3(c) to include the waiver provided in section 156 of the Omnibus Budget Reconciliation Act as discussed above. The Department is not requiring public comment on each waiver. This approach will expedite the waiver process and will allow State agencies to utilize public comment as they determine appropriate.

List of Subjects in 7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

Amendment

For the reasons set out in the preamble, Part 272 of Subchapter C, Chapter II of Title 7, Code of Federal Regulations, is amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. A new paragraph (g)(48) is added to § 272.1 as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(48) Amendment 228. FNS will consider requests for waivers to monthly reporting requirements beginning November 5, 1982.

2. Section 272.3 is amended by adding a new paragraph (c)(8) to read as follows:

§ 272.3 Operating guidelines and forms.

* * * * *

(c) *Waivers.* * * *

(8) Notwithstanding the preceding paragraphs, waivers may be granted by the Administrator of the Food and Nutrition Service or the Deputy Administrator for Family Nutrition Programs as provided in section 6(c) of the Act. Waivers authorized by this paragraph are not subject to the public comment provisions of § 272.3(d).

* * * * *

(91 Stat. 958 (7 U.S.C. 2011–2029))

(Catalogue of Federal Domestic Assistance Programs No. 10.551, Food Stamps)

Dated: October 29, 1982.

Robert E. Leard,

Associate Administrator, Food and Nutrition Service.

[FR Doc. 81-30203 Filed 11-4-82; 8:45 am]

BILLING CODE 3410-30-M

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7 CFR Parts 272 and 273

[Amdt. No. 213]

Food Stamp Program; Wage Matching

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rulemaking.

SUMMARY: This final rule amends the Food Stamp Program regulations, published October 17, 1978 (43 FR 47846), as amended, which implemented the Food Stamp Act of 1977. Pub. L. 97–98 amended the Food Stamp Act to require State agencies to request information concerning wages from the Social Security Administration unless they request such information from the agencies administering the State unemployment compensation laws. Matching techniques will allow State agencies to identify more readily those households with unreported or incorrectly reported earnings or benefits. This rulemaking will implement this law and will result in savings by reducing errors and fraud.

EFFECTIVE DATE: These rules are effective on January 1, 1983.

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

SUPPLEMENTARY INFORMATION:

Classification

This final action has been reviewed with regard to the requirements of Executive Order 12291 and Secretary's Memorandum No. 1512–1, and it has been determined that the rule is not a major rule as defined by that Order. It is not likely to result in an annual effect on the economy of $100 million or more. State food stamp agencies, when implementing wage matching, might experience some increase in administrative costs, but it is not anticipated that such an increase would be major. If State agencies have an operating matching system it will cost very little to expand the use of the system for food stamp purposes. This final rule is not likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Because this rule will not affect the business community, it will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This rule has also been reviewed with regard to the requirements of Public Law 96–354, and Samuel J. Cornelius, Administrator of the Food and Nutrition Service, has certified that the rule will not have a significant economic impact on a substantial number of small entities. The rule has no impact whatsoever on small businesses or small organizations. The primary impact is on State governments and individual recipients. To the extent that county governments operate the Food Stamp Program within States, they may be affected. Moreover, there should not be significant economic costs where wage matching is already conducted.

Paperwork Reduction Act

This action does not contain reporting and recordkeeping requirements subject to approval by OMB under the Paperwork Reduction Act.

Introduction

On May 7, 1982, the Department issued a proposed rulemaking, at 47 FR 19943, requiring State agencies to wage match with data from either the Social Security Administration (SSA) or the agencies administering the State unemployment compensation (UC) laws. A full explanation of the rationale and purposes of this rule was provided in the preamble to this proposed rulemaking. Therefore, this preamble deals only with significant issues raised by the commenters and the changes made as a result of these comments. The reasons supporting those proposed rules which are unchanged by the final rules were carefully examined in light of the comments to determine the continued applicability of each justification. Unless otherwise stated, or unless inconsistent with the final rules or

preamble, the rationale contained in the proposal should be regarded as a basis for the pertinent final rules. Thus, a thorough understanding of the grounds for the final rules may require reference to the proposed rulemaking.

A total of 28 commenters sent in suggestions and comments on the proposed rules which mandate wage matching. There were 15 comment letters received from State agencies, one from a local agency, two from public interest groups, six from regional Food and Nutrition Service offices, one from the Office of Inspector General, USDA, one from the Social Security Administration and two from the general public.

There were several comments on the value of wage matching in general; the majority of those commenting were State agencies and they supported the concept of wage matching as an aid to determining eligibility, eliminating fraud and as a deterrent to incorrect reporting. However, several State agencies pointed out that a great deal of staff time could be spent working on outdated information, particularly information from SSA, and that the process may not be worthwhile. Two commenters suggested that the wage matching requirement be waived if State agencies can prove that it is not cost effective.

The requirement to wage match cannot be waived since it is mandated by legislation. The Department recognizes that SSA data is usually less current than quarterly UC data but, as pointed out in the final rules on optional wage matching published on May 7, 1982 at 47 FR 19940, the Department does not believe that it is without usefulness. SSA wage data is useful in identifying overpayments and in fraud investigations. It can also serve as an indicator of a household's employment pattern. Moreover, SSA is the best source for interstate data and self-employment wage data (which is not included in UC wage data). Relative to the value of data from unemployment compensation agencies, there are several State agencies which are already matching with UC data and they do not indicate that the age of the data is a problem.

A few commenters raised the question of whether the mandate applies to State and local agencies that do not have access to computer systems. The mandate to wage match applies to all State agencies and a minor change has been made to the final rules to make this clear. The Department expects that most State agencies which are not computerized will be beginning work in this area, especially since 75 percent funding for this activity is now available. On June 11, 1982, the Department issued final rules (at 47 FR 25496) which provided that the Federal financial participation for the design and implementation of automated systems be raised to 75 percent effective retroactively to Oct. 1, 1980. Discussions with FNS Regional Offices indicate that several State agencies have already submitted requests for this funding and several others are planning to do so shortly. Whether a State agency has computer capabilities or not, however, the legislative requirement to wage match applies.

Alternative Data Bases

A number of the commenters raised a question relative to the possibility of using alternative data bases for wage matching. This question arises because there are 12 wage request States, i.e., States which do not require employers to report each quarter wages paid to individual employees. These States do not have UC data available and thus, unless an alternative data base is approved, they will have no option but to wage match with SSA data, regardless of the availability of more current data. The Department recognizes the problem raised by these commenters. However, the statutory language is very specific in this area (Pub. L. 97–98, section 1321(3) 95 Stat. 1287). The law clearly requires that State agencies wage match with SSA data, unless they match with data maintained by agencies administering State unemployment compensation laws. This language does not allow for approval of an alternative data base.

When State Agencies Must Wage Match

The provision in the proposed rules which required State agencies to wage match with SSA data semiannually and/or with UC data quarterly received more comments than any other provision in the rules except for the proposed implementation schedule. This provision's intent was consistency with AFDC. The overwhelming majority of commenters opposed this requirement for varying reasons, and several commenters suggested alternatives.

Most commenters believe that this provision would generate a workload that would be staggering, expensive, and largely unproductive. Several State agencies already match wage information in food stamp cases with UC data and do not want to modify a system which is effective for them. For example, the Nevada State agency indicated that they match a certification and at recertification unless they have current information in the case file. They say: "We have found this to be efficient and workable for our agency, as well as for SSA and UC. If information is obtained on all clients at specific times the ECS (eligibility certification specialist) is unable to handle the volume, and essential information is overlooked. We believe our current procedure provides us with the optimum use of available wage data." The State of Louisiana comments: "The requirement to match data quarterly with the agency administering unemployment compensation laws would increase the administrative burden on some State Agencies who have already entered into wage match agreements. In Louisiana, our current agreement provides for a match with Employment Security files automatically at the time of a household's food stamp redetermination of eligibility. Wage information is on demand otherwise. State agencies with a viable working agreement with the agency administering the unemployment compensation laws should not be required to make changes to their systems which could prove costly and administratively burdensome." Connecticut agrees with this comment and recommends that the rules should, at a minimum, offer State agencies the option of doing a wage match at time of certification or recertification rather than mandating a semiannual or quarterly wage match. These comments reflect the opinions of State agencies already involved with wage matching. These State agencies have found their systems to be effective and workable for the UC agencies too. In one of the States, for example, where the food stamp caseload is almost three times as large as the AFDC caseload—the State UC agency indicates that a quarterly wage match for the large food stamp caseload would be burdensome.

Relative to SSA matching, conversation with staff at SSA suggests that, rather than a semiannual match, it would be more productive for SSA to retain a control file of active inquiries from State agencies and to provide updated data on any new earnings subsequently posted until notified to delete the control by the State agencies. Using this system, a State agency would do an initial match and then SSA would report when changes occur. New accretions and deletions would be reported by the State agency to SSA no less frequently than semiannually.

In light of these comments the Department has revised this section in the final rules to allow State agencies an option ralative to when to wage match. The first option would be to match data no less frequently than at time periods

consistent with AFDC wage matching requirements, as outlined in 45 CFR 205.56, *Access to wage information from agencies administering State unemployment compensation laws and from the Social Security Administration.*

The second option would be to match with UC data no less frequently than at time of certification and recertification, and SSA data on a one time basis initially and then as additions and deletions occur, provided that SSA update information as new information is posted to their files. State agencies will be able to utilize this latter option once SSA has the capability to update information. This capability is currently scheduled to become available in January 1983. Although the Department wants to be consistent with AFDC whenever possible, it is also interested in combatting fraud and waste in the most efficient and productive way. To this end, the Department believes that State agencies should be allowed the flexibility to determine which of these two options would have the best results for them.

Data Exchange Agreements

The proposed rules stipulated that a State agency would have to execute a data exchange agreement with SSA and/or the UC agencies specifying the procedures to be used in requesting and providing wage information and included some minimum requirements for these agreements. One commenter felt the final rules should be more specific and require that the name and/or titles of accessing officials be listed. However, as another commenter pointed out, such a requirement would result in continuous amending of the agreement. This section was not changed in the final rule.

A question was raised as to whether the data exchange agreements should be submitted to FNS for approval. The Department regards the data exchange agreement as an agreement between the State agency and SSA and/or the UC agency. It is not necessary that FNS approve the agreement. SSA has completed a draft of the agreement to be used in accessing SSA data; agreements between UC agencies and State agencies will be drafted by these parties on a State-by-State basis.

Safeguard Provisions

The proposed rules required that State agencies agree to comply with the provisions in the Internal Revenue Service (IRS) brochure entitled *Tax Information and Security Guidelines* when accessing SSA data. This brochure implements the safeguard and monitoring provisions and the reporting provisions of sections 6103 and 7213 of the Internal Revenue Code. As noted in the preamble to the proposed rules, the brochure should be identified as the *Tax Information and Security Guidelines*, Publication 1075 (Rev. 6–81), and may be requested from the IRS district disclosure officer in the appropriate IRS district. Relative to safeguarding UC data, the proposed rules required incorporation into the UC data exchange agreements State agency established safeguards, as well as any other safeguards required by Federal or State law or regulation. A comment was received that the proposed rules do not subject the UC agency to the IRS safeguard and reporting requirements. This commenter believed that it was the intent of Congress that UC data be subject to IRS safeguard requirements. The Department disagrees. In House Report 96–788 (96th Congress 2nd Session, February 27, 1980, p. 110) this is addressed as follows: "Disclosure of all this information would be subject to the same safeguards and limitations applicable to the disclosure of tax return information *to the extent such safeguards and limitations as modified were determined to be appropriate in the context of the unemployment compensation files*, with the safeguards to be established by regulations promulgated by the appropriate official, perhaps, in this context, the Secretary of Labor." (Italic added.) The Department believes that Congress intended that the Secretary of Labor establish the safeguard requirements for UC data. The Department has confirmed with staff at the Department of Labor that regulations are being drafted on the disclosure of information. Until such regulations are effective, the language in these final rules requiring incorporation into the UC data exchange agreements State agency established safeguards, as well as any other safeguards required by Federal or State law or regulations, will ensure the adequate safeguarding of information.

Two commenters suggested that the rules should specify what is required by the IRS *Tax Information and Security Guidelines*. The Department feels this is unnecessary since this brochure is very specific and readily available.

Action on "Hits"

Several commenters suggested that the final rules contain some minimum follow-up requirements. For example, one commenter suggested that a minimum standard as to what constitutes a "hit" be established with upper limits left to the discretion of the State agency. Another commenter recommended that the State agency be allowed to establish cut off levels such as eliminating income below certain levels from review and follow-up action. Two commenters suggested that the rule require households known to be error-prone to be specially identified and maintained. The area of how to use wage matching and how to treat the results is an area which the Department believes should be flexible. The Department does agree that the rules should ensure that a State agency develop, at a minimum, follow-up procedures and corrective action requirements. The development of such procedures and requirements is essential. However, the Department believes that the specifics of these procedures and requirements should be left up to the State agency so that the plans can reflect the action best suited to each particular State. A general statement requiring the development of follow-up procedures and corrective action requirements has been added to the final rules. Such follow-up action would include, but not be limited to, adjustment of benefits and eligibility, and the filing of claims, as appropriate.

A comment was received on the fact that the proposed rules did not address the timeframe for agency action on positive matches. This issue was raised within the context that current regulations require the State agency to act within 10 days on information received. Obviously, the workload generated by wage matching activities makes this timeframe unrealistic for action on the information obtained from the match. The Department believes that the most important factor here is the currency of information. Information obtained from wage matching is usually not as current as information individually reported by a recipient and a 10 day processing time is, consequently, not appropriate, as it is when current information becomes known to the agency. If the information obtained from the match is, in some instances, current, then presumably the State agency would take more immediate action. The State agency should evaluate the information received and use its discretion to determine the timeframe for action. The State agency should include the criteria for applying specific timeframes in its plans addressing followup procedures.

Funding

Two commenters suggested that the final rules address funding for wage matching. The Department does not feel that the funding arrangements need to be specifically addressed in these rules. The funding for this activity would be the same as for any other State agency

activity, at the 50 percent level. The exception to this would be if any wage matching activity were to be conducted by an investigator in connection with food stamp investigations. In accordance with program regulations (7 CFR 277.15), investigative activity undertaken by investigators may be funded at the 75 percent level. As discussed earlier in this preamble, State agencies planning, enhancing and/or developing automated systems can obtain 75 percent matching funding for this activity. Interested State agencies should request information about the 75 percent matching funding from their respective FNS Regional offices.

Implementation

The requirement in the proposed rules to implement wage matching and the entry of social security numbers into computer systems effective January 1, 1983, received numerous comments. All of the State agencies commenting on this provision felt the implementation date was unrealistic since some are installing new computer systems which will not be ready by January 1, 1983, while for others, reprogramming existing systems and entering nonassistance food stamp cases into a central file are lengthy processes. Several commenters made suggestions on the implementation of these rules. Two State agencies suggested that the implementation date be extended by six to nine months. Another suggestion was that a provision for waiver of the January 1, 1983 implementation date be made for those State agencies able to prove that reasonable efforts are being made to assure regulatory compliance at the earliest possible date.

The Department considered these comments carefully but concluded that the statutory language is specific relative to the implementation date. Subsection (b) of section 127 of Pub. L. 96-249 states that the amendments made by the subsection shall take effect on January 1, 1983. This section pertains to information maintained by State UC agencies. Congress, in the Food Stamp and Commodity Distribution Amendments of 1981, did not modify this date. In fact, the legislative history of the 1981 amendments indicates that this provision is to be effective no later than January 1, 1983. See Senate Report No. 97-290, 97th Congress, 1st Session, 221, 1981. Thus, the January 1, 1983 date in the 1980 legislation remains the date when State agencies must begin wage matching.

A second issue, raised by three commenters on this section, concerns the preamble language in the proposed rules which suggested that State agencies may wage match with UC data prior to January 1, 1983. Two commenters agreed and one did not. As stated above, the January 1, 1983, implementation date is based on section 127(b) of Pub. L. 96-249 which requires that State UC agencies disclose wage information upon request to State food stamp agencies beginning on January 1, 1983. Congress, in the Food Stamp and Commodity Distribution Amendments of 1981, did not modify this date. As a result, the January 1, 1983, date in the 1980 legislation remains the date the wage matching amendments take effect. While the Department feels that it cannot mandate wage matching with UC data prior to that date, this does not mean that State agencies are prohibited from wage matching with UC data prior to that date. There are no Federal prohibitions against such wage matching. Those State agencies which do not have State laws which would preclude such matching can certainly do so prior to January 1, 1983.

Technical Correction

In the final regulations published on May 7, 1982 (at 47 FR 19940) on optional wage matching, the last two sentences in § 273.2(k)(1)(iii)(A)(3) were deleted in error. This error is corrected in this rulemaking.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Therefore, Parts 272 and 273 are amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. A new paragraph (g)(40) is added to § 272.1 as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(40) *Amendment 213.* All State agencies shall execute the appropriate data exchange agreements and implement the provisions of this amendment not later than January 1, 1983. State agencies may opt to match earnings data with information maintained by the Social Security Administration upon publication of final regulations provided they have executed data exchange agreements with the Social Security Administration. State agencies which are not prohibited by State law from wage matching with agencies administering unemployment compensation may do so upon publication of final regulations, provided they have executed the appropriate data exchange agreements.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.2 the title and language of paragraph (f)(7) are revised, a new paragraph (f)(9) is added, and paragraph (k)(1)(iii)(A)(*3*) is revised to read as follows:

§ 273.2 Application processing.

* * * * *

(f) *Verification.* * * *

(7) *State Data Exchange and Beneficiary Data Exchange.* The State agency may verify SSI benefits through the State Data Exchange (SDX), and Social Security benefit information through the Beneficiary Data Exchange (BENDEX), or through verification provided by the household. The State agency may use SDX and BENDEX data to verify other food stamp eligibility criteria. The State agency may access SDX and BENDEX data without release statements from households, provided the State agency makes the appropriate data request to SSA and executes the necessary data exchange agreements with SSA. The household shall be given an opportunity to verify the information from another source if the SDX or BENDEX information is contradictory to the information provided by the household or is unavailable. Determination of the household's eligibility and benefit level shall not be delayed past the application processing time standards of paragraph (g) of this section if SDX or BENDEX data is unavailable.

* * * * *

(9) *Access to wage information.* (i) The State agency shall request wage information available from the Social Security Administration (SSA) under provisions of Section 6103(1)(7) of the Internal Revenue Code of 1954 and/or from agencies administering State unemployment compensation (UC) laws under provisions of Section 303(d) of the Social Security Act. State agencies are not required to request wage information from SSA if such information is available from agencies administering UC laws. At a minimum,

State agencies shall either A) request wage data at time periods consistent with the AFDC requirements in 45 CFR 205.56 or, B) if UC data is used, at certification and recertification and, C) if SSA data is used, on a one time basis initially and then as additions and deletions occur, and provided that SSA updates information as new information is posted to SSA files. The State agency shall submit additions and deletions to SSA no less frequently than semiannually.

(ii) Information on earnings and benefits disclosed by SSA or UC agencies shall be used only for the purposes of:

(A) Verifying a household's eligibility;

(B) Verifying the proper amount of benefits;

(C) Investigating to determine whether participating households received benefits to which they were not entitled; and

(D) Substantiating information which will be used in conducting criminal or civil prosecutions based on receipt of food stamp benefits to which participating households were not entitled.

(iii) State agencies shall develop follow-up procedures and corrective action requirements, including timeframes within which action should be taken, to be applied to data obtained from wage matching. Follow-up actions shall include, but not be limited to, the adjustment of benefits and eligibility, and the filing of claims, as appropriate.

(iv) FNS reserves the right to review State agencies' use of data obtained from wage matching and may require State agencies to take additional specific action to ensure that such data is being used to protect Program integrity.

(v) Prior to accessing wage information from SSA and/or UC agencies, State agencies shall execute data exchange agreements with the respective agency, detailing the procedures to be used in requesting and providing wage information. These agreements shall include, at a minimum, the following:

(A) Identification of all agency officials with authority to request wage information;

(B) Methods and timing of the requests for information, including the format to be used, and the period of time needed to furnish the requested wage information; and

(C) Safeguards limiting release or redisclosure as required by Federal or State law or regulation. The agreement with SSA shall assure compliance with the safeguard, reporting, and other requirements contained in sections 6103 and 7213 of the Internal Revenue Code as implemented by the Internal Revenue Service in its publication, *Tax Information and Security Guidelines.* The agreements with UC agencies shall assure compliance with all safeguard requirements set by the Department of Labor.

(iv) The State agency may access data for wage matching without release statements from households, provided the State agency makes the appropriate data request to SSA and/or the UC agency, and executes the necessary data exchange agreements. The household shall be given an opportunity to verify information from another source if the data obtained from wage matching is contradictory to the information provided by the household or is unavailable. Determination of the household's eligibility and benefit level shall not be delayed past the application processing time standards of paragraph (g) of this section if SSA, UC or State wage data is unavailable.

* * * * *

(k) *SSI households.* * * *

(1) * * *

(iii) * * *

(A) * * *

(*3*) State agencies may verify other information through SDX and BENDIX but only to the extent permitted by data exchange agreements with SSA. Information verified through SDX or BENDIX shall not be reverified unless it is questionable. Households shall be given the opportunity to provide verification from another source if all necessary information is not available on the SDX or the BENDIX, or if the SDX/BENDIX information is contradictory to other household information.

* * * * *

3. In § 273.6 a new paragraph (g) is added as follows:

§ 273.6 Social security numbers.

* * * * *

(g) *Entry of SSN's into automated data bases.* State agencies with automated food stamp data bases containing household information shall enter all social security numbers obtained in accordance with § 273.6(a)(1) into these files.

(91 Stat. 958 (7 U.S.C. 2011–2029))

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

Dated: October 27, 1982.

Mary C. Jarratt,

Assistant Secretary.

[FR Doc. 82-30204 Filed 11-4-82; 8:45 am]

BILLING CODE 3410-30-M

Federal Crop Insurance Corporation

7 CFR Part 423

[Amdt. No. 2]

Flax Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Flax Crop Insurance Regulations (7 CFR Part 423), effective for the 1983 and succeeding crop years by (1) adding a Section 11 to the policy to prescribe FCIC's liability in cases of loss by fire when the insured has other such insurance covering fire losses, (2) prescribing the interest to be charged when premium payments are not made within a certain time, and (3) adding a provision to require the insured to file a notice of probable loss when the crop is damaged to the extent that a loss is probable and require that a representative sample of the unharvested crop be left intact, and making certain other technical and language corrections. The intended effect of this amendment is to restore a provision in the regulations regarding losses from fire, improve the debt management practices of FCIC, revise the system of reporting damage or loss to insured crops, and make the regulations easier to read and more administratively effective.

EFFECTIVE DATE: November 5, 1982..

ADDRESS: Comments on this rule may be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in the regulations to which this amendment applies (7 CFR Part 423) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

This action has been reviewed under USDA procedures established in

Secretary's Memorandum No. 1512–1 (June 11, 1981).

Merritt W. Sprague, Manager, FCIC, has determined that (1) this action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action does not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which this amendment applies are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically upon area and community development; therefore, review as established in OMB Circular A–95 was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provision of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

It has also been determined that this action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under the provisions of Secretary's Memorandum No. 1512–1 (June 11, 1981). That review will be completed prior to the sunset review date established for these regulations.

On Thursday, April 29, 1982, FCIC published a notice of proposed rulemaking in the **Federal Register**, at 47 FR 18339–18340, which proposed to amend the Flax Crop Insurance Regulations (7 CFR Part 423), effective with the 1983 and succeeding crop years, in the following instances:

1. Restore Section 11 to the policy to provide that if an insured has other insurance against fire losses, the Corporation shall be liable for loss due to fire for only the smaller of the indemnity determined on the contract with FCIC, or the amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance.

2. Revise paragraph 5(d) of 7 CFR 423.7(d), Terms and Conditions, to provide that for the 1983 and succeeding crop years, unpaid premiums will bear interest in the amount of 1½ percent simple interest per calendar month or any part thereof starting with the first day of the month following the month in which the acreage reporting date for the crop in the county occurred.

3. Revise paragraph 7(c) of 7 CFR 423.7(d), Terms and Conditions, to provide that if a crop is damaged to the extent that a loss is probable, the insured is required to give notice of damage at least 15 days prior to the beginning of harvest. If a probable loss is not determined until after harvest begins, the insured is required to give such notice immediately and leave a representative sample of the unharvested crop intact for 15 days after the date of the notice.

In addition, FCIC proposed making minor language and format changes to include redesignating Appendix B, listing counties where Flax Crop Insurance is available, as Appendix A.

The public was given 60 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. However, FCIC, in reviewing the amendment before issuance as a final rule, determined that the date interest attaches on any unpaid premium balance, as contained in the proposed rule, is inequitable as published.

The proposed rule states that interest will accrue at the rate of one and a half percent (1½ percent) simple interest per calendar month or any part thereof on any unpaid premium balance *starting from the first day of the month following the month in which the acreage reporting date for the crop occurs.* (Emphasis added)

As this formula would apply for spring planted crops, for example, the acreage reporting date is June 25, with the first premium billing date on September 1. Under this proposal, the insured would have until October 1 to pay the premium without interest. If the premium was not paid by that date, interest would be computed from July 1 (the first day of the month following the month in which the acreage reporting date occurred), resulting in an immediate four-month interest charge.

While the premium is due and payable when insurance attaches at the time of seeding or planting, the common practice is to meet the growing season obligations from the proceeds of the crop at harvest. With this in mind, FCIC has historically deferred collection of the paragraph 5(d) of 7 CFR 423.7(d) premium until after harvest.

FCIC has decided to amend the provision to provide that interest will attach on the first day of the month following the first premium billing date. This will result in little, if any, departure from the general practice of collecting the premium at harvest, thus providing the insured with protection while deferring the premium payment until harvest.

With the amendment decribed above, the Amendment No. 2 to the Flax Crop Insurance Regulations (7 CFR Part 423), is hereby republished as a final rule to be effective with the 1983 and succeeding crop years.

List of Subjects in 7 CFR Part 423

Crop insurance, Flax.

Final Rule

PART 423—FLAX CROP INSURANCE

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Flax Crop Insurance Regulations (7 CFR Part 423), appearing at 44 FR 67343–67349, Monday, November 26, 1979, effective with the 1983 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR Part 423 is revised to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 72, as amended (7 U.S.C. 1506, 1516)

2. The Table of Contents is revised to read as follows:

Sec.

423.1 Availability of flax crop insurance.
423.2 Premium rates, production guarantee, coverage levels, and prices at which indemnities shall be computed.
423.3 Reserved.
423.4 Creditors.
423.5 Good faith reliance on misrepresentation.
423.6 The contract.
423.7 The application and policy.
Appendix A. Counties designated for Flax Crop Insurance.

3. Paragraph 5(d) of the Terms and Conditions section of the Policy as found in 7 CFR 423.7(d) is revised to read as follows:

§ 423.7 The application and policy.

* * * * *

Flax Crop Insurance Policy

Terms and Conditions

* * * * *

5. *Annual Premium.*

* * * * *

(d) Interest will accrue at the rate of one and a half percent (1½%) simple interest per calendar month or any part thereof on any unpaid premium balance starting from the first day of the month following the first premium billing date.

4. In paragraph 7 of the Terms and Conditions section of the Policy as found in 7 CFR 423.7(d) item 7(c) is revised, 7 (d) and (e) are redesignated as 7 (e) and (f), and a new 7(d) is added to read as follows:

* * * * *

Terms and Conditions

* * * * *

7. Notice of damage or loss.

* * * * *

(c) Notice shall be given at least 15 days prior to the beginning of harvest if the flax on any unit is damaged to the extent that a loss is probable. If probable loss is not determined until less than 15 days prior to the beginning of harvest on a unit, notice shall be given immediately and a representative sample of the unharvested flax (at least 10 feet wide and the entire length of the field) shall remain intact for a period of 15 days from the date of the notice, unless the Corporation gives written consent to the insured to harvest the representative sample.

(d) In addition to the notices required in paragraphs (b) and (c) of this section, if a loss is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the service office not later than *30 DAYS* after the earliest of (1) the date the harvest is completed on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire flax crop on the unit is destroyed, as determined by the Corporation. The Corporation reserves the right to provide additional time if there are extenuating circumstances.

* * * * *

5. The Appendix to the Flax Crop Insurance Policy (Additional Terms and Conditions) as found in the appendix to 7 CFR 423.7 is hereby amended by adding section 11 to read as follows:

* * * * *

Appendix to the Flax Crop Insurance Policy—(Additional Terms and Conditions)

* * * * *

11. Other Insurance Against Fire. If the insured has other insurance against damage by fire during the insurance period, the Corporation shall be liable for loss due to fire only for the smaller of (a) the amount of indemnity determined by the Corporation under the policy with the Corporation or (b) the amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit before the fire and after the fire, as determined by the Corporation from appraisals made by the Corporation.

Appendix B Redesignated As Appendix A

6. Appendix B to 7 CFR Part 423 is redesignated as Appendix A.

Done in Washington, D.C., on September 28, 1982.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Merritt W. Sprague,

Manager.

Dated: October 7, 1982.

[FR Doc. 82-30362 Filed 11-4-82; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 429

[Amdt. No. 1]

Rye Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Rye Crop Insurance Regulations (7 CFR Part 429), effective with the 1983 and succeeding crop years by: (1) Adding a Section 11 to the Appendix to the Policy to prescribe FCIC's liability in cases of loss by fire when the insured has other such insurance covering fire losses; (2) prescribing the interest to be charged when premium payments are not made within a certain time; (3) adding a provision to require the insured to file a notice of probable loss when the crop is damaged to the extent that a loss is probable and require that a representative sample of the unharvested crop be left intact; and (4) making certain other technical language and format changes. The intended effect of this rule is to restore a provision in the regulations regarding losses from fire, improve the debt management practices of FCIC, revise the system of reporting damage or loss to insured crops, and make the regulations easier to read and more administratively effective.

EFFECTIVE DATE: November 5, 1982.

ADDRESS: Written comments on this rule may be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

The Impact Statement describing the options considered in developing the rule and impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in the regulations to which this amendment applies (7 CFR Part 429) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563-0003 and 0563-0007.

This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 (June 11, 1981).

Merritt W. Sprague, Manager, FCIC, has determined that (1) this action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action does not increase the Federal paperwork burden for individuals, small businesses, or other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which this amendment applies are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically on area and community development; therefore, review as established in OMB Circular A-95 was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

It has also been determined that this action does not constitute a review as to need, currency, clarity, and effectiveness of these regulations under the provisions of Secretary's Memorandum No. 1512-1 (June 11, 1981). That review will be competed before October 29, 1984.

On Thursday, April 29, 1982, FCIC published a notice of proposed rulemaking in the **Federal Register** at 47 FR 18340. In the rule, FCIC proposed to:

1. Restore Section 11 to the Appendix to the Rye Crop Insurance Policy to provide that if the insured has other insurance against fire losses, the Corporation shall be liable for loss due to fire only for the smaller of the amount of indemnity determined on the contract with FCIC, or the amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance.

2. Amend paragraph 5(d) of 7 CFR 429.7(d) Terms and Conditions to provide that, for the 1983 and succeeding crop years, unpaid premiums will bear interest in the amount of 1½% simple interest per calendar month or any part thereof, starting on the first day of the month following the month in which the acreage reporting date for the crop in the county occurred.

3. Add to paragraph 7 of 7 CFR 429.7(d) Terms and Conditions to provide that if a crop is damaged to the extent that a loss is probable, the insured is required to give notice of damage at least 15 days prior to the beginning of harvest. If a probable loss is not determined until after harvest begins, the insured is required to give such notice immediately and leave a representative sample of unharvested

crop intact for 15 days after the date of the notice.

4. Remove and Reserve 7 CFR 429.3. This section required FCIC to annually post in each county courthouse a listing of indemnities paid in that county. That provision was previously required by the FCIC Act. The 1980 amendments to the Act (Pub. L. 96–365, September 26, 1980), deleted that provision and FCIC is no longer required to post such lists.

In addition to these changes, FCIC hereby makes minor language changes to include correcting the Table of Contents, and redesignating Appendix B listing the counties where rye crop insurance is offered as Appendix A.

The public was given 60 days in which to submit written data, comments, and opinions on the rule, but none were received; however, FCIC, in review of the regulations during the 60-day comment period, determined that the premium billing dates, related to the acreage reporting dates, were inequitable as published. The proposed rule stated that interest will accrue at the rate of one and a half percent (1½%) simple interest per calendar month or any part thereof on any unpaid premium balance *starting on the first day of the month following the month in which the acreage reporting date for the crop occurs.* (Emphasis added)

By applying this formula to a spring-seeded crop, for example, the acreage reporting date would be June 25, with the first premium billing date on September 1. Under this proposal, the insured would have until October 1 to pay the premium without interest. If the premium was not paid by that date, interest would be computed to July 1 (the first day of the month following the month in which the acreage reporting date for the crop occurred), resulting in an immediate four-month interest charge.

While the premium is due and payable when insurance attaches at the time of seeding or planting, the practice of farmers insured with FCIC is to meet growing season obligations from the proceeds of the crop at harvest and FCIC has historically deferred collection of premiums until after that time and has not considered the premium delinquent until the termination date of the policy. This has adversely affected the cash flow of the Corporation since most premiums were not paid until after indemnities were paid by the Corporation. This free credit to the insured is contrary to general industry practices and requires the Corporation to expend large amounts in interest on funds borrowed from the Treasury.

While the premium is due and payable when insurance attaches at seeding or planting time, the proposed date for the attachment of an interest charge as contained in the proposed rule would result in a hardship to the insured; therefore, FCIC has decided to amend the provision to provide that interest will attach on the first day of the month following the first premium billing date. This will result in little, if any, departure from the practice of collecting premiums at harvest, thus providing the insured with protection while deferring the premium payment until harvest. In addition, all insureds have been notified of this change in the billing procedure and alerted as to the first premium billing date established for their crop(s).

Accordingly, Amendment No. 1 to the Rye Crop Insurance Regulations (7 CFR Part 429) is herewith republished as a final rule with the amendment described above.

List of Subjects in 7 CFR Part 429

Crop insurance, Rye.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Rye Crop Insurance Regulations (7 CFR Part 429), effective with the 1983 and succeeding crop years, in the following instances:

PART 429—RYE CROP INSURANCE

1. The authority citation for 7 CFR Part 429 is revised to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 72, as amended (7 U.S.C. 1506, 1516).

2. The Table of Contents is revised to read as follows:

Sec.
429.1 Availability of rye crop insurance.
429.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
429.3 [Reserved]
429.4 Creditors.
429.5 Good faith reliance on misrepresentation.
429.6 The contract.
429.7 The application and policy.
Appendix A, Counties designated for Rye Crop Insurance.

§ 429.3 [Reserved]

3. 7 CFR 439.3 is removed and reserved.

4. Paragraph 5(d) of the Terms and Conditions section of the policy as found in 7 CFR 429.7(d) is revised to read as follows:

§ 429.7 The application and policy.

* * * * *

(d) * * *

Rye Crop Insurance Policy

Terms and Conditions

* * * * *

5. *Annual Premium.* * * *

(d) Interest will accrue at the rate of one and a half percent (1½%) simple interest per calendar month or any part thereof on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. In paragraph 7 of the Terms and Conditions section of the Policy as found in 7 CFR 429.7(d), item 7(c) is revised, 7 (d) and (e) are redesignated as 7 (e) and (f) respectively, and a new 7(d) is added to read as follows:

§ 429.7 The application and policy.

* * * * *

(d) * * *

Terms and Conditions

* * * * *

7. *Notice of damage or loss.* * * *

(c) Notice shall be given at least 15 days prior to the beginning of harvest if the rye on any unit is damaged to the extent that a loss is probable. If probable loss is not determined until less than 15 days prior to the beginning of harvest on a unit, notice shall be given immediately and a representative sample of the unharvested rye (at least 10 feet wide and the entire length of the field) shall remain intact for a period of 15 days from the date of the notice, unless the Corporation gives written consent to harvest the representative sample.

(d) In addition to the notice required in paragraphs (b) and (c) of this section, if a loss is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the office for the county not later than *30 DAYS* after the earliest of (1) the date the harvest is completed on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire rye crop on the unit is destroyed, as determined by the Corporation. The Corporation may provide additional time if there are extenuating circumstances.

* * * * *

6. The appendix to § 429.7, the Rye Crop Insurance Policy (Additional Terms and Conditions) as found in the appendix to 7 CFR 429.7 is amended by adding Section 11 to read as follows:

§ 429.7 The application and policy.

* * * * *

Appendix to § 429.7—(Additional Terms and Conditions)

* * * * *

11. Other Insurance Against Fire. If the insured has other insurance against damage by fire during the insurance period, the Corporation shall be liable for loss due to fire only for the smaller of (a) the amount of indemnity determined by the Corporation under the policy with the Corporation or (b) the amount by which the loss from fire exceeds the indemnity paid or payable under

such other insurance. For the purposes of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit before the fire and after the fire, as determined by the Corporation from appraisals made by the Corporation.

7. Appendix B to 7 CFR Part 429 is redesignated as Appendix A and revised to read as follows:

Appendix A

Counties Designated for Rye Crop Insurance—7 CFR Part 429

In accordance with the provisions of 7 CFR 429.1, the following counties are designated for rye crop insurance:

Georgia

Jefferson

Nebraska

Antelope	Sheridan

North Dakota

Barnes	McLean
Bottineau	Pierce
Cass	Ransom
Dickey	Richland
Foster	Sargent
Hettinger	Stutsman
Kidder	Ward
LaMoure	Wells
McHenry	

South Carolina

Chesterfield

South Dakota

Beadle	Grant
Brown	Hamlin
Clark	Kingsbury
Codington	McPherson
Day	Marshall
Deuel	Roberts
Edmunds	Spink
Faulk	

Done in Washington, D.C., on September 27, 1982.

Dated: October 29, 1982.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Robert H. Sindt,

Deputy Manager.

[FR Doc. 82-30361 Filed 11-4-82; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 430

Sugar Beet Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith revises and reissues the Sugar Beet Crop Insurance Regulations (7 CFR Part 430), effective with the 1983 and succeeding crop years, following a review as to need, currency, clarity, and effectiveness of these regulations under the provisions of Secretary's Memorandum No. 1512–1 (June 11, 1981). The changes contained in this rule include (1) adding a provision to require (a) that the insurance file a notice of probable loss when the crop is damaged to the extent that a loss is probable, and (b) that the insured leave intact a representative sample of the unharvested crop, (2) prescribing interest rates to be charged when premium payments are not made within a certain time, (3) correcting the table of contents, (4) redesignating Appendix B, which lists the counties where sugar beet crop insurance may be offered, as Appendix A, (5) making minor changes to language, and (6) substituting a multi-crop application for the present application form. The intended effect of this rule is to revise the system of reporting damage or loss to insured crops, improve the debt management practices of FCIC, and make the regulations easier to read and more effective administratively. This action is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

DATE: Effective Date: November 5, 1982.

Comment Date: Written comments on this rule must be submitted not later than January 4, 1983, to be sure of consideration.

ADDRESS: Written comments on this rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: This action has been revised under USDA procedures established in Secretary's Memorandum No. 1512–1 (June 11, 1981).

Information collection requirements contained in the regulations to which this amendment applies (7 CFR Part 430) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

Merritt W. Sprague, Manager, FCIC, has determined that (1) this action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action does not increase the Federal paperwork burden for individuals, small businesses, and other person, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which this amendment applies are: Title—Crop Insurance; Number 10.430.

This action will not have a significant impact specifically upon area and community development; therefore, review as established in OMB Circular A–95 was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

It has also been determined that this action does constitute a review as to the need currency, clarity, and effectiveness of these regulations under the provisions of Secretary's Memorandum No. 1512–1 (June 11, 1981). The sunset review date for these regulations is established as August 1, 1987.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which warrants the immediate implementation of this rule without allowing for the normal 60-day comment period prior to implementation because the Sugar Beet Crop Insurance Regulations (7 CFR Part 430) provide that any amendments to the regulations, or notification to present insureds describing the changes, must be placed on file or mailed to present insureds 15 days before the cancellation date in order to be effective for the crop year, and to allow sufficient time for policyholders to decide on their insurance plans.

Notification of the changes for the 1983 crop year was given to each policyholder in Arizona and California, where the cancellation date is July 15, on June 25, 1982, thus constituting notice to the insureds as required by 7 CFR Part 430.

Since the amendment is already in effect in those two States, and pursuant to the administrative provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect to this rule prior to implementation are impracticable and contrary to the public interest; however, comments are solicited for 60 days after publication of this rule, and this interim action will be scheduled for review so that a final document discussing comments received and any amendments required can be published

in the Federal Register as soon as possible.

The changes involved in this rule, as approved by the Board of Directors of FCIC, are (1) to amend the section dealing with premiums to provide that if the premium payment is not made within 30 days of the first premium billing date, an interest rate of 1½% simple interest per month will accrue to the unpaid premium balance (Premium billing dates for crops have been established at or near the usual harvesttime and allow a period of 30 days in which to pay premiums before such interest rate attaches), (2) to add a provision which established the liability of FCIC in cases of loss by fire when the insured has other insurance against fire for the smaller of the amount of indemnity determined under the contract with FCIC, or the amount by which the loss from fire exceeds the indemnity paid or payable under the other insurance contract, and (3) to add a provision that requires the insured to file a notice of probable loss if the crop is damaged to the extent that a loss is probable and require that a representative sample of the unharvested crop be left intact for FCIC inspection. The provision described in (3) is designed to aid in the loss reporting method, making an earlier determination of losses and thereby improving the loss adjustment system.

In addition, FCIC is amending 7 CFR Part 430 to the extent of minor corrections to language and format including amending the table of contents and redesignating the Appendix B as Appendix A.

All written comments made pursuant to this rule will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 430

Crop insurance, Sugar beets.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Sugar Beet Crop Insurance Regulations (7 CFR Part 430), effective with the 1983 and succeeding crop years, to read as follows:

PART 430—SUGAR BEET CROP INSURANCE

Subpart—Regulations for the 1983 and Succeeding Crop Years

Sec.

430.1 Availability of Sugar Beet Insurance.
430.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
430.3 Reserved.
430.4 Creditors.
430.5 Good faith reliance on misrepresentation.
430.6 The contract.
430.7 The application and policy.
Appendix A—Counties Designated for Sugar Beet Crop Insurance.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 72, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1983 and Succeeding Crop Years

§ 430.1 Availability of Sugar Beet Insurance.

Insurance shall be offered under the provisions of this subpart on sugar beets in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this chapter the names of the counties in which sugar beet insurance will be offered.

§ 430.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for sugar beets which shall be shown on the county actuarial table on file in the service office and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities shall be computed from among those levels and prices shown on the actuarial table for the crop year.

§ 430.3 [Reserved]

§ 430.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefit under the insurance contract except as provided in the policy.

§ 430.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the sugar beet insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $20,000, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 430.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance. The contract shall cover the sugar beet crop as provided in the policy. The contract shall consist of the application, the policy, the attached appendix, and the provisions of the county actuarial table showing the production guarantees, coverage levels, premium rates, prices for computing indemnities, insurable and uninsurable acreage, and applicable dates when necessary. Any changes made in the contract shall not affect its continuity from year to year. Copies of forms referred to in the contract are available at the service office.

§ 430.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the sugar beet crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office and, where applicable, on or before the closing date for the crop for that county.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for

acceptance of applications or contracts changes in any county, by placing the extend date on file in service office and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension: *Provided, however,* That if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) Sugar beet contracts in effect for the 1982 crop year are amended by the substitution of the 1983 contract and are continuous unless terminated in accordance with their terms. A new application is not required by this amendment for the 1983 crop year.

(d) The provisions of the application and Sugar Beet Insurance Policy for the 1983 and succeeding crop years, are as follows:

BILLING CODE 3410-08-M

Rev. (9-81)

UNITED STATES DEPARTMENT OF AGRICULTURE
FEDERAL CROP INSURANCE CORPORATION

CROP INSURANCE APPLICATION

CONTINUOUS CONTRACT

1 Name of Applicant _____ 6 State ☐☐ - County ☐☐☐ - 7 Contract Number ☐☐☐☐☐

2 Agent, Administrator, Executor, Etc. _____ 8 County _____ 9 State ☐☐

3 Street or Mailing Address _____ 10 Identification Number ☐☐☐☐☐☐☐☐☐ 11 SSN - TAX

4 City and State _____ 5 ZIP Code _____ 12 Type of Entity _____

13 Applicant is Over 18 Yes____ No____ If No, Date of Birth _____

A The applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called "Corporation"), hereby applies to the Corporation for insurance on the applicant's share in the crop(s) shown below planted on insurable acreage as shown on the county actuarial table for the above-stated county. The applicant elects from the actuarial table the coverage level and, where applicable, a price election or plan of insurance. **THE PREMIUM RATE AND APPLICABLE PRODUCTION GUARANTEE OR AMOUNT OF INSURANCE PER ACRE SHALL BE THOSE SHOWN ON THE APPLICABLE COUNTY ACTUARIAL TABLE FILED IN THE OFFICE FOR THE COUNTY FOR EACH CROP YEAR.**

14 Effective Crop Year	15 Crop	16 Type, Class Plan of Ins.	17 Price Election	18 Level Election	19	20 For Agency Use Only (A)	21 (P)
					☐		
					☐		
					☐		
					☐		
					☐		
					☐		
					☐		
					☐		

22 Crop(s) **NOT** insured the first year _____

B This application is accepted by the Corporation unless the applicant is notified of rejection within 30 days of the date hereof. Rejection shall be accomplished by depositing notification thereof in the United States Mail, postage paid, to the above address. Rejection may be for any reason which would also serve as a basis for termination under the policy, the Federal Crop Insurance Act, or the regulations issued thereunder. Outstanding and delinquent indebtedness to any United States Government Agency may be grounds for rejection. The contract shall be in effect for the crop year specified above, unless the time for submitting applications has passed at the time this application is filed, **AND SHALL CONTINUE FOR EACH SUCCEEDING CROP YEAR UNTIL CANCELED OR TERMINATED** as provided in the contract. This accepted application, the insurance policy(ies), the attached appendix(es), and the provisions of the county actuarial table showing the insurable and uninsurable acreage, coverage levels, premium rates, and where applicable, the production guarantees, amounts of insurance, or plan of insurance shall constitute the contract. No term or condition of the contract shall be waived or changed except in writing by the Corporation. A material failure to include complete and accurate information on this application may invalidate the automatic acceptance provision hereof.

23 ☐ Applicant has received the policy(ies) and appendix(es) for the crop(s) shown above.

24 ☐ Previous Carrier _____ 25 Policy Number _____

26 Applicant's Signature _____ 27 Date _____ 19__ 28 Code No ☐☐☐☐☐ 29 Witness to Signature _____

30 Location of Farm Headquarters	31 Address of Your Service Office
Phone	Phone

SEE REVERSE SIDE OF FORM FOR STATEMENT REQUIRED BY PRIVACY ACT OF 1974

32 N S I O T - F U R

33 Page____ of____ pages

BILLING CODE 3410-08-C

Sugar Beet Crop Insurance Policy

Terms and Conditions

1. *Causes of loss.* (a) Causes of loss insured against. The insurance provided is against unavoidable loss of production resulting from adverse weather conditions, insects, plant disease, wildlife, earthquake or fire occurring within the insurance period subject to any exceptions, exclusions or limitations with respect to causes of loss shown on the actuarial table.

(b) Causes of loss not insured against. The contract shall not cover any loss of production due to: (1) The neglect or malfeasance of the insured, any member of the insured's household, the insured's tenants, or the insured's employees; (2) failure to follow recognized good farming practices; (3) damage resulting from the backing up of water by any governmental or public utilities dam or reservoir project; or (4) any cause not specified as an insured cause in this policy as limited by the actuarial table.

2. *Crop and acreage insured.* (a) Upon acceptance of an application for insurance, the crop insured shall be sugar beets grown under a contract with a processor for processing as sugar, for which the actuarial table shows a guarantee and premium rate per acre.

(b) The acreage insured for sugar beets for each crop year shall be that insurable acreage planted to sugar beets in which the insured has a share as shown on the actuarial table and as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect. *Provided*, That insurance shall not attach or be considered to have attached as determined by the Corporation to any acreage: (1) Where premium rates are established by farming practices on the actuarial table, and the farming practices carried out on such acreage are not among those for which a premium rate has been established; (2) excluded from the processor contract for, or during, the crop year; (3) which is destroyed and after such destruction it was practical to replant to sugar beets and such acreage was not replanted; (4) initially planted after the date established by the Corporation and placed on file in the service office as being too late to initially plant and expect a normal crop to be produced; (5) planted to sugar beets the preceding crop year in Michigan, Minnesota, North Dakota and Ohio or the two preceding crop years in all other States unless otherwise provided on the county actuarial table; (6) planted to a type or variety of sugar beets not established as adapted to the area or shown as non-insurable on the actuarial table; or (7) in California other than Imperial County, planted before the filing of the application or reinstatement request if such acreage is not inspected for the crop year and approved in writing by the Corporation after a normal stand is obtained.

(c) Insurance may attach only by written agreement with the Corporation on acreage which is planted for the development or production of hybrid seed or for experimental purposes.

3. *Responsibility of insured to report acreage and share.* The insured shall submit to the Corporation on a form prescribed by the Corporation, a report showing (1) all acreage of sugar beets planted in the county (including a designation of any acreage to which insurance does not attach) in which the insured has a share and (2) the insured's share therein at the time of planting. Such report shall be submitted promptly after completion of planting each year not later than the acreage reporting date on file in the service office for this purpose.

4. *Production guarantees, coverage levels and prices for computing indemnities.* (a) For each crop year of the contract, the production guarantees, coverage levels and prices at which indemnities shall be computed shall be those shown on the actuarial table.

(b) The production guarantee per acre shall be progressive as follows:

(1) *First Stage*—from planting until July 1 (except in California and Arizona it shall be the earlier of thinning or 90 days after planting); and to any acreage that the Corporation determines was damaged in this stage to the extent that growers in the area usually would not further care for the crop.

(2) *Second Stage*—from the end of first stage until at least 15 percent of the production guarantee per acre or the third stage has been harvested.

(3) *Third Stage*—after harvest of at least 15 percent of the production guarantee per acre for any acreage.

The production guarantee applicable to any acreage within a unit shall be that established for the stage reached by the crop on such acreage as determined by the Corporation.

5. *Annual premium.* (a) The annual premium is earned and payable at the time of planting and the amounts thereof shall be determined by multiplying the insured acreage times the applicable premium per acre, times the insured's share at the time of planting, times the premium adjustment percentage in subsection (c) of this section.

(b) For premium adjustment purposes, only the years during which premiums were earned shall be considered.

(c) The premium shall be adjusted as shown in the following table:

PERCENTAGE ADJUSTMENTS FOR FAVORABLE CONTINUOUS INSURANCE EXPERIENCE

	Numbers of years continuous experience through previous years															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
Loss ratio [1] through previous crop year																
.00–.20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21–.40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41–.60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61–.80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81–1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

PERCENTAGE ADJUSTMENTS FOR UNFAVORABLE INSURANCE EXPERIENCE

	Number of loss years through previous year [2]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
Loss ratio [1] through previous crop year																
1.10–1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20–1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40–1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70–1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00–2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50–3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288

PERCENTAGE ADJUSTMENTS FOR UNFAVORABLE INSURANCE EXPERIENCE—Continued

	Number of loss years through previous year [2]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
3.25–3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00–4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00–5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00–Up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

[1] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.
[2] Only the most recent 15 crop years will be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

(d) Interest will accrue at the rate of one and a half percent (1½%) simple interest per calendar month or any part thereof on any unpaid premium balance starting on the first day of the month following the first premium billing date.

(e) Any unpaid amount due the Corporation may be deducted from any indemnity payable to the insured by the Corporation or from any loan or payment to the insured under any Act of Congress or program administered by the U.S. Department of Agriculture, when not prohibited by law.

(f) If there is no break in the continuity of participation, any premium adjustment applicable under this section shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of death of the insured, (2) the contract of the person who succeeds the insured if such person had previously participated in the farming operation, or (3) the contract of the same insured who stops farming in one county and starts farming in another county.

(g) If there is a break in the continuity of participation, any reduction in premium earned under this section shall not thereafter apply; however, any previous unfavorable insurance experience shall be considered in premium computation following a break in continuity.

6. *Insurance period.* Insurance on insured acreage shall attach at the time the sugar beets are planted and shall cease upon the earliest of (a) final adjustment of a loss, (b) harvesting, (c) total destruction of the insured sugar beet crop, (d) the applicable date of the calendar year in which the sugar beets are normally harvested as follows: (1) July 15 for Arizona and Imperial County, California; (2) the last day of the 12th calendar month after planting of the acreage for all other California counties, unless a written request from the insured for an extension of the insurance period is received prior to such date and is approved by the Corporation; (3) November 25 in Ohio; or (4) November 15 in all other States.

7. *Notice of damage or loss.* (a) Any notice of damage or loss shall be given promptly in writing by the insured to the Corporation at the service office.

(b) Notice shall be given promptly if, during the period before harvest, the sugar beets on any unit are damaged to the extent that the insured does not expect to further care for the crop or harvest any part of it, or if the insured wants the consent of the Corporation to put the acreage to another use. No insured acreage shall be put to another use until the Corporation has made an appraisal of the potential production of such acreage and consents in writing to such other use. Such consent shall not be given until it is too late or impractical to replant to sugar beets. Notice shall also be given when such acreage has been put to another use.

(c) Notice shall be given at least 15 days prior to the begining of harvest if the sugar beets on any unit which will be harvested are damaged to the extent that a loss is probable. If probable loss is not determined until less than 15 days prior to the beginning of harvest on a unit, notice shall be given immediately and a representative sample of the unharvested sugar beets (at least 4 rows wide and the entire length of the field) shall remain intact for a period of 15 days from the date of the notice, unless the Corporation gives written consent to harvest the representative sample.

(d) In addition to the written notices required in paragraphs (b) and (c) of this section, if a loss is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the service office not later than *30 days* after the earliest of (1) the date harvest is completed on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire sugar beet crop on the unit is destroyed, as determined by the Corporation. The Corporation reserves the right to provide additional time if there are extenuating circumstances.

(e) Any insured acreage which is not to be harvested and upon which an indemnity is to be claimed shall be left intact until inspected by the Corporation.

(f) The Corporation may reject any claim for indemnity if any of the requirements of this section are not met.

8. *Claim for and payment of indemnity.* (a) It shall be a condition precedent to the payment of any indemnity that the insured (1) establish the total production of sugar beets on the unit and that any loss of production was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed and (2) furnish any other information regarding the manner and extent of loss as may be required by the Corporation.

(b) Indemnities shall be determined separately for each unit. The amount of indemnity for any unit shall be determined by (1) multiplying the insured acreage of sugar beets on the unit by the applicable production guarantee per acre, which product shall be the production guarantee for the unit, (2) subtracting therefrom the total production of sugar beets to be counted for the unit, (3) multiplying the remainder by the applicable price for computing indemnities, and (4) multiplying the result obtained in step (3) by the insured share: *Provided*, That if the premium computed on the insured acreage and share is more than the premium computed on the reported acreage and share, the amount of indemnity shall be computed on the insured acreage and share and then reduced proportionately.

(c) The total production to be counted for a unit shall be determined by the Corporation and shall include all harvested and appraised production for acreage not qualifying for the third stage production guarantee, only the amount of appraised and harvested production in excess of the difference between the third stage production guarantee and the production guarantee applicable to such acreage shall be counted. For acreage abandoned, put to another use without prior written consent of the Corporation, or damaged solely by an uninsured cause not less than the applicable production guarantee shall be counted.

(1) Any harvested production of sugar beets shall be adjusted by the factor (rounded to three decimal places) obtained by dividing the average percentage of sugar in the sugar beets, as determined from individual tests made at the time of delivery to the processor, by the percentage of sugar shown on the actuarial table: *Provided, however*, That if individual tests of sugar content are not made by the processor at the time of delivery of the sugar beets, the factor to be used shall be 1.000; *Provided, further*, That for harvested sugar beets which are not acceptable under the contract with a processor due to an insurable cause of loss occurring within the insurance period, the Corporation will determine the production to be counted by (a) dividing the value of the beets, as determined by the Corporation by the value of undamaged beets containing the percentage of sugar shown on the actuarial table and (b) multiplying the result obtained by the tons of beets harvested: *Provided, further*, That any Corporation appraisals shall be the tons appraised with no adjustment for quality.

(2) Appraised production to be counted for a unit shall include: (i) any appraisals by the Corporation for unharvested or potential production, poor farming practices, or uninsured causes of loss and (ii) not less than the applicable guarantee for any acreage which is abandoned or put to another use without prior written consent of the Corporation or damaged solely by an uninsured cause.

(d) The appraised potential production for acreage for which consent has been given to be put to another use shall be counted as production in determining the amount of loss under the contract. However, if consent is

given to put acreage to another use and the Corporation determines that any such acreage (1) is harvested, or (2) is further damaged by an insured cause before the acreage is put to another use, the indemnity for the unit shall be determined without regard to such appraisal and consent.

(e) Any claim for indemnity on a unit shall be submitted to the Corporation on a form prescribed by the Corporation.

(f) In determining the total production to be counted for each unit, production from units on which the production has been commingled will be allocated to such units in proportion to the liability on each unit.

(g) There shall be no abandonment to the Corporation of any insured sugar beet acreage.

(h) In the event that any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c).

(i) Any indemnity will be payable within 30 days after a claim for indemnity is approved by the Corporation. *However*, in no event shall the Corporation be liable for interest or damages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(j) If the insured is an individual who dies, disappears, or is judicially declared incompetent, or the insured is an entity other than an individual and such entity is dissolved after the sugar beets are planted for any crop year, any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled thereto.

(k) The Corporation reserves the right to reject any claim for indemnity if any of the requirements of this section are not met and the Corporation determines that the amount of loss cannot be satisfactorily determined.

9. *Misrepresentation and fraud.* The Corporation may void the contract without affecting the insured's liability for premiums or waiving any right, including the right to collect any unpaid premiums if, at any time the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

10. *Transfer of insured share.* If the insured transfers any part of the insured share during the crop year, protection will continue to be provided according to the provisions of the contract to the transferee for such crop year on the transferred share, and the transferee shall have the same rights and responsibilities under the contract as the original insured for the current crop year. Any transfer shall be made on an approved form. Both transferee and transferor remain liable for payment of the premium.

11. *Records and access to farm.* The insured shall keep or cause to be kept for two years, after the time of loss, records of the harvesting, storage, shipments, sales or other disposition of all sugar beets produced on each unit including separate records showing the same information for production from any uninsured acreage. The Corporation shall have access to such records and the farm for purposes related to the contract.

12 *Life of contract: Cancellation and termination.* (a) The contract shall be in effect for the first crop year specified on the application and may not be cancelled for such crop year. Thereafter, either party may cancel insurance for any subsequent crop year by giving written notice to the other on or before the cancellation date preceding such crop year.

(b) The contract will terminate as to any crop year if any amount due the Corporation under this contract is not paid on or before the termination date for indebtedness preceding such crop year: *Provided*, That the date of payment for premium (1), if deducted from an indemnity claim, shall be the date insured signs claim or (2), if deducted from payment under another program administered by the U.S. Department of Agriculture, shall be the date such payment was approved.

(c) The cancellation and termination dates are:

State and county	Cancellation date	Termination date for indebtedness
Arizona, and Imperial County, California.	July 15	August 31.
All other California counties.	July 15	[1]
All other States	Dec. 31	March 31.

[1] The termination date for indebtedness for all California counties other than Imperial County shall be the date the insured begins planting for the next crop year unless prior to such date the insured has made arrangements satisfactory to the Corporation for payment of the premium owed the Corporation.

(d) In the absence of a notice from the insured to cancel, and subject to the provisions of this section and section 17, the contract shall continue in force for each succeeding crop year.

13. *Meaning of terms.*

For the purpose of sugar beet crop insurance:

(a) "Actuarial table" means the forms and related material for the crop year approved by the Corporation which are on file for public inspection in the service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, insurable and uninsurable acreage, and related information regarding sugar beet insurance in the county.

(b) "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown on the actuarial table.

(c) "Crop year" means the period within which the sugar beet crop is normally grown and shall be designated by the calendar year in which the sugar beet crop is normally harvested except that in California and Arizona it shall be the period from planting until the applicable date for the end of the insurance period and shall be designated by reference to the calendar year in which planted if planted by July 15, and if planted after July 15, by reference to the next calendar year.

(d) "Harvest" means the lifting and topping of the sugar beets for the purpose of delivery to a processor.

(e) "Insurable acreage" means the land classified as insurable by the Corporation and shown as such on the county actuarial table.

(f) "Insured" means the person who submitted the application accepted by the Corporation.

(g) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(h) "Service office" means the office serving your contract as shown on the application for insurance or such other office as may, in writing, be selected by you after approval by us or designated by us upon written notice to you.

(i) "Share" means the interest of the insured as landlord, owner-operator, or tenant in the insured sugar beet crop at the time of planting as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share shall be deemed to be insured under this contract: *Provided*, That for the purpose of determining the amount of indemnity, the insured share shall not exceed the insured's share at the earliest of (1) the date of beginning of harvest on the unit; (2) the calendar date for the end of the insurance period; or (3) the date the entire crop on the unit is destroyed, as determined by the Corporation.

(j) "Tenant" means a person who rents land from another person for a share of the sugar beet crop or proceeds therefrom.

(k) "Unit" means all insurable acreage of sugar beets in the county on the date of planting for the crop year (1) in which the insured has a 100 percent share, or (2) which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sugar beet crop on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided into two or more units according to applicable guidelines of file in the service office or by written agreement between the Corporation and the insured. The Corporation shall determine units as herein defined when adjusting a loss, notwithstanding what is shown on the acreage report, and may consider any acreage and share reported by or for the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

14. *Acreage limitations.*

(a) The Corporation may limit the insured acreage of sugar beets to any acreage limitations established under any Act of Congress, provided the insured is so notified in writing prior to the planting of sugar beets.

(b) If the insured does not submit an acreage report as provided in section 3 the Corporation may elect to determine by units the insured acreage and share or declare the insured acreage on any unit(s) to be "zero." If the insured does not have a share in any insured acreage in the county for any year, the insured may be revised only upon approval of the Corporation.

15. *Irrigated acreage.*

(a) Where the actuarial table provides for insurance on an irrigated practice, the insured shall report as irrigated only the acreage for which the insured has adequate facilities and water to carry out a good irrigation practice at the time of planting.

(b) Where irrigated acreage is insurable, any loss of production caused by failure to carry out a good irrigation practice, except failure of the water supply from an unavoidable cause as determined by the Corporation, occurring after the beginning of planting shall be considered as due to an uninsurable cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

16. *Subrogation.*

The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made by the Corporation. The insured thereafter shall execute all papers required and take appropriate action as may be necessary to secure such rights.

17. *Termination of the contract.*

(a) The contract shall terminate if no premium is earned for five consecutive years.

(b) If the insured is an individual who dies, or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; however, if such event occurs after insurance attaches year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

18. *Coverage level and price election.*

(a) If the insured has not elected on the application a coverage level and price at which indemnities shall be computed from among those shown on the actuarial table, the coverage level and price election which shall be applicable under the contract, and which the insured shall be deemed to have elected, shall be as provided on the actuarial table for such purposes.

(b) The insured may, with the consent of the Corporation, change the coverage level and/or price election for any crop year on or before the closing date for submitting applications for that crop year.

19. *Assignment of indemnity.*

Upon approval of the Corporation, and on a form prescribed by the Corporation, the insured may assign to another party the right to an indemnity for the crop year and such assignee shall have the right to submit the loss notices and forms as required by the contract.

20. *Contract changes.*

The Corporation may change any terms and provisions of the contract from year to year. Any changes shall be mailed to the insured or placed on file and made available for public inspection in the service office at least 15 days prior to the cancellation date preceding the crop year for which the changes are to be effective, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in section 12.

Appendix A

Counties Designated for Sugar Beet Crop Insurance—7 CFR Part 430

In accordance with the provisions of 7 CFR 430.1, the following counties are designated for sugar beet crop insurance:

Arizona

Maricopa
Pinal

California

Butte
Colusa
Fresno
Glenn
Imperial
Kern
Kings
Los Angeles
Madera
Merced
Monterey
Sacramento
San Benito
San Joaquin
Solano
Stanislaus
Sutter
Tulare
Yolo

Colorado

Adams
Boulder
Kit Carson
Larimer
Logan
Morgan
Phillips
Sedgwick
Weld
Yuma

Idaho

Ada
Bannock
Bingham
Bonneville
Canyon
Cassia
Elmore
Franklin
Jerome
Lincoln
Minidoka
Owyhee
Power
Twin Falls

Kansas

Grant
Sherman
Wallace

Michigan

Bay
Huron
Midland
Saginaw
Sanilac
Tuscola

Minnesota

Chippewa
Clay
Faribault
Grant
Kandiyohi
Kittson
Lac qui Parle
Marshall
Norman
Polk
Redwood
Renville
Swift
Traverse
Wilkin
Yellow Medicine

Montana

Big Horn
Carbon
Dawson
Prairie
Richland
Rosebud
Stillwater
Treasure
Yellowstone

Nebraska

Box Butte
Chase
Morrill
Scotts Bluff
Sioux

New Mexico

Curry

North Dakota

Cass
Grand Forks
McKenzie
Pembina
Richland
Traill
Walsh
Williams

Ohio

Hancock
Henry
Lucas
Ottawa
Putnam
Sandusky
Wood

Oregon

Malheur

Texas

Castro
Deaf Smith
Parmer
Randall

Utah

Box Elder
Cache
Davis
Salt Lake
Utah
Weber

Wyoming

Big Horn
Goshen
Park
Washakie

Done in Washington, D.C., on October 29, 1982.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: October 29, 1982.

Approved by:

Robert H. Sindt,

Deputy Manager.

[FR Doc. 82-30369 Filed 11-4-82; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 384; Lemon Reg. 383, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period November 7–13, 1982, and increases the quantity of lemons that may be shipped during the period October 31–November 6, 1982. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

EFFECTIVE DATES: The regulation becomes effective November 7, 1982, and the amendment is effective for the period October 31–November 6, 1982.

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

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been

designated a "non-major" rule. The Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona lemon crop for the benefit of producers, and will not substantially affect costs for the directly regulated handlers.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981–82. The marketing policy was recommended by the committee following discussion at a public meeting on July 6, 1982. The committee met again publicly on November 2, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons has improved.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. Section 910.684 is added as follows:

§ 910.684 Lemon Regulation 384.

The quantity of lemons grown in California and Arizona which may be handled during the period November 7, 1982, through November 13, 1982, is established at 225,000 cartons.

2. Section 910.683 Lemon Regulation 383 (47 FR 49012) is revised to read as follows:

§ 910.683 Lemon Regulation 383.

The quantity of lemons grown in California and Arizona which may be handled during the period October 31, 1982, through November 6, 1982, is established at 230,000 cartons.

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

Dated: November 4, 1982.

D. S. Kuryloski,

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

[FR Doc. 82-30681 Filed 11-4-82; 11:38 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Docket No. AO-144-A13]

Lemons Grown in California and Arizona; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the lemon marketing order program to permit handlers to request that lemons on the trees be included, under specified conditions, in the calculation of their weekly prorate bases.

EFFECTIVE DATE: November 5, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Room 2532-S, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing, issued September 7, 1982, published September 10, 1982 (47 FR 39836); and Emergency Decision, issued October 8, 1982, published October 15, 1982 (47 FR 46101).

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291 and Secretary's Memorandum 1512-1.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant impact on a substantial number of small entities. This action is designed to promote orderly marketing of California-Arizona lemons for the benefit of producers and will not substantially affect costs for the directly regulated handlers.

The reporting and recordkeeping requirements resulting from this action have been submitted for approval to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Such requirements are not effective until OMB approval has been obtained.

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary, and in addition to, the findings and determinations previously made in connection with the issuance of the aforesaid order and each previously issued amendment thereto; and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings Upon the Basis of the Hearing Record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon proposed amendment of the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona.

Upon the basis of the record, it is found that:

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, and as hereby further amended, regulates the handling of lemons grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to

subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The order, as amended, and as hereby further amended, prescribes, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to differences in the production area and marketing of lemons; and

(5) All handling of lemons grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make all of the amendatory provisions effective November 5, 1982. This amendatory action was in response to an emergency situation in the lemon industry.

In view of the foregoing, it is hereby found and determined that good cause exists for making this amendatory order effective November 5, 1982, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity covered by this order, as amended, and as hereby further amended) of more than 80 percent of the volume of California-Arizona lemons covered by this order refused or failed to sign the proposed amendment of the marketing agreement, as amended, regulating the handling of lemons grown in California and Arizona; and it is hereby further determined that:

(1) The refusal or failure of such handlers to sign the proposed amendment of the marketing agreement, as amended, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the aforesaid order, as amended, is the only practicable means pursuant to the declared policy of the Act of advancing the interests of the producers of lemons grown in the production area;

(3) The issuance of this amendatory order, amending the aforesaid order, as amended, is favored or approved by producers who have been engaged within the production area, in the production of lemons for market during the period August 1, 1981 through July 31, 1982, (which has been determined to be a representative period) who have produced for market at least two-thirds of the volume of such commodity during such period; and

(4) On the effective date of this order amending the order, as amended, the provisions of the marketing agreement, as amended and now effective, will no longer tend to effectuate the declared policy of the Act because it would be inconsistent with this order amending the order, as amended. Accordingly, the provisions of the current marketing agreement, as amended, are hereby terminated effective November 5, 1982.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of lemons shall be in conformity to and in compliance with the terms and conditions of the said order, as amended, and as hereby further amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Section 910.53 is amended by adding a new paragraph (i) to read as follows:

§ 910.53 Prorate bases.

* * * * *

(i) Notwithstanding any other provisions of this section, the prorate base for any handler may be computed as follows:

(1) The prorate base as determined by paragraph (d) of this section, and by that portion of paragraph (f)(2) of this section pertaining to new prorate bases for District 2 handlers, shall be increased by the quantity of lemons certified under this paragraph by the committee. The quantity of lemons which may be so certified for a handler in each certification credit period may not exceed 25 percent of the total estimated tree crop controlled by such handler. The quantity of lemons so certified shall be credited to a handler's average weekly picks in equal amounts over the number of weeks in the credit period.

(2) The committee shall determine the type of fruit eligible for certification in each district to assure that all such fruit was produced during the then current fiscal year.

(3) The committee shall establish time periods during which certification may be approved in the various districts, herein referred to as application periods. The committee shall also establish the number of weeks, herein referred to as the credit periods, over which certification will apply to handlers in each prorate district.

(4) Any handler utilizing the provisions of this paragraph shall be precluded from requesting upward adjustment as provided for in paragraphs (f)(1) and (f)(2) of this section.

(5) The committee shall establish procedures whereby any handler who has fruit certified may have such certification cancelled during a credit period.

(6) At the end of a credit period, certified fruit will not be included as picks to earn prorate base.

(7) The committee shall establish procedures to assure that any certified fruit over which control is transferred from one handler to another handler does not result in duplicate pick credit.

(8) The committee, with the approval of the Secretary, may establish rules and regulations to effectuate the provisions of this paragraph which may include modification of the method or manner of making certification computations.

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

Signed at Washington, D.C. on November 1, 1982, to become effective November 5, 1982.

C. W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 82-30548 Filed 11-4-82; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1011

Milk in the Tennessee Valley Marketing Area; Temporary Revision of Supply Plant Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rule.

SUMMARY: This action makes final for October and November 1982 a 10-percentage point decrease in the supply plant shipping requirement under the Tennessee Valley Federal Milk order. The shipping percentage was reduced on an interim basis for these two months on October 20, 1982. Interested parties were invited to submit comments on the interim action. No opposing comments were received. This action is being taken because a supply plant operator is incurring uneconomic shipment of milk to a distributing plant under the current shipping requirements of the order.

EFFECTIVE DATE: November 5, 1982.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202–447–4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Interim Revision of Shipping Percentage: Issued October 15, 1982; published October 20, 1982 (47 FR 46677).

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

It has also 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 advise the industry on a timely basis regarding final action on the supply plant shipping requirement revision.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has 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.

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 § 1011.7(b) of the order. This revision was made effective on an interim basis on October 20, 1982. Interested parties were afforded an opportunity to comment on the interim revision by submitting written data, views or arguments. No opposing comments were received.

After consideration of all relevant material, including the material set forth in the aforesaid interim revision document, it is hereby found and determined that for the months of October and November 1982 the supply plant shipping percentage of 60 percent as set forth in § 1011.7(b) should be decreased on a final basis to 50 percent.

A review of the market situation indicates that the Tennessee Valley market has undergone some changes in marketing conditions in the past 18 months. Although month-to-month and year-to year comparisons are complicated by the varying regulatory status of certain plants, the trend in the market has been towards increased producer milk receipts and almost no growth in Class I sales. Increases in production have resulted from greater output by producers historically associated with the Tennessee Valley market, and by the addition of new producers to the market.

Historically, this market has had a high Class I utilization. However, the percentage of producer milk in Class I has been declining for the past two years. The percent of producer milk in Class I averaged about 5 percentage points less in 1981 than in 1979. For the first eight months of 1982 this figure averaged about 6 percentage points below year-earlier levels. For the short-production months of August through November, the percent of producer milk in Class I averaged 78.6 percent in 1980 and 73.6 percent in 1981. It is expected that the percent of producer milk in Class I will continue to be below year-ago levels in the current short-production season.

Because of this general relationship of supplies to demand, Kraft, Inc., petitioned the Department in July 1982 for a temporary reduction of 10 percentage points in the supply plant shipping requirement for certain subsequent months. As the operator of the only pool supply plant in the market, Kraft indicated that it anticipated that it would have to make uneconomic shipments of milk to its distributing plant outlet if the supply plant were to continue to meet the pooling requirements of the order. The Department invited public comments on a proposed revision of the shipping percentage for the months of August through November 1982. Comments were received from Dairymen, Inc., a cooperative association which represents a substantial majority of the producers associated with the market. The cooperative objected to the proposed action, claiming that the marketing situation did not warrant a temporary reduction in the shipping requirement. After a full review of the issue, Kraft's petition for those months was denied.

Actual operating experience now indicates that Kraft, in making the minimum shipments required for pooling its supply plant, is having to back-haul some of the milk to a manufacturing plant since not all of the shipments are needed at the supply plant's regular distributing plant outlet. This situation is likely to continue at least for the next several weeks, if not longer. In recognition of this situation, both Kraft and Dairymen, Inc., have under review alternatives for dealing with this problem, including a possible review of the issue at a public hearing. Under these circumstances, a temporary reduction in the shipping requirement through November 1982 is appropriate in that it can prevent uneconomic movements of milk merely for purposes of assuring pool plant qualification.

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) Interested parties were afforded an opportunity to file written data, views or arguments concerning this temporary revision.

Therefore, good cause exists for making the interim revision of the shipping percentage for the months of October and November 1982 effective on a final basis.

List of Subjects in 7 CFR Part 1011

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the shipping percentage in § 1011.7(b) of the order is hereby revised on a final basis for the months of October and November 1982.

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

Effective date: November 5, 1982.

Signed at Washington, D.C., on: November 1, 1982.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 82-30519 Filed 11-4-82; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1421

CCC Grain Price Support Regulations Governing Loan Purchase Program for 1982 and Subsequent Crops Rice

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to amend the regulations governing the loan and purchase program for 1982 and subsequent crops of rice (1) to delete all references to farm and producer allotments currently appearing at 7 CFR 1421.301, 1421.303 and 1421.304, (2) to delete reference to normal crop acreage and set-aside requirements currently appearing at 7 CFR 1421.304; (3) to incorporate availability and maturity

dates; and (4) to remove all references to the annual crop supplements that are no longer being codified.

DATES: This final rule shall become effective November 5, 1982.

ADDRESS: Director, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: H. E. Maynard, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013, (202) 447–8480.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with provisions of Secretary's Memorandum 1512–1 and Executive Order 12129 and has been classified "not major." It has been determined that the provisions of this final rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loans and Purchases, Number 10.051 as filed in the Catalog of Federal Domestic Assistance. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A–95 was not used to assure that units of local government are informed of this action.

The purpose of this rule is to amend the regulations governing the loan and purchase program for 1982 and subsequent crops of rice to include eligibility requirements, availability dates, and maturity dates for making loans and purchases, to delete references to the annual crop supplements for rice that are no longer being codified and to delete certain other references which are no longer applicable to the program.

A separate Regulatory Impact Analysis was not prepared. The effects of this final rule are primarily administrative. Significant impacts to the private sector would be the result of annual program determinations. There will be modest savings to the Government, as the result of decodification.

Since the statutory authority for producer and farm allotments for rice has been repealed and compliance with normal crop acreage and set-aside requirements may no longer be necessary for price support eligibility, references to those requirements have been deleted. The elimination of allotments removes the possibility of having both eligible and ineligible rice being produced on the same farm. Therefore, the requirement specified in the regulations that a producer furnish a cooperative a Form CCC–675, Designation of Eligibility, has been deleted. Annual crop supplements in which the loan availability dates and maturity dates have previously been published in the **Federal Register** are no longer being issued. Therefore, this continuing regulation is being revised to set forth these dates. In addition, Uniform Rice Storage Agreements no longer authorize modified commingled warehouse storage. Therefore, references to modified commingled storage have been deleted.

The availability date establishes the period during which the producer may request a price support loan or sign a purchase agreement. The maturity date defines the length of the price support loan and establishes the final date that loans on the commodity mature for that crop year. Since this final rule makes no substantive changes in the regulations but merely deletes certain obsolete references and generally incorporates and republishes certain existing provisions into a single continuing regulation, it has been determined that no further rulemaking is required. Accordingly, this rule shall become effective upon date of publication in the **Federal Register.**

Accordingly, the general regulations governing price support for 1978 and subsequent crops of rice as set forth at 7 CFR 1421.300 through 1421.313 and the title of the subpart are amended as stated herein for the 1982 and subsequent crops of rice. The material previously appearing in this subpart remains in full force and effect as to the crops to which it was applicable.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs—rice Price support programs.

Final Rule

Accordingly, 7 CFR Part 1421 is amended by revising the title of the subpart and §§ 1421.300–1421.312 to read as follows:

Subpart—Loan and Purchase Program for 1982 and Subsequent Crops Rice

Sec.

1421.300 Purpose.
1421.301 Availability.
1421.302 Eligible rice.
1421.303 Compliance requirements.
1421.304 Determination of quality.
1421.305 Determination of quantity.
1421.306 Warehouse receips.
1421.307 Warehouse charges.
1421.308 Fees and charges.
1421.309 Inspection certificates.
1421.310 Settlement.
1421.311 Maturity of loans and expiration of purchase agreements.
1421.312 Support rates.

Authority: Secs. 4, 5, 62 Stat. 1070, 1072, as amended (15 U.S.C. 714 b and c); secs. 101i, 401, 95 Stat. 1242, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1421).

Subpart—Loan and Purchase Program for 1982 and Subsequent Crops Rice

§ 1421.300 Purpose.

This subpart contains provisions which, together with (a) the General Regulations Governing Price Support for the 1978 and Subsequent Crops, (b) the Cooperative Marketing Associations eligibility requirements for price support as set forth in Part 1425 of this title and (c) any amendments or revisions of such regulations, set forth the requirements with respect to price suport for the 1982 and subsequent crops of rice.

§ 1421.301 Availability.

(a) *Loans.* If a producer desires to participate in the price support loan program, such producer must request a loan on or before March 31 of the year following the year the crop is normally harvested.

(b) *Purchases.* If a producer desires to enter into a purchase agreement with CCC by offering eligible rice which is not under loan, such producer must execute and deliver to the county ASCS office on or before March 31 of the year following the year the crop is normally harvested a Purchase Agreement (Form CCC–614) indicating the approximate quantity of rice the producer will sell to CCC.

§ 1421.302 Eligible rice.

(a) *General.* To be eligible for loans and purchases, rice must meet the requirements of this section in addition to the other eligibility requirements of the program.

(1) *Eligible producer.* The rice must have been produced by an eligible producer.

(2) *Classes.* The rice must be one of the classes specified in: (i) A notice which is published in the **Federal Register** for the applicable crop each year or (ii) the official standards of the United States for rough rice other than "mixed rough rice."

(3) *Contamination and poisonous substances.* Rice must not be contaminated by rodents, birds, insects, or other vermin or contain mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals.

(b) *Grade requirements for loans.* In addition to the requirements of paragraph (a) of this section, rice at the time it is placed under loan must (1) Grade U.S. No. 5 or better (rice of special grades shall not be eligible), and (2) contain not more than 14 percent moisture.

(c) *Quantity eligible for loan and purchase.* Loans and purchases shall be available to eligible producers on all rice produced on a participating farm.

(d) *Cooperative Marketing Association.* If an eligible producer is a member of an approved cooperative and delivers a quantity of eligible rice produced on a participating farm to the cooperative for marketing, such rice shall be eligible for the cooperative to place under loan or deliver for purchase.

§1421.303 Eligible producer.

An eligible producer is a rice producer who shares in the production of rice on a participating farm and has complied with the program eligibility requirements prescribed in Parts 713, 718, and 791 of this title and any amendments thereto.

§ 1421.304 Determination of quality.

(a) *Quality.* The class, grade, grading factors, milling yield, and all other quality factors shall be determined in accordance with the official standards of the United States for rough rice, whether or not such determinations are made on the basis of an official inspection.

(b) *Loans and purchases.* In the case of rice stored commingled in an approved warehouse, loans and purchases will be made on the basis of the quality shown on the warehouse receipt or supplemental certificate, if applicable. In the case of rice stored identity preserved, loans and purchases will be made on the basis of the quality shown on the Federal or Federal-State sample inspection certificate, based on a representative sample of each lot of rice taken as authorized by the county office. Loans and purchases on farm stored rice will be based on the rate published in a notice in the **Federal Register** for the applicable crop year.

§ 1421.305 Determination of quantity.

(a) *In warehouse.*—(1) *Commingled.* The amount of a loan on the quantity of eligible rice stored commingled in an approved warehouse shall be based on the weight specified on the warehouse receipts representing such rice which is pledged as security for the loan, or on the supplemental certificate, if applicable.

(2) *Identity preserved.* The amount of a loan on the quantity of eligible rice stored identity preserved in an approved warehouse shall be based on a percentage, as determined by the State committee, of the weight specified on the warehouse receipt representing such rice which is pledged as security for the loan, or on the supplemental certificate, if applicable. Such percentage shall not exceed 95 percent of the weight so specified. The State committee's determination shall be made on a statewide basis or for specified areas within the State. The county committee may lower such percentage on an individual basis when determined to be in the best interest of CCC. Weights determined on the basis of such percentages shall be expressed in terms of whole units of 100 pounds (round 49 pounds or less to the next lowest hundredweight and round 50 pounds or more to the next highest hundredweight).

(b) *On farm.* The quantity of rice placed under a farm storage loan shall be determined in accordance with § 1421.17 and shall be expressed in whole units of 100 pounds.

§ 1421.306 Warehouse receipts.

(a) *General.* A warehouse receipt representing rice to be placed under a warehouse storage loan, delivered in satisfaction of a farm storage loan, or delivered for purchase must meet the requirements of this section and the general regulations governing price support for 1978 and subsequent crops, as amended or revised. A separate warehouse receipt must be submitted for each class by grade, and milling yield of rice. Each warehouse receipt must carry an endorsement by the warehouse operator in substantially the following form: "Warehouse charges through (applicable maturity date) including, but not limited to, receiving and loading out charges accrued or to accrue and all other charges incident to the acquisition of the rice by CCC on the rice represented by this warehouse receipt have been paid or otherwise provided for and a lien for such charges will not be claimed by the warehouseman from CCC or any subsequent holder of the warehouse receipt."

(b) *Entries.* Each warehouse receipt or supplemental certificate properly identified with the warehouse receipt must be issued in accordance with the Uniform Rice Storage Agreement. The following items must be shown on the warehouse receipt and/or supplemental certificate in the case of rice stored commingled, or on the warehouse receipt, supplemental certificate, or Federal or Federal-State inspection certificate in the case of rice stored identity preserved:

(1) Net weight;

(2) Class;

(3) Grade;

(4) Grading factors;

(5) Milling yield;

(6) Moisture;

(7) Method of storage (commingled or identity preserved);

(8) Manner by which rice was received (truck or rail).

(c) *Supplemental certificate.* When required, the supplemental certificate shall be executed by the warehouse operator for commingled rice and by the producer for identity-preserved rice.

§ 1421.307 Warehouse charges.

(a) *Farm-stored loans and purchases.* CCC will assume receiving and warehouse storage charges with respect to rice delivered to an approved warehouse after loan maturity date and acquired by CCC (1) in satisfaction of a farm storage loan or (2) by purchase, except that warehouse storage charges will be assumed by CCC only from and after the date of completion of deposit of such rice in the warehouse.

(b) *Warehouse-stored loans and purchases.* CCC will assume receiving and warehouse storage charges accruing on or after the day following the loan maturity date with respect to rice which is in approved warehouse storage under loan and is acquired by CCC and with respect to rice which is in approved warehouse storage on the loan maturity date and is purchased by CCC.

(c) *Refund of prepaid handling charges.* The receiving or the receiving and loading out charges to be refunded on the rice referred to in paragraphs (a) and (b) of this section and § 1421.22(i) shall be at the rate charged the producer by the storing warehouse.

§ 1421.308 Fees and charges.

The producer shall pay a loan service fee and delivery charge as specified in § 1421.11. In addition, a charge for the cost of grading each lot sampled will be made in connection with each warehouse receipt serving as security for an identity-preserved warehouse-stored loan.

§ 1421.309 Inspection certificates.

Except in the case of a loan on rice stored commingled in an approved warehouse, settlement with the producer on rice acquired by CCC will be based on the quality shown on the Federal or Federal-State sample inspection certificate. Such inspection certificate shall be dated not earlier than 30 days prior to the maturity date. The cost of Federal or Federal-State inspections as required by this section and § 1421.310 shall be for the account of CCC.

§ 1421.310 Settlement.

Settlement for eligible rice acquired by CCC under loan or by purchase will be made with the producer as provided in § 1421.22 and this section. Where rice is placed under a farm storage loan in an area where a location differential is in effect and is delivered to CCC in satisfaction of the loan in an area where no differential is applicable, settlement for rice acquired by CCC will be made on the basis of the support rate for the area where the rice is delivered. Deliveries of rice shall be in accordance with instructions issued by the county office.

(a) *Commingled warehouse storage.* Settlement for eligible rice stored commingled in an approved warehouse and acquired by CCC under loan or by purchase shall be made on the basis of the class and the grade, quality, and quantity as shown on the warehouse receipt or supplemental certificate, if applicable. Settlement shall also be made on such a basis: (1) Where an approved warehouse issues a commingled warehouse receipt for loan rice delivered into the warehouse from farm storage pursuant to instructions of the county ASCS office, (2) where an approved warehouse issues commingled warehouse receipts in exchange for warehouse receipts representing rice under identity preserved warehouse storage loan, and (3) where CCC determines that the warehouse failed to maintain the identity of rice covered by an identity preserved warehouse storage loan. In such case, the warehouse shall issue a commingled warehouse receipt covering such rice. In the case of purchases, the producer shall, not later than the day following the maturity date specified in § 1421.311, deliver to the county office warehouse receipts under which an approved warehouse guarantees the class and grade, quality, and quantity of rice sold to CCC.

(b) *Other storage.* Settlement for eligible rice acquired under loan or purchase not covered by paragraph (a) of this section shall be made on the basis of the class and of the grade and quality shown on the Federal or Federal-State sample inspection certificate and on the basis of the quantity shown on the official weight certificates. Certificates required by this paragraph (b) shall be dated not earlier than 30 days before the maturity date.

(1) *Loans.* In the case of rice stored identity preserved in approved warehouse storage and acquired by CCC under a loan, the county office shall obtain official weight certificates and sample the rice for quality determination within 10 days following the maturity date.

(2) *Purchases.* In the case of rice stored identity preserved in approved warehouse storage and acquired by CCC under purchase, the producer shall, within 5 days following the maturity date, deliver to the county office warehouse receipts representing rice stored identity preserved in an approved warehouse. The county office shall obtain official weight certificates and sample the rice for settlement purposes within 5 days of the time the producer delivers the warehouse receipt or 10 days after the maturity date, whichever is later.

§ 1421.311 Maturity of loans and expiration of purchase agreements.

(a) *Loans.* Loans mature on demand but not later than April 30 of the year following the year the rice is normally harvested.

(b) *Purchases.* Purchase agreements expire on April 30 of the year following the year the rice is normally harvested.

§ 1421.312 Support rates.

The basic support rate, premium and discounts, and the location differentials for use in making loans and purchases will be available in the county ASCS office for the applicable crop year.

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

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 82-30422 Filed 11-4-82; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 523, 545 and 563

[No. 82-708]

Liquidity; Investment Authority of Federal Associations; Limitation on Investment in Accounts of Commercial Banks and Thrift Institutions and in Debt Securities Hedged With Forward Commitments

October 27, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") implements provisions of the recently-enacted Garn-St. Germain Depository Institutions Act of 1982 authorizing federal associations to invest in the accounts of institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation ("insured institutions") and authorizing the counting of investments in such accounts toward the Board's liquidity requirements. The Board also amends its regulations governing liquidity requirements for members of the Federal Home Loan Bank System ("Bank System") by qualifying as liquid assets (1) debt securities hedged with forward commitments (including commitments represented by repurchase agreements) issued by members of the Association of Primary Dealers in United States Government Securities, banks whose accounts are insured by the Federal Deposit Insurance Corporation, or insured institutions, (2) debt securities directly hedged with a short financial futures position, (3) debt securities held subject to exchange-traded options giving the holder the right to sell the securities at a specified value within a specified time, and (4) debt securities that provide the holder with a right to redeem at par value, regardless of the stated maturities of such securities. Finally, the Board amends its regulations limiting investments in commercial banks to reflect the liquidity amendments, extend coverage of the limitation to investments in any commercial bank or thrift institution, and permit a higher level of investment. These amendments grant members of the Bank System additional methods for maintaining liquidity consistent with the purposes underlying the Board's liquidity requirements.

EFFECTIVE DATE: November 3, 1982.

FOR FURTHER INFORMATION CONTACT: Jerry Hartzog ((202) 377-6782), Office of Economic and Policy Research, Michael

S. Joseph ((202) 377–6994), Office of Examinations and Supervision, or Kenneth F. Hall ((202) 377–6466), Attorney, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

Summary of Comments

On July 29, 1982, the Board requested comment on whether to amend its regulations governing liquidity requirements for members of the Federal Home Loan Bank System. The proposal would have qualified as liquid assets debt securities that otherwise would not so qualify because of their maturities if the securities were hedged with forward commitments, short financial futures positions or long put options, or gave the holder the right to redeem at par value. FHLBB Res. No. 82–506; 47 FR 34152 (1982). The Board also proposed to extend the coverage of its regulation limiting investments in time deposits of a single commercial bank to include debt securities subject to forward commitments issued by a single institution, and to apply the limitation to investments in savings and loan associations.

The Board received a total of twenty-three comments on the proposed amendments, of which thirteen were from federal savings and loan associations, five were from state-chartered savings and loan associations, four were from various thrift industry trade groups, and one was from a securities dealer. All but one of the comments, from a federal association, expressed strong support for the proposed amendments. The comment expressing opposition to the proposal was based on the view that hedging is never perfect and rarely results in a net gain. Several other commenters suggested various additions or changes to specific aspects of the proposal, which are discussed below.

Implementation of New Statutory Investment Authority

Section 323 of the recently enacted Garn-St Germain Depository Institutions Act of 1982 ("Garn-St Germain Act"), Pub. L. No. 97–320, 96 Stat. 1469 (to be codified in scattered sections of 12 U.S.C.), amends section 5(c)(1)(G) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(c)(1)(G)) to authorize the investment by federal savings and loan associations in the savings accounts of banks whose accounts are insured by the Federal Deposit Insurance Corporation ("FDIC") ("insured banks") or of insured institutions. In addition, section 332 of the Garn-St Germain Act amends section 5A(b)(1)(B) of the Federal Home Loan Bank Act (12 U.S.C. 1425a(b)(1)(B)) to permit members of the Federal Home Loan Bank System to count towards satisfaction of their liquidity requirements, investments in the savings accounts of both insured banks and insured institutions.

The Board has determined to implement this new statutory authority immediately. Although the Board normally seeks public comment prior to promulgating final regulations, the Board has determined, pursuant to 12 U.S.C. 553(b) (1976), that delay in implementation of the new authority is both unnecessary and contrary to the public interest because (1) the regulatory amendments merely implement the authority expressly granted by the statutory changes and (2) it is in the public interest that federal associations be given the expanded investment powers provided by the statutory changes and that Federal Home Loan Bank System members be permitted to count such investments towards the liquidity requirements at the earliest possible date.

Forward Commitments

As was discussed in the proposal, one manner in which an association can effectively shorten the maturity of a long-term debt security is to obtain a forward commitment on the security. Specifically, if that association, at the time it purchases a debt security that would qualify as a liquid asset but for its maturity or after such purchase, obtains a firm commitment from a third party to purchase the security at a specified price within a time period that would qualify the security as a liquid asset, the debt security can be insulated from fluctuations in market rates regardless of its maturity. Currently, the only type of investment hedged with a forward commitment that qualifies as a liquid asset is a time deposit subject to a repurchase agreement with an insured bank.

However, unlike the case with an option or futures contract where an organized exchange stands behind the obligation to purchase, hedging a debt security with a forward commitment entails the risk that the individual or corporation providing the commitment might fail to fulfill the obligation represented by the commitment. This risk exists even if the commitment is in the form of a secured repurchase agreement. To minimize this risk, the proposed regulation provided that the forward commitment would have to be made by a member of the Association of Primary Dealers in U.S. Government Securities ("Association") or by an insured commercial bank.

One commenter suggested that debt securities hedged with forward commitments issued by any member of the New York Stock Exchange ("NYSE") also should be eligible for liquidity, asserting that institutions would be at no greater risk holding such commitments than they would be holding commitments issued by Association members. No substantiation, however, was offered for this position. The Board notes that members of the Association are required to report their positions to the Federal Reserve Board on a daily basis, and thus are subject to a higher level of supervision than is generally applicable to NYSE members. The Board also notes that the Articles of Association of the Association require that, in identifying primary dealers, account be taken of their ability to make markets and of their financial soundness, thus affording some indication as to the extent of Association members' familiarity with the securities markets. Therefore, in view of the fact that the standards under which Association members operate appear generally to be more stringent than those applicable to NYSE members, the Board has determined to retain the provision as proposed while adding, as discussed above, similar authority to count toward liquidity debt securities subject to forward commitments issued by insured institutions. As an additional measure, the Board has determined to require the board of directors of a Bank System member to review at least annually the financial condition of any insured bank, insured institution or Association member from which it regularly obtains forward commitments.

The proposed regulation provided that, in order for a long-term debt security to qualify as a liquid or short-term liquid asset, it would have to be hedged with a forward commitment obtained at the time of its purchase by an institution. Several commenters suggested that the board should also permit debt securities hedged after their purchase to qualify as liquidity. The general purpose of the liquidity requirements is to ensure that an institution has on hand either sufficient cash to meet demands on it for funds or assets that can be converted readily to cash. The intent of the regulations with respect to assets other than cash is to qualify as liquidity only those assets that retain or stay close to their book values. This reflects the view that the value of a liquid asset as reflected on an institution's books should approximate its market value in order to avoid overstating the liquidity position of the institution. It also reflects the fact that

an institution may be reluctant to sell an asset on which it may suffer a large loss, thus undermining the purpose of designating the asset as a part of liquidity. Generally, hedging a long-term debt security already held by an institution merely locks in its market value at the time it is hedged. If at that time its market value were substantially less than its book value, the purpose of the liquidity requirement (to ensure an institution has sufficient cash or cash substitutes) would be defeated, since an institution would then be able to count toward liquidity the book value of a long-term asset whose actual market value is lower than its book value, and which the institution may be reluctant to sell.

However, these concerns are not applicable with respect to securities whose market values equal or exceed their book values. Therefore, the Board has determined to permit the inclusion in liquidity of long-term debt securities hedged after the date of their purchase provided that, at the time of hedging, their market values equal or exceed their book values and only an amount equal to their book values may be counted toward satisfaction of the Board's liquidity requirements.

Debt Securities Hedged With Short Futures Positions

Another way in which the maturity of a long-term debt security can effectively be shortened is to hedge the security by taking a short futures position in that security (*i.e.*, entering into a contract to make delivery of the security at a specified time). Any decrease in the value of the long-term security because of increases in market rates generally is substantially offset by an increase in the value of the futures contract. Thus, even if the stated maturity exceeds five years, taking the short position ensures that the purchaser is able to liquidate the security over the short term at or above a specified value without incurring a substantial capital loss.

As proposed, the final regulation imposes two requirements to ensure that the security is directly hedged. First, the security being hedged must be of deliverable grade pursuant to the specifications of the futures contract. This ensures that the association may deliver the security to meet its obligations under the futures contract and will not be required to purchase another security. Second, the term of the futures contract may not exceed the maximum maturity that would be necessary for a similar debt security not hedged by a futures contract to qualify as a liquid asset or short-term liquid asset. The purpose of this requirement is to ensure that the exposure to fluctuations in market rates of an association investing in hedged long-term debt securities will be no greater than if the association invested in debt securities whose maturities are sufficiently short to qualify them as liquid or short-term liquid assets.

Under the proposal, in order for a long-term debt security to have qualified as a liquid asset, the contract to make delivery (the hedge) would have had to be purchased simultaneously with the security and maintained during the time the maturity of the security was in excess of that permitted for liquid assets. As is noted above, several of the commenters suggested that debt securities hedged after their purchase should qualify as liquid assets. For the reasons set forth above in the discussion of forward commitments, the Board has determined to permit the inclusion in liquidity of long-term debt securities that are hedged with short futures positions after their purchase, provided that their market values at the time of hedging equal or exceed their book values. In addition, only an amount equal to their book values may be counted toward satisfaction of the liquidity requirements.

Debt Securities Hedged With Options

The Board requested comment on whether to authorize institutions to count as liquid and short-term liquid assets long-term debt securities subject to exchange-traded options to sell the securities. Since that time, the Board has authorized federal associations to trade in financial options. FHLBB Res. No. 82–557; 47 FR 36621 (August 23, 1982).

Matched with a properly structured option, a debt security can be insulated from fluctuations in market rates regardless of its maturity. Specifically, if an institution, at the time it purchases a debt security that would qualify as a liquid or short-term liquid asset but for its maturity, obtains a option to sell the security (a "long put option") within a time period that would qualify the security as a liquid asset, the member has effectively shortened the maturity of the security. As with debt securities hedged with forward commitments or futures contracts, the Board has determined to permit the counting toward liquidity of debt securities hedged with long put options only if the securities are hedged at a value equal to or exceeding their book values. Only an amount equal to their book values may be counted toward the liquidity requirements.

The commenters generally supported adoption of this provision. In addition, one commenter suggested that debt securities sold subject to "deep-in-the-money" call options should count toward liquidity. This would constitute a major departure from existing regulations, however, since it would authorize the counting toward liquidity of assets not held by an institution. The Board has determined not to adopt this suggestion.

Debt Securities Providing a Right To Redeem

The Board also proposed to amend its regulations to provide that an obligation that would qualify but for its maturity as a liquid asset under paragraphs (g) (2), (3), (6) or (9) of § 523.10 or as a short-term liquid asset under paragraphs (h) (2), (5) or (7) would so qualify regardless of its maturity if it provided the holder with the right to redeem the obligation with the issuer of the obligation at the obligation's stated or par value. The Board has determined to retain this provision as proposed. The right to redeem ensures that such obligations retain the value they possessed at the time of purchase and, thus, that they retain their liquidity. To ensure that an institution's interest-rate risk exposure under such an instrument will not be excessive, the regulation provides that the period of time within which the right to redeem may be exercised may not exceed the maximum maturity necessary for the obligation to qualify as a liquid asset or short-term liquid asset.

Accounting

Several commenters suggested that the final regulation should clarify the accounting treatment of forward commitments, financial futures contracts and financial options. The Board's regulations, at 12 CFR 563.17–3, 563.17–4 (1982) and 563.17–5 (published at 47 FR 36621 (August 23, 1982)), address the appropriate accounting treatment for these types of instruments. Although the Board considered requiring institutions to carry these instruments on their books at their current market values, it was felt that the result of such a requirement would be to effect a major change in the manner in which they currently are accounted for while not appreciably increasing the accuracy with which their true value is recorded of an institution's books. Therefore, the Board has determined to make no changes at this time in the accounting principles applicable to the instruments described above.

Limitation on Investment in Accounts of Banks and Thrift Institutions and in Debt Securities Hedged With Forward Commitments

The Board proposed to amend § 563.9–6 of its regulations (12 CFR 563.9–6 (1982)), which limits the amount of investments an insured institution may make in time and savings deposits of an insured bank, to include within the limitation debt securities owned by an insured institution and hedged with forward commitments issued by a single bank or by any one member of the Association of Primary Dealers in U.S. Government Securities. One commenter felt that § 563.9–6 should apply just to liquid and short-term liquid assets. Another suggested that repurchase agreements should not be subject to the § 563.9–6 limitation.

The rationale for limiting investments in time deposits of a bank or thrift institution is to prevent an excessive commitment of an insured institution's funds to a single source. In the Board's view, this rationale applies equally well to an institution's reliance on commitments issued by a bank or by a government securities dealer. Therefore, the Board has determined to expand coverage of the limitation as proposed. The Board requested comment as to whether the limitation in § 563.9–6 should be extended to debt securities hedged with forward commitments issued by *any* individual or corporation. Those commenting on this issue differed in opinion, with a slight majority favoring extension of the limitation. The Board believes the limitation should be expanded to prevent over-reliance on the resources of a single individual or corporation.

The proposed amendments would also have made three further changes to § 563.9–6. First, the investment limitation would have been amended to be the greater of (1) one hundred thousand dollars or (2) the lesser of (i) one-quarter of one percent of the deposits of the insured bank or insured institution in which the investment is made or (ii) the greater of the investing institution's net worth or one percent of such institution's assets. The addition of the one-percent-of-assets factor would ensure that an insured institution with declining net worth would retain the ability to make a reasonable investment above one hundred thousand dollars in an insured institution or insured bank. One commenter suggested that the limitation based on one-quarter of one percent of the deposits in the bank or thrift in which an investment is made should be raised to one-half of one percent, asserting that institutions curently are excessively restricted as concerns deposits in financially sound banks. The Board is of the view that a higher limitation would give insured institutions greater flexibility in soundly investing their funds, and therefore has determined to raise the limitation to one-half of one percent. The other provisions are adopted as proposed. The final regulation, then, provides that an insured institution may always invest at least $100,000, but is limited as to the maximum dollar amount it may invest with any one person or entity to the *lesser* of one-half of one percent of the deposits of the bank or thrift in which a deposit is made or (2)(ii) above. (It should be noted that the one-half of-one-percent-limitation would have no applicability to an investment in debt securities hedged with a forward commitment issued by an entity other than a financial institution, thus leaving (2)(ii) as the only limitation applicable to such an investment.)

The Board also has determined to extend the limitation in § 563.9–6 to investments in the savings accounts of any commercial bank or thrift institution. (It is noted that the regulation does not limit investments in demand accounts of a bank or thrift institution.) This is appropriate in view of the Board's recent authorization of investments by federally-chartered savings and loans in time and savings deposits of insured institutions (47 FR 17468 (1982)) and of the fact that many state-chartered institutions possess similar authority as well as authority to invest in deposits of state-insured banks or thrifts. It also is consistent with the recently-enacted Garn-St Germain Act, which codifies the authority of federal associations to invest in insured institutions and permits time deposits in insured institutions to count toward the Board's liquidity requirements. Finally, the amendments make clear that the term "savings accounts," as used in § 563.9–6, applies also to loans of unsecured day(s) funds to a bank or thrift institution. This limitation is incorporated into the liquidity regulations through amendment of the introductory language to paragraphs (g) and (h) of § 523.10. As amended, paragraphs (g) and (h) provide that no investment may be counted as a liquid or short-term liquid asset to the extent it exceeds any applicable limitation, whether imposed by federal or state law, on investment in such assets by a Bank System member.

Clarifying and Technical Amendments

The Board has determined to adopt two clarifying and one technical amendment to its regulations. First, paragraph (e) of § 523.10 is amended to clarify that short-term borrowings include that portion of the principal amount of a borrowing that has a remaining term to maturity exceeding one year, if it becomes contractually due during the current year. This amendment codifies an interpretation issued by the Board's Office of Examinations and Supervision (T Memorandum 34–4 (May 1, 1973)).

Second, § 545.9, regarding permissible investments by federally-chartered savings and loans, is amended to make clear that the authority provided by paragraph (a) of that section does not exempt an association from the limitations contained in § 545.9–4 relating to investments in corporate debt obligations and commercial paper. This amendment codifies existing interpretations of §§ 545.9 and 545.9–4 issued by the Board's Office of General Counsel.

Finally, the Board amends paragraph (h)(3) of § 545.9, regarding permissible investments by federal associations, which incorrectly references former § 545.6–20. The substance of former § 545.6–20, which addressed loans guaranteed under the Foreign Assistance Act of 1961, was redesignated as § 545.6–11 in July of 1979. 44 FR 39126 (1979). The amendment inserts the proper reference to § 545.6–11.

Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96–354; 5 U.S.C. 601 *et seq.*), the Board certifies that the amendments will not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 523

Federal Home Loan Banks, Savings and loan associations.

12 CFR Part 545

Insurance of accounts, Savings and loan associations.

12 CFR Part 563

Commercial banks, Savings and loan associations.

The Board finds that delay of the effective date of this regulatory action for 30 days after publication pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary and against the public interest because (1) it implements new authority granted by the Garn-St Germain Act, and (2) it will ease the liquidity problems of the savings and loan industry by permitting institutions to immediately count additional

appropriate assets as liquid assets and short-term liquid assets.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 523 of Subchapter B, Part 545 of Subchapter C, and Part 563 of Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 523—MEMBERS OF BANKS

Liquidity

1. Amend § 523.10 by revising paragraphs (a), (b), (e) and introduction text of (g) and (g)(4)(i), and by adding new paragraphs (g)(11), introductory text of (h) and (h)(8), as follows:

§ 523.10 Definitions for purposes of this section, § 523.11 and § 523.12.

(a) *Cash.* Cash on hand and unpledged demand accounts in a Bank, an insured bank, an insured institution, the Bank for Savings and Loan Associations (Chicago, Illinois), or the Savings Banks Trust Company (New York, New York), but not gold in any form.

(b) *Insured bank; insured institution.* (1) "Insured bank" means a commercial or mutual savings bank whose accounts are insured by the Federal Deposit Insurance Corporation and which is not under the control of any supervisory authority.

(2) "Insured institution" means an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation and which is not under the control of any supervisory authority.

* * * * *

(e) *Short-term borrowings.* All borrowings, or any portion of the principal amount thereof, payable on demand or in one year or less, but not including tax and loan accounts, note accounts, United States Treasury General Accounts, or United States Treasury Time Deposit-Open Accounts.

* * * * *

(g) *Liquid assets.* The total of cash, accrued interest on unpledged assets which qualify as liquid assets under this subsection or would so qualify except for their maturities, and the book value of the following unpledged assets (including such assets held subject to repurchase agreement), as long as principal and interest on such assets are not in default and a member's investments in such assets do not exceed any applicable limitations on such investments by the member:

* * * * *

(4) Savings accounts of an insured bank or insured institution, including loans of unsecured day(s) funds to an insured bank or insured institution (*i.e.*, Federal funds or similar unsecured loans), if:

(i) Except for loans of unsecured day(s) funds, such accounts are (*a*) negotiable and will mature in one year or less, (*b*) not negotiable and will mature 90 days or less, or (*c*) not withdrawable without notice and the notice periods do not exceed 90 days;

* * * * *

(11) Any obligation that would qualify as a liquid asset under paragraphs (g)(2), (g)(3), (g)(6) or (g)(9) of this section but for its maturity: *Provided,* that the obligation: (i) Is hedged, at a value equal to or exceeding its book value, with a firm forward commitment (including a commitment represented by a repurchase agreement) to purchase the obligation issued by a member of the Association of Primary Dealers in United States Government Securities ("Association member"), an insured institution or an insured bank, as defined in paragraph (b) of this section, and the commitment must be fulfilled within a period of time that does not exceed the maximum maturity necessary for the obligation to qualify as a liquid asset under this paragraph (g); (ii) is hedged, at a value equal to or exceeding its book value, with a financial futures contract under which the obligation is of deliverable grade and the delivery date is at or before the maximum maturity necessary for the obligation (the deliverable security) to qualify as a liquid asset under this paragraph (g); (iii) is hedged, at a value equal to or exceeding its book value, with a long put option and the time period within which the option may be exercised does not exceed the maximum maturity necessary for the obligation to qualify as a liquid asset under this paragraph; or (iv) provides that the holder has the right to redeem the obligation with the issuer of the obligation at the stated or par value and that this right may be exercised within a period of time that does not exceed the maximum maturity necessary for the obligation to qualify as a liquid asset under this paragraph; *provided further,* that the amount of any obligation qualifying under paragraphs (g)(11)(i), (ii) or (iii) of this section that may be counted in satisfaction of the requirements imposed by § 523.11 of this Part shall be the obligation's book value at the time time of hedging; and *provided finally,* that the board of directors of a member institution shall review on at least an annual basis the financial condition of each insured institution, insured bank, and Association member from which it regularly obtains forward commitments.

(h) *Short-term liquid assets.* The total of cash other than vault cash used to satisfy the reserve requirements of 12 CFR Part 204, accrued interest on unpledged assets which qualify as liquid assets under paragraph (g) of this section, or would so qualify except for their maturities, and the book value of the following unpledged assets (including such assets held subject to repurchase agreement), as long as a member's investments in such assets do not exceed any applicable limitations on such investments by the member:

* * * * *

(8) Any obligation that would qualify as a short-term liquid asset under paragraph(h)(2), (h)(5) or (h)(7) of this paragraph but for its maturity: *Provided,* that the obligation: (i) Is hedged, at a value equal to or exceeding its book value, with a firm forward commitment (including a commitment represented by a repurchase agreement to purchase the obligation issued by a member of the Association of Primary Dealers in United States Government Securities ("Association member"), an insured institution or an insured bank, as defined in paragraph (b) of this section, and the commitment must be fulfilled within a period of time that does not exceed the maximum maturity necessary for the obligation to qualify as a short-term liquid asset under this paragraph (h); (ii) is hedged, at a value equal to or exceeding its book value, with a financial futures contract under which the obligation is of deliverable grade and the delivery date is at or before the maximum maturity necessary for the obligation (the deliverable security) to qualify as a short-term liquid asset under this paragraph (h); (iii) is hedged, at a value equal to or exceeding its book value, with a long put option and the time period within which the option may be exercised does not exceed the maximum maturity necessary for the obligation to qualify as a short-term liquid asset under this paragraph (h); or (iv) provides that the holder has the right to redeem the obligation with the issuer of the obligation at the stated or par value and that this right may be exercised within a period of time that does not exceed the maximum maturity necessary for the obligation to qualify as a short-term liquid asset under this paragraph (h); *provided further,* that the amount of any obligation qualifying under paragraph (h)(8)(i), (ii) or (iii) of this section that may be counted in satisfaction of the

requirements imposed by § 523.11 of this Part shall be the obligation's book value at the time of hedging; and *provided finally*, that the board of directors of a member institution shall review on at least an annual basis the financial condition of each insured institution, insured bank and Association member from which it regularly obtains forward commitments.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

2. Amend § 545.9 by revising paragraph (a) and by removing the reference in paragraph (h)(3) to § 545.6–20 and substituting in its place a reference to § 545.6–11, as follows:

§ 545.9 Securities and other investments.

A Federal association may invest in:

(a) Assets that qualify as liquid assets, as defined in § 523.10(g) of this Chapter, and assets, other than time deposits and bankers' acceptances, that would so qualify except for their maturities, provided that any investment in corporate debt obligations and commercial paper shall be subject to the limitations of § 545.9–4 of this part.

* * * * *

3. Revise § 545.9–2, as follows:

§ 545.9–2 Investment in savings and demand accounts.

A Federal association may invest in the savings and demand accounts of any institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation. In addition, a Federal association may maintain a non-interest-bearing account at an institution whose accounts are insured pursuant to a state deposit insurance program if the account is necessary or incidental to a correspondent relationship.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

4. Revise the title and the text of § 563.9–6, as follows:

§ 563.9–6 Limitation on investment in accounts of commercial banks and thrift institutions and in debt securities hedged with forward commitments.

An insured institution's investments in savings accounts of a commercial bank or thrift institution (including loans of unsecured day(s) funds, *i.e.*, Federal funds or similar unsecured loans), and debt securities hedged with a firm forward commitment (including a commitment represented by a repurchase agreement) to purchase the debt securities issued by any single individual, partnership, or corporate or mutual entity of any sort, shall not exceed, with respect to any single individual, partnership, or corporate or mutual entity, the greater of one hundred thousand dollars, or the lesser of if applicable, one half of one percent of the deposits of the institution from which the investment is obtained, or the greater of the investing institution's net worth or one percent of the investing institution's assets.

(Secs. 323, 332, Pub. L. No. 97–320, 96 Stat. 1469, amending 12 U.S.C. 1464(c)(1)(G), 1425a(b)(1)(B), respectively; Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Reorg. Plan No. 3 of 1947; 3 CFR 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-30421 Filed 11-4-82; 8:45 am]

BILLING CODE 6720-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 118

Handicapped Assistance Loans

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: These amendments reflect changes made to the Small Business Act (15 USC 631 *et seq.*) by Pub. L. 97–35 (95 Stat. 357). As a result, handicapped persons and certain nonprofit organizations as defined in the regulations, in order to receive financial assistance under the Agency's handicapped assistance loan program, would no longer have to show that other Federal Government financing, such as SBA's regular loan program, is not available.

ADDRESS: Written comments, in duplicate, may be transmitted to Deputy Associate Administrator for Financial Assistance, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

EFFECTIVE DATE: November 5, 1982.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416. (202) 653–6574.

SUPPLEMENTARY INFORMATION: Prior to the enactment of Pub. L. 97–35 (95 Stat. 357), the various SBA lending programs could be found in different subsections of Section 7 of the Small Business Act (15 USC 636) ("Act"). Pub. L. 97–35 consolidated the Agency's lending programs into Section 7(a) of the Act (15 U.S.C. 636(a)) so that the handicapped assistance loan program authorization is presently in paragraph (10) thereof. Section 7(a)(1) of the Act provides that no "financial assistance shall be extended pursuant to this subsection if the applicant can obtain credit elsewhere." Both sections 3(h) and 18(b)(2) of the Act define "credit elsewhere" as the "availability of sufficient credit from non-Federal sources at reasonable rates and terms * * *" Prior to the enactment of Pub. L. 97–35, the handicapped assistance subsection had provided for such aid "where other financial assistance is not available on reasonable terms" with no reference to non-Federal sources.

Section 118.11(a)(2) of SBA regulations (13 CFR 118.11(a)(2)) presently provides that HAL–1 assistance is available only if funds are not otherwise available from private sources "or other Federal, State or local programs." Section 118.11(b)(1)(ii)(D) of our regulations (13 CFR 118.11(b)(1)(ii)(D)) presently states that handicapped aid to individuals is not available unless financial assistance is not obtainable through "other applicable Government financing, including SBA's regular Business Loan Program * * *"

The changes in the regulations effected herein bring the regulations into compliance with the Act as amended by Pub. L. 97–35 so that applicants for handicapped assistance need not prove the unavailability of other Federal Government financing, including SBA's regular business loan program. Handicapped assistance thus is available if the applicant could not obtain financial aid from private or non-Federal Government sources. Because these changes reflect statutory amendments and are of a liberalizing nature, the Agency is publishing them as a final rule.

This regulation will not have a significant economic impact on a substantial number of small entities and is, therefore, not subject to the requirements of the Regulatory Flexibility Act, Pub. L. 96–354, because it will not significantly increase the reporting, recordkeeping or compliance burdens of the regulation. This regulation does not constitute a major rule for the purposes of Executive Order 12291. In this regard we are certain that the annual effect on the economy will be less than $100 million. It will not result in a major increase in costs or price for consumers, individual industries, Federal, State or local government agencies or geographic regions, and will not have significant adverse effects on

competition, employment, investment, productivity or innovation.

List of Subjects in 13 CFR Part 118

Handicapped, Loan programs—business, Small business.

PART 118—[AMENDED]

Accordingly, pursuant to the authority contained in Section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), Part 118, Chapter 1, Title 13 of the Code of Federal Regulations, is amended as follows:

1. Section 118.11(a)(2) is revised to read as follows:

§ 118.11 Eligibility.

(a) * * *

(2) Financial assistance shall not be extended if funds are otherwise available on reasonable terms from private sources or other State or local programs. It must be demonstrated that:

(i) The applicant's bank of account will not make the loan.

(ii) Private credit is not obtainable.

(iii) Grant funds from other non-Federal Government programs are not available.

(iv) Contributions from foundations, local or State fundraising activities, including tax assessments, donations, and similar historical avenues of funding will not be diminished as a result of the SBA loan.

* * * * *

2. Section 118.11(b)(1)(ii)(D) is amended to read as follows:

§ 118.11 Eligibility.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(D) Through applicable Government financing other than Federal.

(Catalog of Federal Domestic Assistance Program No. 59.021 Small Business Loans)

Dated: October 28, 1982.

Heriberto Herrera,

Acting Administrator.

[FR Doc. 82-30528 Filed 11-4-82; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

15 CFR Part 2009

Submission of Representations Concerning Standards-Related Activity

AGENCY: United States Trade Representative.

ACTION: Final rule.

SUMMARY: These regulations provide for the proper submission of representations by certain foreign countries concerning standards-related activities viewed by such countries as barriers to trade. These regulations implement section 422 of the Trade Agreements Act of 1979 and the Agreement on Technical Barriers to Trade, which was entered into by the United States in the Tokyo Round of Multilateral Trade Negotiations.

EFFECTIVE DATE: December 6, 1982.

FOR FURTHER INFORMATION CONTACT: Donald S. Abelson, Chairman, Trade Policy Staff Committee, Standards Subcommittee (202/395-3063).

SUPPLEMENTARY INFORMATION: The Agreement on Technical Barriers to Trade (the "Agreement") was approved by Congress in Section 2(a)) of the Trade Agreements Act of 1979 (19 U.S.C. 2503(a) and entered into force for the United States on January 1, 1980. Article 14:2 of the Agreement provides:

If any party considers that any benefit accruing to it, directly or indirectly, under that Agreement is being nullified or impaired, or that the attainment of any objective of this agreement is being impeded by another Party or Parties, and that its trade interests are being significantly affected, the party may make written representations or proposals to the other party or parties which it considers to be concerned. Any party shall give sympathetic consideration to the representations or proposals made to it with a view to reaching a satisfactory resolution of the matter.

This provision was implemented in domestic law by section 422 of the Trade Agreements Act of 1979 (19 U.S.C. 2552), which provides that the United States Trade Representative shall receive all such standards-related representations.

The Office of the United States Trade Representative published proposed regulations to further implement Article 14.2 and section 422 at 46 FR 59547 (December 7, 1981). Comments were due February 5, 1982. One comment was received.

The commenter objected to the requirement that representations by a foreign government conform to part 2009, stating that rejection of an official representation on the basis of formal defects would violate United States obligations to consult under Article 14.2 of the Agreement. The commenter urged that the regulations be expressed as guidelines rather than as mandatory requirements.

However, section 422 explicitly requires that foreign government representations be made in accordance with procedures prescribed by USTR. We have revised the regulations to provide maximum flexibility for foreign representations within the parameters of section 422. The only mandatory requirement is that representations provide information on trade impact; Article 14.2 itself requires such a showing. The non-mandatory guide-lines below are designed to facilitate a prompt and thorough response to the representation in question.

Authority

The authority for the regulations published below is 5 U.S.C. 301; the Trade Agreements Act of 1979, sections 3(b) (19 U.S.C. 2504(b)) and 401–422 (19 U.S.C. 2251–54); E.O. 11846 of March 27, 1975 (40 FR 69173); Reorganization Plan No. 3 of 1979 (44 FR 69173), and E.O. 12188 of January 2, 1980 (45 FR 989).

Drafting Information

The principal authors of this document were Amelia Porges, Clifford Marshall and Robert Stang of the Office of the General Counsel, Office of the United States Trade Representative.

Regulatory Impact Analysis

The Office of Management and Budget has determined that these regulations are issued with respect to a foreign affairs function of the United States. Thus, section 3 of E.O. 12291 does not apply and a Regulatory Impact Analysis is not required.

List of Subjects in 15 CFR Part 2009

Foreign Trade: Standards.

Accordingly, new USTR regulations entitled "Submission of Representations Concerning Standards-Related Activity" are established in a new Part 2009 of Chapter XX of Title 15 of the Code of Federal Regulations and are set forth below:

William E. Brock,

United States Trade Representative.

PART 2009—PROCEDURES FOR REPRESENTATIONS UNDER SECTION 422 OF THE TRADE AGREEMENTS ACT OF 1979

Sec.

2009.0 Submission of representation.
2009.1 Information required in representation.

Authority: 5 U.S.C. 301; 19 U.S.C. 2504(b), 2551–54; E.O. 11846, 40 FR 14291; Reorganization Plan No. 3 of 1979, 44 FR 69173; E.O. 12188, 45 FR 989.

§ 2009.0 Submission of representation.

(a) Any—

(1) Part to the Agreement; or

(2) Foreign country that is not a Party to the Agreement but is found by the United States Trade Representative, ("Trade Representative") to extend rights and privileges to the United States that are substantially the same as those that would be so extended if that foreign country were a Party to the Agreement, may make a representation to the Trade Representative alleging that a standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement on Technical Barriers to Trade.

(b) All representations under section 422 of the Trade Agreements Act of 1979 ("section 422") shall be addressed to the United States Trade Representative, Office of the United States Trade Representative, 600 17th Street, NW., Washington, D.C. 20506. Alternatively, such a representation may be made by diplomatic correspondence and may be accepted by the Trade Representative.

(c) "The Agreement", a "Party to the Agreement" and "standards-related activity" are defined as in section 451 of the Act (19 U.S.C. 2561).

§ 2009.1 Information required in representation.

(a) Each representation submitted under section 422 should state clearly on the first page that the representation is a request for action with respect to the obligations of the United States under the Agreement, and should contain the following information:

(1) The foreign country making the representation, the division of the foreign country's government representing that country's interest, the person(s) within the division who is (are) coordinating the foreign country's representation.

(2) A description of the standards-related activity at issues, including, whenever possible, copies of the standards-related activity's provisions.

(3) Identification of the foreign goods or services affected by the standards-related activity at issue.

(4) A statement of how the standards-related activity concerned is alleged to violate the obligations of the United States under the Agreement. This statement shoud indicate with particularity which such obligations are alleged to be violated.

(5) Indication as to whether the foreign country has officially petitioned, filed or complained for relief concerning the same subject matter as this representation to any international forum.

(b) Each representation submitted under section 422 of the Act must contain information sufficient to provide a reasonable indication that the standards-related activity concerned is having a significant trade effect, including (but not limited to) the volume of trade in the goods concerned.

(c) Representations should be submitted in 10 copies.

[FR Doc. 82-30491 Filed 11-4-82; 8:45 am]

BILLING CODE 3190-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-3097]

Association of Independent Dentists; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement requires a Colorado dental association to cease, among other things, inhibiting competition by restricting or advising member dentists against the truthful advertising of their services. The order bars the association and its members from coercing any third-party payer into altering the terms and conditions of any dental health care plan. Further, the association is required to timely repeal any provision of its by-laws which are inconsistent with the prohibitions contained in the order; mail a copy of the order together with a letter specifying the changes made to the by-laws to every member; and provide all future members with a copy of the order.

DATES: Complaint and order issued October 22, 1982.[1]

FOR FURTHER INFORMATION CONTACT: FTC/CS-8, Arthur Lerner, Washington, D.C. 20580. (202) 724-1303.

SUPPLEMENTARY INFORMATION: On Monday, August 16, 1982, there was published in the **Federal Register**, 47 FR 35519, a proposed consent agreement with analysis In the Matter of Association of Independent Dentists, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: Section 13.367 Members. Subpart—Combining or Conspiring: Section 13.384 combining or conspiring; § 13.395 To control marketing practices and conditions; § 13.430 To enhance, maintain or unify prices. Subpart—Corrective Actions and/or Requirements: Section 13.533 Corrective actions and/or requirements; 13.533-60 Release of general, specific or contractual constrictions, requirements or restraints.

List of Subjects in 16 CFR Part 13

Dentists, Dental health care services.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Carol M. Thomas,

Secretary.

[FR Doc. 82-30529 Filed 11-4-82; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket C-3028]

Fred Meyer, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's order issued on July 23, 1980 (45 FR 28754), by modifying Paragraphs A and B of Section IV, so as to extend from 10 to 14 days the time in which customers have to come into the store to settle their account once their layaway period has expired. The modification also extends from 11 to 15 days the time the store will wait before returning layaway merchandise to stock.

DATES: Consent Order issued July 23, 1980. Modifying Order issued Oct. 14, 1982.

FOR FURTHER INFORMATION CONTACT: FTC/PC, Julio A. Castillo, Washington, D.C. 20580. (202) 376-2805.

SUPPLEMENTARY INFORMATION: In the Matter of Fred Meyer, Inc. Codification appearing at 45 FR 28754 remains unchanged.

[1] Copies of the Complaint and the Decision and Order filed with the original document.

List of Subjects in 16 CFR Part 13

Layaway merchandise, trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

The Order Modifying Cease and Desist Order Issued July 23, 1980 is as follows:

Before the Federal Trade Commission

COMMISSIONERS: James C. Miller III, Chairman, David A. Clanton, Michael Pertschuk, Patricia P. Bailey

In the matter of Fred Meyer, Inc., Docket No. C-3028.

Order Modifying Cease and Desist Order Issued July 23, 1980

The Federal Trade Commission having considered the July 19, 1982, petition of Fred Meyer, Inc., a Delaware corporation, successor to Fred Meyer, Inc., an Oregon corporation, to reopen this matter and modify the consent order to cease and desist issued by the Commission on July 23, 1980, and having determined that public interest warrants reopening and modification of the order

It is ordered that order Paragraph A and B of Section 4 be revised as follows:

Mail to each layaway customer:

1. within twenty (20) days after the end of the period designated in the layaway agreement to make full payment for the merchandise,

2. if the payments received by respondent have not been returned to the customer, and

3. if the merchandise has not been delivered to the customer, and

4. before the merchandise is returned to stock and before making any entries in the layaway account which would close out the account, the following disclosure clearly and conspicuously in twelve-point or larger type, entirely on one side of a single piece of paper, separated from any other written matter:

We Owe You Money

(Date of mailing to be inserted here)

You haven't fully paid for your recent layaway purchase at our (name of store) store. You can fully pay for your purchase within 14 days from the above date. Or you can get a refund from us for the amount you have paid (less 35 cents handling charge). If you want a refund, come to the department of the store where you have the layaway not later than (insert date 14 days from notice) and ask for your money. You also have the choice of getting a credit to purchase other merchandise. Please bring this notice with you. If you don't ask for a refund or a credit, we will send you a check automatically within 45 days if the amount we owe you is more than $1.

Respondent may insert in the above notice a different handling charge that is reasonable in comparison with a 35 cent charge.

B. Defer returning layaway merchandise to stock until 15 days after the mailing of the notice specified in IV. A. and allow completion of the layaway purchase within 14 days after the mailing of the notice.

By direction of the Commission.

Issued: October 14, 1982.

Carol M. Thomas,

Secretary.

[FR Doc. 82-30489 Filed 11-4-82; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 18

[T.D. 82-204]

Customs Regulations Amendments Relating to Customs Bonded Warehouses

Correction

In FR Doc. 82-29742, beginning at page 49355, in the issue of Monday, November 1, 1982, on page 49368, in the middle column, § 18.4 is corrected in the last line of the authority citation by changing "16461a" to "1646a".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 75G-0117]

GRAS Status of Ozone

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that ozone is generally recognized as safe (GRAS), with specific limitations, for use as a disinfectant in bottled water. This action is based on an industry petition requesting such affirmation.

EFFECTIVE DATE: November 5, 1982.

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: Under procedures described in § 170.35 (21 CFR 170.35), the American Bottled Water Association, 1141 W. Olympic Blvd., Los Angeles, CA 90015, submitted a petition (GRASP 4G0043) requesting affirmation that the use of ozone as a disinfectant in bottled water is GRAS. FDA published a notice of filing of this petition in the **Federal Register** of June 25, 1975 (40 FR 26723), and the agency gave interested persons an opportunity to review the petition and to submit comments to the Dockets Management Branch, Food and Drug Administration. No comments were received in response to the notice.

Ozone has the chemical formula O_3; is an unstable blue gas with a pungent, characteristic odor; and occurs at low levels (about 0.05 part per million (ppm) in air at sea level) in nature. It is generally encountered in dilute form in a mixture with air or oxygen. Ozone is formed photochemically in the Earth's stratosphere by the action of ultraviolet light of short wavelengths on oxygen. It is produced commercially by passing electrical discharges or ionizing radiation through air or oxygen. Ozone is a powerful oxidant having an oxidation potential of 2.07 volts. In aqueous solution, ozone is relatively unstable. The rate of decay of ozone in solution is dependent both on the termperature and the purity of the water.

Along with chlorine, ozone is generally recognized as one of the most potent germicidal agents used in the treatment of water. Chemical disinfectants kill or inactivate microorganisms by physical or chemical disruption of a critical cellular structure or function. In the case of ozone, a chemical reaction takes place that is oxidative in nature. Thus, the oxidative potential of ozone is an important factor with regard to its capabilities as a disinfectant. The chemical state of ozone that is germicidally active is not known, but it may be the $OH\cdot$. (hydroxyl radical) or the HO_2^- (hydroperoxyl radical). The presence of other species, such as O_3^- (ozonide radical), O_2^- (superoxide radical), and O^- (oxide radical), have been demonstrated, but their role in germicidal activity is not known. Most experimental data indicate that the efficiency of ozone as a disinfectant varies with pH, and that it is somewhat more efficient at a lower pH (6.0) than at a higher pH (10.0). This result is probably caused by the greater stability of ozone in water at lower pH's.

The petitioner has sought agency affirmation that the use of this ingredient as a disinfectant in bottled water is GRAS. Information supplied by the petitioner indicates that, under normal conditions, the ozone dosage applied is 0.5 to 2.0 ppm. The petitioner's quality control standard is a maximum level of 0.4 ppm at the time of bottling.

The petition provides information from the published literature verifying that ozone is toxic, particularly by inhalation, at relatively low levels. However, the petition also provides data from the published literature on the rate

of dissipation of ozone in water under a wide range of conditions. These data show that ozone dissipates rapidly when used in water, and that the rate of decay of residual ozone in water varies inversely with the amount of oxidizable materials present. The petition also includes unpublished data confirming the disappearance of ozone under the proposed conditions of use and under what must be considered worst case conditions—from distilled water.

The petition also provides published information indicating that ozone has been in continuous use for disinfecting municipal water for nearly 70 years in Europe, originally in France, extending to Germany, Holland, Switzerland, and other European countries. In addition, published reports indicate that a few municipalities in the United States have used it in their drinking water systems. There have been no reports of human toxicity from the use of ozone in municipal water supplies in the United States and Europe. This information corroborates the safety of the use of ozone as a disinfectant in bottled water.

In a 1968 opinion letter, FDA stated that ozone used to disinfect potable water is GRAS if it is used in accordance with current good manufacturing practice and with the recommendations of the United States Public Health Service. The agency reiterated this position in the preamble to the final rule establishing current good manufacturing practice for bottled water (40 FR 11566; March 12, 1975).

Ozone is also regulated in § 129.80 (21 CFR 129.80), at a level of 0.1 part per million in water, for use in sanitizing operations of product water-contact surfaces and any other critical areas.

After a comprehensive review of all data regarding the use of ozone as a disinfectant for bottled water, the agency has determined that:

1. Ozone is not eligible for GRAS status as a disinfectant in bottled water based on common use in the United States before January 1, 1958.

2. Ozone is GRAS for this limited use based on scientific procedures. The agency's conclusion is based upon published data demonstrating that although ozone may be toxic at relatively low levels, it dissipates rapidly in water. These data are supplemented by unpublished data that confirm the rapid dissipation of ozone in water under the intended conditions of use. This conclusion is corroborated by published information that ozone has been used for 70 years in Europe for disinfecting municipal drinking water, and that it has had a limited use for this purpose in the United States. No reports of safety problems have been associated with this use.

3. Ozone performs the functional effect claimed by the petitioner.

Therefore, the agency concludes that the use and level of use of ozone as set forth in the petition is GRAS. The agency also has considered the potential consumer exposure to oxidation products formed during the reaction of ozone with impurities found in water. To assure that the levels of any oxidation products formed are low and safe, the agency has included in § 184.1563 (21 CFR 184.1563) the requirement that the starting water, before ozonation, meet the microbiological, physical, chemical, and radiological quality standards for bottled water specified in § 103.35 (b) through (e) (21 CFR 103.35 (b) through (e)). The agency thus concludes that this limited approval for use of ozone in bottled water constitutes a specific limitation on its use in accordance with § 184.1(b)(2) (21 CFR 184.1(b)(2)).

FDA is affirming ozone as GRAS even though there are no applicable food-grade specifications. The agency has determined that the method of manufacture of commercial ozone assures a product with purity suitable for the requested use. Therefore, the agency concludes that ozone must be of a purity suitable for its intended use in accordance with 21 CFR 170.30(h)(1), and that further specifications are unnecessary.

The format of the 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; 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 not an environmental impact statement is required.

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.

List of Subjects in 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), Part 184 is amended by adding new § 184.1563, to read as follows:

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

§ 184.1563 Ozone.

(a) Ozone (O_3, CAS Reg. No. 10028–15–6) is an unstable blue gas with a pungent, characteristic odor, which occurs freely in nature, It is produced commercially by passing electrical discharges or ionizing radiation through air or oxygen.

(b) The ingredient must be of a purity suitable for its intended use in accordance with § 170.30(h)(1) of this chapter.

(c) In accordance with § 184.1(b)(2), the ingredient is used to treat food only within the following specific limitations:

Category of food	Maximum treatment level in food	Functional use
Bottled water that prior to ozonation meets the microbiological, physical, chemical, and radiological quality standards of § 103.35 (b) through (e) of this chapter.	Not to exceed current good manufacturing practice. Current good manufacturing practice results in a maximum residual level at the time of bottling of 0.4 milligram of ozone per liter of bottled water.	Antimicrobial agent, § 170.3 (o)(2) of this chapter.

Effective date. This regulation shall become effective November 5, 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: October 18, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-30180 Filed 11-4-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 601

Licensing; Reclassification Procedures To Determine That Licensed Biological Products Are Safe, Effective, and Not Misbranded Under Prescribed, Recommended or Suggested Conditions of Use

Correction

In FR Doc. 82–27314, beginning at page 44062, in the issue of Tuesday, October 5, 1982, make the following corrections:

1. On page 44062, in the first column under the "DATE" change "November 6, 1982" to "November 4, 1982".

2. On page 44071, in the middle column, the first full paragraph, last line, add "(d)" after "§ 601.26."

3. On page 44071, last column, the first paragraph under "PART 601—LICENSING", change the last line of the amendatory language from "(1), as follows:" to read "(l), as follows:".

4. On page 44071, in the last column, the footnote designated "[2] Note", first line, change "November 6, 1982" to read "November 4, 1982".

5. On page 44073, in the middle column, the first full paragraph, second line, change "November 6, 1982." to read "November 4, 1982".

BILLING CODE 1505-01-M

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21 CFR Part 1020

[Docket No. 77N-0061]

Diagnostic X-Ray Systems and Their Major Components; X-Ray Beam Limitation Devices for Radiographic and Fluoroscopic X-Ray Systems

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing regulations to (1) clarify the x-ray beam limitation requirements for stationary, general-purpose radiographic systems; (2) incorporate interpretations that have been made about the performance of these systems; (3) relax certain requirements for field size adjustments; and (4) permit a capability for overriding the automatic x-ray field size adjustment on radiographic spot film and fluoroscopic x-ray systems if appropriate labeling is provided.

EFFECTIVE DATE: December 1, 1983.

FOR FURTHER INFORMATION CONTACT: Raymond F. Coakley, Jr., Bureau of Radiological Health (HFX-460), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3426.

SUPPLEMENTARY INFORMATION: Under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90-602, 42 U.S.C. 263b et seq.), FDA is amending the performance standard for diagnostic x-ray systems and their major components (21 CFR 1020.30, 1020.31, and 1020.32). The amendments modify the requirements of § 1020.31(e)(2) concerning the manner in which means to limit the x-ray field are provided for stationary, general-purpose radiographic systems. The amendments also alter §§ 1020.31(g) and 1020.32(b) by permitting a capability for overriding the automatic x-ray field size adjustment on spot film and fluoroscopic x-ray systems and by requiring appropriate labels for these override controls when such a capability is provided.

The development of these amendments was announced in a notice of intent published in the **Federal Register** of April 1, 1977 (42 FR 17494), and drafts of the proposed amendments were made available for review and comment by interested parties. Under section 358(f) of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f(f)), those proposals were reviewed by the Technical Electronic Product Radiation Safety Standards Committee, a permanent statutory advisory committee to the Secretary, Department of Health and Human Services, which must be consulted before establishment or amendment of performance standards for electronic products. The committee concurred with issuing the proposals for public comment.

In the **Federal Register** of May 9, 1978 (43 FR 19879) FDA published the proposed amendments. Interested persons were given 60 days to comment on the proposal. Written comments were received from four manufacturers, two radiologists, and one radiological physics consultant. The substantive comments received and FDA's conclusions are discussed below.

General Comments

1. Several comments lauded FDA's proposal to simplify the requirements concerning positive beam limitation (PBL) but at the same time criticized the agency for the number of regulations and the burden these rules impose. These same comments questioned the need for regulations of this general type.

The agency believes the PBL systems are useful and reliable. The arguments favoring the rule have been previously made a matter of public record. Subsequent data show that PBL can and does achieve its purpose, which is to reduce x-ray beams to the size of the film.

The Bureau of Radiological Health (BRH) conducted a survey of user practices, attitudes, and assessments regrading devices that provide PBL on stationary, general-purpose radiographic systems. The results were compiled, evaluated, and published in a report entitled "Positive Beam Limitation Effectiveness Evaluation" (Ref. 1).

BRH initiated the survey in 1978 after receiving reports that many users of x-ray systems equipped with PBL were overriding the PBL system when the same or better results would have been obtained with the device in full operation. The reports also indicated that, among those who did use the PBL, general acceptance was poor.

The survey participants were a stratified random sample of one of every nine known PBL users in June 1977. BRH sent to 543 persons a questionnaire and instructions developed by BRH. The questionnaire was accompanied by letters of endorsement from the American College of Radiology and the American Society of Radiologic Technologists. An overall 75-percent response was achieved.

Survey responses indicated that PBL has been generally well received by its users but that there is room for improvement. Reliability of the PBL system appeared to be a key factor in user acceptance of PBL. Sixty percent of the respondents rated the reliability of the PBL system as better than that of other x-ray components, and 76 percent reported downtime (lack of use due to malfunction) of 4 percent or less. Ratings of reliability were associated with whether users liked using PBL (66 percent did), whether the users thought PBL was effective in reducing x-ray exposure (80 percent thought so), whether the users concluded that they saved time by using PBL (78 percent did), and whether they believed the effort required to take radiographs was reduced by PBL (76 percent did).

The agency concludes that PBL requirements are not only justified but widely accepted and that the comments that questioned the need for these regulations do not warrant any change.

Requirements for Field Size Adjustment

2. A comment argued that the proposed rule would force manufacturers to redesign all existing PBL systems to a less restrictive requirement to remain competitive.

The agency recognizes that redesign may be necessary to incorporate the features permitted by the amendment. However, each PBL manufacturer will have the opportunity to compete in this area. Increased cost of meeting competition is not a persuasive argument against greater flexibility in government regulation.

Under the previous provisions of the standard, the presence of the PBL override and the need for undersizing of the x-ray field have allowed conditions where poor use by operators sometimes caused unnecessary patient exposure. The agency believes that unnecessary radiation exposure arising from the frequent and continual use of the override mode in existing systems will

be reduced when undersizing is more easily accomplished. The amended standard eliminates the requirement that the x-ray field always return to the full size of the image receptor whenever a cassette is changed—even when the cassette is the same size. The universality of that requirement was an occasion for operators to leave the equipment in the override mode when making a series of undersized radiographs (where all the cassettes were the same size) because repeated cassette replacement required repeated undersizing of the field.

Historically, the need for undersizing provided the stimulus for the agency to amend the standard. Practicing radiologists and technologists requested systems that could retain an undersized (coned down) field size smaller than the image receptor size while the operator made a series of exposures. Under the former rule, replacing one image receptor with another (whether of the same size or not) while in PBL mode caused the field size to return to the full size of the image receptor. The proposed amendment was intended to permit (not to require) the field size to remain coned down during a change of image receptor, provided the image receptor's size did not change.

The agency has changed the wording of the final rule to clarify this intent. Section 1020.31(e)(2)(i) requires that the field size and the image receptor size match; however, the agency has added new § 1020.31(e)(5) which permits the operator to initiate undersizing of the field, provided the same image receptor size and the same source-to-image-receptor distance (SID) are maintained.

FDA has also made this change to avoid a possible situation in which, to avoid noncompliance declarations, the field size would be permanently adjusted to a size smaller than the inserted image receptor. The agency evaluated compliance with the current requirements for automatic field size adjustment by analyzing field test results for certified, PBL-equipped, general-purpose radiographic systems. The results showed a significant portion of the noncompliances arose from x-ray field dimensions smaller than permitted. Many of these noncompliances would have resulted in unusable radiographs requiring repeat radiographic studies to obtain usable diagnostic images. Thus, systems fully complying with the proposed rule by permanent adjustment to undersize could be producing radiographs containing little or no diagnostic information and thus force the user to use the override. To avoid this situation the final rule eliminates this provision of the proposal.

3. A comment noted that, before reliable PBL was developed, it was common practice to leave unexposed margins on radiographs. The comment stated that this practice is "a totally unnecessary waste of film and possible loss of diagnostic information." Routine maintenance should control the accuracy of the PBL system and undersizing should not be permitted.

The agency notes that, at some facilities, uncertified beam limitation systems are required to exhibit an unexposed margin as evidence of collimation. For consistency, such evidence of collimation is usually required for radiographs taken with any x-ray equipment, whether certified or uncertified. The former PBL requirement—which applies to certified equipment but not to uncertified—made this consistency somewhat difficult to accomplish routinely. These current radiological practices, along with other information, led to this amendment, which will allow an unexposed margin without the need of an override. Under the amended standard, those facilities having both certified and uncertified equipment can now establish and continue the policy of unexposed margins as part of a uniform quality control program. As mentioned above, the agency never intended that the undersizing provision be used as an excuse by manufacturers or assemblers to set the PBL sensing mechanism to cause undersizing to satisfy the field limitation requirement by means of poor tolerances. In fact, the capability to retain a reduced field configuration is not required by the standard but is only permitted. The agency is confident that manufacturers will produce reliable PBL systems in response to market pressures. Therefore, the final rule retains the undersizing feature that allows the operator the freedom to retain a reduced x-ray field without the need of an override when the cassette size and SID remain unchanged. At the same time, manufacturers may not set the PBL system so that it always produces undersizing.

4. Three comments on proposed § 1020.31(e)(3)(v) suggested that tomography as well as stereoscopic radiography be excepted from PBL requirements.

The agency intended that tomography be excluded from the conditions requiring that PBL be provided and believes that the proposed rule implicitly excepted tomography. Section 1020.31(e)(3)(v) has been revised so as explicitly to exclude tomographic radiography from the requirements.

5. A comment objected to the provision in proposed § 1020.31(e)(2) that "x-ray production be prevented," arguing that this provision is stricter than the current requirement. The comment interpreted the 5-second compliance requirement of proposed § 1020.31(e)(4) as a design standard that would inhibit the development and use of systems such as capacitor discharge or field emission units where x-rays are produced but absorbed by a safety shutter.

The agency advises that the final standard, as amended, is identical to the current standard in requiring that x-ray production be prevented. FDA intended that the x-ray tube not be energized to the point of x-ray emission unless the PBL requirements were met. The requirement in § 1020.31(e)(4) of this final rule—for PBL to be effective within 5 seconds of cassette insertion—is the same as the previous requirement; 5 seconds are allowed for automatic adjustment. The agency notes further that this is not a design standard because the means to achieve the required PBL performance within 5 seconds is not specified.

The agency also notes that the capacitor discharge and field emission units mentioned are usually not in the stationary, general-purpose radiographic systems subject to the PBL requirement.

Conditions for Positive Beam Limitation

6. A comment objected to the proposed condition in § 1020.31(e)(3)(i) that "the image receptor is inserted into a permanently mounted cassette holder," as being a design standard and also a change from the previous rule. It also pointed out that, for a PBL design that is continuously in operation, the proposal did not account for: (1) Image receptors that do not use cassettes, (2) techniques that do not use a permanently mounted cassette holder or film changer (such as tabletop or stretcher exposures), and (3) certain special cases such as the use of a portable cassette holder. The comment suggested that this type of system, designed to provide operational PBL at all times, must be allowed a bypass or override mode and proposed that the condition read: "The image receptor is in position for an exposure and a technique requiring PBL is selected."

The agency does not agree that this condition is a design standard. Section 1020.31(e)(3) identifies the circumstances under which PBL must be operative; it does not give detailed specifications on materials or manner of

construction to achieve the required performance. The agency also disagrees with the assertion that § 1020.31(e)(3)(i) is a change from the previous requirement. The rule merely states in a more positive way the conditions under which PBL must be operative. For the type of design mentioned in the comment a bypass mode is not prohibited. The override is present because the standard requires PBL operation only when an image receptor has been inserted into a permanently mounted cassette holder and not for the situations mentioned in the comment. The agency has always discouraged the use of the override switch to permit use of a film changer or to perform table top radiography and other routine radiographic procedures. That type of design requires that the override switch be routinely used for these routine procedures.

This amendment seeks to reduce the misuse of the override switch (as discussed here and in paragraph 2), which PBL design has encouraged or required to use for common everyday operation. The comment is rejected.

7. A comment asserted that the seemingly innocuous changes have major implications that result from applications that were not considered. The comment urged further thought to discover all the techniques for which designs would have to be provided. The only example mentioned is arthrography on a radiographic table that uses film changers with variously sized films instead of a cassette.

The agency concludes that the objection is based on the same premise that was addressed in paragraph 6. The technique mentioned does not require PBL because a permanently mounted cassette holder is not used.

8. One comment objected to proposed § 1020.30(e)(3) (iii) and (iv) that require PBL when the x-ray beam axis is within ±3 degrees. The comment called it a design standard, contended that it was more restrictive than the previous standard, and argued that industry would have to set sensing mechanisms to ±4 degrees or ±5 degrees to assure compliance at ±3 degrees.

As discussed at length in paragraph 2 of the preamble to the proposal the revision relaxes a restriction in the previous rule that required PBL when the beam was within ±10 degrees of the horizontal or vertical. A manufacturer may provide effective PBL at any beam axis angulation. The previous rule, the proposed rule, and this final rule require PBL only when the beam axis and the image receptor plane are very nearly perpendicular. This less restrictive requirement is retained in the final rule.

9. One comment questioned the use of English measurement units in proposed § 1020.31(e)(3)(iii) establishing conditions for the SID. The comment stated that, because the previous rule permitted the PBL range limit to be 100 centimeters when a metric scale is provided, the use of 36 inches in proposed § 1020.31(e)(3)(iii) would require a redesign. Furthermore, the comment said, the metric system is being encouraged by Federal policy.

The agency agrees that the metric system is more appropriate both for policy and for consistency within the standard. The final rule reflects this agreement. In addition, although image receptor sizes continue to be commonly measured in inches, for consistency, § 1020.31(e)(3)(ii) identifies the image receptor to read, 50 centimeters. This unit change differs so slightly from the proposed dimension of 20 inches that the agency considers it to be insignificant. The agency advises that, for compliance purposes, systems will be measured in the units that are provided by the manufacturer.

10. A comment asked why chest radiography at an SID of 7 or 8 feet no longer would require PBL.

The agency advises that the conditions for PBL are those for which most common radiographic examinations are performed. Chest radiography normally is performed at SID's of 72 inches or less. The radiography performed at SID's of 7 or 8 feet is considered to be a specialized application and not routine radiography. Because the demand for these specilized applications is low, manufacturers are not required to produce PBL systems designed to operate at SID's in excess of 72 inches.

Radiographic Override Capability

11. A comment objected to labeling that proposed § 1020.31(e)(5) would require to be included on the key switch because the text would not express a warning. The comment argued that a longer and more meaningful text is necessary.

As discussed in paragraph 4 of the preamble to the proposal, the purpose of the key switch label is to indicate the function of the switch—not to express a warning. The label is intended to reduce misinformation—not carelessness. The agency rejects the comment.

12. The comment that argued that the proposed key switch labeling was inadequate also suggested that including a longer text on the unit itself would interfere with the physical arrangement, and there would not be enough space on the unit to accommodate the needed information. As an alternative, the comment suggested that the longer text should be included in the operator's manual. Another comment noted that the required label may need to be printed in very small type so it would not distract from the operating control labels. This comment also suggested that the warning could be printed on a large holder or durable tag permanently affixed to the key itself. In this manner, the message could be made more prominent, and the tag or holder on the key might also serve to discourage users from leaving the key in the key switch when the override switch is not in use.

The agency recognizes that adding a label will require some production changes on units manufactured after the effective date of this amendment. However, as discussed at length in paragraph 4 of the preamble, FDA believes that labeling the override switch will reduce the inappropriate use of the switch. No data showing the contrary were submitted with the comments. Therefore, the agency concludes that these changes are justified by the reasons explained in the preamble to the proposal and retains in the final rule the requirement for a label. However, the location of the labeling might be improved. The agency rejects the suggestion that the information be confined to the operator's manual and maintains that the switch itself must be labeled to show its intended function. In the final rule, the agency has adopted the suggested option for labeling the key. Thus, an alternative will be available where space limitation is a problem.

13. One comment argued that the costs of attaching any label and of reopening, changing, and repackaging units already manufactured for stock "are not justified when one keeps in mind that the same switch was accepted for years without a label." The comment objected to FDA's proposal to make this requirement effective 60 days after publishing the final rule. The comment claimed 18 months are needed to comply with the provision.

The agency advises that these labels will be required only on units manufactured after the effective date. Thus, it will not be necessary to relabel any warehouse stocks manufactured before that date. The date of manufacture is given on the manufacturer's identification label. The alternative of permanently labeling the key should take even less time than labeling the control unit. The agency, however, has reconsidered the 60-day proposed effective date and has concluded that 1 year is a reasonable period of time to make any changes

required by the amendments. To further ease any burden, FDA is making the new requirements effective on the first working day of the thirteenth month after publication of the final rule, which will permit manufacturers to add the override switch label concurrent with their periodic change in date of manufacture given on the manufacturer's identification label.

14. Another comment stated that the requirement of a label indicating that this override switch is for system failure is not facing up to the fact that it will be used for non-bucky techniques (that do not use permanently mounted cassette holders) and special procedures.

The comment misunderstood the requirement. A PBL system that meets either the current or the amended standard does not need an override for "non-bucky techniques" or any known special procedures. Those techniques that do not use a permanently mounted cassette holder do not now nor did they ever require use of an override switch because PBL has not been required under this condition. The standard has been clarified by changing its current requirement (for PBL after insertion of an image receptor—which has previously been interpreted to mean insertion into a permanently mounted cassette holder) to an explicit requirement (for PBL after insertion of an image receptor into a permanently mounted cassette holder—which most special procedures do not use). This change is intended to assure that the x-ray field is limited to and aligned with the boundaries of an image receptor placed in a cassette holder designed as a permanent part of the system. Thus, it applies to the large majority of routine radiographic procedures performed with stationary, general-purpose radiographic systems. By requiring the key switch or key to be labeled, the agency provides for users that might not be trained in the proper use of PBL. Operators previously have been able to "cone down" to small x-ray fields to satisfy their need for an unexposed margin. They now can cone down to satisfy any need for even smaller x-ray fields on an image receptor inserted in a permanently mounted cassette holder. The operator accessible switch is for system failure only—not for special procedures. No change is required in the final rule.

Fluoroscopic Override Capability

15. A comment stated that "spot-film systems with an override switch should not require a visible indicator, because the override mode is recognized immediately by the radiologist as soon as he takes the first spot-film radiograph."

FDA disagrees with the comment. The purpose of the visual indicator required by §§ 1020.31(g)(5) and 1020.32(b)(3) is to alert the radiologist that the unit is in the override mode before the first radiograph is taken. The agency believes that trial and error is not an appropriate way to become informed of this situation. Not requiring a visual indicator would promote unnecessary radiation exposure to the patient as well as waste of film. FDA concludes that, because the override switch is not key-controlled, visible indication of the status is necessary if the operators are to minimize both unnecessary exposure to the patient and the necessity for retakes.

16. A comment questioned the meaning of the phrase "signal visible at the fluoroscopist's position" in proposed §§ 1020.31(g)(5) and 1020.32(b)(3). The comment objected to the use of a light that might distract the attention of the fluoroscopist, and suggested that FDA should restate the provisions to provide only that a "visual indication shall be required * * *".

The agency intends that the signal attract the fluoroscopist's attention before he or she begins to use a system in which the automatic field adjustment has failed. The comment is rejected.

17. With respect to the effective date of the amendments, a comment argued that, because of the design change required, 2 years are needed before the regulation is made effective. Another comment believed that 60 days are sufficient to implement the labeling change and does not mention any design change.

The agency notes that no manufacturer is required to provide an override capability. However, if a manufacturer provides an override, then it must meet the requirements by the effective date of the amendments. As discussed in paragraph 13 above, FDA concludes that 1 year is a reasonable period of time to add an indicator of the override capability, a change that is not major. However, to permit manufacturers to implement the provisions in an orderly and efficient manner, the amendments will become effective on the first working day of the thirteenth month after date of publication in the **Federal Register**.

Reference

The following information has been placed on file in the Dockets Mangement Branch, Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

"Positive Beam Limitation Effectiveness Evaluation," prepared by the Division of Compliance and the Data Systems and Mathematics Staff of the Bureau of Radiological Health, Food and Drug Administration, February 1980 (HHS Publication (FDA) 80–8108). (Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (GPO Stock No. 017–015–0163–6, $2.00)).

In accordance with Executive Order 12291, the economic effects of this final rule have been carefully analyzed, and it has been determined that this rule is not a major rule under the criteria of the Order. The amendments to the standard can be considered generally to be a relaxation of the rule and the additional requirements for a key switch label and a signal visible at the fluoroscopist's position involve a very small increase in cost of future units, especially compared with the cost savings of the overall effect of this rule. Specifically, the annual cost of the label required on stationary, general-purpose radiographic equipment is estimated to be $3,000 ($1.00 per system for approximately 3,000 systems). The annual cost for the label and visible signal required on stationary, general-purpose fluoroscopic equipment is estimated to be $30,000 ($15.00 per system for approximately 2,000 systems). 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 any event, this rule will not have a significant economic impact on a substantial number of small entities, for the reasons stated above.

List of Subjects in 21 CFR Part 1020

Electronic products, Ionizing radiation, Medical devices, Radiation protection, Standards, Television, X-rays.

Therefore, under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 1020 is amended as follows:

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

1. In § 1020.30 by revising paragraph (b)(19), to read as follows:

§ 1020.30 Diagnostic x-ray systems and their major components.

* * * * *

(b) * * *

(19) "Image receptor" means any device, such as a fluorescent screen or radiographic film, which transforms incident x-ray photons either into a visible image or into another form which can be made into a visible image by further transformations. In those cases where means are provided to preselect portions of the image receptor, the term "image receptor" shall mean the preselected portion of the device.

* * * * *

2. In § 1020.31 by revising paragraph (e)(2), and by adding new paragraphs (e)(3), (4), (5), and (6) and (g)(5), to read as follows:

§ 1020.31 Radiographic equipment.

* * * * *

(e) * * *

(2) *Positive beam limitation (PBL).* The requirements of this paragraph shall apply to stationary, general-purpose radiographic systems which contain a tube housing assembly, an x-ray control, and, for those systems so equipped, a table, all certified in accordance with § 1020.30(c). Means shall be provided for PBL such that x-ray production is prevented when:

(i) Either the length or width of the x-ray field in the plane of the image receptor differs from the corresponding image receptor dimension by more than 3 percent of the SID; or

(ii) The sum of the length and width differences as stated in paragraph (e)(2)(i) of this section without regard to sign exceeds 4 percent of the SID.

(3) *Conditions for positive beam limitation.* PBL shall be provided whenever all the following conditions are met:

(i) The image receptor is inserted into a permanently mounted cassette holder;

(ii) The image receptor length and width are each less than 50 centimeters;

(iii) The x-ray beam axis is within ±3 degrees of vertical and the SID is 90 centimeters to 130 centimeters inclusive; or the x-ray beam axis is within ±3 degrees of horizontal and the SID is 90 centimeters to 205 centimeters inclusive;

(iv) The x-ray beam axis is perpendicular to the plane of the image receptor to within ±3 degrees; and

(v) Neither tomographic nor stereoscopic radiography is being performed.

(4) *Measuring compliance.* Compliance with the requirements of paragraph (e)(2) of this section shall be determined when the equipment indicates that the beam axis is perpendicular to the plane of the image receptor and the provisions of paragraph (e)(3) of this section are met. Compliance shall be determined no sooner than 5 seconds after insertion of the image receptor.

(5) *Operator initiated undersizing.* The PBL system shall be capable of operation, at the discretion of the operator, such that the size of the field may be made smaller than the size of the image receptor through stepless adjustment of the field size. The minimum field size at an SID of 100 centimeters shall be equal to or less than 5 by 5 centimeters. Return to PBL function as described in paragraph (e)(2) of this section shall occur automatically upon any change of image receptor size or SID.

(6) *Override of positive beam limitation.* A capability may be provided for overriding PBL in case of system failure and for servicing the system. This override may be for all SID's and image receptor sizes. A key shall be required for any override capability that is accessible to the operator. It may not be possible to remove the key while the PBL is overridden. Each such key switch or key shall be clearly and durably labeled as follows:

For X-Ray Field Limitation System Failure

The override capability is considered accessible to the operator if it is referenced in the operator's manual or in other material intended for the operator or if its location is such that the operator would consider it part of the operational controls.

* * * * *

(g) * * *

(5) A capability may be provided for overriding the automatic x-ray field size adjustment in case of system failure. If it is so provided, a signal visible at the fluoroscopist's position shall indicate whenever the automatic x-ray field size adjustment override is engaged. Each such system failure override switch shall be clearly labeled as follows:

For X-Ray Field Limitation System Failure

* * * * *

3. In § 1020.32 by adding paragraph (b)(3), to read as follows:

§ 1020.32 Fluoroscopic equipment.

* * * * *

(b) * * *

(3) If the fluoroscopic X-ray field size is adjusted automatically as the SID or image receptor size is changed, a capability may be provided for overriding the automatic adjustment in case of system failure. If it is so provided, a signal visible at the fluoroscopist's position shall indicate whenever the automatic field adjustment is overridden. Each such system failure override switch shall be clearly labeled as follows:

For X-Ray Field Limitation System Failure

* * * * *

Effective date. This regulation shall become effective on December 1, 1983.

(Sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f))

Dated: October 14, 1982.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 82-30181 Filed 11-4-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3280

[Docket No. R-82-1017]

Manufactured Home Construction and Safety Standards

Correction

In FR Doc. 82-29865, beginning at page 49383, in the issue of Monday, November 1, 1982, make the following corrections:

1. On page 49386, last column, first paragraph, first line, "(l)(2)(i)" should read "(i)"

2. On page 49387, middle column, third full paragraph, designated as amendment "9.", the second line, "(l)(2)(ii), (l)(2)(iii) and (l)(2)(iv)" should read "(e)(2)(ii), (e)(2)(iii) and (e)(2)(iv)" by changing the "l's" to "e's".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 51

[T.D. 7844]

Crude Oil Windfall Profit Tax Act of 1980; Excise Tax Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final excise tax regulations relating to the windfall profit tax on domestic crude oil imposed by title I of the Crude Oil Windfall Profit Tax Act of 1980. It contains most of the final regulations on

the windfall profit tax, many of which relate to administrative aspects of the tax.

DATES: These regulations are generally effective with respect to all crude oil removed (or deemed removed) from the premises after February 29, 1980. For exceptions to this effective date, see the discussion below of the effective dates of the amendments.

FOR FURTHER INFORMATION CONTACT: Douglas W. Charnas of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3297).

SUPPLEMENTARY INFORMATION:

Background

On April 4, 1980, the **Federal Register** published temporary and proposed regulations (45 FR 23384, 23400) under sections 4986, 4987, 4988, 4989, 4991, 4992, 4993, 4994, 4995, 4996, 4997, 6050C, 6076, and 6402 of the Internal Revenue Code of 1954. The temporary regulations were required to implement various sections of the Crude Oil Windfall Profit Tax Act of 1980. Certain amendments to the temporary regulations and further proposed regulations have since been published.

This document provides final regulations pursuant to the notices of proposed rulemaking published on April 4, 1980 (45 FR 23384, 23400), relating to the implementation of the windfall profit tax; April 25, 1980 (45 FR 27929, 27953), relating to withholding and depositing windfall profit tax where the producer is an integrated oil company; September 24, 1980 (45 FR 63263, 63297), relating to the interim rule for determining base prices for tier 2 and tier 3 oil; November 5, 1980 (45 FR 73467, 73512), relating to tax deposits and refunds based on the net income limitation; December 11, 1980 (45 FR 81561, 81606), relating to the definition of the term "producer"; January 19, 1981 (46 FR 4873, 4950), relating to various administrative provisions; and February 23, 1981 (46 FR 13509, 13525), relating to the qualified disburser election. This document amends § 51.4988–1 which was finalized by Treasury Decision 7790, published on October 27, 1981 (46 FR 52334). This document also reflects amendments made to the temporary regulations by Treasury Decision 7811, published on March 3, 1982 (47 FR 8995), relating to exempt royalty oil.

This document does not provide final regulations on such other subjects as front-end tertiary oil or tier 2 and tier 3 base prices. Final regulations on these subjects will be published in the future. Furthermore, numerous comments received on the above-cited proposed regulations addressed many issues not dealt with explicitly in these final regulations. Various issues are under study for possible future amendments to these regulations including newly discovered oil, condensate, exempt stripper well oil, property, net profits interests, and exempt royalty owner oil. The fact that a particular issue has not been addressed in these regulations should not be construed as foreclosing the issuance of amended regulations providing further guidance on those issues.

The rules contained in these final regulations will apply to all entities, large and small, engaged in the production or purchase of domestic crude oil and related activities. The amendments add no rules that duplicate, overlap, or conflict with any other known Federal rules applicable for the same purposes.

Explanation of Provisions

Withholding in Absence of Data on Operator's Certificate

The temporary and proposed windfall profit tax regulations provided withholding rules which are to be followed when an operator's certificate is either absent or data is omitted from it or believed to be incorrect. Various commentators have suggested that these withholding rules are unnecessarily strict. These commentators have suggested that the regulations be amended to permit the purchaser to withhold an amount based on all the information available to the purchaser in order to have the alternative withholding requirement more closely approximate the actual tax due.

These withholding rules were established for two reasons. First, they assure that the failure to certify will never justify underwithholding. Second, the rules protect the purchaser from claims by the producer that too much tax is being withheld based upon information available to the purchaser. The reasons for establishing these withholding rules continue to justify these rules. Therefore, the suggested rule has not been included in the amendments to the regulations.

Heavy Oil

Several commentators on the proposed regulations suggested that the definition of "heavy oil" as oil with a gravity of 16 degrees API or less be revised to include any oil with a gravity of less than 17 degrees API (*e.g.*, 16.9 degrees). This suggestion has not been accepted. Section 4991(e)(3) defines the term "heavy oil" as crude oil having "a weighted average of 16 degrees API or less (corrected to 60 degrees Fahrenheit)." However, the Senate Finance Committee report (S. Rep. No. 96–394, 96th Cong., 1st Sess. 51 (1979)) makes it clear that Congress intended to treat as heavy oil only that oil deregulated by Executive Order 12153 (Exec. Order No. 12153, 3 CFR Part 424 (1980); 44 FR 48949 (1979)). The Executive order applied only to crude oil with a weighted average of 16.0 degrees API or less. The conference report for the Windfall Profit Tax Act of 1980 (H.R. Rep. No. 96–817, 96th Cong., 2d Sess. 102 (1980)) states that the conference was adopting the Senate 16.0 definition. Thus, the definition of "heavy oil" in the temporary and proposed regulations does not include (and was not intended to include) crude oil with a weighted average gravity of more than 16.0 degrees API. The final regulations have been revised to provide explicitly that "heavy oil" must have a weighted average gravity of 16.0 degrees API or less (corrected to 60 degrees Fahrenheit).

Independent Producer Oil

Independent producers commenting on the proposed regulations also requested several clarifications of the rules contained in § 51.4992–1, relating to the lower rates of tax applicable to "independent producer oil." In response to these comments, § 51.4992–1 makes clear (1) that the independent producer amount is to be allocated between tiers 1 and 2 in proportion to the producer's "qualified production" for the quarter, (2) that the term "qualified overriding royalty" includes an overriding royalty that could be converted into an operating interest at the option of the holder of the override, and (3) that an independent producer need only maintain records sufficient to establish to the satisfaction of the district director that a property has not been held by a disqualified transferor.

Section 150.4992–1(d)(3)(i) of the temporary regulations provides that qualified production generally does not include production attributable to an interest acquired after December 31, 1979. However, § 150.4992–1(d)(3)(ii) provides that this rule does not apply if the producer acquiring the property establishes to the satisfaction of the district director that at no time after December 31, 1979, has the interest in the acquired property been held by a person who was a disqualified transferor for any quarter ending after September 30, 1979, and ending before the date such person transferred the

interest. The term "disqualified transferor" means with respect to any quarter, any person who (1) had qualified production from such quarter which exceeded such person's independent producer amount for such quarter or (2) was not an independent producer.

Several commentators pointed out that there are situations where a partnership with many partners transfers an interest in property to an independent producer. Under the temporary regulations this transfer does not escape the general prohibition or transferred properties if one partner in the partnership is a disqualified transferor even if the partner has a minimal interest in the partnership. The commentators suggested that a *de minimis* rule be provided. In response to these comments, § 51.4992–1(d)(3)(ii) does not treat a transfer of an interest in property as having been from a disqualified transferor if less than two percent of the interest in the partnership is held by partners who are disqualified transferors.

Tier Determinations for Powerhouse Fuel

Section 150.4996–1(d)(2) provides that oil used to power a production process or production equipment will not be considered removed from the premises if it is transported from one tract or parcel of land to a contiguous tract or parcel of land, provided that 100 percent of the operating mineral interest (as defined in § 1.614–2(b)) in both tracts or parcels of land is held by the same persons. That section also provides that in the case of oil produced from a property from which more than one tier of oil is produced the oil used to power a production process or production equipment will be deemed of the higher or highest tier designation to the extent of production in such tier and thereafter to the next lower tier. The effect of this rule is generally to treat as not removed from the premises the crude oil resulting in the least amount of windfall profit tax liability.

Several commentators suggested that the crude oil should be allocated among the categories of crude oil produced from the property. In response to these comments, § 51.4996–1(d)(2) amends the rule in the temporary regulations and provides that, in the case of oil produced from a property from which more than one category of oil is produced, the crude oil that is injected or used to power a production process or production equipment shall be allocated among such categories in proportion to the production from that property in each such category that was removed from the premises during the immediately preceding calendar quarter. For these purposes, the categories of oil are tier 1 oil, tier 2 oil, newly discovered oil, tier 3 oil other than newly discovered oil, and exempt oil.

Independent Refiner

Section 150.4996–1(h) defines the term "independent refiner." Several commentators have stated that the temporary regulations are unclear on whether a taxpayer must be directly engaged in the refining of crude oil in order to qualify as an independent refiner. Section 51.4996–1(h) makes clear that the term "independent refiner" does not include any taxpayer who is not directly engaged in the refining of crude oil even if such taxpayer is related to a person directly engaged in the refining of crude oil. However, § 51–4996–1(h) provides that a taxpayer not directly engaged in refining will be treated as directly engaged in refining if an amount equal to 95 percent or more of the crude oil purchased during the calendar quarter of which such taxpayer is the first purchaser is refined by a refiner who is a member of a controlled group of corporations of which the taxpayer is a member, provided that the refiner is an independent refiner and that such taxpayer is not a producer of crude oil and is not a retailer or refiner under section 613A(d) (2) or (4). Section 51.4996–1(h) also provides that a purchaser is to be treated as directly engaged in refining if it is clear that the 95 percent rule would have been met but for an act of God, a strike, a severe mechanical breakdown, an injunction, or a restraining order.

Annual Cutoff of Withholding Adjustments

Several commentators on the proposed regulations raised problems with the end of year reporting and withholding adjustment cut-off rules. Under the temporary and proposed regulations, the purchaser or other withholding agent is required to furnish Form 6248 to each producer at the end of each calendar year, and corrections of errors in withholding are not permitted after the form is furnished. Form 6248 is then used by the producer to determine whether the producer is entitled to a refund or is required to pay a balance due.

The commentators stated that, in many cases, Form 6248 will not be entirely accurate when furnished on the required date of March 31 due to errors not yet ascertained on that date. Consequently, numerous corrected Forms 6248 may be required giving rise to corrected claims for refund or windfall profit tax returns. Therefore, several commentators suggested that the withholding agent be permitted to continue to make withholding adjustments for a full year following the year in which the oil giving rise to the withholding error was removed. However, the producer is required annually to pay any balance due if there has been underwithholding of windfall profit tax liability and is entitled to file a claim for credit or refund if there has been overwithholding. The continuation of withholding adjustments after Form 6248 has been furnished would create the likelihood of a double payment by the producer if the adjustment increases withholding or a double refund if the adjustment decreases withholding. In order to avoid this result, the producer's entitlement to a refund claim or obligation to pay a balance due would have to be extended until after the expiration of the withholding adjustment period. The continuation of withholding adjustments suggestion has not been accepted due to the lengthy delay in refunds or payments that would follow.

Disbursers Who Receive Oil Payments They Consider Underwithheld or Forms 6248 They Consider Inaccurate

Many persons disbursing funds from the sale of taxable crude oil of which the disburser is not the purchaser have commented that they are not certain what they should do in a situation where they consider the amount of windfall profit tax withheld on the payments they received to be more or less than the amount that should have been withheld. The withholding rules have been amended to provide that in cases where the disburser is of the opinion that there is an underwithholding or overwithholding, the disburser must, within 5 days, notify the person from whom it received payment that it disagrees with the amount of tax withheld. The reporting requirements of the regulations have also been amended to require the disburser in those cases where it disagrees with the amount of withholding to send a statement to the persons it makes payments to setting forth sufficient information to briefly explain the difference of opinion between the person from whom the disburser received payment and the disburser on the amount withheld.

The final regulations provide guidance in cases where an intermediate disburser receives a Form 6248 that is the basis for Forms 6248 that it will be furnishing to others and filing with the Service and the intermediate disburser believes that the form contains an error.

In such cases the intermediate disburser must notify the person furnishing it with the form that it believes the form contains an error. If the person furnishing the intermediate disburser with the Form 6248 agrees that it contains an error, the error can be corrected on a new Form 6248 issued to the intermediate disburser. If the person furnishing the intermediate disburser with the Form 6248 does not agree that there is an error, the intermediate disburser must furnish and file the Forms 6248 based on the information contained in the Form 6248 furnished it. However, the instructions to Form 6248 may require that the difference of opinion be indicated on the form.

Multiple Forms 6248 to One Producer

In many cases the disburser makes payments to the same producer for crude oil sold from more than one property (such as where the disburser is also a purchaser of oil from another property). The regulations have been amended to provide that in these cases the information for all the properties may be incorporated into one Form 6248. If the disburser prefers to furnish separate forms, it may do so but if the forms are not all furnished at the same time, the producer must be informed.

Detailed Statements

Numerous producers commented that the annual information furnished them on Form 6248 is insufficient to permit accurate computations of windfall profit tax liability, particularly when the producer must allocate the independent producer amount between tiers 1 and 2 or take the net income limitation into account. Under the proposed regulations, the detailed statement required by paragraph (d) of § 51.4997–2 to be furnished upon request was intended to supplement the information required by paragraph (c) (relating to Form 6248), thus providing the producer with the information necessary for a full and correct computation of the tax. The final regulations amend paragraph (d) to clarify that the requested information must be furnished in sufficient detail to permit those computations.

A few producers suggested that the regulations require the detailed information to be furnished in all cases and not just upon the request of the producer. This suggestion has not been adopted because it could impose a significant and unnecessary reporting burden due to the fact that not all producers need the detailed information.

Corrected Forms 6248

The final regulations also revise the procedures to be followed when the person furnishing Form 6248 discovers that the form was in error. Under the new rules, a corrected Form 6248 must be furnished no later than July 31 of the year following the year to which the correction relates if any error ascertained through June 30 in windfall profit tax liability, tax withheld, or amount under or overwithheld equals $100 or more. All corrections of $1 or more must be reflected in a corrected Form 6248 furnished at the time that the next year's Form 6248 is furnished. The new rules should substantially reduce the number of corrected Forms 6248 that would otherwise be required because only large errors must be corrected more frequently than annually.

Miscellaneous Changes

Section 51.4997–2 deletes the requirement that the purchaser or other withholding agent inform an exempt producer each month of the reason for the absence of withholding and by deleting the requirement that the producer be provided additional information relating to withholding adjustments in the annual statement. Section 51.6050C–1 specifies that an operator need not recertify the same information to a producer, unless requested to do so. Furthermore, a new § 51.6081–1 is added to authorize district directors and directors of service centers to grant extensions of time for filing windfall profit tax returns.

Integrated oil company commentators requested a change in the rule of § 51.4995–3 (d)(2). That rule provided that a qualified disburser undertaking the distribution responsibilities of an integrated oil company after December 31, 1980, must deposit tax in accordance with the deposit schedules applicable to integrated oil companies. It was requested that this rule not be applied when the integrated oil company transfers its entire interest in the property. The final regulations make the requested change.

The final regulations also amend the deposit rules applicable to integrated oil companies by permitting estimated tax deposits to be based on liability for the third preceding month, rather than the second preceding month as required in the proposed rules.

The final regulations also make a number of clarifying changes in various sections.

The effectiveness of these regulations will be evaluated on the basis of comments and information received from offices within the Treasury Department and Internal Revenue Service, other governmental agencies, and the public.

Effective Dates of Amendments; Effect on Temporary Regulations

These regulations are effective with respect to all crude oil removed (or deemed removed) from the premises after February 29, 1980, except as provided below:

(i) Paragraph (a)(10 of § 51.4993–2 (relating to the certification by a petroleum engineer of certain facts) is effective for certifications submitted after December 6, 1982.

(ii) Sections 51.4995–1, 51.4995–2, 51.4995–3, 51.4995–4, and 51.4995–5 (relating to requirements for withholding and depositing tax) are effective for payments made after December 6, 1982.

(iii) Paragraphs (c) and (d)(1) of § 51.4996–1 (relating to the definitions of operator and removal from the premises, respectively) are effective with respect to crude oil removed from the premises (as defined in § 150.4996–1(d), title 26, chapter I of the Code of Federal Regulations) on or after January 1, 1981, and so much of paragraph (g) of § 51.4996–1 (relating to the definition of integrated oil company) as precedes subparagraph (1) is effective with respect to crude oil removed after December 6, 1982. For the text of those paragraphs as in effect prior to those dates, see T.D. 7690, 45 FR 23384 (April 4, 1980).

(iv) Sections 51.4997–2 and 51.6050C–1 (relating to certain information statements and returns) are effective for information and statements furnished or filed after December 6, 1982.

In general, these regulations supersede the Temporary Excise Tax Regulations Under the Crude Oil Windfall Profit Tax Act of 1980, title 26, chapter I, part 150 of the Code of Federal Regulations. However, these regulations do not supersede the temporary regulations issued under sections 150.4989–1 (c), 150.4991–1(a), 150.4993–1, 150.4994–1, 150.4995–2(b)(2), 150.4996–1(b)(3), 150.4996–1(i), 150.4997–2(b), and 150.4997–2(d)(1). In addition, the temporary regulations shall continue in effect for those periods prior to the effective dates of these regulations.

Executive Order 12291

The Commissioner of Internal Revenue has determined that these final rules are not major rules as defined in Executive Order 12291 and the Treasury-OMB agreement dated April 28, 1982, implementing that order. Accordingly, a Regulatory Impact Analysis is not required. Most of the economic impact that these rules will have on both small entities and the

economy in general is due to requirements imposed by the statute.

Drafting Information

The principal author of these regulations is Douglas W. Charnas of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR §§ 51.4986–1–51.6402–1

Crude Oil Windfall Profit Tax Act of 1980.

Adoption of Amendments to the Regulations

PART 51—[AMENDED]

Accordingly, the proposed addition of and amendments to 26 CFR Part 51 are hereby adopted as set out below:

Paragraph 1. The following new sections are inserted immediately before § 51.4988–1:

§ 51.0 Introduction.

Each section of the regulations in this part is designated by a number composed of the part number followed by a decimal point [51.], the section of the Internal Revenue Code of 1954 to which it relates, a hyphen [-], and a number identifying the section. By use of these designations, the reader can associate sections of the regulations with provisions of the Code. For example, § 51.4986–1 pertains to section 4986 of the Code. For additional rules relating to the windfall profit tax, see part 150 of this chapter (Temporary Excise Tax Regulations Under the Crude Oil Windfall Profit Tax Act of 1980).

§ 51.4986–1 Imposition of tax.

Section 4986 imposes an excise tax on the windfall profit from taxable crude oil removed from the premises on or after March 1, 1980, and before the end of the phaseout period. See §§ 51.4988–1, 51.4991–1, and 51.4996–1 for the definitions of "windfall profit," "taxable crude oil," and "removed from the premises," respectively. See section 4990 (c) for the definition of "phaseout period." The tax imposed by section 4986 is to be paid by the producer of the crude oil. However, see section 4995 and the regulations thereunder relating to the requirement of withholding by the purchaser of the crude oil or another person electing to withhold. See § 51.4996–1 for the definitions of "purchaser" and "producer."

§ 51.4987–1 Amount of tax.

Section 4987 establishes that the amount of tax imposed by section 4986 with respect to any barrel of taxable crude oil is the applicable percentage of the windfall profit on that barrel. The applicable percentage for tier 1 oil and tier 2 oil which is not independent producer oil is 70 in the case of tier 1 and 60 in the case of tier 2. The applicable percentage for independent producer oil is 50 for tier 1 and 30 for tier 2. The applicable percentage for tier 3 oil other than newly discovered oil is 30. The applicable percentage for newly discovered oil is 30 for taxable periods beginning in 1980 or 1981, 27½ for taxable periods beginning in 1982, 25 for taxable periods beginning in 1983, 22½ for taxable periods beginning in 1984, 20 for taxable periods beginning in 1985, and 15 for taxable periods beginning in 1986 or thereafter. In the case of a fraction of a barrel, the tax is the same fraction of the amount of the tax imposed on the whole barrel.

Par. 2. Section 51.4988–1 is added to read as follows:

§ 51.4988–1 Windfall profit; removal price.

(a) *Windfall profit.* For purposes of this part and chapter 45 of the Code, the term "windfall profit" means the excess of the removal price of the barrel of crude oil over the sum of—

(1) The adjusted base price of the barrel, and

(2) The amount of the severance tax adjustment with respect to the barrel provided by section 4996(c) and § 51.4996–2.

However, the amount of windfall profit is subject to the net income limitation set forth in § 51.4988–2.

(b) *Removal price.*—(1) *In general.* The "removal price" generally is the amount for which the barrel is sold to the purchaser (including any adjustments to the sales price made after sale). However, in the case of a sale between related persons (within the meaning of section 103(b)(6)(C)), the removal price shall not be less than the constructive sales price for purposes of determining gross income from the property under section 613.

Also, if crude oil is removed (or deemed removed) from the premises before it is sold the removal price shall be equal to the amount that results (or would result) from application of the constructive sales price principles under section 613 for purposes of determining gross income from the property regardless of whether gross income from the property is actually increased by reason of that oil). See § 51.4996–1 for rules relating to removal (and deemed removal) from the premises.

(2) *Alaskan oil from Sadlerochit reservoir.* In the case of Alaskan oil from the Sadlerochit reservoir ("Sadlerochit oil"), the removal price of such crude oil removed during any calendar month shall be the average of the producer's removal prices for such month.

(3) *District director's authority.* In determining the removal price of crude oil from a property in the case of any transaction, a district director may adjust the removal price to reflect clearly the fair market value of the crude oil removed.

Par. 3. The following new sections are inserted immediately after § 51.4988–2:

§ 51.4989–1 Adjusted base price.

(a) *Adjusted base price defined.* For purposes of this part and charter 45 of the Code, the "adjusted base price" is the base price for the barrel of crude oil plus the amount equal to the base price multiplied by the inflation adjustment for the calendar quarter in which the crude oil is removed from the premises, rounded to the nearest cent. The inflation adjustment, which is determined under a formula set out in section 4989(b), is greater for tier 3 oil than it is for tier 1 oil or tier 2 oil. Inflation adjustments will be published periodically by the Internal Revenue Service. For a special adjustment to the base price for Sadlerochit oil, see section 4996(d).

(b) *Base price for tier 1 oil.* The base price for tier 1 oil is the ceiling price which would have applied to the crude oil under the March 1979 energy regulations (see § 51.4996–1(f)) if it had been produced and sold in May 1979 as upper tier oil, reduced by 21 cents. For purposes of this determination, the grade and quality of current tier 1 oil shall be presumed to be the same as that of the crude oil produced from the property in May 1979.

(c) *Base prices for tier 2 and tier 3 oil.* [Reserved]

(d) *Variations in grade or quality of oil.* For purposes of paragraphs (b) and (c) of this section, if the production from a property in May or December 1979 varied in grade or quality during the month, the per barrel weighted average grade and quality for the month shall be used. If there was no production in May or December 1979, the grade and quality of the crude oil produced in the first month of production after such month shall be used. Once the base price is determined, it is not to be adjusted for later changes in grade or quality.

§ 51.4991-1 Taxable crude oil; tiers of oil.

(a) *Taxable crude oil.* [Reserved].

(b) *Tiers of oil.* Section 4991 defines the tiers of taxable crude oil. Tier 1 oil is any taxable crude oil other than tier 2 oil and tier 3 oil. Tier 2 oil is any crude oil which is produced from a stripper well property within the meaning of the June 1979 energy regulations (see § 51.4996–1(f)) and any crude oil from an economic interest in a National Petroleum Reserve held by the United States. However, the term "tier 2 oil" does not include tier 3 oil. Tier 3 oil is newly discovered oil, heavy oil, and incremental tertiary oil. The term "newly discovered oil" has the meaning given to that term by the June 1979 energy regulations. The term "heavy oil" means all crude oil which is produced from a property if crude oil produced and sold from that property during either—

(1) The last month before July 1979 in which crude oil was produced and sold from that property, or

(2) The taxable period, had a weighted average gravity of 16.0 degrees API or less (corrected to 60 degrees Fahrenheit). For the definition of incremental tertiary oil, see § 51.4993–1.

§51.4992-1 Independent producer oil.

(a) *General rule.* "Independent producer oil" is that portion of an independent producer's qualified production for a calendar quarter which does not exceed such person's independent producer amount for the quarter.

(b) *Independent producer defined.* An "independent producer," with respect to any calendar quarter, is any person other than a person to whom subsection (c) of section 613A does not apply by reason of paragraph (2) (relating to certain retailers) or paragraph (4) (relating to certain refiners) of section 613A (d) (applying subsection (d) (2) or (4) on the basis of the calendar quarter rather than an annual basis). See § 51.4996–1(g).

(c) *Independent producer amount.* A person's independent producer amount for any quarter is the product of 1,000 barrels multiplied by the number of days in the quarter. If a person's qualified production for any quarter exceeds that person's independent producer amount for the quarter, the independent producer amount is to be allocated between tiers 1 and 2 in proportion to the person's qualified production of crude oil for the quarter in each such tier, and is to be allocated within any tier on the basis of the removal prices for such person's qualified production in that tier removed during that quarter, beginning with the highest of those prices.

(d) *Qualified production of crude oil defined.*—(1) *In general.* An independent producer's qualified production of crude oil for any quarter is the number of barrels of taxable crude oil of which such person is the producer which is removed during that quarter, which is tier 1 oil or tier 2 oil, and which is attributable to the independent producer's working interest in a property.

(2) *Working interest defined.* The term "working interest" means an operating mineral interest (within the meaning of section 614(d)) which was in existence as an operating mineral interest on January 1, 1980, or which is an operating mineral interest derived from a qualified overriding royalty interest after that date. A "qualified overriding royalty interest" is an overriding royalty interest in existence as such an interest on January 1, 1980, but only if on or before February 20, 1980, there was in existence a binding contract under which such interest was to be converted (or, at the option of the owner of such interest, could be converted) into an operating mineral interest.

(3) *Production from transferred property.*—(i) *In general.* Except as otherwise provided in this subparagraph, in the case of a transfer (as defined in § 51.4996–3 (b)) on or after January 1, 1980, of an interest in any property, the qualified production of the transferee shall not include any production attributable to such interest.

(ii) *Small producer transfer exemption.*—(A) *In general.* Subdivision (i) shall not apply to any transfer of an interest in property if the transferee maintains records sufficient to establish to the satisfaction of the district director that at no time after December 31, 1979, has the interest (or any part thereof) in the property been held by a person who was a disqualified transferor (other than as a mere agent for a person not a disqualified transferor or members of a partnership who in the aggregate have less than a two percent share of the interest) for any quarter ending after September 30, 1979, and ending before the date such person transferred the interest.

(B) *Disqualified transferor.* The term "disqualified transferor" means, with respect to any quarter, any person who either had qualified production for such quarter which exceeded such person's independent producer amount for such quarter or was not an independent producer for such quarter.

(C) *Special rules.* For purposes of this paragraph, an interest in property held by a partnership at any time shall be treated as owned proportionately by the partners of such partnership at such time. An interest in property held by any trust or estate shall be treated as owned both by such trust or estate and proportionately by its beneficiaries. See § 51.4996–1(b)(2) for certain general rules relating to partnerships, trusts, and estates. Chapter 45 and this part shall be treated as having been in effect for periods after September 30, 1979, for purposes of making any determination under subdivision (ii)(B).

(iii) *Other exceptions.* Subdivision (i) shall not apply in the case of—

(A) A transfer of an interest in property at death,

(B) A change of beneficiaries of a trust which qualifies under clause (iii) of section 613A(c)(9)(B) (determined without regard to the exception at the end of such clause), and

(C) Any transfer so long as the transferor and transferee are required by section 4992(e) to share the 1,000 barrel amount referred to in paragraph (c) of this section.

The preceding sentence shall apply in the case of any interest in property only if the production from that interest was qualified production for the transferor.

(e) *Allocation within related group.*—(1) *In general.* Section 4992(e) contains rules for the allocation of the 1,000 barrel per day amount among all persons who are members of the same related group.

(2) *Special rules.* [Reserved]

§ 51.4993-1 Incremental tertiary oil. [Reserved]

§ 51.4993-2 Self-certification of tertiary recovery projects.

(a) *Certification of petroleum engineer.* In order to qualify under section 4993(c)(2)(D)(i), relating to the self-certification of a qualified tertiary recovery project, the operator shall submit a certification (attached to Form 6458), signed under penalties of perjury by a petroleum engineer (who has been duly registered or certified in accordance with applicable state law, if any), to the Internal Revenue Service Center, Austin, Texas. The certification shall contain the following:

(1) A statement that the project involves a tertiary recovery method (as defined in section 4993(d)(1)) that is expected to result in more than an insignificant increase in the ultimate recovery of crude oil, together with a description of the process used and the increase in the amount of crude oil to be recovered by reason of the application of the method,

(2) A description of the implementation and operation of the project sufficient to establish that its implementation and operation are in accordance with sound engineering principles.

(3) An identification of the area from which the ultimate recovery of crude oil is expected to be increased as a result of the implementation and operation of the project, and, if that area is less than the entire property, a precise delineation of the portion of the property that is expected to yield the increase in the ultimate recovery of crude oil,

(4) The date on which the tertiary injectant was, or is expected to be, initially introduced into the reservoir,

(5) An explanation of the number and frequency of injections to be made and the expected duration of the project,

(6) If the project involves a single injection, an estimate of the period of time during which the injectant will continue to increase the recovery of crude oil,

(7) Data on crude oil reserve estimates covering the project area with and without the tertiary recovery process,

(8) The past production history and estimates of future production,

(9) The number of wells in the project area and the number of both producing and injection wells expected to be drilled,

(10) The projected date of completion of the injection and producing wells expected to be drilled,

(11) Projected future income and expenses, and

(12) The operator's employer identification number.

The petroleum engineer's certification may be submitted at any time. However, for purposes of section 4993 (d) (2) (B), relating to the "project beginning date", a petroleum engineer shall not be considered as having certified a project until the certification is received by such Internal Revenue Service Center. If the certification is sent to such Service Center by mail, it shall be considered received when posted by United States mail, properly addressed, and with sufficient postage.

(b) *Change in application of any tertiary recovery method.* If the actual application of any tertiary recovery method differs in any manner (including timing differences) from the application of the tertiary method upon which the certification submitted by the operator pursuant to §§ 51.4993–2 or 51–4993–3 was based, the operator shall promptly send a written statement to that effect to such Internal Revenue Service Center setting forth the reasons for the difference. However, such statement is not required to be sent before December 6, 1982.

(c) *Termination of injection.* If any project certified under paragraph (a) of this section involves the continuous or repetitious injection of liquids, gases, or other matter and if the injection is terminated, the operator shall promptly send a written statement (attached to Form 6458) to that effect to such Internal Revenue Service Center setting forth the date that the injection was terminated.

(d) *Significant expansion.* If a project is significantly expanded, the expansion shall be treated as a separate project requiring separate certification.

§ 51.4993–3 Jurisdictional agency certification of tertiary recovery projects.

(a) *Initial certification.* In order to qualify under section 4993 (c) (2) (D) (ii), relating to the approval of tertiary recovery projects by a jurisdictional agency, the operator shall submit the certification (attached to Form 6458) to the Internal Revenue Service Center, Austin Texas. The certification shall state that the appropriate jurisdictional agency has approved the project as having met the requirements set forth in section 4993 (c) (2) (A), (B), and (C), and the operator shall attach the approving document or a certified copy thereof. The certification of the jurisdictional agency's approval may be submitted at any time. However, for purposes of section 4993 (d) (2) (B) (ii), relating to the "project beginning date", a jurisdictional agency shall not be considered as having approved a project until the certification is received by the Service Center. If the certification is sent to the Service Center by mail, it shall be considered received when posted by United States mail, properly addressed, and with sufficient postage.

(b) *Revocation of certification.* If the agency revokes the approval, it shall immediately notify the operator and the Service Center of the revocation setting forth the date of the revocation and stating whether the revocation has retroactive effect (and, if so, to what date the revocation is retroactive), and the operator shall send a copy of the revocation (attached to Form 6458) to such Service Center within 10 days after receiving it.

(c) *Termination of injection.* If any project certified under paragraph (a) of this section involves the continuous or repetitious injection of liquids, gases, or other matter and if the injection is terminated, the operator shall promptly send a written statement (attached to Form 6458) to that effect to the certifying agency and such Internal Revenue Service Center setting forth the date that the injection was terminated. However, such statement is not required to be sent before December 6, 1982.

§ 51.4993–4 Internal Revenue Service rulings relating to qualified tertiary recovery projects.

(a) *In general.* Either the operator of a property or any producer of crude oil from that property may request a ruling from the Internal Revenue Service as to whether any tertiary recovery project involving that property is a "qualified tertiary recovery project" within the meaning of section 4993 (c). If a producer submits the request, the producer shall notify the operator in writing that the request was submitted.

(b) *Manner of requesting ruling.* The request for a ruling described in paragraph (a) of this section shall be made by submitting the request to the Commissioner of Internal Revenue, Attention: Assistant Commissioner (Technical), Washington, D.C. 20224. In addition to meeting the requirements of § 601.201(e) of this chapter (Statement of Procedural Rules), the request shall contain the following (or, in the case of subparagraph (5), (6), or (7), if unavailable, a statement of the reason for the unavailability):

(1) A statement as to whether a jurisdictional agency has approved the project, and if so, a copy of the approving document and a copy of the material upon which the approval was based together with any certification submitted to a Service Center and identification of such Service Center,

(2) A statement from the operator of the property as to whether the operator has previously submitted a request for a ruling on that project and as to whether any producer has notified the operator that a request has been submitted, as well as the date and name of the person who made a request,

(3) A description of the location of the project.

(4) The type of tertiary recovery process instituted,

(5) Data on crude oil reserve estimates covering the project area with and without the tertiary recovery process,

(6) The past production history and estimates of future production,

(7) The characteristics of the formation such as the name, depth, lithology, thickness, porosity, permeability, and reservoir pressure and temperature history,

(8) A description of any secondary or tertiary process previously used, or in use, in the project area,

(9) A full and complete description of the tertiary process stating how it will be developed from the pilot flood through full development, and

(10) A complete description of the geological and engineering factors taken into consideration, together with sufficient data to support the conclusion that the project meets the requirements of section 4993(c) for a "qualified tertiary recovery project."

(c) *Special rule for projects for which a certification of approval by a jurisdictional agency has been submitted.* If, pursuant to section 4993(c)(2)(D)(ii) and § 51.4993–3, the operator of the property has submitted a certification of approval by a jurisdictional agency, the ruling described in paragraph (a) of this section will be issued within 180 days of the date that a request for the ruling, meeting the requirements of paragraph (b) of this section and § 601.201(e) of this chapter (Statement of Procedural Rules) is received by the Office of the Assistant Commissioner (Technical). However, if the request for a ruling is not complete as to the information required in paragraph (b) (1) through (10) of this section, the Office of the Assistant Commissioner (Technical) may send written notice to the person making the request specifying the further information that must be submitted. The 180-day period shall not include any days after the date of the mailing of the written notice and before the date on which the additional information is received.

§ 51.4994–1 Exemptions. [Reserved]

§ 51.4994–2 Front-end oil. [Reserved]

§ 51.4995–1 Requirement of withholding.

(a) *General rule; when required.*—(1) *In general.* Except as otherwise provided in this section, the purchaser (as defined in § 51.4996–1(a)) of domestic crude oil shall deduct and withhold tax from amounts payable by that purchaser for the crude oil. However, the preceding sentence shall not apply if—

(i) The crude oil is removed from the premises (as defined in § 51.4996–1(d)) before it is sold, or

(ii) The manufacture or conversion of crude oil into refined products begins before the crude oil is removed from the premises, or

(iii) The producer of the crude oil is an integrated oil company (as defined in § 51.4996–1(g)) that has furnished a certificate to the purchaser pursuant to paragraph (c)(2) of § 51.4995–2, or

(iv) The purchaser has received a qualified disburser's certificate pursuant to § 51.4995–5 with respect to that oil and the certificate is still in effect, or

(v) The United States (or any agency or instrumentality thereof) is the producer of the crude oil as holder of a royalty or net profits interest and the crude oil is sold to the purchaser directly by the Department of the Interior, or

(vi) The purchaser has received a Federal royalty certificate from an operator or lessee pursuant to paragraph (c)(3) of § 51.4995–2, or

(vii) The United States (or any agency or instrumentality thereof) is the producer of the crude oil as holder of a royalty or net profits interest and the crude oil is produced from a naval petroleum reserve. See 10 U.S.C. 7420(a)(2) for the definition of naval petroleum reserves.

The amount of tax to be deducted and withheld shall be determined in accordance with the rules of paragraphs (b) and (c) of this section. For purposes of the tax imposed by section 4986, the producer shall be treated as having paid on the last day of the first February after the calendar year in which the crude oil is removed from the premises the amount deducted and withheld with respect to such crude oil by the purchaser under this section.

(2) *Special rule for crude oil removed before sale.* If the purchaser of crude oil would be required to deduct and withhold tax from amounts payable for the crude oil but for the fact that the crude oil was removed from the premises before sale, and if the purchaser can determine the amount of tax imposed by section 4986 with respect to the crude oil, the purchaser may elect to withhold. If the purchaser elects to withhold, the purchaser shall be deemed to be required to withhold under paragraph (a)(1) of this section. The election shall be made by furnishing to the operator of the property from which the crude oil was produced and to each person to whom the purchaser makes payment for the crude oil a document that informs the recipient that the tax is being withheld. The election document shall be furnished within 5 days of receipt of the first crude oil to which it applies. Unless the election document specifies otherwise, the election shall remain effective until 30 days after the purchaser furnishes each recipient of the election document (or a successor in interest) a document informing the recipient that the tax will not be withheld. See §§ 51.4995–4 and 51.4995–5 for the elections pursuant to which an operator or qualified disburser is treated as the purchaser. See § 51.4995–3 for the depositary rules applicable to crude oil removed during each month (semimonthly period in the case of certain integrated oil companies).

(b) *Amount to be deducted and withheld.*—(1) *Operator's certification.* If the purchaser has received the certification required to be furnished by the operator pursuant to section 6050C and § 51.6050C–1, and if the purchaser has no reason to believe that any information contained in that certification that affects the computation of the windfall profit tax is not correct, the amount of tax to be deducted and withheld under paragraph (a) of this section is the amount of tax imposed by section 4986 based on the information provided in the operator's certification. However, in determining the amount to be deducted and withheld, section 4988(b) (relating to the net income limitation on windfall profit) shall not apply.

(2) *Absence of complete and current operator's certification.* This subparagraph applies if the purchaser has not received the certification required to be furnished by the operator pursuant to section 6050C and § 51.6050C–1, or if the certification does not contain all the information necessary for the purchaser to compute the amount to be withheld under paragraph (b)(1) of this section, or if the purchaser has reason to believe that any information contained in that certification that affects the tax computation is not correct (including information that was correct when provided but that has become incorrect.) In such a case, the amount of tax to be deducted and withheld under paragraph (a) of this section is the amount of tax imposed by section 4986 (without regard to the net income limitation provided in section 4988(b)) based on the information, if any, provided in the operator's certification that the purchaser has no reason to believe is not correct, and on the substitution of the following assumptions for any item of information that is absent from the certification or that the purchaser has reason to believe is not correct:

(i) If the item that is absent or that the purchaser has reason to believe is not correct is the tax tier of the crude oil, the crude oil shall be assumed to be in tier 1 subject to the 70 percent rate of tax (except as provided in (b)(3)(ii));

(ii) If the item is the adjusted base price, the adjusted base price shall be assumed to be—

(A) In the case of tier 1 oil, $11.01 plus the amount equal to $11.01 multiplied by the inflation adjustment provided under section 4989(b)(1) for the calendar quarter in which the crude oil was removed,

(B) In the case of tier 2 oil, $12.34 (the amount equal to $11.22 multiplied by 1.1)

plus the amount equal to $12.34 multiplied by the inflation adjustment provided under section 4989(b)(1) for the calendar quarter in which the crude oil was removed, and

(C) In the case of tier 3 oil, $13.46 (the amount equal to $11.22 multiplied by 1.2) plus the amount equal to $13.46 multiplied by the inflation adjustment provided under section 4989(b)(2) for the calendar quarter in which the crude oil was removed;

(iii) If the item is the severance tax adjustment provided by section 4996(c), the severance tax adjustment shall be assumed to be inapplicable unless the amount of that adjustment is known by the purchaser.

(3) *Producer's certification.* If, pursuant to § 51.4995–2, the purchaser has received a certification that a producer's share of production from a property qualifies as "exempt oil" or "independent producer oil," and if the purchaser has no reason to believe, at the time of any payment for such share of production, that any statement in the certification bearing on such qualification is not correct, the purchaser—

(i) Shall not withhold tax from amounts payable for the share of production that has been certified as exempt oil (the provisions of paragraph (b) (1) and (2) of this section notwithstanding), and

(ii) In determining the amount to be withheld under paragraph (b)(1) of this section from amounts payable for the share of production that has been certified as independent producer oil, shall apply the rates provided in section 4987(b)(2) and, in determining the amount to be withheld under paragraph (b)(2) of this section, shall substitute 50 percent for 70 percent.

If a payment by a purchaser is made to an operator, partnership, or other disburser, rather than directly to the producer of the crude oil, the amount of exempt oil and independent producer oil shall be determined on the basis of information provided to the purchaser by the operator, partnership, or disburser pursuant to paragraph (e) of § 51.4995–2.

(c) *Withholding adjustments.*—(1) *General rule.* (i) A purchaser who ascertains that the amount of tax withheld from any payment for crude oil was more or less than the amount of tax imposed by section 4986 (computed without regard to the net income limitation) with respect to that crude oil shall make adjustments in the amount to be withheld from subsequent payments to the same person as provided in this paragraph. For purposes of this paragraph, a purchaser has ascertained that the amount withheld was more or less than the tax imposed when the purchaser has sufficient information to be able to determine the amount of tax imposed by section 4986 (computed without regard to the net income limitation) with respect to that crude oil. Thus, adjustments are generally required when the purchaser made an incorrect calculation with respect to a prior payment, when the purchaser has withheld in accordance with the rules of paragraph (b)(2) because of the absence of an effective operator's certification and the purchaser later receives an effective certification, when an earlier certification is corrected, or when the purchaser has withheld tax from a producer at the generally applicable rates and the purchaser subsequently receives a retroactively effective independent producer's certificate. Every adjustment under this paragraph shall be reflected on the return used in reporting windfall profit tax withholding (Form 720). See the instructions for Form 6047. If the entire adjustment would be reported in the return for the same taxable period as the withholding giving rise to the adjustment, the return for that period shall reflect only the amount withheld as adjusted. Otherwise, every return on which an overpayment or underpayment is adjusted pursuant to this paragraph must include such statements and other information as may be required by the instructions to the return.

(ii) Except as otherwise provided in this paragraph, the purchaser must make a full adjustment by underwithholding or overwithholding in subsequent payments to the same person (whether or not from the same property) so that the total amount withheld is equal to the tax imposed by section 4986 (computed without regard to the net income limitation). The full adjustment must be made, if possible, in the next payment. If it is not possible to complete the adjustment in the next payment, the purchaser shall adjust by underwithholding or overwithholding to the fullest extent possible in each subsequent payment until the adjustment is completed. However, no adjustment is to be made in the amount withheld from payments made afer the statement required by § 51.4997–2(c) (relating to yearly statement of windfall profit tax liability) is furnished. Furthermore, no adjustment is required to be made in the amount withheld from payments made for crude oil removed in a subsequent calendar year, although the purchaser may make such an adjustment if the adjustment is reflected in the statement required by § 51.4997–2(c) for the year in which the error occurred. If the error is one of underwithholding that is not fully adjusted under this paragraph (*e.g.*, where the relationship between the producer and the purchaser has terminated), the producer is required to file a return at the end of the year in accordance with § 51.4997–1 unless the producer's entire liability for tax under section 4986 has been satisfied by reason of overwithholding by another purchaser. If the error is one of overwithholding that is not fully adjusted under this paragraph, the rules of § 51.6402–1 with respect to claims for credit or refund are applicable to the producer.

(iii) If the purchaser is required to make an adjustment by overwithholding under this paragraph because the purchaser withheld less than the amount required to be withheld from an earlier payment, the overwithholding under this paragraph shall not be treated as an amount withheld or required to be withheld for purposes of § 51.4995–3 (relating to depositary requirements) to the extent that the excess of the amount originally required to be withheld over the amount actually withheld has been deposited by the purchaser (and reported if the underwithholding occurred in an earlier taxable period).

(2) *Special rules.* (i) No amount shall be deducted or withheld from any payment in excess of the windfall profit with respect to the crude oil giving rise to that payment.

(ii) If, pursuant to section 4995(a)(3)(D), the producer and purchaser agree to additional withholding, any amount withheld pursuant to the agreement shall be treated as an amount required to be withheld.

(iii) If, under the rules of this paragraph, the purchaser would otherwise be required (or permitted) to make an adjustment by underwithholding in subsequent payments, the purchaser may (at the purchaser's option) adjust the overwithholding (in full or in part) by making a payment to the producer or the producer's agent in the amount of the overwithheld tax (or a portion thereof). For purposes of § 51.4995–3 (relating to depositary requirements), any amount paid pursuant to the preceding sentence shall be treated as a reduction in the amount required to be deposited under § 51.4995–3 with respect to oil removed from the premises during the month immediately preceding the month of payment (during the semi-monthly period of the payment in the case of an integrated oil company making deposits

under paragraph (a) of § 51.4995–3). However, any adjustment by payment under this subdivision shall not exceed the amount that would reduce to zero the amount otherwise required to be deposited under § 51.4995–3 for the depository period referred to in the preceding sentence.

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). A, a purchaser of crude oil, has been withholding in accordance with the special rules of paragraph (b)(2) because the operator of the property from which A purchases crude oil has not provided A with the certification required by § 51.6050C–1. Subsequently, the operator does provide A with the certification, and A, withholding under the rules of paragraph (b)(1), ascertains that the amount withheld earlier exceeds the amount of tax imposed by section 4986 based upon the information provided by the operator. Although A withheld properly in accordance with the information available during the earlier period, the amount withheld is subject to the adjustment rules of this paragraph.

Example (2). Purchaser B, in the third calendar quarter of the year, ascertains that too little tax was withheld from payments for crude oil purchased in the preceding calendar quarter with respect to producer C. B must attempt to fully adjust the underwithholding by increasing the amount withheld from subsequent payments made to C (up to the full amount of windfall profit). If the adjustment has not been completed when B makes the final payment for crude oil removed during the calendar year, B is permitted, but not required, to continue the adjustments in payments for crude oil removed after the close of the calendar year so long as the annual information statement and return required by § 51.4997–2(c) reflects the adjustment. B is required to inform C of C's liability for any amount remaining unadjusted and to provide that information to the Internal Revenue Service in accordance with the rules of § 51.4997–2.

Example (3). D, the producer of exempt oil, failed to provide purchaser E with an exemption certificate in time to avoid the withholding of tax from a payment made by E to D. Under paragraph (c)(2)(iii), E has the option of adjusting the overwithholding by making a payment to D.

(d) *Extent of purchaser's liability.* Every purchaser required to deduct and withhold tax under this section is liable for the tax required to be withheld, whether or not it is actually withheld by the purchaser. However, in no event shall the purchaser's liability for the tax required to be withheld exceed the producer's liability for the tax imposed by section 4986 (including the application of the net income limitation provided in section 4988(b) if all the data necessary for computing that limitation are available) with respect to crude oil sold to that purchaser, and the purchaser's liability shall abate to the extent that the purchaser establishes that the producer's liability for the tax has been paid (including payments by the producer or by the purchaser through adjustments in amounts later withheld). See paragraph (c) relating to adjustments in withholding. The producer from whom the correct amount was not withheld shall be liable to any purchaser for the amount of the producer's tax liability paid by the purchaser pursuant to this paragraph. The purchaser is relieved of liability to any other person for the amount of any tax withheld pursuant to this section and paid to the Internal Revenue Service or deposited with a duly designated depository of the United States. See § 51.4995–3 relating to depository requirements.

§ 51.4995–2 Producer's certificate.

(a) *In general.* A producer of "exempt Indian oil" (as defined in section 4994(d)) or "exempt royalty oil" (as defined in section 4994(f)), or the holder of any interest in crude oil that is a "qualified governmental interest" (as defined in section 4994(a)) or is a "qualified charitable interest" (as defined in section 4994(b)), generally may execute an exemption certificate with respect to such oil. In the case of "exempt Indian oil" produced from lands administered by the Bureau of Indian Affairs, the certificates may be furnished and filed by the Commissioner of Indian Affairs or his delegate on behalf of the producer. Generally, a producer of "independent producer oil" (as defined in section 4992) may execute a certificate with respect to such oil. Any certificate executed pursuant to this paragraph shall be furnished to the purchaser of the crude oil or, if the producer receives payment for the crude oil through the operator of the property from which the crude oil is produced, a partnership, or other disburser of the sales proceeds, to such operator, partnership, or disburser. The producer need submit only one certificate for each property to each person from whom the producer receives payment. However, see paragraph (d) of this section relating to revocations of certificates. Every integrated oil company shall follow the rules of paragraph (c)(2) of this section (relating to mandatory and optional withholding exemption certificates). Any certificate provided under this section must set forth the facts that establish entitlement to the exemption or lower rates claimed. The certificate (or any revocation of a certificate) shall identify the producer by name, address, and employer identification number (or, if none, social security number) and shall be signed by the producer (under the penalties of perjury except in the case of a revocation). Form 6458 is provided for this purpose. For the requirement that the operator of a property, partnership, or other disburser who has received such a certificate furnish a copy of the certificate, or certify as to its contents, to the person making payment for oil, see paragraph (e) of this section. For the certification requirement of operators or lessees selling certain crude oil from a Federal lease, see paragraph (c)(3) of this section. For the effect of the furnishing of certificates, see § 51.4995–1(b)(3) (relating to the withholding requirements). For the criminal penalty applicable to the furnishing of a false statement, see section 7206.

(b) *Exemption certificate.*—(1) *In general.* For purposes of this section, an exemption certificate is a written statement certifying that the producer's crude oil is exempt from the tax imposed by section 4986 because the crude oil constitutes exempt Indian oil or exempt royalty oil or the oil is from a qualified governmental interest or a qualified charitable interest. Any producer who furnishes an exemption certificate (other than an exempt royalty owner's certificate) to an operator, purchaser, partnership, or other disburser shall also file an exemption certificate with the Internal Revenue Service Center, Austin, Texas. Only one such certificate need be filed even though the producer may furnish certificates to more than one operator, purchaser, partnership, or other disburser.

(2) *Exempt royalty owner's certificate.* [Reserved]

(c) *Other producer's certificates.*—(1) *Independent producer's certificate.* An independent producer's certificate is a written statement certifying that the producer holds a working interest (as defined in section 4992(d)(2)) in a certain property and that the entire amount of tier 1 and tier 2 crude oil production attributable to that interest is qualified production of crude oil as defined in section 4992(d). No certificate may be furnished with respect to crude oil if it is reasonable to believe that the number of barrels attributable to the interest to be certified taken together with all other crude oil with respect to which an independent producer's certificate has been furnished by the producer to any operator, purchaser, partnership, or other disburser, will exceed the producer's independent producer amount (see section 4992 (c) and (e)). Producers who are members of a related group (within the meaning of section 4992(e)(2)) shall set forth in the

certificate the members of the related group identified by employer identification number (or, if none, social security account number), and shall file one such certificate with the Internal Revenue Service Center, Austin, Texas. Only one such certificate need be filed even though the producer may furnish certificates to more than one operator, purchaser, partnership, or other disburser. The certificate shall be filed by the 30th day following the day that the producer first furnishes such a certificate to any operator, purchaser, partnership, or other disburser. Independent producers who are not members of a related group need not file the independent producer certificate with the Internal Revenue Service.

(2) *Integrated oil company's certificate.*—(i) *Mandatory certificates.* Every integrated oil company that is a producer of crude oil from a property of which that company is the operator (or would be the operator in the absence of a designation under § 51.4996–1(c)) shall furnish the statement described in paragraph (c)(2)(iii) of this section to each purchaser of crude oil from that property no later than the date by which the first statement by the operator to the purchaser under § 51.6050C–1 is required to be furnished.

(ii) *Optional certificate.* Any integrated oil company that is a producer of crude oil from a property of which that company is not the operator may, at its option, furnish such a statement with respect to such crude oil to the purchaser of the crude oil or, if the producer receives payment for the crude oil through the operator of the property from which the crude oil is produced, a partnership, or other disburser of the sales proceeds, to such operator, partnership, or disburser.

(iii) *Contents of certificate.* The certificate furnished pursuant to this subparagraph shall state that the producer is an integrated oil company (as defined in § 51.4996–1 (g)), that the producer will deposit its own windfall profit tax liability, and that the producer's share of production is not to be withheld upon under § 51.4995–1.

(iv) *Date certificate becomes effective.* Any certificate furnished pursuant to this subparagraph shall apply to all payments for crude oil of which the integrated oil company is the producer made by or for the purchaser after the date on which the purchaser received the certificate.

(3) *Federal royalty certificate.*—(i) *Certificate required.* If the United States (or any agency or instrumentality thereof) is the producer of crude oil that is sold to the purchaser by the lessee or operator for the Department of the Interior, the lessee or operator shall furnish the statement described in paragraph (c)(3)(ii) of this section to each purchaser of such crude oil no later than the date by which the first statement by the operator to the purchaser under § 51.6050C–1 is required to be furnished. The statement described in paragraph (c)(3)(ii) need not be furnished if the United States, acting through the Department of the Interior, sells its production directly to the purchaser.

(ii) *Contents of certificate.* The certificate furnished pursuant to this subparagraph shall state that the United States (or any agency or instrumentality thereof) is the producer of the crude oil (or a specified portion of the oil), that the crude oil is sold for the Department of the Interior, and that the United States' share of production is not to be withheld upon under § 51.4995–1.

(d) *Revocation of certificate.* If the producer has furnished a certificate with respect to crude oil, and the producer subsequently ascertains that the crude oil is not, has ceased to be, or on a certain date will cease to be eligible for certification under the rules of paragraphs (a) through (c) of this section, the producer shall furnish notice within 10 days of the ascertainment to the person to whom the certificate was furnished that the certificate is revoked immediately or as of the appropriate date.

(e) *Operators, partnerships, and other disbursers.* If payment for a producer's crude oil is to be made by the purchaser through one or more operators, partnerships, or other disbursers rather than to each producer individually, the information contained in any certifications permitted by this section shall be aggregated in a certification by the operator, partnership, or disburser to the person from whom payment is received, unless such operator, partnership, or disburser has undertaken the withholding obligation of the purchaser pursuant to §§ 51.4995–4 or 51.4995–5. Each certification shall state the percentage of the crude oil that is certified as exempt from tax or subject to a lower rate of tax. The certification may certify crude oil as exempt from tax or subject to a lower rate of tax only to the extent that the operator, partnership, or disburser has received certifications from the producers (or another operator, partnership, or disburser). Any operator, partnership, or disburser furnishing a certification shall retain in its records, for so long as material in the administration of any internal revenue law, each certification (or a reproduction thereof) that was used as the basis for the certification furnished by the operator, partnership, or disburser under this section.

(f) *Substitution of operator or qualified disburser for purchaser.* If, pursuant to §§ 51.4995–4 or 51.4995–5, the operator of a property or a qualified disburser elects to be responsible for the obligations otherwise imposed upon the purchaser, the purchaser shall forward to the responsible person, at the time of the election, any exemption certificate or any notice of revocation previously received by the purchaser. The purchaser shall immediately forward to the responsible person any exemption certificate or any notice of revocation received after the election. The operator or qualified disburser shall treat any exemption certificate or any notice of revocation forwarded by a purchaser as an exemption certificate or notice of revocation from the producer.

§ 51.4995–3 Depositary requirements.

(a) *Deposits by integrated oil companies other than independent refiners.*—(1) *In general.* Every integrated oil company (as defined in § 51.4996–1 (g)) other than an independent refiner (as defined in § 51.4996–1(h)) that is either liable as a producer for the tax imposed by section 4986 (unless such tax is required by § 51.4995–1 to be deducted and withheld by the purchaser) or is required as a purchaser to deduct and withhold tax pursuant to § 51.4995–1 shall make deposits with respect to semimonthly periods (as defined in paragraph (a)(3)(i) of this section). The amount to be deposited for each semimonthly period is the amount of tax imposed by section 4986 (computed with regard to the net income limitation provided in section 4988(b), if applicable) on the removal in that semimonthly period of crude oil that is not subject to withholding under § 51.4995–1 for which the company is liable as a producer, plus the amount required to be withheld by the company as a purchaser pursuant to § 51.4995–1 from payments that have been or will be made for crude oil removed from the premises during that semimonthly period. However, if the amount withheld by the company as a purchaser from any payment is more than the amount required to be withheld, the amount to be deposited shall be the amount withheld. The deposits shall be made on or before the depositary date (as defined in paragraph (a)(3)(ii) of this section) for the semimonthly period in which the crude oil is removed. These depositary requirements will be considered to have been met for a semimonthly period with respect to estimated deposits, including deposits based upon the producer's

estimate of the effect of the net income limitation provided in section 4988(b), only if—

(i)(A) The company's deposit for such semimonthly period is not less than 90 percent of the total amount otherwise required by this section to be deposited by it for such period, and (B) if such period occurs in a month other than the last month in a taxable period, it deposits any underpayment for such month by the 9th day of the second month following such month ; or

(ii)(A) Its deposit for each semimonthly period in the month is not less than 45 percent of the total amount otherwise required by this section to be deposited by it for the month, and (B) if such month is other than the last month in a taxable period, it deposits any underpayment for such month by the 9th day of the second month following such month; or

(iii)(A) Its deposit for each semimonthly period in the month is not less than 50 percent of the total amount required by this section to be deposited by it for the third preceding calendar month (determined without regard to subdivisions (i) through (iv) of this subparagraph), and (B) if such month is other than the last month in a calendar quarter, it deposits any underpayment for such month by the 9th day of the second month following such month; or

(iv)(A) The requirements of (i)(A), (ii)(A), or (iii)(A) are satisfied for the first semimonthly period of a calendar month, and (B) the company's deposit for the second semimonthly period of that calendar month is, when added to the deposit for the first semimonthly period, not less than 90 percent of the total amount otherwise required by this section to be deposited by it for that month, and (C) if such period occurs in a month other than the last month in a calendar quarter, the company deposits any underpayment for such month by the 9th day of the second month following such month.

However, subdivisions (ii) and (iii) of this subparagraph shall not apply to any company that normally incurs in the first semimonthly period in each month more than 75 percent of its total liability for deposit for the month (determined without regard to subdivisions (i) through (iv)).

(2) *Special requirement.* If the aggregate amount of deposit liability for a taxable period (determined without regard to subdivisions (i) through (iv) of paragraph (a)(1) of this section) exceeds the total amount deposited by the company pursuant to paragraph (a)(1) of this section for such taxable period, then the company shall, on or before the last day of the second month following the close of the taxable period, deposit an amount equal to the amount by which the deposit liability exceeds the total deposits made pursuant to paragraph (a)(1) of this section for the taxable period.

(3) *Definitions.* For purposes of this part—

(i) *Semimonthly period.* A "semimonthly period" means the first 15 days of a calendar month or the portion of a calendar month following the 15th day of such month.

(ii) *Depositary date.* The depositary date for deposits for semimonthly periods is the 9th day of the semimonthly period following the semimonthly period in which the crude oil was removed.

(b) *Independent refiners purchasing oil pursuant to a delayed payment contract.* Purchasers that are independent refiners (as defined in § 51.4996–1(h)) shall make deposits for each calendar month in accordance with the rules of paragraph (c) of this section except in the case of crude oil purchased under a contract therefor under which no payment is required to be made by the purchaser before the 46th day after the close of the month in which the crude oil is purchased. In the case of crude oil purchased under such a contract, the deposits shall be made for each calendar month not later than the last day of the second month which begins after the month in which the crude oil was removed. The amount to be deposited for each month is the amount required to be withheld pursuant to § 51.4995–1 from payments that have been or will be made for crude oil removed during that month. However, if the amount withheld by the purchaser from any payment is more than the amount required to be withheld, the amount to be deposited shall be the amount withheld.

(c) *Deposits by other purchasers.* Except as provided in paragraph (a) or (b) of this section, purchasers shall make deposits for each calendar month not later than 45 days after the close of that month. The amount to be deposited for each month is the amount required to be withheld pursuant to § 51.4995–1 from payments that have been or will be made for crude oil removed from the premises during that month. However, if the amount withheld by the purchaser from any payment is more than the amount required to be withheld, the amount to be deposited shall be the amount withheld.

(d) *Special rules for electing operators and qualified disbursers.*—(1) *Electors who are also producers.* Except as otherwise provided in §§ 51.4995–4 or 51.4995–5, any operator or qualified disburser who makes the election provided by §§ 51.4995–4 or 51.4995–5 and who is the producer of crude oil subject to the election shall deposit with respect to that crude oil by treating the crude oil as not subject to withholding. However, if section 4995(a)(7)(A)(ii) applies to amounts withheld by the operator electing under § 150.4995–4, that section shall also apply to amounts deposited by the operator under the preceding sentence.

(2) *Special rules for qualified disbursers.* The rules of this subparagraph apply to every qualified disburser making the election provided by § 51.4995–5 regardless of whether that qualified disburser is an operator entitled to make (or who has previously made) the election provided by § 51.4995–4. Except as otherwise provided in this subparagraph, a qualified disburser shall deposit both the amount required to be deposited as a purchaser and the liability of the qualified disburser as a producer (if any) in accordance with the rules of paragraph (a) of this section if the qualified disburser is an integrated oil company (other than an independent refiner) and in accordance with the rules of paragraphs (c) and (f) of this section in any other case. If, on December 31, 1980, an integrated oil company (other than an independent refiner) was a disburser (as defined in § 51.4996–1(j)) with respect to a property, any qualified disburser subsequently undertaking any portion of the distribution responsibility of the integrated oil company shall deposit all amounts attributable to that property in accordance with the rules of paragraph (a) of this section. However, the preceding sentence shall not apply if, on December 31, 1980, the integrated oil company was also a producer of crude oil from that property and the integrated oil company transfers the distribution responsibility contemporaneously with the transfer of its entire interest in the property to a person other than a related person (as defined in section 613A(d)(3)).

(e) *Payments by producers to correct underwithholding.* If the amount of tax withheld from a producer for a calendar year is less than the total liability of the producer for the tax imposed by section 4986 with respect to crude oil removed during the calendar year and subject to withholding under § 51.4995–1, the producer shall remit the difference with a timely return filed under § 51.4997–1 or shall, on or before the last day for filing a return under § 51.4997–1, deposit such difference.

(f) *Deposits by producers of tax due on crude oil not subject to*

withholding.—(1) *In general.* Except as provided in paragraph (a) (relating to certain integrated oil companies), every producer shall deposit for each calendar month the tax imposed by section 4986 (computed with regard to the net income limitation provided in section 4988(b), if applicable) on the removal in that month of crude oil that is not subject to withholding under § 51.4995–1. The deposits shall be made not later than 45 days after the close of the month in which the crude oil was removed (or deemed removed under § 51.4996–1(d)) from the premises. These deposit requirements will be considered to have been met for a month with respect to estimated deposits, including deposits based upon the producer's estimate of the effect of the net income limitation provided in section 4988(b), only if—

(i)(A) The producer's aggregate deposit liability under this subparagraph (1) for the three months of a taxable period is less than $100 and (B) the producer deposits the amount of tax owed on or before the last day for filing the return required by § 51.4997–1 for that taxable period or remits the tax owed with that return; or

(ii)(A) The producer's deposit for the month is not less than 90 percent of the total amount otherwise required by this section to be deposited by it for the month, and (B) the producer complies with the requirements of subparagraph (2) of this paragraph; or

(iii)(A) The producer's deposit for each month of the taxable period is not less than 30 percent of the total amount otherwise required by this section to be deposited by it for the three months of the taxable period, and (B) the producer complies with the requirements of subparagraph (2) of this paragraph; or

(iv)(A) The producer's deposit for the month is not less than 100 percent of the amount required by this section to be deposited by it for the third preceding month (determined without regard to subdivisions (i) through (iv)), and (B) the producer complies with the requirements of subparagraph (2) of this paragraph.

However, subdivisions (iii) and (iv) of this subparagraph shall not apply to any producer that normally incurs in the first month in each taxable period more than 45 percent of its total liability for deposit for the taxable period (determined without regard to subdivision (ii) through (iv)).

(2) *Special requirement.* If the total liability for the tax imposed by section 4986 on the removal of crude oil that is not subject to withholding for a taxable period exceeds the total amount deposited by the producer pursuant to subparagraph (1) of this paragraph for such taxable period, then the producer shall deposit the difference not later than the last day of the second month following the close of the taxable period.

(g) *Special rules applicable to overdeposits.*—(1) *Purchasers who are not also depositing tax as a producer.* If, for any taxable period, a purchaser is not also depositing tax as a producer, the excess (if any) of the purchaser's deposits for a semimonthly period (calendar month in the case of purchasers depositing under paragraph (b) or (c) of this section) with respect to the removal of crude oil in that semimonthly period (or month) over the amount required to be deposited shall be applied in order of time to each of the purchaser's succeeding semimonthly periods (or months) in the same taxable period, to the extent that the amount by which the purchaser's deposit liability for that period (or month) exceeds the deposit for such subsequent period (or month), until such excess is exhausted.

(2) *Treatment of deposits by a producer in excess of liability.*—(i) *In general.* The rules of this subparagraph apply to producers required to deposit tax under paragraph (a) or (f) of this section, including producers who are also depositing as a purchaser. Any overdeposit of tax shall be applied in order of time to each of the producer's succeeding semimonthly periods (calendar months in the case of producers depositing under paragraph (f) of this section) to the extent that the amount by which the total deposit liability (as a producer and purchaser) for that period (or month), exceeds the deposit for subsequent period (or month), until such excess is exhausted. For this purpose an overdeposit is—

(A) The excess of the sum of—

(*1*) A producer's deposits for a semimonthly period (or month) with respect to the tax imposed by section 4986 on the removal in that semimonthly period (or month) of crude oil that is not subject to withholding under § 51.4995–1, plus

(*2*) The amount deposited as a purchaser for crude oil removed during that period (or month)

(B) Over the sum of—

(*1*) The tax imposed by section 4986 (computed with regard to the net income limitation) on the removal of crude oil that is not subject to withholding, plus

(*2*) The amount required to be deposited as a purchaser for that period (or month). The preceding sentences shall not apply to any amount for which the producer files a claim for credit against a liability for a tax imposed by chapter 1 or a claim for refund pursuant to § 51.6402–1. Furthermore, except to the extent otherwise provided in forms and instructions, no amount shall be applied to a deposit for a subsequent semimonthly period (or month) that occurs in a taxable period beginning in a different taxable year (for Federal income tax purposes).

(ii) *Examples.* The rules of this paragraph and their relationship to the rules of § 51.6402–1 may be illustrated by the following examples:

Example (1). A, whose taxable year (for Federal income tax purposes) ends September 30, is the producer of crude oil from property X. For each taxable period (calendar quarter) within his taxable year ending September 30, 1981, A's windfall profit tax liability, determined without taking the net income limitation into account, is $1,000. The purchaser of A's crude oil is not required to withhold any windfall profit tax, and for the last taxable period of 1980 A has deposited $1,000. At the beginning of the first taxable period of 1981, A determines that the net income limitation will reduce the windfall profit tax with respect to the crude oil removed from property X during the taxable year ending September 30, 1981, by approximately 10 percent. Therefore, A concludes that the tax paid for the preceding taxable period (calendar quarter) exceeds his liability for tax for that period, although the exact amount of the excess cannot be determined until the taxable year ends. Under § 51.6402–1 A may not claim a refund for the amount of any such excess until the taxable year ends on September 30, 1981. However, paragraphs (a) and (f) of § 51.4995–3 do not require deposit of more than the tax imposed by section 4986. Therefore, A may estimate the effect of the net income limitation in determining the amount of windfall profit tax to be deposited for each taxable period. Furthermore, the amount by which the tax deposited by A for a preceding deposit period exceeds the actual liability for that period is treated as deposited for the next period. Accordingly, A deposits a total of $800 for the first taxable period of 1981 and $900 for each of the next two taxable periods. Thus, at the end of the four taxable periods ending within A's taxable year, A has made the following deposits:

October–December 1980, $1,000
January–March 1981, $800
April–June 1981, $900
July–September 1981, $900.

After September 30, 1981, A computes his net income limitation for property X and determines that his actual tax liability was $850 for each taxable period. A has satisfied the deposit requirements and is entitled to file a claim for credit or refund of $200.

Example (2). Assume the same facts as in example (1), except that A overestimates the effect of the net income limitation and deposits a total of $600 for the first taxable period of 1981 and $800 for each of the next two taxable periods. After September 30, 1981, A's deposits are as follows:

October–December 1980, $1,000
January–March 1981, $600
April–June 1981, $800

July–September 1981, $800.

$150 of the deposits for October, November, and December 1980 is treated as carried over to and deposited in the next taxable period, bringing the total deposit required for Jan-Mar 1981 to $700 (the amount equal to the $850 actual liability less $150 carried from the preceding period). However, due to the overestimation of the effect of the net income limitation, A has not deposited the total liability for that period or the next two taxable periods. Therefore, A is liable for $200 in undeposited tax (the amount equal to $3,400 total liability less $3,200 total deposits) plus interest and penalties (unless A's error was due to reasonable cause).

(iii) *Reporting requirements.* For the requirement that the producer file quarterly and annual statements if windfall profit tax deposits have been based on an application of the net income limitation provided in section 4988(b), see § 51.4997–1.

(h) *Government depositaries.* Deposits required by this section shall be made with a Federal Reserve bank or, at the depositor's election, with an authorized financial institution. See paragraph (i)(2) of this section.

(i) *Depositary forms.*—(1) *In general.* A person may make one, or more than one, remittance of the amount required to be deposited. However, a deposit for one taxable period shall be made separately from any deposit for another taxable period.

(2) *Tax deposit forms.* Each remittance of amounts required to be deposited by this section shall be accompanied by an FTD (Federal Tax Deposit, Excise Taxes) Form (Form 504). Such form shall be prepared in accordance with the instructions applicable thereto. The remittance, together with FTD Form 504, shall be forwarded to a financial institution authorized as a depositary for Federal taxes in accordance with 31 CFR 214 or, at the election of the person remitting the tax, to a Federal Reserve Bank. For procedures governing the deposit of Federal taxes at a Federal Reserve bank see 31 CFR 214.7. The timeliness of the deposit is determined by the date stamped on the Federal Tax Deposit form by the Federal Reserve bank or the authorized financial institution or, if section 7502(e) applies, by the date the deposit is treated as received under section 7502(e). Each person making deposits pursuant to this section shall report on the return for the period with respect to which such deposits are made information regarding such deposits in accordance with the instructions applicable to such return.

(3) *Procurement of prescribed forms.* Copies of the applicable deposit forms will so far as possible be furnished to purchasers and producers. Such a person will not be excused from making a deposit, however, by the fact that no form has been furnished to it. A person not supplied with the proper form should make application therefor in ample time to make the required deposits within the time prescribed. A person may secure the forms or additional forms by applying therefor and supplying its name, identification number, address, and the taxable period to which the deposits will relate. Copies of FTD Form 504 may be secured by application to a director of an Internal Revenue Service Center.

§ 51.4995–4 Election of purchaser and operator to have operator withhold, deposit tax, etc.

(a) *General rule.* Pursuant to section 4995(a)(7)(B), it has been determined that the substitution of the operator for the purchaser will make the administration of the windfall profit tax more practicable only when the operator is otherwise required by § 51.4995–3 to make deposits as a purchaser of crude oil produced from a different crude oil reservoir. Consequently, an election pursuant to section 4995(a)(7) shall be valid only when made under those circumstances. Where an election is allowed, the operator of the property and a purchaser of crude oil produced from that property may make a joint election under this section with respect to crude oil produced from the entire property or any portion thereof. While the election is in effect, and to the extent of the crude oil subject to the election, the operator shall be treated as the purchaser for purposes of chapter 45 (or related provisions of subtitle F of the Code) and this part and, accordingly, is subject to all of the requirements imposed thereby upon the purchaser (except to the extent that a qualified disburser's election under § 51.4995–5 relieves the operator of those requirements). The purchaser shall not be held responsible for failing to meet those requirements. The operator shall promptly notify all producers of crude oil from that property (or portion) that a joint election has been made and that all information otherwise required to be sent to the purchaser should be sent to the operator. If the operator makes payment for crude oil produced from the property to a partnership rather than directly to the producers, the notice shall be sent to the partnership. The operator and the purchaser must agree to transfer to the operator responsibility for meeting all the requirements otherwise imposed upon the purchaser in order for the agreement to constitute an effective election. If an election has been made under this section, the operator generally may treat as not subject to withholding amounts received for its own production from the property with respect to which the election has been made. However, in the case of an operator that is a partnership, a partner shall not be treated as not subject to withholding for amounts received for its own production from the property unless the partner is treated as not subject to withholding without regard to this section.

(b) *Method of making election; termination of election.* The joint election shall be made by the execution of a document, signed and dated by both the purchaser and operator, that states that both parties have agreed that the operator of the property shall be responsible for all the requirements otherwise imposed upon the purchaser by chapter 45 (or related provisions of subtitle F) of the Code or by this part. The purchaser and operator shall, within 10 days of the execution of the document, each forward a copy of the document to the Internal Revenue Service Center, Austin, Texas. The election shall remain in effect from the date of its execution (or later effective date specified in the election document) until either of the parties executes a document, signed, dated, and delivered to the other party, that declares that the joint election is to be terminated. The termination shall not take effect for at least 60 days after the execution of the termination document unless both the operator and the purchaser agree on an earlier effective date. The party executing the termination document shall promptly notify all producers of crud oil from that property of the termination and the resulting changes in responsibilities and shall, within 10 days of executing the termination document, forward a copy to the Internal Revenue Service Center, Austin, Texas. The party receiving the termination document shall, within 10 days of receipt, forward a copy to the Internal Revenue Service Center, Austin, Texas. Both the purchaser and operator shall retain in their records, for so long as they may be material in the administration of any internal revenue law, a copy of the joint election and any subsequent termination.

(c) *Status of operator who is also a producer.* If an election is made by the purchaser and the operator to have the operator treated as the purchaser and the operator is also a producer of crude oil from the property subject to the election, the operator, except as otherwise provided in this section, shall comply with all the requirements of this part that are imposed upon a producer

whose crude oil is not subject to withholding (see, *e.g.*, § 51.4995–3 (a) and (f) relating to the deposit schedules for producers not subject to withholding; see also, § 51.4995–3(d) relating to special deposit rules for certain operators and electing qualified disbursers).

§ 51.4995–5 Election of qualified disburser to withhold, deposit tax, etc.

(a) *In general.* Any "qualified disburser," as defined in paragraph (b) of this section, may make an election under this section to act as the withholding agent with respect to the crude oil the sales proceeds of which are distributed by that qualified disburser. An electing qualified disburser generally may treat as not subject to withholding amounts received for its own production from the property with respect to which it elects to act as a qualified disburser. However, in the case of a partnership that is an electing qualified disburser, a partner shall not be treated as not subject to withholding for amounts received for its own production from the property unless the partner is treated as not subject to withholding without regard to this section. While the election is in effect, and to the extent of the crude oil subject to the election, the qualified disburser shall be treated as the purchaser for purposes of chapter 45 (and related provisions of subtitle F of the Code) and this part (other than this section), and, accordingly, is subject to all of the requirements imposed thereby upon the purchaser. The qualified disburser shall promptly notify the operator of the property and every payee of any portion of its disbursements that the election has been made and that all information otherwise required to be sent to the purchaser should be sent to the qualified disburser.

(b) *Qualified disburser defined.* The term "qualified disburser" means—

(1) A disburser (as defined in § 51.4996–1(j)) who distributes an amount equal to or greater than 10 percent of the entire gross proceeds from the sale of crude oil from a property (or a portion of a property if that portion constituted a separate property prior to a unitization or aggregation), exclusive of that person's own share of the proceeds (if any), or

(2) A disburser that is an integrated oil company required to make semimonthly deposits pursuant to § 51.4995–3(a), or

(3) A federally registered partnership as defined in section 6501(o)(4).

(c) *Method of making election; termination of election.* The election shall be made by furnishing to the purchaser a signed and dated document that states facts that would establish that the person making the election is a "qualified disburser" and makes clear that the person has assumed complete responsibility for meeting all the requirements otherwise imposed upon the purchaser by chapter 45 (or related provisions of subtitle F) of the Code or by this part (other than this section) with respect to the crude oil the sales proceeds of which are distributed by the qualified disburser and for treating as not subject to withholding amounts received for its own production. The election document shall set forth the elector's identifying number (employer identification number or, if none, social security account number), the property or properties subject to the election, including the lease name, location, and identifying number, if any, and such other information as may be required by Form 6458 (Certification and Election Form) or its instructions. If the election is made with respect to more than one property, the election document shall identify each property. Generally, the election shall become effective with respect to crude oil removed after the last of the month in which the election document is received by the purchaser (or a later effective date specified in the election document). However, the election may be made retroactively effective with respect to all crude oil removed after December 31, 1980, if the purchaser and qualified disburser so agree in writing, and if the election is made no later than May 31, 1981. The election shall remain in effect until 60 days after the qualified disburser furnishes the purchaser a signed and dated document that contains all of the data required to be in the election document and that declares that the election is terminated (or a later date specified in the termination document), unless the purchaser agrees in writing to an earlier termination date. The qualified disburser shall promptly notify the operator and all affected producers of the termination and the resulting changes in responsibilities and shall, within 10 days of furnishing the termination document to the purchaser, forward a copy to the Internal Revenue Service Center, Austin, Texas. Both the purchaser and qualified disburser shall retain in their records, for so long as they may be material in the administration of any internal revenue law, a copy of the election document and any subsequent termination document. If a qualified disburser making the election provided by this section receives payment of the sales proceeds of the crude oil from an intermediate disburser rather than directly from the purchaser, and document required by this section to be furnished to the purchaser shall be furnished to such other disburser. Any person receiving such a document shall furnish a copy to the person from whom that person receives payment and, if any portion of the payments received by that person remains subject to withholding, shall specify the share of production to which the document relates.

(d) *Obligation of purchaser to file copy of election document with the Internal Revenue Service.* Within 10 days of receipt of an election document under this section, the purchaser shall forward a copy to the Internal Revenue Service Center, Austin, Texas.

(e) *Status of electing qualified disburser who is also a producer.* Except as otherwise provided in this section, an electing qualified disburser who is also a producer of crude oil from the property subject to the election shall comply with all the requirements of this part that are imposed upon a producer whose crude oil is not subject to withholding (see, *e.g.*, § 51.4995–3 (a) and (f) relating to the deposit schedules for producers not subject to withholding; see also, § 51.4995–3(d) relating to special deposit rules for certain operators and electing qualified disbursers).

(f) *Authority of district director to terminate election, require bond, etc.* If the district director for the district in which the principal place of business of the qualified disburser is located determines that the election under this section of any qualified disburser is not in the best interest of the Government in the effective collection and administration of the windfall profit tax, the district director may terminate the election or may permit the election to continue upon compliance with reasonable conditions, such as the posting of a bond. In the case of a termination the district director shall promptly notify the purchaser or other affected disbursers of the change in responsibilities.

(g) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). P purchases crude oil from a lease operated by O. P pays 100 percent of the sales proceeds to O who retains 50 percent (the amount attributable to O's share of production) and distributes the remaining 50 percent to all the other producers in accordance with their percentage share of production. Since O is a qualified disburser, O may elect under this section to undertake all the windfall profit tax responsibilities otherwise imposed upon P. If O does elect, O furnishes P the election document and P withholds no windfall profit tax from payments to O. P must submit a copy of the

election document to the Internal Revenue Service.

Example (2). Assume the same facts as in example (1) except that one of the producers receiving payment from O is a federally registered partnership. The partnership and O are both qualified disbursers entitled to make the election provided by this section. If the partnership and O both make the election, O must not withhold tax from payments to the partnership and must furnish a copy of the partnership's election document to P together with O's election document. If the partnership makes the election but O does not, O must furnish a copy of the partnership's election document to P and must specify the share of production held by the partnership. P should withhold tax from payments made to O except for the portion of the payment that is attributable to the partnership's share of production. The partnership would withhold tax from payments made to its partners. P must submit to the Internal Revenue Service a copy of any election document received by P.

Example (3). Assume the same facts as in example (1). Assume further that O pays A, a producer that is not an integrated oil company, 20 percent of the entire sales proceeds, and that A retains 75 percent of the 20 percent payment from O and distributes the remaining 25 percent to producer B. A is not a qualified disburser because A distributes only 5 percent of the entire proceeds of sale and is neither an integrated oil company required to make semimonthly deposits pursuant to § 51.4995–3(a) nor a federally registered partnership.

Example (4). Assume the same facts as in example (1) except that P directly pays producer C, who has a 20 percent share of production and that the remaining 80 percent is paid to O who retains the 50 percent share attributable to O's share of production and distributes the remaining 30 percent to the other producers. O is a qualified disburser who may make the election provided by this section with respect to the sales proceeds received by O. C, who retains the entire proceeds received from P, is not a qualified disburser. P must not withhold upon the payment to O but must withhold upon the payment to C in accordance with the rules of § 51.4995–1.

Example (5). Assume the same facts as in example (1) except that O, after retaining the 50 percent share of the sales proceeds attributable to O's production, distributes the remaining proceeds to producer A. Assume further that A retains 20 percent of the 50 percent payment from O and distributes the remaining 80 percent to other producers. O and A are both qualified disbursers because O distributes 50 percent of the entire sales proceeds and A distributes 40 percent. If both O and A make the election provided by this section, O does not withhold tax from the payments to A and deposits tax with respect to O's own production as a producer whose crude oil is not subject to withholding.

§ 51.4996–1 Definitions.

For purposes of this part and chapter 45 of the Code—

(a) *Purchaser.* The term "purchaser" includes only the first person (as defined in section 7701 (a)(1)) purchasing production of domestic crude oil.

(b) *Producer.*— (1) *In general.* Except as otherwise provided in this paragraph, the term "producer" means the holder of the economic interest with respect to the crude oil in place in the ground. For this purpose, the term "economic interest" has the same meaning as it has for purposes of subtitle A of the Code. For example, the owner of a production payment shall be treated as the producer only to the extent that the production payment is treated as an economic interest by section 636 (taking into account the effective date of that section).

(2) *Partnerships, trusts, and estates.* In the case of a partnership, the partnership's economic interest in the crude oil shall be allocated among the partners on the basis of each partner's proportionate share of the partnership's income from the crude oil, and the partner to whom the crude oil is allocated shall be treated as the producer of the crude oil. In the case of a trust or estate, the entity is the producer rather than the beneficiaries (see § 51.4994–1 for the treatment of trusts and estates for purposes of determining the applicability of an exemption from the windfall profit tax).

(3) *Net profits interest.* [Reserved]

(c) *Operator.* The term "operator" means the person who bears more of the responsibility for the management and operation of crude oil production from the property than any other person. In the case of a business entity (including a partnership) the operator is the entity and not its employee or owner (or general partner). However, under section 4996(a)(2)(B), another person may be designated as the operator, for purposes of chapter 45 of the Code by persons holding 50 percent or more of the total shares of production attributable to operating mineral interests in the property. Such a designation must be made in writing and signed by all persons participating in the designation. A copy of the designation document shall be furnished to the Internal Revenue Service Center, Austin, Texas, within 30 days of its effective date.

(d) *Removed from the premises; deemed removed.*—(1) *In general.* Except as otherwise provided in this paragraph, crude oil is removed from the premises when it is physically transported off the premises. If the manufacture or conversion of crude oil into refined products begins before it is considered to have been removed from the premises, the crude oil shall without exception be treated as removed from the premises on the date the manufacture or conversion begins. Additionally, crude oil (other than crude oil described in subparagraph (2) or crude oil that has been manufactured or converted) that is used on the premises shall be treated as removed from the premises on the date of such use. The term "premises" has the same meaning as it has for purposes of determining gross income from the property under section 613 (*i.e.*, immediate vicinity of the well). See § 1.613–3(a).

(2) *Certain use not considered removal.* Crude oil that is produced and then, without leaving the premises and without manufacture or conversion, injected into any well on the premises or used on the premises to power a production process such as a tertiary injection process or a water flood, or production equipment such as an artificial lift device, is not deemed removed from the premises.

(3) *Certain transportation not considered removal.* (i) This subparagraph (3)(i) applies to the transportation of crude oil away from the premises to another part of the same tract or parcel of land, or from one tract or parcel of land to a contiguous tract or parcel of land (or to a tract or parcel that is in a group of contiguous tracts or parcels that is contiguous to a producing tract or parcel). Such transportation shall not be considered removal from the premises provided (A) that the crude oil has not been manufactured or converted, (B) that on a tract or parcel of land described in the preceding sentence the crude oil either is used to power a production process or production equipment or is injected into a well, and (C) that the same person or group of persons holds 100 percent of the operating mineral interests (as defined in § 1.614–2(b)) in each of the tracts or parcels of land. If the crude oil not deemed removed pursuant to this subparagraph (3)(i) is produced from a property from which more than one category of crude oil is produced, the crude oil that is injected or used to power a production process or production equipment shall be allocated among such categories in proportion to the production from that property in each such category that was removed from the premises during the immediately preceding quarter. For purposes of the preceding sentence, the categories of crude oil are tier 1 oil, tier 2 oil, newly discovered oil, tier 3 oil other than newly discovered oil, and exempt oil.

(ii) Crude oil shall not be considered removed from the premises when, prior to sale, it is transported a short distance from the premises to a storage facility

where the crude oil is to be held until sale. In that case, the crude oil shall be considered to be removed from the premises when it is removed from the storage facility.

(4) *"Wash" and "frac" oil.* If oil that has been removed or deemed removed pursuant to this paragraph is injected through a well into a reservoir (*e.g.*, "wash" or "frac" oil), the first crude oil produced from the same reservoir through that well after injection (up to an amount equal to the amount injected) shall be deemed not removed, provided the operator certifies the information required by paragraph (b)(7) of § 51.6050C–1. The provisions of this subparagraph do not apply to oil for which a deduction is allowable under section 193.

(e) *Taxable period.* The term "taxable period" means March 1980 and each calendar quarter beginning after March 1980.

(f) *Energy regulations.* The term "energy regulations" means regulations prescribed under section 4(a) of the Emergency Petroleum Allocation Act of 1973 (15 U.S.C. 753(a)) (crude oil price control regulations). References to the energy regulations shall refer to those regulations as in effect on April 2, 1980, unless the reference is to the March or June 1979 regulations. See section 4996(b)(8).

(g) *Integrated oil company.* Except as provided in paragraph (g)(4) of this section, the term "integrated oil company" means a taxpayer that is a "retailer" or "refiner" or a taxpayer who has made the election provided in paragraph (g)(3) of this section.

(1) *Retailer.* The term "retailer" means any taxpayer described in section 613A(d)(2) applying that section on a quarterly basis, *i.e.*, one who directly, or through a related person, sells crude oil or natural gas (excluding bulk sales to commercial or industrial users) or any product derived from crude oil or natural gas—

(i) Through any retail outlet operated by the taxpayer or a related person, or

(ii) To any person—

(A) Obligated under an agreement or contract with the taxpayer or related person to use a trademark, trade name, of service mark or name owned by such taxpayer or related person, in marketing or distributing crude oil or natural gas or any product derived from crude oil or natural gas, or

(B) Given authority, pursuant to an agreement or contract with the person or related person, to occupy any retail outlet owned, leased, or in any way controlled by the taxpayer or related person.

However, notwithstanding the preceding sentence, this subparagraph shall not apply in any case where the combined gross receipts from the sale of such crude oil, natural gas, or any product derived therefrom, for the taxable period of all retail outlets taken into account for purposes of this subparagraph do not exceed $1,250,000. For purposes of this subparagraph, sales of crude oil, natural gas, or any product derived from crude oil or natural gas shall not include sales made of such items outside the United States, if no domestic production of the person or a related person is exportd during the taxable period or immediately preceding taxable period.

(2) *Refiner.* The term "refiner" means any taxpayer described in section 613A(d)(4) applying that section on a quarterly basis, *i.e.*, one who is engaged in the refining of crude oil or is related to a person so engaged, provided that on any day during the taxable period the refinery runs of the person and any related person exceed 50,000 barrels.

(3) *Election to be treated as an integrated oil company.* Any taxpayer who was an integrated oil company during any taxable period of the current or preceding calendar year may elect, for purposes of administering the windfall profit tax, to be treated as an integrated oil company for some or all of the taxable periods in the current year during which the taxpayer would not otherwise be considered to be an integrated oil company. The election shall be made by filing a document with the Internal Revenue Service Center, Austin, Texas. The document shall state that the election is made and shall set forth the facts that entitle the taxpayer to make the election. The election shall be considered to take effect with the first taxable period beginning after the election document is received by the Internal Revenue Service Center and to remain in effect for all taxable periods until revoked, unless the election document specifies a different effective period. The election may be revoked at any time by filing with the Internal Revenue Service Center, Austin, Texas a document that states that the election is revoked. The revocation shall be effective with the first taxable period beginning after the revocation document is received by the Internal Revenue Service Center unless a later effective date is specified in the revocation document. If an election or revocation document is sent to the service center by mail, it shall be considered received when posted by United States mail, properly addressed, and with sufficient postage.

(4) *Special rule.* For purposes of § 51.4995–3 (relating to depositary requirements) if for any taxable period a taxpayer is an integrated oil company solely because that taxpayer is related to a person who is an independent refiner (as defined in paragraph (h) of this section), such taxpayer shall not be considered an integrated oil company for that taxable period.

For purposes of this paragraph, the term "related person" has the same meaning as in section 613A(d) (2) and (4).

(h) *Independent refginer.* The term "independent refiner" means any taxpayer who is engaged in the refining of crude oil, and who

(1) Obtained, directly or indirectly, in the second preceding calendar quarter, more than 70 percent of his refinery input of domestic crude oil (or 70 percent of his refinery input of domestic and imported crude oil) from producers who do not control, are not controlled by, and are not under common control with such refiner, and

(2) Marketed or distributed in such quarter and continues to market or distribute a substantial volume of gasoline refined by him through branded independent marketers or nonbranded independent marketers. The term "branded independent marketer" means a person who is engaged in the marketing or distributing of refined petroleum products pursuant to—

(i) An agreement or contract with a refiner (or a person who controls, is controlled by, or is under common control with such refiner) to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner (or any such person), or

(ii) An agreement or contract under which any such person engaged in the marketing or distributing of refined petroleum products is granted authority to occupy premises owned, leased, or in any way controlled by a refiner (or person who controls, is controlled by, or is under common control with such refiner),

but who is not affiliated with, controlled by, or under common control with, any refiner (other than by means of a supply contract, or an agreement or contract described in subparagraph (1) (i) or (ii)) and who does not control such refiner. The term "nonbranded independent marketer" means a person who is engaged in the marketing or distributing of refined petroleum products, but who is not a refiner, is not a person who controls, is controlled by, is under common control with, or is affiliated with a refiner (other than by means of a supply contract), and is not a branded independent marketer. For purposes of this paragraph, the term "independent

refiner" does not include any taxpayer who is not directly engaged in the refining of crude oil even if such taxpayer is related to a person directly engaged in the refining of crude oil. However, for purposes of the preceding sentence, a taxpayer not directly engaged in refining will be treated as directly engaged in refining if an amount equal to 95 percent or more of the crude oil purchased during the calendar quarter of which such taxpayer is the first purchaser is refined (or will be refined) by a refiner (or refiners) who is a member of a controlled group of corporations (within the meaning of section 1563(a)) of which such taxpayer is a member, provided that the refiner (or refiners) is an independent refiner without regard to this sentence and further provided that such taxpayer is not a producer of crude oil and is not a person described in paragraph (2) or (4) of section 613A(d). If a taxpayer would be treated as directly engaged in the refining of crude oil under the rule of the preceding sentence but for the fact that an amount less than 95 percent of such crude oil purchased is refined (or will be refined) by a refiner within the same controlled group of corporations as the taxpayer, the taxpayer nevertheless will be treated as directly engaged in the refining of crude oil if it is established by clear and convincing evidence that an amount equal to 95 percent or more of such crude oil purchased would have been refined by a refiner (or refiners) within the same controlled group of corporations but for an act of God, a strike, a severe mechanical breakdown, an injunction, or a restraining order.

(i) *Property.* [Reserved]

(j) *Disburser.* The term "disburser" means a person receiving payments from the sale of crude oil who is responsible for distributing some or all of the payment to one or more producers of the oil (either directly or through intermediate disbursers). In the case of a partnership distributing proceeds from the sale of crude oil to its partners, the partnership and not the partner (or partners) responsible for distributing the proceeds is considered the disburser.

(k) *Domestic.* The term "domestic," when used with respect to crude oil, refers to any crude oil (including crude oil derived from natural gas production) produced in the United States or in a possession of the United States.

(l) *Crude oil.* [Reserved]

(m) *Other.* See section 4996 (b) and (d) for definitions of "barrel," "United States," "possession of the United States," "Indian tribe," and "Alaskan oil from Sadlerochit reservoir."

§ 51.4996–2 Severance tax adjustment.

(a) *In general.* The severance tax adjustment with respect to any barrel of crude oil is the amount by which any severance tax imposed with respect to that barrel exceeds the severance tax which would have been imposed if the barrel had been valued at its adjusted base price.

(b) *Severance tax defined.* For purposes of this section, the term "severance tax" means any tax imposed by a State (not including a political subdivision of a State) with respect to the extraction of crude oil that is determined on the basis of the gross value of the extracted crude oil. The term "severance tax" does not include a tax levied on the value of reserves in the ground or a tax levied on the basis of net proceeds from production. Furthermore, a tax on the removal of crude oil from the ground levied as a fixed fee per barrel is not a severance tax because the amount of that tax is not determined by reference to the gross value of the extracted crude oil.

(c) *Limitations.*—(1) *15 percent limitation.* A severance tax shall not be taken into account to the extent that the total rate thereof exceeds 15 percent.

(2) *Increases after March 31, 1979.* The amount of a State's severance tax taken into account under paragraph (a) of this section shall not exceed the amount which would have been imposed under that State's severance tax, as in effect on March 31, 1979, unless that excess is attributable to an increase in the rate of the severance tax (or to the imposition of a severance tax) which applies equally to all portions of the gross value of each barrel of crude oil subject to that tax. For purposes of this subparagraph, the conversion of a tax levied at a fixed fee per barrel into a tax based on the gross value of crude oil removed constitutes an initial imposition of a severance tax.

§ 51.4996–3 Special rules for post–1978 transfers of property.

(a) *In general.* The rules of this section apply for all purposes of this part and chapter 45 of the Code, including the application of the June 1979 energy regulations for purposes of this part and chapter 45 of the Code.

(b) *Classification of crude oil from property transferred after 1978.* If a portion of a property (as defined in paragraph (i) of §51.4996–1) is transferred after December 31, 1978, any crude oil produced from any portion of the property constitutes crude oil from a stripper well property, newly discovered oil, or heavy oil only if such crude oil would be so classified if there had not been a transfer. The term "transfer" means any sale, exchange, lease, sublease, gift, bequest, devise, or other disposition (including a distribution by an estate, or a contribution to or distribution by a corporation, partnership, or trust, whether or not a taxable event) of rights (including rights less than fee simple) with respect to the property. Thus, for example, a change in the identity of the holder of a lease, mineral rights, royalty rights, or fee simple ownership rights with respect to a portion of the property is a transfer, even if such change is the result of corporate reorganization, gift, devise, or inheritance.

§ 51.4997–1 Returns and recordkeeping.

(a) *Returns.* Returns with respect to windfall profit taxes imposed by section 4986 shall be made as provided in this section.

(1) *Quarterly return.* A return for each taxable period (on Form 720, with Form 6047 attached thereto, in accordance with the instructions on those forms) shall be made by the following:

(i) Each purchaser of crude oil required to deduct and withhold tax pursuant to § 51.4995–1;

(ii) Each operator of a property or qualified disburser who, having made an election pursuant to §§ 51.4995–4 or 51.4995–5, is required to deduct and withhold tax; and

(iii) Each producer of crude oil the tax with respect to which is excepted from the withholding requirement by a subparagraph of § 51.4995–1 (a).

(2) *Annual return.* A return for each calendar year shall be made by each producer of crude oil whose liability for tax with respect to crude oil that was removed during the four taxable periods of the calendar year exceeds the amount of tax withheld with respect to that crude oil.

Every producer taking the net income limitation provided by section 4988 (b) into account in making windfall profit tax deposits shall file quarterly and annual statements in accordance with forms and instructions provided for that purpose. See § 51.6076–1 for the rules relating to the time for filing the returns required by this section and § 51.6081–1 for extensions of time for filing returns.

(b) *Recordkeeping requirements.* Each taxpayer liable for tax under section 4986, each producer or purchaser of domestic crude oil, each operator of a property from which domestic crude oil was produced, each disburser, and each partnership or other person receiving information on behalf of or providing information to producers under this part shall keep records of all documents, material, and information necessary to

the determination of the windfall profit tax or that affect his, her, or its administrative obligations under the Crude Oil Windfall Profit Tax Act of 1980 or the regulations in this part, including material furnished to other persons, as well as information received from other persons. The records shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

§ 51.4997-2 Certain information to be furnished by purchaser and others.

(a) *In general*—(1) *Purchasers.* If the rules for collection and deposit of tax under §§ 51.4995–1 and 51.4995–3 apply to a purchaser with respect to any crude oil (or would apply to the purchaser in the absence of an exemption certificate given pursuant to § 51.4995–1 (b)(3)), such purchaser shall furnish statements in accordance with paragraphs (b), (c), (d), and (e) of this section to each producer of the crude oil, except that, if payment for the crude oil is made to the operator of the property from which the crude oil is produced, a partnership, or other disburser (whether or not a "qualified disburser," as defined in § 51.4995–5) rather than to each producer individually, the statements shall be furnished to the operator, partnership, or other disburser, as the case may be. Such purchaser shall also file the information return required by paragraph (c) of this section with the Internal Revenue Service (in the case of yearly statements on Form 6248).

(2) *Operators, partnerships, disbursers*—(i) *In general.* Except as otherwise provided in this subparagraph, any person who is to be furnished a statement pursuant to paragraph (a)(1) with respect to crude oil of which such person is not the producer (referred to hereinafter in this section as the "intermediary") shall, within 15 days of receipt of any statement furnished pursuant to paragraph (a)(1), furnish to each producer, operator, partnership, or disburser to whom such person makes payment for the crude oil a statement containing information relating to the share of crude oil attributable to that producer, operator, partnership, or disburser. However, the rule of the preceding sentence shall apply to the statement required by paragraph (b) of this section (relating to monthly statements of tax withheld) to be furnished by a partnership to a partner only if the partner to receive the statement has requested that it be furnished. The statement furnished by the intermediary to the producer, operator, partnership, or disburser shall be based upon the information contained in the statement received by the intermediary pursuant to paragraph (a)(1) or this subparagraph. Such statement shall not contain any information contrary to the information contained in the statement received by the intermediary pursuant to paragraph (a)(1) or this subparagraph. In the case of a partnership furnishing the statement required by paragraph (c) (Form 6248) or an annual statement required by paragraph (d) directly to any of its partners who are producers, the statement shall be furnished by the date that is the later of—

(A) 15 days following receipt of such a statement by the partnership, or

(B) The first April 30 following the end of the year to which the statement relates.

Any person furnishing the statement required by paragraph (c) (Form 6248) shall file a copy with the Internal Revenue Service as an information return. If a person required to furnish a statement under this paragraph makes payment to the same producer, operator, partnership, or disburser for crude oil removed from more than one property, the information for each property may be aggregated into one statement (and one information return) furnished under this paragraph. If at the time a person furnishes a yearly statement required by paragraph (c) (Form 6248) to a producer, operator, partnership, or disburser such person expects to provide the same producer, operator, partnership, or disburser with another return with an additional or amended statement for the same year, the statement shall inform the recipient of that fact. If an intermediary is required by this subparagaraph to furnish and file Form 6248 and the intermediary has not been furnished the Form 6248 pursuant to paragraph (a)(1) of this subparagraph on which to base its own Form 6248 by the first April 30 following the end of the year to which the Form 6248 relates, the intermediary shall, within 15 days (*i.e.*, by May 15), furnish to each producer, operator, partnership, or disburser to whom the intermediary makes payments for crude oil for which the Form 6248 was not received, a statement setting forth the amount of payments that the intermediary made to the recipient of the statement during the immediately preceding calendar year, the name, address, and employer identification number (or, if none, social security number) of the person required by paragraph (a)(1) or this subparagraph to furnish Form 6248 to the intermediary, the fact that the person required to furnish Form 6248 to the intermediary has not yet done so, and such other information as may be required by Form 6248 or its instructions. The intermediary shall file with the Internal Revenue Service a copy of each statement furnished pursuant to the preceding sentence by the time the intermediary must furnish such statement (*i.e.*, May 15).

(ii) *Notification of error.*—(A) *Underwithholding.* If an intermediary is of the opinion that there has been an underwithholding or overwithholding of windfall profit tax on a payment received, the intermediary shall, within 5 days of forming the opinion that withholding was inaccurate, notify the person from whom the intermediary received payments of the amount considered to be underwithheld or overwithheld. In addition, the intermediary shall, at the time the intermediary makes payment of an amount considered to be inaccurately withheld upon to any producer, operator, partnership, or disburser, furnish to each such payee a statement setting forth sufficient information to briefly explain the reason for the difference, if known, between the purchaser and the intermediary on the amount withheld.

(B) *Incorrect yearly statement.* If an intermediary is of the opinion that the yearly statement (Form 6248) it received pursuant to paragraph (a)(1) or this subparagraph is incorrect, the intermediary shall, within 15 days of forming that opinion, notify the person furnishing the statement of the intermediary's opinion. If an intermediary notifies the person furnishing the statement that it considers the statement furnished to be in error, the intermediary shall furnish the yearly statement required by paragraph (a)(2)(i) of this section on the date that is the earlier of—

(*1*) 30 days after the intermediary notifies the person furnishing the statement to the intermediary that the intermediary considers it to be in error, or

(*2*) 10 days after notification from such person that such person disagrees with the intermediary's opinion that there is an error.

The statement furnished by the intermediary shall be based upon the information contained in the statement furnished to the intermediary pursuant to paragraph (a)(1) or this subparagraph including any modification made to that statement by the person furnishing the statement after receiving a notification from the intermediary pursuant to this

subdivision. However, the intermediary shall indicate on the statement the difference of opinion if Form 6248 or its instructions so require.

(3) *Identifying numbers.* Every person with respect to whom the annual information return prescribed by paragraph (c) of this section (Form 6248) is required to be made by another person and every person who is required to be shown as a member of a related group on another person's independent producer certificate pursuant to § 51.4995–2(c)(1) shall furnish to such other person the person's employer identification number, or if an employer identification number has not been assigned, the person's social security account number.

(b) *Monthly statement.* [Reserved]

(c) *Yearly statement of windfall profit tax liability.*—(1) *In general.* For each calendar year, the purchaser shall furnish statements and shall file information returns with the Internal Revenue Service. A separate statement shall be furnished to and a separate information return shall be filed for each producer, operator, partnership, or disburser to whom the purchaser made payments for crude oil purchased during the calendar year. If the purchaser made payments to the same producer, operator, partnership, or disburser for crude oil purchased from more than one property, the information for each property may be aggregated into one statement and one information return. Furthermore, that statement and return may be combined with any statement and return required by paragraph (a)(2). If at the time such a statement is furnished to a person the purchaser expects to provide that person with another statement with additional information for the same year, the purchaser shall inform the recipient of that fact. Each statement and information return shall contain the information with respect to oil for which that person received payment required by the form (Form 6248) or its instructions. If the purchaser did not withhold tax from payments to that person because of the receipt of an exemption certificate, the yearly statement and information return shall identify the applicable exemption and set forth the number of barrels that would have been in each tax tier if the oil had been taxable crude oil.

(2) *Producers not subject to withholding.* Every producer of crude oil not subject to withholding under § 51.4995–1, other than a producer who has certified pursuant to § 51.4995–2 that its share of production is "exempt oil," shall file the information return with respect to that crude oil that would otherwise have been required to be filed by the purchaser.

(3) *Prescribed form.* The statement and information return required by this paragraph shall be furnished and filed on Form 6248. The statement shall be furnished in duplicate. The information return shall be filed in the place and in the manner provided in the instructions to Form 6248. The Internal Revenue Service may prescribe procedures permitting the filing of the information return required by this paragraph on magnetic tape (or other approved media) instead of paper returns.

(4) *Time for furnishing yearly statement of windfall profit tax liability and filing yearly information returns.* Each yearly statement required to be furnished by a purchaser under this paragraph for any calendar year shall be furnished on or before March 31 of the year immediately following the calendar year to which the statement applies, and each yearly information return required to be filed by a purchaser shall be filed on or before April 30 of that year. Each yearly statement required to be filed by an intermediary shall be filed within 30 days of the date the intermediary is required to furnish such statement.

(5) *Correction of errors in statements and returns.* (i) If a person required to furnish a yearly statement or file an information return under this paragraph or paragraph (a)(2) ascertains not later than June 30 of the year following the year to which the statement relates that the statement or return is not correct, such person shall correct the error by furnishing a corrected statement and filing a corrected return not later than the following July 31. However, the preceding sentence shall not apply (A) in the case of an intermediary for an error for which the intermediary is required by paragraph (a)(2)(ii) to give a notification of error, or (B) if the corrected statement or return would reflect a change of less than $100 in each of the following items: Windfall profit tax liability, windfall profit tax withheld, and amount of underwithheld or overwithheld tax.

(ii) If, at the time that a person is required to furnish an original yearly statement and file a return under this paragraph for any year, it has been ascertained that the statement of an earlier year was not correct and has not been corrected, such person shall furnish a corrected statement and file a corrected return by the time that the next original statement and return is required. However, the preceding sentence shall not apply (A) in the case of an intermediary for an error for which the intermediary is required by paragraph (a)(2)(ii) to give a notification of error, or (B) if the corrected statement or return would reflect a change of less than $1.00 in each of the following items: Windfall profit tax liability, windfall profit tax withheld, and amount of underwithheld or overwithheld tax.

(iii) The provisions of this subparagraph may be illustrated by the following examples:

Example (1). On March 31, 1983, A, a purchaser of crude oil, furnished B, a producer of crude oil, with a yearly statement (Form 6248) relating to crude oil that A purchased from B during 1982. On June 10, 1983, A ascertained that the yearly statement furnished to B understated B's windfall profit tax liability by $100. A must furnish to B and file with the Internal Revenue Service a corrected yearly statement by July 31, 1983.

Example (2). Assume the facts in example (1) except that A ascertained the error on July 1, 1983. A would be required to furnish and file the corrected yearly statement by March 31, 1984 (the time the next original yearly statement is required to be furnished and filed).

Example (3). Assume the facts in example (1) except that the yearly statement understated B's windfall profit tax liability by $99. A would be required to furnish and file the corrected yearly statement by March 31, 1984.

Example (4). On April 30, 1983, C, an intermediary, furnished D, a producer of crude oil, a yearly statement relating to 1982 for crude oil for which C made payments to D. On June 1, 1983, C ascertained that, based on the information contained in the yearly statement furnished to C on March 31, 1982, C had understated D's windfall profit tax liability by $50. On April 15, 1984, C received a yearly statement relating to payments made to C for crude oil removed in 1983. C is required to furnish to D a yearly statement relating to 1983 for payments made to D by April 30, 1984. C is also required to furnish to D by April 30, 1984, a correct yearly statement relating to 1982. C is also required to file with the Internal Revenue Service the correct yearly statement by May 30, 1984 (the date that is 30 days after the date C is required to furnish the corrected yearly statement).

(6) *Identifying numbers.* Any person required to make an information return with respect to any other person under this paragraph shall obtain from that other person that person's identifying number (employer identification number or, if none, social security account number) and shall include that number in the information return. Furthermore, any person required to make an information return that is based, in whole or in part, upon information received from another person shall include that other person's identifying number in the information return.

(d) *Detailed statement to be furnished upon request.*

(1) [Reserved].

(2) If the information request specifies that the information is requested for each taxable period, the information shall be provided for each taxable period not later than the last day of the second month following the end of the taxable period (or, if later, 90 days following receipt of the request). If the information request states that the person requesting the information has an income tax year (for Federal income tax purposes) that ends on a date other than the last day of a calendar quarter and states the date on which the taxable year ends, the information for the taxable period within which the taxable year (for Federal income tax purposes) ends shall be provided for each month in that period. In any other case, the requested information shall be provided for each calendar year not later than March 31 of the following calendar year (or, if later, 90 days following receipt of the request).

(e) *Suspended accounts.* If, due to the fact that the identity of the producer is not known or is in dispute, the sales proceeds of crude oil have been placed in escrow or otherwise held in suspense and have not been distributed to the producer at the time that the information return is required to be filed under paragraph (c), a return (Form 6248), clearly identified as relating to suspended funds, shall be filed for each such account. At the filer's option, some or all of the returns may be aggregated into a single return. Not later than 60 days after the sales proceeds have been released to the producer, an information return shall be filed with an identification of the producer, and the statements required by paragraphs (c) and (d) of this section for past periods shall be furnished to the producer.

(f) *Cross reference.* For the requirement that the operator or qualified disburser furnish the statements and file the returns required by this section in the event that the election has been made to have the operator or qualified disburser deduct and withhold tax, etc. see §§ 51.4995–4 and 51.4995–5.

§ 51.6050C–1 Information furnished by operator for purposes of windfall profit tax.

(a) *In general.* The operator of any property from which domestic crude oil is removed during a calendar month shall furnish a monthly statement, signed under the penalties of perjury if the statement is furnished to the purchaser, certifying the information specified in paragraph (b) of this section to:

(1) The purchaser of the crude oil, if the purchaser is required to withhold tax from payments for the crude oil pursuant to § 51.4995–1 (see paragraph (e) of this section for the requirement that the statement be furnished to a qualified disburser), or

(2) The producer, in any other case, except that if the producer of crude oil is a partner in a partnership, this statement may be furnished to the partnership if the producer and the partnership so agree. In that case, the partnership shall furnish the information to the producer with respect to that producer's share of the crude oil within 15 days of receipt.

(b) *Information to be certified.* In the case of crude oil that qualifies as exempt Alaskan oil (as defined in § 51.4994–1), the statement shall certify that the crude oil is exempt Alaskan oil. In all statements not certifying an exemption for Alaskan oil, the following information is to be certified in the statement required under paragraph (a) of this section:

(1) The tier, for purposes of the tax imposed by section 4986, of the crude oil removed during the month and, if the crude oil is tier 3 oil, whether the crude oil constitutes newly discovered oil, heavy oil, or incremental tertiary oil;

(2) The amount of the crude oil removed and, if the crude oil removed includes crude oil of different tiers or categories, the amount of crude oil removed of each tier or category;

(3) The adjusted base price (within the meaning of section 4989) for each tier of crude oil removed;

(4) The severance tax adjustment, if any, provided under section 4996(c) with respect to each tier of crude oil removed;

(5) The TAPS adjustment, if any, provided under section 4996(d), and the average removal price for the month, in the case of crude oil from the Sadlerochit Reservoir;

(6) The property from which the crude oil was removed; and

(7) If oil that has been removed or deemed removed is injected into a well (*e.g.*, "wash" or "frac" oil)—

(i) The quantity of crude oil produced that is deemed not removed under § 51.4996–1(d)(4) (assuming the operator makes the certification required by this paragraph), and

(ii) That the operator will maintain records sufficient to establish that such quantity of crude oil is deemed not removed under that section (*e.g.*, documentation of the purchase, injection, recovery, and removal or sale of the "wash" or "frac" oil).

However, in the case of a statement furnished to a purchaser, the statement need not certify any information that was certified in a previous statement furnished to that purchaser under this section provided that the omitted information has not changed since the previous certification and the purchaser has not requested recertification. When providing information to a purchaser, the operator shall provide the information with respect to crude oil sold to that purchaser removed during the month. In the case of a statement furnished to a producer or partnership, the operator shall provide the information with respect to that person's allocable share of all crude oil removed from the premises during the month (including any crude oil delivered in kind to that producer).

(c) *Time and manner of certifying information.* The operator shall furnish the statement required by paragraph (a) of this section to the purchaser or producer, as the case may be, no later than the fifteenth day of the month following the calendar month in which the crude oil was removed.

(d) *Agreement between operator and recipient of statement.* If the purchaser or producer agrees in a signed statement that the operator shall be relieved of the duty of furnishing to such purchaser or producer—

(1) The statement otherwise required under paragraph (a) of this section, or

(2) Some or all of the information required under paragraph (b) of this section,

the operator shall be relieved of such duty, provided that the purchaser or producer has the information necessary to comply with all of the requirements of this part without such statement or information. Such an agreement shall immediately cease to have effect when the operator, purchaser, or producer, by a written statement signed by an authorized person, notifies the other party that it is terminating the agreement.

(e) *Special rule.* If an election under § 51.4995–5 is in effect under which a qualified disburser assumes the obligations of the purchaser, the statement otherwise required by this section to be furnished to the purchaser shall be furnished to the qualified disburser.

(f) *Producer's certificate.* For the requirement that certain operators furnish producer certificates to purchasers, see § 51.4995–2(e).

(g) *Penalties.* See sections 6678, 7206, and 7241 (relating to civil and criminal penalties).

§ 51.6076–1 Time for filing return of windfall profit tax.

Each quarterly return required by paragraph (a)(1) of § 51.4997–1 shall be

filed not later than the last day of the second month following the close of the taxable period. Each annual return required by paragraph (a)(2) of § 51.4997–1 shall be filed not later than May 31 of the first year following the close of the calendar year in which the crude oil giving rise to the underpayment was removed.

§ 51.6081–1 Extension of time for filing returns.

(a) District directors and directors of service centers are authorized to grant a reasonable extension of time for filing with the Internal Revenue Service any return, statement, or other document which relates to the tax imposed by chapter 45 and which is required under the provisions of chapter 45 or the regulations thereunder. However, except in the case of taxpayers who are abroad, such extensions of time shall not be granted for more than 3 months. An extension of time for filing a return shall not operate to extend the time for payment of the tax or any part thereof unless specified to the contrary in the extension. Any extension of time for filing a return shall not operate to extend the time for furnishing any information statement or other document with a person other than the Internal Revenue Service.

(b) The application for an extension of time for filing the return shall be addressed to the district director or director of the service center with whom the return is to be filed and must contain a full recital of the causes for the delay. It should be made before the expiration of the time within which the return otherwise must be filed, and failure to do so may indicate negligence and constitute sufficient cause for denial. It should, where possible, be made sufficiently early to permit consideration of the matter and reply before what otherwise would be the due date of the return.

(c) If an extension of time for filing the return is granted, a return shall be filed before the expiration of the period of extension.

§ 51.6402–1 Credit or refund of overpayment of windfall profit tax.

(a) *In general.* Any purchaser or producer who pays, or is deemed to have paid under section 4995(a)(4), more than the correct amount of the crude oil windfall profit tax imposed by chapter 45 for a taxable period may file a claim for refund of the overpayment or may claim credit for such overpayment, in the manner and subject to the conditions stated in this section and § 301.6402–2 of this chapter (Regulations on Procedure and Administration).

(b) *Overpayments by purchasers and by producers depositing tax.*—(1) *In general.* If, for any taxable period, a purchaser or a producer (or a person acting in both capacities) has paid more than the sum of the amount required to be deposited as a purchaser for crude oil removed during that taxable period plus the amount of tax imposed by section 4986 (computed without regard to the net income limitation on windfall profit provided in section 4988(b)) on the removal in that taxable period of crude oil that is not subject to withholding, the purchaser or producer may file a claim for refund of that overpayment on or after the date for filing the return of such tax for such taxable period under section 6076 or may claim credit for such overpayment against any liability for a tax imposed by chapter 1 or 45 in accordance with the forms and instructions provided for that purpose.

(2) *Producers; net income limitation.* Except as provided in paragraph (b)(1), if, for any taxable period, a producer has paid more than the amount of tax imposed by section 4986 (computed with regard to the net income limitation provided in section 4988(b)) on the removal in that taxable period of crude oil that is not subject to withholding, the producer may file a claim for credit or refund of that overpayment only after the end of the taxable year (for Federal income tax purposes) with respect to which the limitation is computed. At that time, the producer may claim a credit or refund of the overpayment as provided in paragraph (b)(1) of this section.

(3) *Purchasers unable to recover underwithholding through subsequent overwithholding.* A purchaser who withheld less than the amount required to be withheld from a payment under § 51.4995–1, who deposited the amount required to be withheld, and who has not corrected the underwithholding pursuant to § 51.4995–1(c) before the expiration of the adjustment period, may file a claim for refund of the excess of the amount deposited over the amount withheld if the amount claimed has been reported as underwithholding on the appropriate Form 6248 furnished and filed pursuant to § 51.4997–2(c) and if the purchaser establishes that the producer has paid in full the producer's liability under section 4986 for the calendar year of removal of the crude oil. Any claim for refund shall be filed on Form 843.

(c) *Overpayments attributable to amounts deducted and withheld.*—(1) *In general.* Under section 4995(a)(4), the producer of crude oil is treated as having paid any amount withheld on the last day of the first February after the calendar year in which the crude oil was removed from the premises. Therefore, if the sum of the producer's liability for the tax imposed by section 4986 (computed without regard to the net income limitation provided in section 4988(b)) on crude oil subject to withholding under § 51.4995–1 for all taxable periods of a calendar year is less than the amount deducted and withheld from the producer under § 51.4995–1 with respect to crude oil removed during the calendar year, an overpayment of tax exists after such last day of February. The producer may file a claim for refund of the overpayment or may claim credit for the overpayment against any liability for a tax imposed by chapter 1 or 45 in accordance with the forms and instructions provided for that purpose. The producer shall attach to the claim a copy of all Forms 6248 furnished to the producer pursuant to § 51.4997–2.

(2) *Net income limitation.* Except as provided in paragraph (c)(1), if the sum of the producer's liability for the tax imposed by section 4986 (computed with regard to the net income limitation provided in section 4988(b)) on crude oil subject to withholding under § 51.4995–1 for any taxable period is less than the sum of the amounts deducted and withheld from the producer under § 51.4995–1 with respect to crude oil removed in that taxable period, the excess may be claimed as a credit or refund only after the later of—

(i) The last day of the first February after the end of the taxable period, or

(ii) The last day of the taxable year (for Federal income tax purposes) with respect to which the limitation is computed.

Thereafter, the producer may file a claim for credit or refund of the overpayment as provided in paragraph (c)(1) of this section.

(d) *Producers who are partners in a partnership with a different taxable year.* If a producer is a partner in a partnership that has a different taxable year (for Federal income tax purposes) than that of the producer and if the net income limitation is taken into account with respect to properties held by the partnership, then the rules of paragraph (b)(2) and (c)(2) shall be applied by treating the partnership taxable year as the taxable year with respect to which the net income limitation is computed. Multiple claims for credit or refund may be filed by a partner who also produces taxable crude oil other than through the partnership.

(e) *Examples.* The rules of this section may be illustrated by the following examples:

Example (1). Under § 51.4995–1, the purchaser of crude oil from producer A is not required to deduct and withhold any tax from payments made to A. Consequently, A deposited a total of $1,100 for a certain taxable period. After the end of the taxable period, it is determined that the tax imposed by section 4986, computed without regard to the net income limitation, is $1,000. A estimates that, due to the net income limitation, the actual liability is only $900. Under paragraph (b)(1) of this section, A may file a claim for credit or refund of $100 (the amount by which the $1,100 deposit exceeds the $1,000 tax imposed by section 4986, computed without regard to the net income limitation). Under paragraph (b)(2) of this section, A may claim credit or refund of any overpayment due to the application of the net income limitation only after A's taxable year (for Federal income tax purposes) has ended. However, see § 51.4995–3 (g)(2) for rules relating to estimated tax deposits.

Example (2). Producer B's taxable year for income tax purposes is the calendar year. Due to the application of the net income limitation, the amount of windfall profit tax withheld from B exceeds B's liability for each of the four taxable periods of the calendar year. B may file a claim for credit or refund of the overwithheld tax after the last day of February following the end of the calendar year.

Example (3). Producer C's taxable year for income tax purposes ends on June 30. Due to the application of the net income limitation, C's windfall profit tax has been overwithheld for each of the four taxable periods within C's taxable year ending June 30, 1981. C may claim credit or refund after June 30, 1981, for the overpayment attributable to crude oil removed during the last two taxable periods of calendar year 1980 (July–September and October–December 1980), because by that time C has been deemed, under section 4995 (a)(4), to have paid the tax with respect to those taxable periods, and the taxable year in which the oil was removed has ended. However, C must wait until after February 28, 1982, to claim credit or refund for the overpayment attributable to crude oil removed during the first two taxable periods of calendar year 1981 (January–March and April–June 1981).

Example (4). Assume the same facts as in example (3), except that the purchaser of C's crude oil made an error and overwithheld tax during the last taxable period of calendar year 1980. The error was not ascertained until after June 30, 1981, and thus remained unadjusted when the purchaser furnished C the annual information statement under § 51.4997–2. After February 28, 1981, C may file a claim for credit or refund of the amount overwithheld due to the withholding error. However, C may not claim a credit or refund for the overpayment due to the withholding error. However, C may not claim a credit or refund for the overpayment due to the application of the net income limitation until the dates specified in example (3).

Example (5). Assume the same facts as in example (3), except that C's taxable year ends on August 31, and the overpayment due to the net income limitation relates to C's taxable year ending August 31, 1981. C may claim a credit or refund after August 31, 1981, for the overpayment attributable to crude oil removed after August 31, 1980, and before January 1, 1981. After February 28, 1982, C may claim credit or refund for the overpayment attributable to crude oil removed from January 1, 1981, through August 31, 1981. That claim may only reflect overpayments due to the application of the net income limitation for crude oil removed through August 1981 because the last month of the third taxable period of 1981 (September 1981) is in C's next income tax year.

Example (6). Under § 51.4995–1, the purchaser of crude oil from producer D is not required to deduct and withhold any tax from payments made to D. D holds a working interest in an oil property and is also a partner in a partnership that holds interests in other properties. D's taxable year for Federal income tax purposes is the calendar year, but the partnership's taxable year ends on June 30. For the four taxable periods of calendar year 1981 D has paid the tax imposed by section 4986, computed without regard to the net income limitation, on the removal of crude oil from both the partnership properties and the property held directly by D. After June 30, 1981, D may file a claim for credit or refund for the first two taxable periods of 1981 if the net income limitation reduces the tax due on the partnership properties. However, that claim may not reflect any reduction in tax due to the net income limitation on the property held directly by D. After D's taxable year ends on December 31, 1981, D may file a claim for credit or refund for any overpayment for the four taxable periods of calendar year 1981 due to the application of the net income limitation to that property. Finally, after June 30, 1982, D may file a claim for credit or refund for the last two taxable periods of 1981 if the net income limitation reduces the tax due on the partnership properties.

Example (7). Assume the same facts as in example (6), except that payments made to D are subject to withholding and that the amount withheld from payments to D for crude oil removed during 1981 is equal to the tax imposed by section 4986 computed without regard to the net income limitation. After February 28, 1982 (the date on which D is treated as having paid the withheld tax), D may file a claim for credit or refund for the four taxable periods of 1981 taking the net income limitation into account for all four taxable periods with respect to the property held directly by D and for the first two taxable periods with respect to the partnership properties. However, the claim for credit or refund may not take into account any reduction in tax due to the application of the net income limitation to partnership properties for the last two taxable periods of 1981. Only after the partnership year ends on June 30, 1982, may D file a claim for credit or refund taking that reduction into account.

(f) *Cross-reference.* For examples illustrating the interrelationship of § 51.4995–3 (relating to depositary requirements) and this section, see § 51.4995–3 (g)(2)(ii).

This Treasury decision is issued under the authority contained in sections 4992, 4993, 4995, 4996, 4997, 6050C, 6402, and 7805 of title 26 of the United States Code.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: October 6, 1982.

David G. Glickman,

Acting Assistant Secretary of the Treasury.

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Office of Pension and Welfare Benefit Programs

29 CFR Part 2510

Definitions and Coverage Under Employee Retirement Income Security Act of 1974; Supplemental Payments

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Adoption of regulation.

SUMMARY: This document contains a final regulation providing guidance on the scope of the term "pension plan" under the Employee Retirement Income Security Act of 1974 (the Act), as amended by the Multiemployer Pension Plan Amendments Act of 1980 (the MPPAA). The regulation is intended to enable employers to provide for certain supplemental retirement income payments to former employees under a welfare plan rather than under a pension plan to help offset the effects of inflation on pension benefits. The regulation affects participants and beneficiaries of a single employer and multiemployer pension plans, as well as employers maintaining these plans.

DATE: The regulation applies to payments made on or after September 26, 1980, except that § 2510.3–2(g)(2) applies to payments after January 1, 1975.

FOR FURTHER INFORMATION CONTACT: Mrs. Patricia Nitchie, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C., telephone (202) 523–8521. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

On January 27 and February 6 and 13, 1981, notice was published in the Federal Register (46 FR 8571, 11292 and 12214) that the Department of Labor (the Department) had under consideration a proposal to adopt a regulation, 29 CFR 2510.3–2 (g), under section 3(2)(B) of the Act. After consideration of all the public comments on the proposal, the

Department has decided to adopt the regulation, with certain modifications. Following is a discussion of the regulation as adopted, the changes from the proposed regulation, and the principal views expressed in the public comments.

B. Summary of Statutory Provisions

In general, payments by employers to supplement the pension benefits of their retirees ("supplemental payments") fall within the definition of the terms "employee pension benefit plan" and "pension plan" set forth in section 3(2)(A) of the Act. Section 409 of the MPPAA amended the Act by adding section 3(2)(B), which, among other things, authorizes the Secretary of Labor to issue regulations treating certain supplemental payment arrangements as welfare plans rather than pension plans if the regulations are consistent with the standards and purposes of the Act. Section 3(2)(B)(ii) of the Act limits welfare plan treatment to arrangements under which the pension benefits of retirees and their beneficiaries are supplemented to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement. Section 3(2)(B) also provides that in the case of any arrangement or payment a principal effect of which is the evasion of the standards or purposes of the Act applicable to pension plans, such arrangement or payment shall be treated as a pension plan.

The Department has concluded, for the reasons discussed below, that the regulatory action it is taking is consistent with the standards and purposes of the Act. The possibility of a unique arrangement or payment having as its principal effect the evasion of the standards or purposes of the Act would depend on the facts and circumstances of the particular case. In that regard, the Department notes that it does not issue advisory opinions which involve issues inherently factual in nature (see Section 5 of ERISA Advisory Opinion Procedure 76–1, 41 FR 36281 (August 27, 1976)).

C. Cost of Living Formula

Under the proposed regulation, for a supplemental payment to be considered to have been made under a welfare rather than pension benefit plan, it could not exceed an amount equal to the payee's monthly pension benefit multiplied by the sum of specific percentages for all retirement years, provided also that the amount did not exceed the percentage increase in the cost of living since retirement. The proposal's formula provided that the percentage for any year would equal the higher of 3 percent or one third of the percentage increase in the cost of living for that year. As explained in the preamble to the proposed regulation, the formula was intended to lessen the likelihood that too large a percentage of retiree's retirement income would consist of discretionary payments which are not afforded the protections of a pension plan under ERISA.

Many commentators urged the Department to revise the formula to permit supplemental payments under a welfare plan which would reflect all or a greater percentage of the cost of living increase since retirement. Other commentators took the position that the Department's rules should be expanded even further to permit limited amounts of supplemental payments to be made under a welfare plan even if these payments exceeded the retiree's cost-of-living increase since retirement.

The Department has concluded that retirees, on balance, would not be harmed by permitting their pension benefits to be supplemented by the full increase in their cost of living since retirement. Therefore, the formula in the final regulation permits the payment of supplements that reflect the full increase in the cost of living (based on the retiree's initial pension benefit). The regulation does not allow supplemental payments in excess of the increase in the cost of living, because the Department has concluded that this change would be inconsistent with section 3(2)(B) of the Act, which authorizes welfare plan treatment only for cost-of living increases after retirement.

Under the revised formula in the final regulation, a payment made under a supplemental payment welfare benefit plan with respect to any month may not exceed an amount equal to the product of: (a) The retiree's pension benefit amount, and (b) a percentage equal to the full percentage increase in the cost of living since the commencement of the retiree's pension benefits. This percentage increase is generally measured by comparing the consumer price index for the month in which the retiree's pension benefits commenced to the consumer price index for the month with respect to which the supplemental payment is made. In response to suggestions from some commentators, the formula of the final regulation uses monthly rather than annual consumer price index data. This method of computation permits supplemental payments to retirees for the first month after the month of retirement where there has been an increase in the cost-of-living for that succeeding month. Like the proposal, the final regulation provides that supplemental payments may be cumulated and paid in subsequent months.

D. Payment Out of General Assets

Under the proposed regulation, supplemental payments were required to be made out of an employer's general assets in order to qualify for welfare plan treatment. Several commentators noted that this condition would, as a practical matter, prevent most employers participating in collectively bargained multiple employer pension plans from making supplemental payments under a welfare plan. The final regulation therefore provides that payments may be made out of a welfare plan trust established exclusively for the purpose of supplementing pension benefits, as well as out of an employer's general assets.

E. Limitation on Obligation to Make Supplemental Payments

The proposed regulation provided that where an employer is obligated to make supplemental payments for more than twelve months at a time, the arrangement would not qualify for welfare plan treatment. Commentator objections to this condition fell into two main categories: First, the condition would prevent use of supplemental payment plans in connection with collectively bargained pension plans, which typically are tied to collective bargaining agreements having terms of three years. Second, employers in general might have difficulty assuring themselves that a supplemental payment arrangement does not give rise to a legal obligation to continue the arrangement for more than twelve months, which obligation would disqualify the arrangement from welfare plan treatment. This twelve-month condition was included in the proposed regulation because it was anticipated that setting such a condition would alert retirees to the fact that their supplemental payments were not part of their regular pension benefits which were afforded all of ERISA's protections, and thus the retirees would not expect the supplemental payments to continue as a permanent source of retirement income for them.

In light of the comments received, however, the Department has concluded that the costs to employers in terms of their loss of flexibility to make supplemental payments would outweigh the benefits of imposing this condition. To the extent that employers thus would be discouraged from making supplemental payments, retirees also

would be disadvantaged insofar as they would suffer a loss of supplemental income which otherwise might have been given to them. Therefore the final regulation has no condition relating to the length of an employer's obligation to continue the supplemental payments.

F. Two-Year Waiting Period

One of the conditions to welfare plan treatment under the proposed regulation was that supplemental payments to a retiree could not commence until two years after retirement. Several commentators expressed concern that this condition would have a particularly adverse effect upon retirees having small pensions. This two-year waiting period condition was included in the proposed regulation for the purpose of impressing upon retirees the distinction between pension plan payments received from their employers and payments made under a supplemental income arrangement. If there were no significant interlude between the time retirees received supplemental payments from their employers and the time they first received retirement payments from their pension plans, it was believed that retirees could become confused as to the source of these payments and could, in fact, believe that all the payments were pension plan payments which were afforded all of ERISA's protections and which could be expected to remain as a permanent source of their retirement income.

The two-year waiting period has been eliminated in the final regulation, however, because the Department has concluded that the benefits to retirees of receiving supplemental payments during their first two years of retirement are more important than the possibility that they would be affected adversely by their failure to distinguish between supplemental payments and benefits from their pension plans.

G. Lump-Sum Distributions

Under the proposal, employers could not make supplemental payments under a welfare plan with respect to amounts paid to pension plan participants in the form of lump-sum distributions. Several commentators complained that there was no indication in the legislative history that Congress intended to exclude recipients of lump-sum distributions and requested that the rule be changed. Several also suggested methods for conversion.

The final regulation provides a method for supplementing pension benefits paid as a lump sum. In general, an unmarried participant may receive a welfare plan supplement that is calculated as if the participant received a straight life annuity, while a married participant may receive a welfare plan supplement that is computed as if the participant and spouse received a joint and survivor annuity.

H. Treatment of Social Security Benefits

Another commentator urged that the final regulation treat Social Security benefits as benefits paid under a pension plan for purposes of applying the Department's cost of living formula. Because Social Security benefits are not paid by a pension plan, they are not "pension benefits" within the meaning of section 3(2)(B) of the Act. Therefore, the Department has not adopted this suggestion.

I. Definition of "Pension Plan"

One commentator requested that the Department clarify the meaning of the term "pension plan" as used in the proposal. This definition is significant because under section 3(2)(B) of the Act only pension benefits may be supplemented under a welfare plan. In this regard, another commentator expressed the view that the term "pension plan" should be defined to include, among other things, Act section 3(36) excess benefit plans and Act sections 201(2), 301(a)(3), and 401(a)(1) unfunded deferred compensation plans for certain management or highly compensated employees. While the term "pension plan" has been clarified in the final regulation, pension plans described in sections 3(36), 201(2), 301(a)(3), and 401(a)(1) continue to be excluded from the definition. Employers already are free to increase the amounts of payments under these types of plans without having to comply with the requirements of parts 2 and 3 of Title I of the Act, even in the absence of a regulation under section 3(2)(B)(ii) of the Act.

J. Safe Harbor for Arrangements Concerning Pre-1977 Retirees

In the preamble to the proposed regulation, the Department noted that it had taken the position in several advisory opinions that payments outside a pension plan for persons who retired prior to the end of 1976 ("pre-1977 retirees") do not constitute an employee benefit plan so long as certain criteria are met. The Department further explained that, as a result of the enactment of section 409 of the MPPAA, it was reexamining its prior positions with respect to the status of supplemental retirement income arrangements for pre-1977 retirees. The substance of those prior positions was incorporated in the proposed regulation as a temporary safe harbor from coverage under Title I of the Act for payments made before January 1, 1982 to pre-1977 retirees. Many commentators urged that the safe harbor of the proposal be made permanent because some employers with plans covering pre-1977 retirees had designed their supplemental payment arrangements to conform to the Department's prior interpretation. To conform to the proposed change would, according to the commentators, increase the administrative burden on these employers and might cause them to reduce the payment of these supplements to their retirees. The Department also has concluded that Congress, in enacting the MPPAA, did not intend to curtail existing arrangements, made in conformance with the Department's position, for the payment of supplemental cost-of-living increases to retirees but, rather, intended to expand the circumstances under which employers might make supplemental payments within the confines of ERISA. In view of these considerations, the Department has decided not to depart from its prior position concerning supplemental payments.

K. Arrangements for Pre-Act Retirees

In the preamble to the proposal, the Department stated that, if the proposed regulation were adopted, both it and regulation section 29 CFR 2510.3–2(e) would be available with respect to arrangements for persons who separated from the service of an employer prior to September 2, 1974 ("pre-Act retirees"). In § 2510.3–2(e), the Department described circumstances under which "gratuitous" payments by former employers to pre-Act retirees would not be considered part of an employee benefit plan covered by Title I of the Act.

One commentator asked that the Department clarify which regulation would be controlling with respect to payments to pre-Act retirees. In this regard, the Department notes that § 2510.3–2(e) will continue to be available to employers with respect to pre-Act retirees, notwithstanding the adoption of a final rule which will be generally applicable with respect to all retirees. Therefore, if, for example, an employer maintains an arrangement providing for payments to pre-Act retirees which satisfies the conditions of either § 2510.3–2(e) or § 2510.3–2(g)(2), that arrangement would not have to meet the quantitative limitations set forth in § 2510.3–2(g)(1).

Another commentator urged the Department to amend § 2510.3–2(e) to

delete the condition contained in § 2510.3-2(e)(3) that the gratuitous payments to pre-Act retirees must have commenced prior to September 2, 1974. Because the safe harbor contained in § 2510.3-2(g)(2) contains no analogous condition, and because the term "pre-1977 retiree" encompasses the term "pre-Act retiree," the Department notes that an arrangement involving a pre-Act retiree does not have to satisfy the condition of § 2510.3-2(e)(3) with respect to the commencement of payments in order not to be considered an employee benefit plan for purposes of Title I of the Act if it meets the conditions of § 2510.3-2(g)(2).

L. Executive Order 12291 Statement

The Department has determined that the rule adopted herein is not a "major rule" within the meaning of section 1(b) of Executive Order 12291 (46 13193, February 19, 1981) because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to complete with foreign-based enterprises in domestic or export markets. The regulation provides employers of all sizes and types with an alternative and voluntary way of supplementing pension benefits, and will impose no new burden or expense on them.

M. Regulatory Flexibility Act Statement

In the notice of proposed rulemaking (January 27, and February 6, 1981, 46 FR 8571 and 11292), the Administrator, Pension and Welfare Benefit Programs, certified pursuant to section 605 of the Regulatory Flexibility Act, 5 U.S.C. 604 *et seq.*, that the proposed regulation would not, if adopted, have a significant impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required in connection with the adoption of this final regulation.

N. Paperwork Reduction Act Statement

The regulation permits employers to treat supplemental retirement income payments to former employees as paid under an ERISA welfare rather than pension plan. Employers always have the option, of course, of making these payments under their existing pension plans or to make no supplemental payments to their retirees at all. For employers who choose to have their payments treated as an ERISA welfare plan, the regulation imposes no new paperwork requirements, other than the existing general requirements.

Employers, however, in addition to the above options, may also choose to make supplemental payments in accordance with the criteria established by the "safe harbor" of paragraph (g)(2) of the regulation with respect to pre-1977 retirees. In this case, employers must comply with an additional paperwork requirement, i.e., that the employer send to each retiree a notice, which specifies certain information, during any year in which a supplemental payment is made.

This "safe harbor" aspect of the regulation would result in the imposition of a maximum of 6,500 burden hours annually on employers who choose to comply with the provisions of the "safe harbor" in making supplemental payments to their retirees. This estimate is based on the assumptions that (1) basically only employers sponsoring large (i.e., covering 100 or more participants) defined benefit plans will grant cost-of-living increases to their retirees, and (2) one-half of employers with pre-1977 retirees will choose to comply with the safe harbor rules rather than the general conditions of the regulation.

Information collection requirements contained in this regulation § 2510.3-2(g)(2)) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 1210-0041.

O. Drafting Information

The principal author of this final regulation is Mr. Rudy Nuissl of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs. However, others in the Department participated in developing the final regulation, both on matters of substance and style.

P. Statutory Authority

The regulation set forth herein is adopted under sections 3(2)(B) and 505 of the Act (29 U.S.C. 1002(2) and 1135). The regulation is made effective on publication, pursuant to 5 U.S.C. 553(d)(1), because it is a rule that recognizes an exemption or relieves a restriction.

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Employee Retirement Income Security Act, Pensions.

Final Regulation

PART 2510—[AMENDED]

In consideration of the matters set forth above, Chapter XXV of Title 29 of the Code of Federal Regulations is amended by adding the following paragraph (g) to § 2510.3-2:

§ 2510.3-2 Employee pension benefit plan.

* * * * *

(g) *Supplemental payment plans.*—(1) *General rule.* Generally, an arrangement by which a payment is made by an employer to supplement retirement income is a pension plan. Supplemental payments made on or after September 26, 1980, shall be treated as being made under a welfare plan rather than a pension plan for purposes of Title I of the Act if all of the following conditions are met:

(i) Payment is made for the purpose of supplementing the pension benefits of a participant or his or her beneficiary out of:

(A) the general assets of the employer, or

(B) A separate trust fund established and maintained solely for that purpose.

(ii) the amount payable under the supplemental payment plan to a participant or his or her beneficiary with respect to a month does not exceed the payee's supplemental payment factor ("SPF," as defined in paragraph (g)(3)(i) of this section) for that month, provided however that unpaid monthly amounts may be cumulated and paid in subsequent months to the participant or his or her beneficiary.

(iii) The payment is not made before the last day of the month with respect to which it is computed.

(2) *Safe harbor for arrangements concerning pre-1977 retirees.* (i) Notwithstanding paragraph (g)(1) of this section, effective January 1, 1975 an arrangement by which a payment is made by an employer to supplement the retirement income of a former employee who separated from the service of the employer prior to January 1, 1977 shall be deemed not to have been made under an employee benefit plan if all of the following conditions are met:

(A) The employer is not obligated to make the payment or similar payments for more than twelve months at a time.

(B) The payment is made out of the general assets of the employer.

(C) The former employee is notified in writing at least once each year in which a payment is made that the payments are not part of an employee benefit plan subject to the protections of the Act.

(D) The former employee is notified in writing at least once each year in which

a payment is made of the extent of the employer's obligation, if any, to continue the payments.

(ii) A person who receives a payment on account of his or her relationship to a former employee who retired prior to January 1, 1977 is considered to be a former employee for purposes of this paragraph (g)(2).

(3) *Definitions and special rules.* For purposes of this paragraph (g)—

(i) The term "supplemental payment factor" (SPF) is, for any particular month, the product of: (A) The individual's pension benefit amount (as defined in paragraph (g)(3)(ii) of this section), and (B) the cost of living increase (as defined in paragraph (g)(3)(v) of this section for that month.

(ii)(A) The term "pension benefit amount" (PBA) means, with regard to a retiree, the amount of pension benefits payable, in the form of the annuity chosen by the retiree, for the first full month that he or she is in pay status under a pension plan (as defined in paragraph (g)(3)(iii) of this section) sponsored by his or her employer or under a multiemployer plan in which his or her employer participates. If the retiree has received a lump-sum distribution from the plan, the PBA for the retiree shall be determined as follows:

(*1*) If the plan provides an annuity option at the time of the distribution, the PBA shall be computed as if the distribution had been applied on that date to the purchase from the plan of a level straight annuity for the life of the participant if the participant was unmarried at the time of the distribution or a joint and survivor annuity if the participant was married at the time of distribution.

(*2*) If the plan does not provide an annuity option at the time of the distribution, the PBA shall be computed as if the distribution had been applied on that date to the purchase from an insurance company qualified to do business in a State of a commercially available level straight annuity for the life of the participant if the participant was then single, or a joint and survivor annuity if the participant was then married, based upon the assumption that the participant and beneficiary are standard mortality risks.

(B) If the retiree has received from the plan a series of distributions which do not constitute a lump-sum distribution or an annuity, the PBA for the retiree shall be determined with respect to each distribution according to paragraph (g)(3)(ii)(A) above, or in accordance with a reasonably equivalent method.

(C) The term PBA, with regard to the beneficiary of a plan participant, means: (*1*) The amount of pension benefits, payable in the form of a survivor annuity to the beneficiary, for the first full month that he or she begins to receive the survivor annuity, reduced by: (*2*) Any increases which have been incorporated as part of the survivor annuity under the plan since the participant entered pay status or, if the participant died before the commencement of pension benefits, since the participant's date of death.

(D) Where a plan participant has commenced to receive his or her pension benefits in the form of a straight-life annuity, or another form of an annuity that does not continue after the participant's death in the form of a survivor annuity, no beneficiary of the participant will have a PBA.

(iii) The term "pension plan" means, for purposes of this paragraph (g), a pension plan as defined in section 3(2) of the Act, but not including a plan described in section 4(b), 201(2), or 301(a)(3) of the Act. The term also does not include an arrangement meeting all the conditions of paragraph (g)(1) or (g)(2) of this section or of an arrangement described in § 2510.3–2(e). In the case of a controlled group of corporations within the meaning of section 407(d)(5) of the Act, all pension plans sponsored by members of the group shall be considered to be one pension plan.

(iv) The term "employer" means, for purposes of paragraph (g) of this section, the former employer making the supplemental payment. In the case of a contolled group of corporations within the meaning of section 407(d)(7) of the Act, all members of the controlled group shall be considered to be one employer for purposes of this paragraph (g).

(v) The term "cost of living increase" (CLI) means, as to any month, a percentage equal to the following fraction:

$$\frac{a-b}{b}$$

where a = the CPIU for the month for which a payment is being computed, and b = the CPIU for the first full month the retiree was in pay status. Where the CLI is calculated for the beneficiary of a plan participant, "b" continues to be equal to the CPIU for the first full month the retiree was in pay status. If, however, the participant dies before the commencement of pension benefits, "b" is equal to the CPIU for the first full month the survivor is in pay status.

(vi) The term "CPIU" means the U.S. City Average All Items Consumer Price Index for all Urban Consumers, published by the U.S. Department of Labor, Bureau of Labor Statistics. Data concerning the CPIU for a particular period can be obtained from the U.S. Department of Labor, Bureau of Labor Statistics, Division of Consumer Prices and Price Indexes, Washington, D.C. 20212.

(vii) Where an employer does not pay to a retiree the full amount of the supplemental payments which would be permitted under paragraph (g)(1) of this section, any unpaid amounts may be cumulated and paid in subsequent months to either the retiree or the beneficiary of the retiree. The beneficiary need not be the recipient of a survivor annuity in order to be paid these cumulated supplemental payments.

(5) *Examples.* The following examples illustrate how this paragraph (g) works. As referred to in these examples, the CPIU's for July through November of 1980 are as follows:

July 1980: 247.8
August 1980: 249.4
September 1980: 251.7
October 1980: 253.9
November 1980: 256.2

Example (1)(a). E is an employer. R received monthly benefits of $600 under a straight-life annuity under E's defined benefit pension plan after R retired from E and entered pay status on July 1, 1980. The amount that E may pay to R as supplemental payments under a welfare rather than pension plan with respect to the months of July through September of 1980 is computed as follows:

SPF for July 1980

$$SPF = \frac{a-b}{b} \times PBA$$

$$= \frac{247.8-247.8}{247.8} \times \$600 = \$0.00$$

SPF for August 1980

$$SPF = \frac{249.4-247.8}{247.8} \times \$600 = \$3.87$$

SPF for September 1980

$$SPF = \frac{251.7-247.8}{247.8} \times \$600 = \$9.44$$

Total = $0.00
3.87
9.44
$13.31

No supplemental payment may be made to R as a welfare plan payment with respect to July 1980, the month of retirement. The $3.87 that may be paid with respect to August 1980 may be paid at any time after August 31, 1980. The $9.44 that may be paid with respect to September 1980 may be paid at any time after September 30, 1980.

Example (1)(b). S is the beneficiary of R. Because R received pension benefits under a

straight-life annuity, S will receive no survivor annuity from E after R's death. S thus will have no PBA after R's death and will not be eligible to receive any supplemental payments from E based on S's PBA. To the extent, however, that R did not receive supplemental payments from E to the maximum limit allowable under paragraph (g)(1), any amounts not paid to R may be cumulated and paid to S after R's death.

Example (2)(a). E is an employer. Q received monthly benefits of $500 in the form of a joint and survivor annuity under E's defined benefit pension plan since retirement from E on July 1, 1980. The amount that E may pay to Q as welfare rather than pension plan payments with respect to the months of July through September of 1980 is computed as follows:

SPF for July 1980

$$SPF = \frac{247.8 - 247.8}{247.8} \times \$500 = \$0.00$$

SPF for August 1980

$$SPF = \frac{249.4 - 247.8}{247.8} \times \$500 = \$3.23$$

SPF for September 1980

$$SPF = \frac{251.7 - 247.8}{247.8} \times \$500 = \$7.87$$

Total = $0.00 + 3.23 + 7.87 = $11.10

No supplemental payment may be made as a welfare plan payment with respect to July 1980, the month of retirement. The $3.23 that may be paid with respect to August 1980 may be paid at any time after August 31, 1980. The $7.87 that may be paid with respect to September 1980 may be paid at any time after September 30, 1980.

Example (2)(b). Q dies on October 15, 1980 without having received any supplemental payments from E. T is the beneficiary of Q. E pays T a survivor's annuity of $300 beginning in November of 1980. The amount payable to T as a survivor annuity under the plan has not been increased since Q began to receive pension benefits. Thus, T's PBA is $300. The amount that E may pay to T as welfare rather than pension plan payments with respect to the months of July through November 1980 is computed as follows:

SPF for July 1980 = $0.00

SPF for August 1980 = $3.23

SPF for September 1980 = $7.87

SPF for October 1980

$$SPF = \frac{a - b}{b} \times PBA$$

$$= \frac{253.9 - 247.8}{247.8} \times \$500$$

= $12.31

(Note that T's "b" is equal to Q's "b".)

SPF for November 1980

$$SPF = \frac{256.2 - 247.8}{247.8} \times \$300 = \$10.17$$

Total that may be paid to T

The maximum E may pay T with respect to the months of July through November 1980 as welfare rather than pension plan payments is the sum of those months' SPFs, which is $33.58.

Example (3). Assume the same facts as in Example (1)(a), except that R elected to receive a lump-sum distribution rather than a straight-life annuity. If R is unmarried on July 1, 1980, R's PBA is $600 for the remainder of R's life. If R is married to S on July 1, 1980, the PBAs of R and S are based on the annuity that would have been paid under an election to receive a joint and survivor annuity. See paragraph (g)(3)(ii)(A)(*1*) of this section.

Signed at Washington, D.C., this 1st day of November 1982.

Jeffrey N. Clayton,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-30403 Filed 11-4-82; 8:45 am]

BILLING CODE 4510-29-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 21001-200]

Court Review of Patent and Trademark Office Decisions; Correction

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule; Correction.

SUMMARY: The Patent and Trademark Office corrects an inadvertent error in a final rule published in the **Federal Register** on October 26, 1982 (47 FR 47380) which amended its rules of practice relating to court review of its decisions.

FOR FURTHER INFORMATION CONTACT: Joseph F. Nakamura by telephone at (703) 557-3525 or by mail marked to his attention and addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: On October 26, 1982, the Patent and Trademark Office published a final rulemaking action revising paragraphs (a) and (c) of § 1.304 in Title 37, Code of Federal Regulations, to correct a reference in these paragraphs to the U.S. Court of Customs and Patent Appeals. The correction substitutes the name of the successor court, the U.S. Court of Appeals for the Federal Circuit. Through inadvertence, the text of paragraph (a) which was published on October 26, 1982, was the text which had been superseded on October 1, 1982, pursuant to an earlier final rulemaking action published in the **Federal Register** on July 30, 1982 (47 FR 33086). In the earlier final rulemaking action, paragraph (a), but not (c), of § 1.304 had been revised to correct the name of the court. Accordingly, the revision of paragraph (a) of § 1.304 in the later rulemaking action published on October 26, 1982, in the **Federal Register** (47 FR 47380) is being deleted.

Dated: October 29, 1982.

Donald J. Quigg,

Acting Commissioner of Patents and Trademarks.

The following correction is made in the **Federal Register** notice of final rulemaking published October 26, 1982 (47 FR 47380):

In paragraph No. 6 on page 47381, the language "paragraphs (a) and" in the introductory sentence is changed to read "paragraph" and the text of paragraph (a) of § 1.304 on pages 47381-47382 is removed.

[FR Doc. 82-30401 Filed 11-4-82; 8:45 am]

BILLING CODE 3510-16-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 5

Multiple Award Schedule Procurement

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of procurement policies.

SUMMARY: This notice sets forth certain policies and procedures that GSA will follow when contracting for products or services under the multiple award schedule (MAS) program. This issuance also contains guidance to GSA contracting personnel to be used in the MAS negotiation process. Additionally, this issuance contains the schedule of sales and marketing data reflecting the type of information to be obtained from firms in the solicitation phase of the negotiation process.

GSA is issuing this notice to inform all parties interested in and doing business with GSA under the MAS program of the positions taken on certain issues concerning MAS contracting. In addition to identifying changes to and clarifying its position on the draft MAS policies issued for comment on May 24, 1982, GSA believes that the positions adopted will result in a less costly Government procedure; reduce the paperwork burden on industry and Government; permit the timely award of MAS contracts; and continue the protection of the

Government's interests when contracting under this procurement program.

The implementation of the MAS policies set forth in this document will begin with solicitations issued on or after October 1, 1982.

EFFECTIVE DATE: This statement of policies is effective with solicitations issued on or after October 1, 1982.

ADDRESS: Mr. Allan W. Beres, Acting Assistant Administrator for Acquisition Policy, General Services Administration, 18th and F Sts., NW., Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Edward J. McAndrew, Office of Policy Formulation, Office of Acquisition Policy, General Services Administration, 18th and F Sts., N.W., Washington, DC 20405 (202–566–1224).

SUPPLEMENTARY INFORMATION:

Background

On May 24, 1982, GSA presented a draft set of MAS policies to industry associations and other interested parties. At that presentation, GSA requested comments on the proposed policies.

The draft policies issued for comment were based on the comments and concerns expressed by the Congress in previous hearings, in reports by the General Accounting Office, by firms and associations doing business under the MAS program, and by customer agencies that order from MAS contracts. In its request for comments, GSA asked interested parties when analyzing the draft policies to keep in mind the comments and concerns that had been expressed.

Comments and Significant Changes in the Policies Set Forth in the Issuance

In response to its May 24, 1982, request for comments, GSA received more than 60 responses. These responses came principally from firms and industry associations that represent firms doing business with GSA under the MAS program. Other responses were received from internal GSA organizations, such as the Inspector General and regional and central office operating procurement elements and from other Government agencies.

With the close of the comment period, June 25, 1982, GSA began an exhaustive analysis of the comments received. Representatives from GSA's Office of Acquisition Policy, the Office of Information Resources Management, the Office of Personal Property, the Office of Inspector General, and the Office of General Counsel participated in developing the revisions adopted in the statement of policies that GSA has issued. In adopting the positions set forth in this issuance, GSA gave serious consideration to the comments expressed by the various, and often competing, interests associated with the MAS program. Because the MAS program primarily involves the purchase of commercial products and services, GSA has aligned the policies with commercial practice to the extent practical given the need for such policies to be consistent with Federal procurement regulations. GSA has tried to make the revised policies cost effective and fair to all parties.

The comments that were received by GSA, for the most part, addressed certain aspects of the draft MAS policies. These issues and the GSA position contained in the revised policies are:

a. *Most Favored Customer.* The most favored customer concept was defined in the draft as including original equipment manufacturer (OEM) and dealer/distributor prices/discounts as the Government's negotiation objective. Comments received from business and industry opposed this concept. In the revised policies, GSA excludes consideration of the OEM and dealer/distributor discount in setting its negotiation objective where an offeror substantiates claims that dealers perform the normal dealer functions for the contractor under the MAS contract or where an offeror claims that the item sold to OEM's is different in physical and performance characteristics and is not the same or similar to the item offered the Government under the MAS contract.

b. *Sales and Marketing Data.* Comments received indicated that the amount of paperwork needed to respond to the data requests is exorbitant. In the revised polices, offerors will be able to certify to those products or services offered that meet the specified tests of commerciality. Sales data will not be required on every model or product offered that is certified as meeting the tests of commerciality. On a sampling basis, the Government will ask for sales data on a selected number of products certified as commercial. For items not certified as meeting the tests of commerciality, sales data is required. The procurement rules for requiring cost and pricing data are unchanged.

c. *Price Reductions Clause.* While some comments received suggested changes to the language in the revised clause and others indicated that the revised clause may still be subject to interpretation, for the most part, there was no opposition to the principal change in the revised clause from the clause presently used in MAS contracts. The revised clause is no longer activated any time that an MAS contractor reduces prices to any customer. Under the revised clause, the clause is activated when prices are changed so as to change the relationship between the Government and the customer or category of customer upon which the award was predicated. Along with narrowing the application of the price reductions clause, the exclusions for certain sales from the application of the revised clause are also changed. The clause in the revised policies is the same as the one contained in the May 24, 1982, draft except for deleting the exclusion for sales to State and local governments. The decision to delete the esclusion for sales to State and local governments was based on a careful analysis of the changes made to the clause. Considering the changes made, operation of the revised price reductions clause should not adversely affect State and local government procurement programs.

d. *Aggregate Discount.* The revised policies include seeking aggregate discounts on MAS contracts. Notwithstanding the position taken by most commentors that the Government should not seek such discounts because of the manner in which orders are placed against MAS contracts, the Government will strive to achieve as part of its negotiation objective an aggregate discount which recognizes not only the manner in which the Government orders but also the aggregate volume of sales expected under the MAS contract. The revised policies reflects latitude in whether such discounts are given when the order in placed or at the conclusion of the contract term.

e. *Maximum Order Limitation.* The revised policies contain the use of the maximum order limitation. This is a change from the draft, which stated that the Federal Supply Service (FSS) will terminate its regular practice of establishing a maximum order limitation in its schedules. Comments received supported the continued use of a maximum order limitation.

f. *Economic Price Adjustments.* The draft policies proposed to terminate the use of an economic price adjustment clause in FSS schedule contracts. The revised policies makes the use of such a clause in FSS schedule contracts optional. The contracting officer will determine whether such a clause should be included in the schedule contracts.

Other Information

Staff members of the appropriate congressional committees were briefed on the revised policies set forth in the issuance.

The revised policies have been given to the Office of Information Resource Management, the Office of Personal Property, and GSA regions for implementation. All GSA contracting people in the Central Office and regions involved with the MAS program were informed of the revised policies and provided a copy of the policy document at a joint meeting held on September 28 1982. In addition, the Office of Information Resources Management and the Office of Personal Property will hold other sessions, as needed, with their contracting personnel on the implementation of the policies. Similarly, audit personnel in the Office of Inspector General have been briefed on the revised policies. The purpose of these sessions is to have the revised policies implemented throughout GSA in a consistent manner. The policies were issued in accordance with 41 CFR 5–1.105(a)(5) and will be incorporated into GSA's formal regulations as soon as is practical.

While GSA is taking steps to implement these policies in the MAS procurement process, GSA's management is committed to continuing its efforts to improve the MAS program. In this regard, the implementation of these policies will be monitored to identify problem areas that may arise. Similarly, GSA is interested in receiving ideas or suggestions from interested parties on further improving the MAS process. After the revised policies have been implemented over a complete procurement cycle for the various products, GSA plans to take another look at the policies and to analyze any difficulties that were encountered in implementation and the suggestions received during the implementation phase which would lead to further improvements.

The complete text of the revised policies follows.

Dated: October 25, 1982.

Ray Kline,

Deputy Administrator of General Services.

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Contract Pricing Arrangements

I. Introduction

This policy statement addresses issues concerning the establishment and maintenance of pricing arrangements on multiple award schedule (MAS) contracts for supplies and services. These issues are the most complex of all the issues associated with the MAS program. Continued interest by Congress, General Accounting Office, this Agency's management, and business and industry, made it apparent that a number of problems exist with respect to negotiating pricing arrangements in MAS contracts. Except where otherwise stated, this policy statement applies to the ADTS and FSS MAS contracts.

The contract pricing policies in this document are those which appear to us to require special attention. None of these policies contravene existing Federal Procurement Regulations nor do they obviate the requirements of existing regulations that are not covered in this document.

In providing supply support to our customer agencies, GSA is responsible for determining the method of support. GSA will continue to emphasize the reduction of the number of items on MAS contracts and to increase the use of competitive procurement methods in providing supply support for items currently in the MAS program. While striving toward this goal, we will continue to use the MAS program, where appropriate, to support our customer agencies.

When GSA provides supply support through the MAS program, it acts as the contracting agent for all Government organizations authorized to use the MAS contracts. Our customer agencies, when they purchase items from the schedules, should be able to buy those items at prices that are better than they could obtain from any other source under similar circumstances. In its role as the contracting agent, GSA will attempt to obtain the best pricing arrangement, i.e., discount(s) from commercial price lists, giving full consideration to the Government's large volume of purchases, in the negotiation process.

II. MAS Contract Pricing Arrangements

The Government's goal when negotiating MAS contract pricing arrangements is to obtain a discount from a firm's established catalog or commercial price list which is equal to or greater than the discount given to that firm's most favored customer. The most favored customer (MFC) discount is equal to the best discount given by a firm to any entity with which that firm conducts business, other than the original equipment manufacturers (OEM), or participating dealers, and distributor's discount.

Consideration may be given to awarding an MAS contract where the Government's discount is not equal to or greater than a firm's MFC discount. This recognizes that there are situations where the Government's terms and conditions may be different from those given the firm's most favored customer. Offerors may cite factors that they claim make the Government different from other customers with which they do business. In these situations, it is the offeror who must provide information identifying such factors, the valuation of the factors identified and the method used for developing the valuation. Contracting officers shall obtain information necessary to judge whether these factors and their valuation are reasonable.

Offerors and contracting officers should understand that there is no guarantee that every offeror who submits an offer will receive a contract. In the event that the Government's negotiation objective cannot be met, the contracting officer must exercise judgment in deciding whether to reject an offer. In exercising this judgment, the contracting officer must weigh the effect that the rejection of the offer will have on meeting the Government's needs.

GSA will not award an MAS contract to a firm that does not give the Government a price equal to the best price given or available to its large volume end user customers with comparable terms and conditions except where the Government's overall volume of purchases does not warrant the best price given to end user customers.

In all MAS contracts, the contracting officer is required to make an affirmative determination that the prices offered to the Government are fair and reasonable (FPR 1–3.807–2).

III. Discount Schedule and Marketing Data

All MAS solicitations will require offerors to submit information on sales, discounts and marketing practices. The required information will be used to determine whether products or services offered meet the tests of commerciality and will be used by the Government in the evaluation of the offeror's proposal

and the price reasonableness determination. The offeror will certify to the completeness, accuracy and currency of the data at the conclusion of negotiations. Failure to submit the required sales, discount and marketing data will result in no award. If the data is not found to be complete, current and accurate subsequent to award, the defective pricing clause will be activated and consideration will be given to cancelling the MAS contract if still in effect.

Before a catalog price exemption to the need for submission of cost or pricing data can be granted for products or service offered on MAS solicitations, the tests of commerciality must be met. (FPR 1–3.807–1). FPR 1–3.807–2(d) references ASPM No. 1 which contains the quantified criteria (located in ASPM No. 1, Chapter 8) for these tests and shall be used as the basis for the catalog price exemption.

Offerors will be able to certify to those products or services meeting these tests of commerciality in the discount schedule and marketing data sheets. Information will only be required on a representative sample of the best selling items. Data will be required on all other items offered under the solicitation that are not certified as commercial in accordance with the aforementioned criteria. Cost or pricing data shall be required where sales of a product or service to the general public do not exceed 35 precent of total sales of that product or service; or, where the price cannot be considered "based on" established catalog or market prices of commercial items sold in substantial quantities to the general public in accordance with FPR 1–3.807–1(b)(2)(iii).

Even though an item qualifies for an exemption from the submission of cost or pricing data, price analysis must be performed to determine the reasonableness of price and the need for further negotiations (FPR1–3.807–1(b)(2)(iv)).

IV. OEMs and Dealer/Distributor Discounts and Marketing Data

Information on OEM and dealer/distributor discount or pricing arrangememts will be obtained where the same or similar product or service is offered to the Government under the MAS contract.

Where an offeror markets through dealers or distributors, the contracting officer shall require the offeror to provide sufficient information on the functions or services performed and whether these functions or services will be performed under the MAS contract.

Where an offeror sells to OEMs and claims that there is considerable difference in physical or performance characteristics of the products or services sold to OEMs and the products or services offered to the Government, the offeror must provide sufficient information to substantiate such a claim in lieu of OEM discount or pricing data. Where the contracting officer determines that the offeror's claim is not substantiated, the offeror is required to furnish OEM discount or pricing information.

The contracting officer will use the OEM and dealer/distributor data in the price analysis that result in the Government's negotiation position.

V. Quantity and Aggregate Discounts

In establishing negotiation objectives and in the negotiation process, emphasis will be placed on obtaining discounts based on the aggregate volume of sales for an MAS contract. Negotiation objectives will be established to obtain volume discounts in line with the discounts available to the offeror's other customers. In developing negotiation objectives based on the aggregate volume of sales, consideration may be given to taking discounts on aggregate volume of sales at the conclusion of the contract period, although it is preferred that discounts be obtained when orders are placed.

VI. Maximum Order Limitation (MOL)

All MAS contracts will contain an MOL. The level at which the MOL is established will depend upon the Government's discount arrangement under the schedule and the estimate of sales volume above which suppliers are likely to quote lower prices in other types of contracts. The contracting officer will establish the MOL level for the contract at the conclusion of negotiations.

VII. Price Reductions

All MAS contracts will contain the price reductions clause contained in this document. The price reductions clause is intended to maintain the relationship that was established at the time of award between the Government and the offeror's customer or category of customer upon which the MAS contract was predicated. Any changes in pricing practices by the contractor resulting in a less advantageous relationship between the Government and the customer or category of customer upon which the MAS contracts was predicated shall result in a price reduction to the Government to the extent necessary to retain the original relationship.

The following price reductions clause will be used in all MAS contracts:

Price Reduction Clause [1]

a. *General.* This price reductions clause is intended to ensure that throughout the term of the contract, the Government shall maintain its relative price/discount [and /or term and condition] advantage in relation to the Contractor's commercial customer(s) price/discount upon which this contract award was predicated. The customer or category of customers upon which the contract award is predicated will be identified at the conclusion of negotiations.

b. *Pricing Reductions to Customers Other than the Federal Agencies.* (1) Prior to the award of contract, the contracting officer and the offeror shall reach an agreement as to the price relationship between the Government and the offeror's identified customer or category of customers upon which the contract award is predicated. This relationship shall be maintained throughout the contract period. Any change in the contractor's commercial pricing arrangements for the identified customer or category of customers which disturbs this relationship will constitute a price reduction.

(2) The contractor shall report all price reductions made during the contract period to the contracting officer along with an explanation of the conditions under which the reductions were made. Those reductions which do not disturb the Government's price position relative to the contractor's identified customer or category of customers will not be subject to the provisions of this clause. However, the information will be used in conjunction with the negotiations for the following contract period.

(3) If, after the date of the conclusion of negotiations, the contractor (i) reduces the prices contained in the commercial catalog, pricelist, schedule, or other documents (or grants any more favorable terms and conditions) offered by the contractor and used by the Government to establish the prices with the contract; or (ii) reduces the prices through special discounts to the identified customer or category of customers upon which the award was predicated so as to disturb the relationship of the Government to that identified customer or category of customers, a price reduction shall apply to this contract for the remainder of the contract period, or until further reduced, or, in the case of temporary price

[1] Note:—Language in brackets apply to ADP/Communications/Teleprocessing Solicitations/Contracts Only.

reductions, for the duration of any temporary price reduction period.

(4) This clause will not apply to contractor's firm fixed price Definite Quantity contracts with specified delivery in excess of the Maximum Order Limitation specified in the contract.

(5) The contracting officer may exempt from the application of this clause any sale at a price below the contract price if caused by an error in quotation or billing, provided adequate documentation is furnished by the contractor immediately following the discovery of the error.

c. *Price Reductions to Federal Agencies.* (This paragraph does not apply to Non-Schedule ADP/Communications/Teleprocessing Services contracts entered into with Federal Agencies.)

Except for temporary "Government-only" price reductions described below, if, after the effective date of this contract, the contractor reduces the price of any contract item to any Federal agency and the sale falls within the contract maximum order limitation, an equivalent price reduction shall apply to all subsequent sales of the contract item to Federal agencies for the duration of the contract period or until the price is further reduced. The contractor may offer to the contracting officer a temporary "Government-only" price reduction which has a duration of 30 calendar days or more, except during the last month of the contract period when any such offer must be for the remainder of the contract period.

d. *Effective Dates and Notifications.* (This paragraph does not apply to Non-Schedule ADP/Communications/Teleprocessing Contracts entered into with Federal Agencies.)

(1) Any price reduction pursuant to b. above, shall be effective for the Government at the same time as the price reduction to the other customer. Any price reduction pursuant to c. above, shall be effective at the time of initial purchase in the Federal Agency (Government) at the reduced price, except in the case of a temporary "Government-only" price reduction which shall be effective at the time of acceptance by the contracting officer. The contractor shall invoice at such reduced price and indicate thereon that the price reduction is pursuant to this Price Reduction Clause until such time as this contract is modified.

(2) The contractor shall notify the contracting officer in writing of any price reduction as soon as possible but not later than 10 calendar days after the effective date. Failure to give timely notice shall require that such price reduction (including temporary price reductions) apply to the contract for the duration of the contract period, or until the price is further reduced, and may constitute a basis for termination of the contract as provided in the Default Clause of the contract.

e. *Contractor's Statement of Price Reduction.* (This paragraph does not apply to Non-Schedule ADP/Communications/Teleprocessing Contracts entered into with Federal Agencies.)

The contractor shall furnish within 10 calendar days after the end of the contract period a statement certifying either (1) that there was no applicable reduction; or (2) that any price reduction was reported to the contracting officer. For each reported price reduction, the contractor shall show the date when the contracting officer was so notified.

VIII. Economic Price Adjustments

An economic price adjustment (EPA) clause will be used in FSS MAS contracts where uncertainty exists as to the stability of market prices during the term of the contract. The contracting officer will determine whether items under the MAS contract are subject to unforeseen price fluctuations, thus warranting the use of an EPA clause. The contracting officer's determination on the use of an EPA clause will be made in the negotiation process.

Multiple Award Schedule (MAS) Pricing Guide

I. Discount Schedule and Marketing Data

A. *Requirement for Offeror To Submit Pricing Data.* FPR 1-3.101(c) provides that proposals shall be supported by statements and analyses or other evidence of reasonable prices and by such information concerning other vital matters as is deemed necessary by the contracting officer. Each MAS solicitation will include Discount Schedule and Marketing Data sheets to be completed for each Special Item Number (SIN) and submitted as a part of the offerors proposal. When this form is completed in its entirety, along with pricing data from current or prior contracts and preaward audits, it should provide the necessary data, in most cases, to enable the contracting officer to complete the price analysis and develop the negotiation objective.

B. *Initial Review of Offerors Proposal.* As soon as possible after receipt of proposals, the contracting officer should review in detail the offeror's submission in response to the Discount Schedule and Market Data Sheets. If the offer has failed to respond to specific data elements or if the response is not adequate, the contracting officer should immediately request that the offeror correct any deficiencies in the data submission. In this regard, a specific date for the receipt of the required data should be established with the offeror. Also, it is important that the data be received well in advance of schedule negotiations to permit adequate time for a price analysis by the contracting officer.

C. *Timeliness of the Procurement Action.* The process, to the extent practical, should begin early enough to allow for award of MAS contracts by the beginning of the proposed schedule period.

II. Prenegotiations

A. *Establishing the Negotiation Objective.* In preparing for negotiations, the contracting officer will establish specific negotiation objectives based upon a properly prepared price analysis. This price analysis will serve as the basis for the negotiation objectives including the rationale for the objectives established. The elements of the price analysis are listed in Section IV of this pricing guide.

B. *Negotiation Objective.* In establishing negotiation objectives, contracting officers must remain cognizant of the Government's goal in negotiating MAS contracts, namely, to obtain discounts equal to or better than an offeror's discounts to its favored customer. The most favored customer discount is defined as the largest discount, other than the OEM or dealer/distributor discount given to any entity with which the offeror does business. There are factors, such as, terms and conditions, warranties and FOB point, that may make the Government different from a firm's other customers. Through proper analysis and documentation, the contracting officer may recognize such differences. However, in recognizing these differences, the contracting officer must also consider the volume purchased by the Government under the MAS contract.

C. *Documentation of the Price Analysis and Negotiation Objective.* The contract file will contain the written price analysis report in support of the Government's negotiation position.

The supporting documentation will necessarily vary depending upon the complexity and estimated dollar volume of the contract. The price analysis and negotiation objective will be a part of the price negotiation memorandum (See section V of this pricing guide). The supporting documentation required at

this point in the procurement process will normally include:

1. General description of the procurement.

2. Adequacy of data submitted by the offeror.

3. The elements of pricing analyzed preparatory to establishing the negotiation objective. (See section IV of this pricing guide).

4. The negotiation objectives and the supporting rationale.

5. Major differences between the offeror's proposal and the negotiation objectives.

6. The offeror's documentation and rationale if less than the MFC discount is offered. This will also include the contracting officer's evaluation of that data.

D. *Approval of Negotiation Objectives.* The negotiation objectives should be approved by the chief of the purchasing office or designee.

III. Catalog Item Verification

A. *Definition of Established Catalog Price.* FPR 1–3.807–1(b)(2) states that for an item to qualify as a catalog price, the price must be, or be based on, (A) an established catalog price, (B) of commercial items, (C) sold in substantial quantities, (D) to the general public. The criteria contained in the following paragraphs should be applied in determining whether an item falls within the scope of this definition.

B. *Established Catalog Price (FPR 1–3.807–1(b)(2)(ii)(A)).* This is a price that is included in a catalog, price list, schedule or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers and states prices at which sales are currently or were last made to a significant number of buyers who constitute the general public. The following questions will help you determine if there is an established catalog price.

1. Is there a printed catalog, price list, published price or other formal document showing prices and applicable discounts, if any.

2. Can audit validate from seller's records that the price offered is a regular catalog price with appropriate discounts?

3. If the answer to either (1) or (2) above is not "yes" the proposal does not meet the test of a catalog priced item.

C. *Commercial Item (FPR 1–3.807–1(b)(2)(ii)(B)).* This is an item (the term includes both supplies and services) of a class or kind that is regularly used for other than Government purposes and is sold or traded in the course of normal business operations. The following questions will help you determine if the item is a commercial item.

1. Is the item or service identical to that described in the catalog?

2. Is the item or service so similar it can be priced by reference to catalog prices?

3. Is the item or service so similar that differences can be identified and priced as add-ons or deducts from catalog prices by price analysis or other known prices?

4. If the answer to either (1), (2) or (3) above is not "yes," the proposal does not meet the test of a catalog item.

D. *General Public (FPR 1–3.807–1(b)(2)(ii)(D)).* An item is sold "to the general public" if it is sold to other than affiliates of the seller and to nongovernment entities. Items sold to affiliates of the seller and sales for end use by the government are not sales to the general public. The following questions will help you determine if an item is sold to the general public.

1. Does the seller's data show sales over the appropriate past period as between Government and non-Government entities?

2. Is there general knowledge of large public sales of products regularly stocked by dealers or regularly traded in the marketplace?

3. Can audit validate from the seller's records that sales have been made to non-Government entities?

4. If you did not answer "yes" to any of the preceding checklist items, the proposal does not meet the test of a catalog item.

E. *Substantial Quantities (FPR 1–3.807–1(b)(2)(ii)(C)).* Supplies are sold in substantial quantities when the facts or circumstances are sufficient to support a reasonable conclusion that the quantities regularly sold are sufficient to constitute a real commercial market for the item. This test is usually in terms of total quantities sold, but it also should include the number of times the item has been sold and how many times a given price or price structure has been accepted by buyers free to choose. Nominal quantities, like models, specimens, samples and prototype of experimental units do not meet this requirement. Services sold in substantial quantities are those that are customarily provided by the company, with personnel regularly employed and with equipment regularly maintained solely or principally to provide such services. In order to provide more detailed guidance to contracting officers, and to ensure that the policy is carried out in a more uniform manner among all contractors, GSA has adopted the ASPM No. 1 criteria as set forth in Chapter 8A. Also, the sales data requested in section VII of the Discount Schedule and Marketing Data is set forth in a format to facilitate your analysis of this requirement. The following questions will help you determine if the items have been sold in substantial quantities:

1. Are reported sales to non-Government entities at least 55% of total sales and those at catalog price less applicable discounts at least 75% of this amount? When the answer to this question is "yes" the item meets the "substantial quantity" test.

2. Are reported sales to non-Government entities at least 35% of total sales and those at catalog price less applicable discounts at least 55% of this amount? When the answer to this question is "yes" the test of substantial may be deemed to have been met when (i) the criteria in B, C, and D above are met, (ii) the nature of the item or total quantities sold clearly supports such a conclusion even though the Government is the major user, and (iii) approval of the chief or deputy chief of the Procurement Office is obtained.

3. Can audit verify from the seller's records that commercial sales meet the test of (1) and (2) above?

4. Are reported sales to non-Government entities less than 35% of total sales to all customers (Government and non-Government)? If the answer is "yes," the item does not meet the test of substantial quantities. Therefore, if the item is to be included in the MAS, cost or pricing data must be obtained and evaluated in accordance with FPR 1–3.807.

F. *Catalog Price Exemption.* A catalog price exemption to the need for submission of cost or pricing data can be granted for products or services offered on MAS solicitations when the requirements set forth in paragraphs A through E above have been met.

The Discount Schedule and Marketing Data Sheets provides in section VII for the information to determine commerciality. This section permits offerors to certify to the commerciality of items offered under the solicitation. Along with this certification, offerors are required to submit sales information on a representative sample of the best selling items under the SIN. The contracting officer will establish the representative sample size in the solicitation. For items that the offeror cannot certify as commercial, sales information will be required for each item offered under the solicitation. The information provided will be used in determining whether an item should be exempt from the cost and pricing data requirement.

IV. Price Analysis

A. *Requirement for Price Analysis.* FPR 1–3.807–2(a) states that some form of price or cost analysis should be made in connection with every negotiated procurement action. FPR 1–3.807–1(b)(2)(iv) states that even though an item qualifies for exemption from the requirements for submission of certified cost or pricing data, price analysis must be performed to determine the reasonableness of the price and the need for further negotiation.

B. *Preparation for Negotiations.* Preparation for negotiations after receipt of the offer begins with a properly prepared price analysis report. The price analysis should provide the basis for establishing the specific negotiation objectives and the reasons why these objectives were established.

C. *Price Analysis Techniques.* Most of the data needed to perform the price analysis will be submitted by the offerors as required by the Discount Schedule and Marketing Data Sheets and the historical files on existing or prior contracts. Questions on the proposal that arise during the price analysis effort will be addressed to the offeror. The price analysis may include the following elements, as appropriate:

1. Discount arrangements on the existing or prior year contract. Data from these sources can be accumulated prior to receipt of proposals. Information should include: estimated and actual sales volume; categories of customers and discount arrangements; the MAS discounts negotiated; and, any problems or significant events that were experienced during the negotiations affecting the Government's negotiation position. Price reduction information submitted in accordance with the price reductions clause shall also be included. This information is the data base from which to start the price analysis after proposals are received.

2. Offeror's commercial sales data. The sales data submitted in Part B, VII of the Discount Schedule and Marketing Data Sheets will be used to determine price reasonableness, the commerciality of products or services offered and the discount the Government should receive. As a general rule, the larger the percent of commercial sales to total sales, the more reliance the Government can place on prices being set in the marketplace. Because products or services available under schedules should be for the most part commercial items, it is essential that the commerciality of the products or services be established preparatory to negotiations. Where products or services do not clearly meet the tests of commerciality, contract negotiators are required to analyze whether these products or services are comparable to others which meet the tests of commerciality or there are other circumstances that can be used in judging why such items should be considered commercial. Additional information may be required from the offeror in assessing commerciality. Where products or services are not commercial, cost or pricing data is required.

3. The prices and discounts proposed by the offeror. The offeror's proposal should be reviewed to ascertain an understanding of the prices or discounts offered to the Government as compared with offeror's discounts to other entities and to determine if the sales data required is included in the proposal. The analysis of the proposal should determine the reasons for differences between the offered discounts, and other discount arrangements; whether there are special discount arrangements; or other concessions that the offeror makes which should be included in determining the Government's negotiation position.

4. Net price evaluation. Comparison of net prices may be utilized in the evaluation of offers under MAS contracts. Every effort should be made to include products with the lowest net price on the schedule even though there may be instances where the offeror offering the lowest net price may not offer the most favored customer pricing. In addition, you may compare the net prices offered by one offeror with net prices of similar items offered by other offerors to assist in the price reasonableness determination. This may be done on a sampling basis using the high dollar volume items listed on the Discount Schedule and Marketing Data Sheets.

5. Recommendations contained in preaward audits or from other pricing specialists or from other appropriate sources.

6. Trend analysis of price changes using appropriate indices such as the Producer Price Index, other similar market indicators, and price changes in similar produces offered by other companies.

7. The comparison of offered prices/discounts to local retail and discount house catalog prices.

8. The overall discount policy of the offeror. The Discount Schedule and Marketing Data sheets require that complete disclosure regarding discount policy and price reductions in any other form be made. This would include, but not limited to, such things as quantity discounts, end-of-year discounts, discounts for multiple quantities, free service or installation, training, bonus goods of any kind, trade-in allowances, rebates of any kind, F.O.B. point, payment terms, incentives, guaranteed prices. The price analysis should determine whether any such items are included in the offeror's proposal to the Government and the consideration that they should be given in establishing the Government's negotiation position.

9. That the offeror's price to the Government takes into account the volume of Government business anticipated for a fixed period, such as a fiscal year, rather than the size of the individual purchase order (FPR 1–3.807–12).

D. *OEM and Dealer/Distributor Discounts.* 1. An integral part of the price analysis is the consideration given to OEMs and dealers in the establishment of the Government's negotiation position. While the government's goal in negotiating schedule discounts is to obtain an offeror's most favored customer discount other than the OEM or dealer discount, it is none the less necessary for the Government to assure itself that these entities are performing OEM or dealer functions. Accordingly, appropriate information will be obtained from the offeror where an offeror sells to OEMs or dealers.

2. An offeror will be required to furnish information on its dealer/distributor pricing or discount arrangements regardless of whether these entities will participate under the schedule contract. Information will be obtained on the functions that the dealer/distributor performs and which of these functions will be performed under the schedule contract. Where a dealer performs a significant number of functions for the offeror, the Government's negotiation objective will be other than the offeror's dealer/distributor price or discount.

3. Where an offeror sells the same or similar products or services to an OEM that are offered to the Government under the MAS solicitation, the offeror will be required to furnish information on its OEM pricing or discount arrangements. Where an offeror sells to an OEM and claims that there is considerable difference between the item sold to the OEM and the item sold through the MAS contract, the offeror will be given the opportunity to demonstrate such differences. If the differences can be substantiated, the Government's negotiation position will be other than the offeror s OEM price or discount.

V. Negotiations

1. Negotiations can begin upon completion of a properly prepared price analysis and establishment of the Government's negotiation objectives.

2. During the negotiations, Government negotiators will address the following:

a. Aggregate discounts based on the estimated volume of sales under the schedule contract giving consideration to the Government's manner of ordering.

b. In FSS, the use of an economic price adjustment clause considering the uncertainty of prices for the contract term and the resultant improved discounts offered the Government by the offeror for this price protection. The use of the EPA clause is a matter for negotiation.

3. In the event that the Government's negotiation objective cannot be met, the contracting officer must exercise judgment in deciding whether to reject the offer. In exercising this judgment, the contracting officer must weigh the effect that the rejection of the offer will have on meeting the Government's needs. Whenever a decision is made to award an MAS contract where the Government's discount is not equal to or better than the MFC discount, the contracting officer will:

a. Ensure the analysis and reasons for this decision are fully documented and justified in the contract file.

b. Obtain approval for such a decision at a supervisory level higher than the contracting officer, regardless of the dollar value.

4. The Government will not award an MAS contract to a firm that does not give us a price equal to the best price given or available to its volume end user customers under similar circumstances except where the Government's overall volume of purchases for the contract period does not warrant the best price given to end user customers.

5. At the conclusion of negotiations, the contracting officer will decide on the level of the MOL in the contract. The level of the MOL depends on the Government's negotiated discount arrangement and the estimate of sales volume above which suppliers are likely to quote lower prices in other types of contracts.

6. In all MAS contract negotiations, the contracting officer is required to make an affirmative determination that the prices negotiated are fair and reasonable (FPR 1-3.807.2).

7. FPR 1-3.811 requires that a price negotiation memorandum (PNM) be prepared at the conclusion of each negotiation. The PNM is the document that brings together all the principal elements of the negotiation leading to the decision the price/discount is fair and reasonable. In support of that decision, the PNM should contain the significant considerations shaping the pricing/discount arrangement. These include:

a. A summary of the offer received (prices, terms, etc.), the Government's negotiation position (objectives) and the negotiation results. Any revised or adjusted offers and any reversed or adjusted Government negotiation objectives will be explained.

b. Names and titles (position) of the Government and contractor representatives who participated in the negotiations.

c. Reference to the price analysis report should be made or, where appropriate, actual incorporation of the price analysis. (Elements of the price analysis report are in Section II, paragraph C of this pricing guide).

d. Where cost of pricing data is required, the narrative should cover the products or services that require it, the source of the data, the analysis of the data and its use in negotiations. Where the requirement for cost or pricing data is waived, the determination and findings in support of such waiver will be appended to the PNM.

e. Where preaward audit or other pricing assistance is available, the PNM should identify the recommendations. Where the recommendations are not used, appropriate rationale will be included on why they were not used. Any alternate position will be documented and supported with factual data.

f. Any exceptions to the Government's terms and conditions will be documented as will any special or non-standard contract provision.

g. The PNM will document the initial negotiation objectives and actual negotiations including the offers and counter-offers made by the parties with supporting rationale for all Government positions.

h. The document will include the MOL level established with supporting rationale.

i. The document must clearly demonstrate and support that the price/discount negotiated is reasonable. It must document any decision to accept less than the best pricing arrangement granted to the most favored customer. The PNM should also identify the offeror's data used in the negotiation process.

j. The PNM should be signed and dated by the contracting officer as evidence that it is the official record of negotiations and it complies with GSA policies and procedures.

Price Analysis Check Sheet

	Yes	No
1. Did the offeror submit adequate data in response to the solicitation?		
2. If data submitted by offeror was not adequate, did you request that deficiencies be corrected?		
3. Did offeror than submit adequate data?		
4. Did you verify that the items meet the test of:		
a. Established catalog price (FPR 1-3.807-1(b)-(2)(ii)(A))?		
b. Commercial item (FPR 1-3.807-1 (b)(2)(ii)(B))?		
c. General public (FPR 1-3.807-1 (b)(2)(ii)(D))?		
d. Substantial quantities (FPR 1-3.807-1 (b)(2)(ii)(c) and ASPM No. 1, Chapter 8A)?		
5. Did you prepare a price analysis on the offerors proposal?		
6. Did you compare the offerors prices/discounts to existing or prior contracts and reconcile differences?		
7. Did you compare proposed price lists to prior lists and evaluate changes?		
8. Did the offeror propose the MFC discount to the Government?		
9. If MFC discount was not offered, did the offeror's proposal provide the required documentation in support thereof?		
10. If MFC discount was not offered, did you evaluate why and use it in developing the Government's negotiation position?		
11. On a sample basis, did you compare "net prices" on high dollar volume items to similar items offered or available from other sources?		
12. Are the prices negotiated at least equal to the best price that the offeror grants to its end user most favored customer?		
13. Does the PNM contain an affirmative determination that the prices negotiated are fair and reasonable and set forth the basis for such determination?		

Solicitation No. ———

Discount Schedule and Marketing Data

Instructions to Offerors

Part A. General Information, applies to each GSA Special Item Number (SIN) for which an offer is submitted. (If all information is the same, SINs may be combined.)

Part B. Separate discount and sales information, *must be completed for each Special Item Number* for which an offer is submitted. (If discount information is the same for all products under each SIN, SINs may be combined. However, separate sales information rerquired under Part B IV must be provided for each SIN.)

Information required by each space *must* be furnished. If not applicable, indicate by "N/A". Information furnished in Part B relating to discounts, allowances and sales information will be treated as "Confidential" by the Government except for final prices and discounts awarded by the Government. *Failure to provide current, accurate and complete information under Parts A and B may subject the offeror to liability for refunds pursuant to the price reductions or Defective Pricing Clauses.*

Part A—General Information

(Applicable to all special item numbers)

I. *Offeror's Marketing Category* (check applicable item)

(a)——Manufacturer selling direct—has no dealers.

(b)——Manufacturer selling direct to the Government even though he has dealers.

(c)——Manufacturer selling to the Government through dealers.

(d)——Dealer selling direct to the Government. (Dealer must submit manufacturer's price list).
(e)——Other (specify)————

II. *Identification of a Price List as the Basis for This Offer* (check and attach—copies of the price list)
(a)——Manufacturer's catalog/pricelist (indicate type)————
(b)——Dealer's catalog/pricelist
(c)——Retailer's catalog/pricelist
(d)——Other (specify)————

III. *Warranty:* (question (b) applies only to FSS solicitations)
(a) Submit your standard commercial warranty or specify where it may be found in your catalog or pricelist included with this offer.
(b) The warranty offered to GSA is more favorable——less favorable——or equal to——the commercial warranty? (check one). Describe and provide the value (expressed as a percentage of the catalog price) if more favorable or less favorable——%.

IV. *Installation and Instruction* (this section only applies to FSS)
(a) Are installation and instruction included in this effort? Yes—, No— (check one). If *Yes*, give details or indicate where the information may be found in your catalog or pricelist.
(b) Are installation and instruction provisions offered herein to the Government more favorable than those in commercial customers? Yes—, No— (check one). If *Yes*, describe and provide the value (expressed as a percentage)——%.

V. *Other Data:* (In FSS solicitations, answer "Yes" Or "No" for each question)
(a)——Do you maintain stock on hand of the items offered?
(b)——Do you display the Special Item Number(s) offered in showroom?
(c)——Do you provide any design and layout assistance related to this Special Item Number free of charge?
(d) If you are a dealer, will you arrange to have other dealers participate in the schedule contract should you receive a contract?
(e)——Will you administer all incoming orders, including requests for expediting and follow-up?

Solicitation No. ———

Part B—Discount and Sales Information

Name of Offeror ————————
GSA Special Item Number ————————

I. *Identification of Items Offered.* How many Model/type of catalog items do you offer under this GSA special Item Number ——— (enter number).

II. *Discounts.* The following concessions are offered to the Government for delivery FOB destination. In ADTS solicitations, list also concessions to the Government for delivery FOB origin.
(a) Discount offered on the above GSA Special Item Number is —— % from pricelist dated ———, *plus* prompt payment discount, as stated on the first page of this solicitation (additional details may be entered below or attached). If discounts vary, show discounts on pricelist.
(b) Aggregate or end of contract additional discounts. An additional discount of —— percent is offered to the Government which will be applied to the actual aggregate sales in excess of the following base figure under this contract:
1. For current MAS contractors, aggregate sales (annualized) to the Government for most recent 12 month period under similar contract(s) is $———, based on sales during the period ——— to ———.
2. For other offerors, projected aggregate sales under this contract is $———.
(c) Quantity Discounts. List below any quantity discounts included in this offer. (Question (2) below applies only to FSS).

	Regular discounts (percent)	Quantity discounts (percent)	Aggregate discounts	Commissions to other than employees (percent)	Prompt payment	FOB point	Other
(1) To dealers/retailers							
(2) To distributors/wholesalers							
(3) To educational institutions							
(4) To state, county, city, and local governments							
(5) To original equipment manufacturers (OEM)							
(6) To others (specify); e.g., national accounts, sales agreements, etc.							
(7) If a dealer, indicate discount from manufacturer's price list							

(1) Can models/products be combined within special Item Number? Yes —— No ——. If yes, provide details.
(2) Can special Item Numbers be combined? Yes —— No ——. If yes, provide details.
(d) Other beneficial terms, discounts, or concessions included in this offer such as prompt renewal discounts, purchase option credits, etc. (List below and provide detail explanations.) (This section applies only to FSS solicitations).

III a. List below the best discount and/or concessions resulting in the lowest net price (regardless of quantity and terms and conditions) to other than authorized GSA contract users from *price list* for the same or similar products or services offered to the Government under this solicitation. (Show actual percentage and delivery terms)

III.c. Do you have in effect, for any customer of any class within the MOL or outside of the MOL, other discounts and/or concessions including but not limited to the following, regardless of price list, which result in lower net prices than those offered the Government in this offer?
Yes——No——rebates of any kind, including year-end or end of contract discounts?
Yes——No——multiple quantity unit pricing plan?
Yes——No——cumulative discounts of any type which cover items being offered?
Yes——No——products (models)/services that may be combined for maximum discounts?
Yes——No——others (specify).
If answer to any of the above is "Yes", provide detail explanation including the value expressed as a percentage of the list price.

Special Item No. ———

IV. (a) Are any of the models/products offered herein sold by the offeror under a different trade name(s)? Yes ——, No ——. If "Yes," explain and provide applicable pricelists.
(b) To your knowledge, are there identical products offered herein contained in any other GSA Federal Supply Schedule contract? Yes ——, No ——. If "Yes", identify the product, schedule and contract.
(c) Summarize any significant changes in concessions offered herein as compared with those set forth in any current GSA contract.

V. *Allowances:* (This section only applies to FSS solicitations). Do you offer any of the following allowances to any customer which are not available to a GSA contract user under this contract? (Enter "yes" or "no" for each. If yes, explain.)
(a) —— Trade-in allowances?
(b) —— Return/Exchange goods policy?
(c) —— Reduced prices on samples, demonstrator models, reconditioned items or floor models?
(d) —— Do you give any allowances not mentioned above?

VI. *Sales Information* (This section only applies to FSS solicitations). Estimate the percentage of your sales made to the U.S. Government under Federal Supply Schedule Blanket Purchase Arrangements (check one of the following):
None ——. 25% or less ——. 25% to 49% ——. 50% to 74% ——. 75% or more ——.
List agencies below:
1. ————————
2. ————————
3. ————————
4. ———————— etc.

VII

Solicitation No. ———— Special Item No. ———— Offeror Name ————

A. This section requires (1) that sales information be provided to enable the contracting officer to determine that the items meet the test of commerciality in FPR 1-3.807-1 and ASPM No. 1, Chapter 8A; and, (2) that pricing data is furnished in sufficient detail to enable the contracting officer to perform a price analysis in accordance with FPR 1-3.807-1(b)(2)(iv).

B. The offeror certifies that, except for the individual models/types or catalog numbers cited in paragraph C below, all other models/types or catalog numbers offered in response to this solicitation meet the tests of commerciality in FPR 1-3.807-1 and ASPM No. 1, Chapter 8A. Of the individual models/types or catalog numbers so certified, sales information shall be provided in the table below for each of the —— models/types or catalog numbers with the largest dollar sales volume. The sales information provided is for the prior 12 months, from ———— to ———— for this special item number.

1. Total annual sales to the Government under this special item number $————.
2. Total annual sales (to all entities) under this special item number $————.

1	2	3	4	5	6	7	8
Model/type or catalog No.	Total annual sales to Fed. Govt.	Total annual sales to nongovernment customers at catalog price (less published discounts)	Total annual sales to nongovernment customers at other than catalog price	Total annual sales: Columns 2, 3, and 4	Provide information below for largest discount granted to any nongovernment customer	List the largest discount at which the item was sold for comparable sales/quantities shown in column 2 to any nongovernment customer during the past year	Is the discount in block number 6 greater than your current offer under this solicitation? Yes——No——. If yes, provide complete documentation and rationale of the difference. Merely submitting copies of documents such as terms and conditions of commercial contracts, commercial warranties, etc., will not be adequate to justify the difference
	$—percent of column 5		$—percent of column 3 if more than 25 percent		Quantity—Discount	Quantity—Discount	

C. Sales information in the table below shall be provided for each individual model/type or catalog number in the above special item number that is not certified commercial when experienced annual government sales are $100,000 or more.

1	2	3	4	5	6	7	8
Model/type or catalog No.	Total annual sales to Fed. Govt.	Total annual sales to nongovernment customers at catalog price (less published discounts)	Total annual sales to nongovernment customers at other than catalog price	Total annual sales: Columns 2, 3, and 4	Provide information below for largest discount granted to any nongovernment customer	List the largest discount at which the item was sold for comparable sales/quantities shown in column 2 to any nongovernment customer during the past year	Is the discount in block number 6 greater than your current offer under this solicitation? Yes——No——. If yes, provide complete documentation and rationale of the difference. Merely submitting copies of documents such as terms and conditions of commercial contracts, commercial warranties, etc., will not be adequate to justify the difference
	$—percent of column 5		$—percent of column 3 if more than 25%		Quantity—Discount	Quantity—Discount	

NOTES:
1. Federal Government sales include all sales to U.S. Government and its instrumentalities and for U.S. Government use, sales directly to U.S. Government prime contractors and to their subcontractors or suppliers at any tier, for use as an end item or as part of an end item, by the U.S. Government.
2. Nongovernment customer is defined as other than Government or affiliates (include sales to distributors, dealers, OEM, national accounts, educational institutions, state, etc.).
3. Discounts are reductions to catalog or market prices (published or unpublished) applicable to any customer, including OEMs, dealers, distributors, national accounts, states, etc.; and any other form of price reduction such as concessions, rebates, quantity discounts, allowances, services, warranties, installation, free parts, etc., which are granted to any customer.

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BILLING CODE 6820-61-M

41 CFR Parts 1-3, 1-7 and 1-15

[FPR Amdt. 225]

Revisions To Profit Policy and Cost of Money Cost Principle

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This amendment codifies FPR Temporary Regulation 61, which deals with a facilities capital cost of money cost principle and policies for establishing profit or fee prenegotiation objectives. The amendment also adds policies for allowing cost imputed under the provisions of Cost Accounting Standard (CAS) 417, Cost Of Money As An Element Of The Cost Of Capital Assets Under Construction. The basis for the regulation is Office of Federal Procurement Policy Letter 80-7, dated December 9, 1980 (44 FR 82593, December 15, 1980), with regard to profit policy and facilities capital cost of money and Department of Defense initiatives regarding CAS 417. The intended effect is substantial uniformity among Government agency regulations.

EFFECTIVE DATE: November 29, 1982.

FOR FURTHER INFORMATION CONTACT: Philip G. Read, Director, Office of Federal Procurement Regulations, Office of Acquisition Policy (202-523-4755).

SUPPLEMENTARY INFORMATION: FPR Temporary Regulation 61 (46 FR 27645, May 21, 1981) is canceled and deleted from the appendix at the end of 41 CFR Chapter 1.

List of Subjects

41 CFR Part 1-3

Government procurement, Types of contracts, Procurement by negotiation, Small purchases, Cost accounting standards.

41 CFR Part 1-7

Government procurement, Contract clauses.

41 CFR Part 1-15

Government procurement, Cost principles.

PART 1-3—PROCUREMENT BY NEGOTIATION

The table of contents for Part 1-3 is amended to revise three entries, add three entries under Subpart 1-3.8, and

add a new Subpart 1–3.13 with 17 new entries as follows:

* * * * *

Subpart 1–3.8—Price Negotiation Policies and Technique

Sec.
1–3.808–1 Scope and applicability.
1–3.808–2 General.
1–3.808–3 Agency responsibilities.
1–3.808–4 Contracting officer responsibilities.
1–3.808–5 Solicitation provision and contract clause.
1–3.808–6 Profit analysis factors.

Subpart 1–3.13—Cost of Money for Capital Employed on Facilities in Use and Capital Assets Under Construction

1–3.1300 Scope and applicability.
1–3.1301 Cost of money for capital employed on facilities in use.
1–3.1301–1 Policy.
1–3.1301–2 Definitions, measurement, and allocation.
1–3.1301–3 Estimating business unit facilities capital and cost of money.
1–3.1301–4 Contract facilities capital estimates.
1–3.1301–5 Preaward facilities capital applications.
1–3.1301–6 Postaward facilities capital applications.
1–3.1301–7 Administrative procedures.
1–3.1301–8 Format 1301, Contract facilities capital and cost of money.
1–3.1302 Cost of money for capital employed on capital assets under construction.
1–3.1302–1 Policy.
1–3.1302–2 Definitions.
1–3.1302–3 Measurement.
1–3.1302–4 Composition and allocation of costs.
1–3.1302–5 Limitations.
1–3.1302–6 Preaward capital employed application.

Subpart 1–3.8—Price Negotiation Policies and Techniques

1. Section 1–3.808–1 is revised and the caption is revised to read as follows:

§ 1–3.808–1 Scope and applicability.

This section—

(a) Prescribes policies for establishing the profit or fee portion of the government prenegotiation objective;

(b) Applies to price negotiations, based on cost analysis, of contracts and contract modifications (including modifications to contracts awarded by formal advertising);

(c) Prescribes policies for agencies' development and use of a structured approach for determining the profit or fee prenegotiation objective; and

(d) Specifies (1) situations requiring contracting officers to analyze profit, and (2) considerations for that analysis.

2. Section 1–3.808–2 is revised and the caption is revised to read as follows:

§ 1–3.808–2 General.

(a) Profit or fee prenegotiation objectives do not necessarily represent net income to contractors. Rather, they represent the potential remuneration contractors *may* receive for contract performance. This remuneration and the Government's estimate of allowable costs to be incurred in contract performance together equal the Government's total prenegotiation objective. Just as actual costs may vary from estimated costs, the contractor's actual profit may vary from negotiated profit or fee, as a result of such factors as efficiency of performance, incurrence of costs the Government does not recognize as allowable, complexity of work, or contingencies.

(b) It is in the Government's interest to offer contractors opportunities for financial rewards sufficient to (1) stimulate efficient contract performance, (2) attract the best capabilities of qualified large and small business concerns to Government contracts, and (3) maintain a viable industrial base.

(c) Both the Government and contractors should be concerned with profit as a motivator of efficient and effective contract performance. Negotiations aimed merely at reducing prices by reducing profit, without proper recognition of the function of profit, are not in the Government's best interest. Negotiation of extremely low profits, use of historical averages, or automatic application of predetermined percentages to total estimated costs do not provide proper motivation for optimum contract performance. Therefore, agencies shall not (1) establish ceilings on profits or fees, (2) create administrative procedures that could be represented to contractors as de facto ceilings, or (3) otherwise unduly constrain the application of judgment in negotiating fair and reasonable prices (but see § 1–3.808–4(e)).

3. Section 1–3.808–3 is revised and the caption is revised to read as follows:

§ 1–3.808–3 Agency responsibilities.

(a) *Structured approach.* (1) Structured approaches for determining profit or fee prenegotiation objectives provide a discipline for ensuring that all relevant factors are considered (see § 1–3.808–6). The structured approach an agency adopts when required shall allow the tailoring of profit or fee on an individual contract to fit the particular circumstances of that contract. Agencies are encouraged to adopt a weighted-guidelines approach, but may prescribe another structured approach if it incorporates a logic and rationale similar to that of the weighted-guidelines method, an example of which may be found in the Defense Acquisition Regulation (32 CFR 3–808). Instead of independently establishing its own structured approach, an agency may adopt another agency's approach if that approach is consistent with, or is appropriately modified to be consistent with the policies set forth in the various subsections of § 1–3.808. Each agency's approach shall be conceptually sound, practicable to apply, and equitable to both the Government and its suppliers in the market environment from which the agency draws its supplies and services.

(2) Agencies that have awarded less than $50 million in noncompetitive contracts over $100,000 in any fiscal year after fiscal year 1979, need not adopt a structured approach, but may do so. However, any agency which makes noncompetitive contract awards over $100,000 totaling $50 million or more in any fiscal year after fiscal year 1979—

(i) Shall prescribe a structured approach for determining the profit or fee objective in those acquisitions that require cost analysis;

(ii) May prescribe specific exemptions for situations in which mandatory use of a structured approach would be clearly inappropriate; and

(iii) Shall exercise management oversight to ensure that the agency's approach is appropriately structured and applied.

(b) *Cost of money as an element of the cost of facilities capital.* (1) Cost Accounting Standard (CAS) 414 (Cost of Money as an Element of the Cost of Facilities Capital) provides a means for allocating to individual contracts an imputed cost of facilities capital employed, making it practical for the Government to differentiate among contracts with respect to the level of contractor-furnished facilities to be employed in contract performance. This imputed cost is an allowable cost under contracts subject to the cost principles for commercial organizations (see § 1–15.205–51).

(2) Agencies shall ensure that contractors are not compensated for facilities capital cost of money both as a direct or indirect cost and in profit or fee. Before the allowability of facilities capital cost of money, consideration for it was included in profits and fees. Therefore, profit and fee prenegotiation objectives shall be reduced if necessary to reflect this refinement in cost accounting practices. This reduction may be accomplished by means of offsets; that is, by (i) using a dollar-for-dollar offset in the Government's prenegotiation profit or fee objective, or (ii) incorporating a common offset factor

under an agency's structured approach. No offset is necessary when the profit rates applied to the profit analysis factors under an agency's structured approach already take into account the allowability of facilities capital cost of money.

(3) When a prospective contractor does not propose or identify facilities capital cost of money in a proposal for a contract under which this cost could be allowed, it is presumed that consideration for facilities capital to be employed in contract performance is included, but not identified, in the contractor's profit or fee objective. Accordingly, the contractor may not later claim this cost as allowable (see §§ 1–3.808–4(c) and 1–15.205(a)(2)(iii)).

(4) The policy on offsets set forth in paragraph (b)(2) of this section does not apply to the cost of money as an element of the cost of capital assets under construction (see §§ 1–15.205–51(b) and 1–3.1302–6).

4. Section 1–3.808–4 is added to read as follows:

§ 1–3.808–4 Contracting officer responsibilities.

(a) When the price negotiation is not based on cost analysis, contracting officers are not required to analyze profit.

(b) When the price negotiation is based on cost analysis, contracting officers in agencies that have a structured approach shall analyze profit, using their agency's structured approach except as specifically exempted under the agency's procedures. When not using a structured approach (because the agency does not have one or because a specific exemption applies), contracting officers shall comply with § 1–3.808–6 in developing profit or fee prenegotiation objectives.

(c) Contracting officers shall use the Government prenegotiation cost objective amounts as the basis for calculating the profit or fee prenegotiation objective. Before applying profit or fee factors, the contracting officer shall exclude any facilities capital cost of money included in the cost objective amounts. If the prospective contractor fails to identify or propose facilities capital cost of money in a proposal for a contract that will be subject to the cost principles for contracts with commercial organizations (see Subpart 1–15.2), facilities capital cost of money will not be an allowable cost in any resulting contract (see § 1–3.808–5 and 1–15.205–51(a)(2)(iii)).

(d) Contracting officers are not required to use an overall profit or fee objective higher than that proposed by the prospective contractor.

(e)(1) The contracting officer shall not negotiate a price or fee that exceeds the following statutory limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b):

(i) For experimental, developmental, or research work performed under a cost-plus-fixed-fee contract, the fee shall not exceed 15 percent of the contract's estimated cost, excluding fee.

(ii) For architect-engineering services for public works or utilities, the contract price or the estimated cost and fee for production and delivery of designs, plans, drawings, and specifications shall not exceed 6 percent of the estimated cost of construction of the public work or utility, excluding fees.

(iii) For other cost-plus-fixed-fee contracts, the fee shall not exceed 10 percent of the contract's estimated cost, excluding fee.

(2) The limitations in paragraphs (e)(1)(i) and (iii) of this section shall apply also to the maximum fees on cost-plus-incentive-fee and cost-plus-award-fee contracts. However, the agency head or a designee may waive the maximum fee limitation for a specific cost-plus-incentive-fee or cost-plus-award-fee contract.

(3) The estimated costs on which the maximum fees are computed pursuant to the statutory limitations set forth in paragraph (e)(1) of this section shall include facilities capital cost of money when this cost is included in cost estimates.

(f) The contracting officer shall not require any prospective contractor to submit details of its profit or fee objective, but shall consider them if they are submitted voluntarily.

(g) If a change or modification calls for essentially the same type and mix of work as the basic contract or is of relatively small dollar value compared to the total contract value, the contracting officer may use the basic contract's profit or fee rate as the prenegotiation objective for that change or modification.

5. Section 1–3.808–5 is added to read as follows:

§ 1–3.808–5 Solicitation notice and contract clause.

(a) The contracting officer shall insert the notice set forth below in all solicitations that will result in contracts with reimbursable costs subject to the cost principles for contracts with commercial organizations (see Subpart 1–15.2):

Facilities Capital Cost of Money

Facilities capital cost of money (see FPR § 1–15.205–51(a)) will be an allowable cost under the contemplated contract, but only if the contractor specifically identifies or proposes it in the cost proposal for the contract and elects to claim this cost by checking the appropriate box below. If the contractor does not specifically identify or propose facilities capital cost of money and does not elect to claim this cost, the contract will include the Waiver of Facilities Capital Cost of Money clause.

☐ The prospective contractor has specifically identified or proposed facilities capital cost of money in its cost proposal and elects to claim this cost as an allowable cost under the contract.

☐ The prospective contractor has not specifically identified or proposed facilities capital cost of money in its proposal and elects not to claim it as an allowable cost under the contract.

(End of notice)

(b) The contracting officer shall insert the clause set forth below in contracts with reimbursable costs subject to the cost principles for commercial organizations in Subpart 1–15.2, when the contractor has not specifically identified or proposed facilities capital cost of money in its proposal and has elected not to claim it as an allowable cost under the contract (see election under paragraph (a) of this section):

Waiver of Facilities Capital Cost of Money

The Contractor is aware that facilities capital cost of money is an allowable cost but waives the right to claim it under this contract.

(End of clause)

6. Section 1–3.808–6 is added to read as follows:

§ 1–3.808–6 Profit analysis factors.

(a) *Common factors.* Unless it is clearly inappropriate or not applicable, each factor outlined in paragraphs (a)(1) through (6) of this section shall be considered by agencies in developing their structured approaches and by contracting officers in analyzing profit when not using a structured approach.

(1) *Contractor effort.* This factor measures the complexity of the work and the resources required of the prospective contractor for contract performance. Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities, and technical assets can be expected to lead to efficient and economical contract performance. The following factors (i) through (iv) shall be considered in determining contractor effort, but they may be modified in specific situations to accommodate differences in the categories used by prospective contractors for listing costs:

(i) *Material acquisition.* This subfactor measures the managerial and

technical effort needed to obtain the required purchased parts and material, subcontracted items, and special tooling. Considerations include (A) the complexity of the items required, (B) the number of purchase orders and subcontracts to be awarded and administered, (C) whether established sources are available or new or second sources must be developed, and (D) whether material will be obtained through routine purchase orders or through complex subcontracts requiring detailed specifications. Profit consideration should correspond to the managerial and technical effort involved.

(ii) *Conversion direct labor.* This subfactor measures the contribution of direct engineering, manufacturing, and other labor to converting the raw materials, data, and subcontracted items into the contract items. Considerations include the diversity of engineering, scientific, and manufacturing labor skills required and the amount and quality of supervision and coordination needed to perform the contract task.

(iii) *Conversion-related indirect costs.* This subfactor measures how much the indirect costs contribute to contract performance. The labor elements in the allocable indirect cost should be given the profit consideration they would receive if treated as direct labor. The other elements of indirect costs should be evaluated to determine whether they (A) merit only limited profit consideration because of their routine nature, or (B) are elements that contribute significantly to the proposed contract.

(iv) *General management.* This subfactor measures the prospective contractor's other indirect costs and general and administrative (G&A) expense, their composition, and how much they contribute to contract performance. Considerations include (A) how labor in the overhead pools would be treated if it were direct labor, (B) whether elements within the pools are routine expenses or instead are elements that contribute significantly to the proposed contract, and (C) whether the elements require routine as opposed to unusual managerial effort and attention.

(2) *Contract cost risk.* (i) This factor measures the degree of cost responsibility and associated risk that the prospective contractor will assume (A) as a result of the contract type contemplated, and (B) considering the reliability of the cost estimate in relation to the complexity and duration of the contract task. Determination of contract type should be closely related to the risks involved in timely, cost-effective, and efficient performance. This factor should compensate contractors proportionately for assuming greater cost risks.

(ii) The contractor assumes the greatest cost risk in a closely priced firm fixed-price contract under which it agrees to perform a complex undertaking on time and at a predetermined price. Some firm fixed-price contracts may entail substantially less cost risk than others because, for example, the contract task is less complex or many of the contractor's costs are known at the time of price agreement, in which case the risk factor should be reduced accordingly. The contractor assumes the least cost risk in a cost-plus-fixed-fee level-of-effort contract, under which it is reimbursed those costs determined to be allocable and allowable, plus the fixed fee.

(iii) In evaluating assumption of cost risk, contracting officers shall, except in unusual circumstances, treat time and materials, labor-hour, and fixed-price level-of-effort contracts as cost-plus-fixed-fee contracts.

(3) *Federal socioeconomic programs.* This factor, which may be a negative or positive consideration, measures the degree of support given by the prospective contractor to Federal socioeconomic programs, such as those involving small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, handicapped sheltered workshops, labor surplus areas, and energy conservation. Greater profit opportunity should be provided under contracts with contractors adhering to the spirit and intent of these programs.

(4) *Capital investments.* This factor takes into account the contribution of contractor investments to efficient and economical contract performance. The following subfactors shall be considered in the analysis:

(i) *Facilities.* This subfactor, which may be either a negative or a positive consideration, includes consideration of the equipment's and facilities' (A) age, (B) undepreciated value, (C) cost-effectiveness, (D) general or special purpose, and (E) remaining life compared with the length of the contemplated program. Also to be considered are any undue reliance on Government-owned facilities and equipment, any contractor failure to provide the kinds or quantities of facilities required for efficient contract performance, and any special contract provisions that will affect the contractor's facilities capital investment risk. When applicable, the prospective contractor's computation of facilities capital cost of money for pricing purposes under CAS 414 (see §§ 1–15.205–51 and 1–3.1301) can help the contracting officer identify the level of facilities investment to be employed in contract performance.

(ii) *Operating capital.* This subfactor includes consideration of the level of the contractor's operating capital investment required for effective contract performance. This level will vary, depending on such circumstances as (A) the nature of the work and duration of the contract, (B) contract type and dollar magnitude, (C) the reimbursement or progress payment rate, (D) the contractor's financial management practices, and (E) the frequency of and time lag between billings and Government payments. These circumstances should be taken into account in determining what profit adjustment, if any, is appropriate under this subfactor.

(5) *Cost-control and other past accomplishments.* This factor, which may be a negative or positive consideration, allows additional profit opportunities to a prospective contractor that has previously demonstrated its ability to perform similar tasks effectively and economically. In addition, consideration should be given to (i) measures taken by the prospective contractor that result in productivity improvements, and (ii) other cost reduction accomplishments that will benefit the Government in follow-on contracts.

(6) *Independent development.* Under this factor, the contractor may be provided additional profit opportunities in recognition of independent development efforts relevant to the contract end item, including manufacturing or engineering processes, specialized or unique services, or other technologies. The contracting officer should consider the extent of the Government's contribution to the contractor's independent research and development program during the contractor fiscal years in which the applicable development was taking place.

(b) *Additional factors.* In order to foster achievement of program objectives, each agency may include additional factors in its structured approach or take them into account in the profit analysis of individual contract actions.

(c) *Nonprofit organizations.* The profit policy was designed for arriving at profit or fee objectives for other than nonprofit organizations. However, if appropriate adjustments are made to reflect differences between profit and nonprofit

organizations, the profit analysis factors and the structured approaches developed by agencies may be used for arriving at fee objectives for nonprofit organizations.

(1) For purposes of this paragraph, nonprofit organizations are defined as those entities organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings inure to the benefit of any private shareholder or individual, of which no substantial part of the activities is carrying on propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from Federal income taxation under Section 501 of the Internal Revenue Code.

(2) In developing appropriate adjustment factors for nonprofit organizations, the following items should be considered:

(i) Tax position benefits;

(ii) Granting of financing through letters of credit or other means;

(iii) Facility requirements of the nonprofit organizations; and

(iv) Any other pertinent factors which may work to either the advantage or disadvantage of the contactor in its position as a nonprofit organization.

Subpart 1–3.13 is added to read as follows:

Subpart 1–3.13—Cost of Money for Capital Employed on Facilities in Use and Capital Assets Under Construction

§ 1–3.1300 Scope and applicability.

This subpart sets forth policies and procedures related to implementation of the "cost of money" cost principle set forth in § 1–15.205–51. This cost principle deals with costs provided for under Cost Accounting Standard 414, Cost of Money as an Element of the Cost of Facilities Capital and Cost Accounting Standard 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction. Although these standards may not be specifically applicable to all contracts subject to the cost principles set forth in Subpart 1–15.2, they have been extended to all such contracts by § 1–15.205–51 and the provisions of this subpart (but see § 1–3.808–3(b)).

§ 1–3.1301 Cost of money for capital employed on facilities in use.

§ 1–3.1301–1 Policy.

(a) It is Government policy to recognize facilities capital cost of money for facilities in use as an allowable cost on negotiated contracts subject to Subpart 1–15.2 that are priced on the basis of cost analysis (see §§ 1–3.808–3(b) and 1–15.205–51(a)).

(b) This policy shall apply to new contracts and contract modifications adding new work awarded on or after June 15, 1981. It shall apply in the same manner to any tier subcontracts or modifications thereto, upon the subcontractor's request, *provided* the prime contract or modification was eligible as of the date of award for facilities capital cost of money in accordance with this paragraph.

§ 1–3.1301–2 Definitions, measurement, and allocation.

Cost Accounting Standard (CAS) No. 414, Cost of Money as an Element of the Cost of Facilities Capital, reprinted in § 1–3.1220–14, establishes criteria for the measurement and allocation of the cost of capital committed to facilities as an element of contract cost for historical cost determination purposes. Important features of the CAS are its definitions, techniques for application, and a prescribed Form CASB–CMF (Facilities Capital Cost of Money Factors Computation) with instructions. This § 1–3.1301 adopts the techniques of CAS 414 as the approved method of measurement and allocation of facilities capital cost of money to overhead pools at the business unit level, and adds only such supplementary procedures as are necessary to extend those techniques for contract forward pricing and administration purposes. Therefore, these procedures are intended to be completely compatible with, and an extension of, the definitions, criteria, and techniques of CAS 414. Contractors who computerize their financial data are encouraged to meet the requirements of both CAS 414 and this § 1–3.1301 from the same data bank and programs.

§ 1–3.1301–3 Estimating business unit facilities capital and cost of money.

The method of estimating the business unit facilities capital and cost of money uses the techniques of CAS 414. Cost of money factors (CMF) by overhead pools at the business unit are developed using Form CASB–CMF. Three elements are required to develop cost of money factors: business unit facilities capital data, overhead allocation base data, and the interest rate promulgated by the Secretary of the Treasury under Pub. L. 92–41. These elements are discussed in this section.

(a) *Business unit facilities capital data.* The net book value (acquisition cost less accumulated depreciation) is used for each cost accounting period. The net book value used is the total of (1) the net book value of facilities recorded on the accounting records of the business unit, (2) the capitalized value of leases (see §§ 1–15.205–34 and 1–15.205–50), and (3) the net book value of facilities at the corporate or group level that support depreciation charges allocated to the business unit in accordance with the provisions of CAS 403. Projections of facilities capital will be supported by budget plans and/or similar type documentation and the estimated depreciation will be the same as used in projected overhead rates. Projections will accommodate changes in the level of facilities net book value, e.g., facilities additions, deletions of facilities by sale, abandonment or other disposal, idle facilities (see § 1–15.205–12).

(b) *Overhead allocation bases.* The base data used to compute the CMF must be the same as that used to compute the proposed overhead rates. CMF's should be submitted and evaluated as part of the proposal.

(c) *Interest rate.* For purposes of projection, the most recent interest rate promulgated by the Secretary of the Treasury under Pub. L. 92–41 will be used as the cost of money rate in Column 1 of Form CASB–CMF. Where actual costs are used in definitization actions, the actual treasury rate(s) applicable to the period(s) of the incurred costs will be recognized by development of a composite rate.

(d) *Determination of final cost of money.* CMF's estimated in accordance with the above procedures are used to develop the facilities investment base used in forward pricing. Actual CMF's are required when it is necessary to determine final allowable costs for cost settlement and/or repricing in accordance with CAS 414 and § 1–15.205–51(a).

§ 1–3.1301–4 Contract facilities capital estimates.

(a) After the appropriate Forms CASB–CMF have been analyzed and CMF's have been developed, the contracting officer is in a position to estimate the facilities capital cost of money and capital employed for a contract proposal. Format 1301, Contract Facilities Capital and Cost of Money (see § 1–3.1301–8), has been provided for this purpose. An evaluated contract cost breakdown, reduced to the contracting officer's prenegotiation cost objective, must be available. The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(b) Format 1301, provides for listing overhead pools and direct-charging service centers (if used) in the same structure they appear on the contractor's

cost proposal and Forms CASB–CMF. The structure and allocation base units-of-measure must be compatible on all three displays. The base for each overhead pool must be broken down by year to match each separate Form CASB–CMF. Appropriate contract overhead allocation base data are extracted by year from the evaluated cost breakdown or prenegotiation cost objective, and are listed against each separate Form CASB–CMF. Each allocation base is multiplied by its corresponding cost of money factor to get the facilities capital cost of money estimated to be incurred each year. The sum of these products represents the estimated contract facilities capital cost of money for the year's effort. Total contract facilities capital cost of money is the sum of the yearly amounts.

(c) Since the facilities capital cost of money factors reflect the applicable cost of money rate in Column 1 of Form CASB–CMF, the contract facilities capital employed can be determined by dividing the contract cost of money by the same rate. Format 1301 is designed to record and compute all the above in the most direct way possible, and the end result is the contract facilities capital cost of money and capital employed. The capital employed amount may be used to identify the level of facilities investment to be employed in contract performance (see § 1–3.808–6 (a)(4)(i)).

§ 1–3.1301–5 Preaward facilities capital applications.

Facilities capital cost of money and capital employed as determined in § 1–3.1301–4, are applied in establishing cost and price objectives as follows:

(a) *Cost of money.* (1) *Cost objective.* This special, imputed cost of money shall be used together with normal, booked costs, in establishing a cost objective or the target cost when structuring an incentive type contract. Target costs thus established at the outset, shall not be adjusted as actual cost of money rates become available for the periods during which contract performance takes place.

(2) *Profit objective.* Cost of money shall not be included as part of the cost base when measuring the contractor's effort in connection with establishing a prenegotiation profit objective. The cost base for this purpose shall be restricted to normal, booked costs (see § 1–3.808–4(c)).

(b) *Facilities capital employed.* The profit objective as it relates to the risk associated with facilities capital employed shall be assessed in accordance with the profit guidelines set forth in § 1–3.808–6(a)(4)(i).

§ 1–3.1301–6 Postaward facilities capital applications.

(a) *Interim billings based on costs incurred.* Contract facilities capital cost of money may be included in cost reimbursement and progress payment invoices. The amount that qualifies as cost incurred for purposes of the "Cost Reimbursement, Fee and Payment" or "Progress Payment" clause of the contract is the result of multiplying the incurred portions of the overhead pool allocation bases by the latest available cost of money factors. Like applied overhead at forecasted overhead rates, such computations are interim estimates subject to adjustment. As each year's data are finalized by computation of the actual cost of money factors under CAS 414 and § 1–15.205–51(a), the new factors should be used to calculate contract facilities capital cost of money for the next accounting period.

(b) *Final settlement.* Contract facilities capital cost of money for final cost determination or repricing is based on each year's cost of money factors determined under CAS 414 and supported by separate Forms CASB–CMF. Contract cost must be separately computed in a manner similar to yearly final overhead rates. Also like overhead costs, the final settlement will include an adjustment from interim to final contract cost of money. However, estimated or target cost will not be adjusted.

§ 1–3.1301–7 Administrative procedures.

(a) Contractor submission of Forms CASB–CMF will normally be initiated under the same circumstances as forward pricing rate agreements (see § 1–3.807–8), and evaluated as complementary documents and procedures. Separate forms are required for each prospective cost accounting period during which Government contract performance is anticipated. If the contractor does not annually negotiate forward pricing rate agreements, submissions may nevertheless be made annually or with individual contract pricing proposals, as agreed to by the contractor and the contracting officer. The contracting officer shall, with the assistance of the cognizant auditor, evaluate the cost of money factors, and retain approved factors with other negotiated forward pricing data and rates.

(b) The contracting officer will complete a Format 1301, Contract Facilities Capital and Cost of Money, after evaluating the contractor's cost proposal and determining the Government prenegotiation cost objective, but before determining the Government prenegotiation profit objective.

(c) A final Form CASB–CMF must be submitted by the contractor under CAS 414 as soon after the end of each cost accounting period as possible, for the purpose of final cost determinations and/or repricing. The submission should accompany the contractor's proposal for actual overhead costs and rates, and be evaluated as complementary documents and procedures.

§ 1–3.1301–8 Format 1301, Contract Facilities Capital and Cost of Money.

(a) Page 1 of Format 1301

BILLING CODE 6320–61–M

CONTRACT FACILITIES CAPITAL AND COST OF MONEY

CONTRACTOR: BUSINESS UNIT: ADDRESS:			RFP/CONTRACT NO. PERFORMANCE PERIOD	
1. OVERHEAD POOLS	2. COST ACCOUNTING PERIOD	3. CONTRACT OVERHEAD ALLOCATION BASE	FACILITIES CAPITAL COST OF MONEY	
			4. FACTORS	5. AMOUNT

This format shall not be printed, reproduced, or stocked by agencies and shall be used only as a guide for individual preparation.

(b) Page 2 of Format 1301.

Instructions for Format 1301 Contract Facilities Capital and Cost of Money

Purpose. The purpose of this format is to compute the estimated facilities capital to be employed for a specific contract proposal. An intermediate step is to compute the estimated facilities capital cost of money, using the Facilities Capital Cost of Money Factors developed on Form(s) CASB–CMF. This procedure is intended to be fully compatible with Cost Accounting Standard 414 "Cost of Money as an Element of the Cost of Facilities Capital," and extend those criteria and techniques to prospective periods for forward pricing purposes. FPR § 1–3.1301 should be referred to for applicability and further explanation.

Identification. Identify the contractor, business unit and address. Identify the specific RFP or contract to which the computation pertains. Identify the estimated performance period of the contract.

Overhead pools (Col. 1). List all business unit overhead pools and direct-charging service/support centers whose costs will be allocated to this contract. The structure must be compatible with contractor's cost proposal and Form(s) CASB–CMF.

Cost accounting period (Col. 2). This column is used only for the "projected" method of estimating contract facilities capital employed and cost of money. Each Overhead Pool listed must be further broken down by each Cost Accounting Period impacted by the Performance Period of the contract. The yearly breakdown must also correspond to yearly overhead allocation bases in the contractor's cost proposal, and to separate Forms CASB—CMF for each year listed. If the "historical" method is used, the column should be ignored.

Contract overhead allocation base (Col 3.). For each Overhead Pool and Cost Accounting Period listed, record the same Contract Overhead Allocation Base amounts used to derive the pre-negotiation cost objective. Such amounts should be the same as those used for burdening contract overhead or applying service/support center use charges. The base units-of-measure must agree with those used on the Form(s) CASB–CMF.

Facilities capital cost of money factors (Col. 4). Carry forward the appropriate estimated Facilities Capital Cost of Money factors from the Form(s) CASB–CMF. Business units, overhead pools and cost accounting periods must agree.

Facilities capital cost of money amount (Col. 5). The product of each Contract Overhead Allocation Base (Col. 3) multiplied by its related Facilities Capital Cost of Money Factor (Col. 4).

Contract facilities capital cost of money (Line 6). The sum of Col. 5. This represents the contract's allocable share of the business unit's estimated cost of money for the cost accounting period(s) impacted by the contract performance period. Therefore it represents a portion of the total(s) of Col. 5 of Form CASB–CMF.

Facilities capital cost of money rate (Line 7). The same Cost of Money Rate used in Col. 1 of the Form(s) CASB–CMF. Only one rate will be used in the facilities capital estimating process regardless of the length of the contract performance period.

Contract facilities capital employed (Line 8). The quotient of Line 6 divided by Line 7. This represents the contract's allocable share of the business unit's estimated facilities value for the cost accounting period(s) impacted by the contract. Therefore it represents a portion of the total(s) of Col. 4 of Form CASB–CMF.

§ 1–3.1302 Cost of money for capital employed on capital assets under construction.

§ 1–3.1302–1 Policy.

(a) It is Government policy to recognize a contractor's investment in capital assets while these are being constructed, fabricated, or developed for the contractor's own use (see § 1–15.205–51(b)). This recognition is made through the allowance of an imputed cost of money amount which is (1) calculated in accordance with Cost Accounting Standard (CAS) 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction (see § 1–3.1220–17), and the instructions in § 1–3.1302–3, (2) capitalized along with the other costs of the asset for which the investment is made, and (3) allocated to Government contracts in accordance with § 1–3.1302–4.

§ 1–3.1302–2 Definitions.

The following definitions have been taken or developed from CAS 417 which is reprinted in § 1–3.1220–17.

(a) *Intangible capital asset.* An asset that has no physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefit it yields.

(b) *Tangible capital asset.* An asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the service it yields.

(c) *Cost of money rate.* The cost of money rate is either the interest rate determined by the Secretary of the Treasury under Pub. L. 92–41 (85 Stat. 97), or the time-weighted average of such rates for each cost accounting period during which the asset is being constructed, fabricated, or developed. The time-weighted average interest rate is calculated by multiplying the various rates in effect during the months of construction by the number of month(s) each rate was in effect. The sum of the products is divided by the total number of months in which the rates were experienced.

(d) *Representative investment.* The representative investment is the calculated amount considered invested by the contractor in the project to construct, fabricate, or develop the asset during the cost accounting period. In calculating the representative investment, consideration must be given to the rate or expenditure pattern of the investment, i.e., if most of the investment was at the end of the cost accounting period, the representative investment calculation must reflect this fact.

(1) If the contractor experiences an irregular or uneven expenditure pattern in the construction, fabrication, or development of a capital asset, i.e., a majority of the construction costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor must either:

(i) Determine a representative investment amount for the cost accounting period by calculating the average of the month-end balances for that cost accounting period, or

(ii) Treat month-end balances as individual representative investment amounts.

(2) If the construction, fabrication, or development costs were incurred in a fairly uniform expenditure pattern throughout the construction period, the contractor may:

(i) Determine a representative investment amount for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period; or

(ii) Treat month-end balances as individual representative investment amounts.

§ 1–3.1303–3 Measurement.

(a) The imputed cost of money for an asset under construction, fabrication, or development is calculated by applying a cost of money rate (see § 1–3.1302–2(c)), to the representative investment amount (see § 1–3.1302–2(d)).

(1) When a representative investment amount is determined for a cost accounting period in accordance with § 1–3.1302–2(d)(1)(i) or § 1–3.1302–2(d)(2)(i), the cost of money rate used shall be the time-weighted average rate.

(2) When a monthly representative investment amount (see § 1–3.1302–2(d)(1)(ii) or § 1–3.1302.2(d)(2)(ii)) is used, the cost of money rate shall be the rate in effect each month. [Note—Under this method, the cost of money calculation is made monthly and the

total for the cost accounting period is the sum of the monthly calculations.)

(b) The method chosen by a contractor for determining the representative investment amount may be different for each capital asset being constructed, fabricated, or developed as long as the method fits the expenditure pattern of the construction costs incurred.

(c) The imputed cost of money will be capitalized only once in any cost accounting period, either at the end of the period or at the end of the construction period, whichever comes first.

(d) When the construction of an asset takes more than one cost accounting period, the cost of money capitalized for the first cost accounting period will be included in determining the representative investment amount for any future cost accounting periods.

§ 1-3.1302-4 Composition and allocation of costs.

(a) The cost of money for a tangible capital asset determined in accordance with §§ 1-3.1302-2 and 1-3.1302-3 shall be capitalized along with the other construction, fabrication, or development costs of that asset for purposes of depreciation under § 1-15.205-9.

(b) The cost of money for an intangible capital asset determined in accordance with §§ 1-3.1302-2 and 1-3.1302-3 shall be capitalized along with other construction, fabrication, or development costs of that asset and amortized over appropriate cost accounting periods.

(c) Where CAS 414 cost of money is allocated to construction, fabrication, or development effort in accordance with § 1-3.1301, it will be recognized and considered an element of total construction costs and be included in all calculations of the asset's representative investment amount.

§ 1-3.1302-5 Limitations.

If substantially all activities necessary to get an asset ready for its intended use are discontinued, cost of money shall not be capitalized for the period of discontinuance, except when such discontinuance arises out of causes beyond the control and without the fault or negligence of the contractor.

§ 1-3.1302-6 Preaward capital employed application.

An offset to the profit objective as discussed in § 1-3.808-3(b) for CAS 414 cost of money is not required for CAS 417 cost of money.

PART 1-7—CONTRACT CLAUSES

The table of contents for Part 1-7 is amended to add one entry under Subpart 1-7.2 and one entry under Subpart 1-7.4 as follows:

* * * * *

Subpart 1-7.2—Cost-Reimbursement Type Supply Contract

* * * * *

Sec.
1-7.203-26 Waiver of facilities capital cost of money.

* * * * *

Subpart 1-7.4—Cost-Reimbursement Type Research and Development

* * * * *

Sec.
1-7.403-62 Waiver of facilities capital cost of money.

Subpart 1-7.2—Cost-Reimbursement Type Supply Contracts

Section 1-7.203-26 is added to read as follows:

§ 1-7.203-26 Waiver of facilities capital cost of money.

Insert the clause set forth in § 1-3.808-5(b) under the conditions prescribed therein.

Subpart 1-7.4—Cost-Reimbursement Type Research and Development Contracts

Section 1-7.403-62 is added to read as follows:

§ 1-7.403-62 Waiver of facilities capital cost of money.

Insert the clause set forth in § 1-3.808-5(b) under the conditions prescribed therein.

PART 1-15—CONTRACT COST PRINCIPLES AND PROCEDURES

The table of contents for Part 1-15 is amended to add the following entry under Subpart 1-15.2:

Sec.
1-15.205-51 Cost of money.

Subpart 1-15.2—Contracts With Commercial Organizations

Section 1-15.205-51 is added to read as follows:

§ 1-15.205-51 Cost of money.

(a) *Facilities capital cost of money.* (1) Facilities capital cost of money (cost of capital committed to facilities) is an imputed cost determined by applying a cost of money rate to facilities capital employed in support of contract performance. A cost of money rate is derived from a common source and uniformly imputed to all contractors. Capital employed is determined without regard to whether its source is equity or borrowed capital. The resulting cost of money is an imputed cost and is not a form of interest on borrowings as discussed in § 1-15.205-17.

(2) Whether or not the contract is otherwise subject to the cost accounting standards (CAS), and except as specified in paragraph (a)(3) of this section, facilities capital cost of money is allowable only when:

(i) The contractor's capital investment and cost of money is measured, allocated to contracts, and costed in accordance with CAS 414 and § 1-3.1301,

(ii) The contractor maintains adequate records to demonstrate compliance with paragraph (a)(2)(i) of this section, and

(iii) The estimated facilities capital cost of money is specifically identified or proposed in cost proposals relating to the contract under which this cost is to be claimed.

(3) Facilities capital cost of money is not allowable in cost-sharing (see § 1-3.405-3) or in cost contracts (see § 1-3.405-2).

(4) Cost of money for facilities capital need not be entered on the company's books of account. However, a memorandum entry of the cost shall be made. All relevant schedules, cost data, and other data necessary to fully support the entry shall be maintained in a manner to permit audit and verification.

(5) Facilities capital cost of money that is (i) allowable under paragraph (a)(2) of this section and, (ii) calculated, allocated, and documented in accordance with this cost principle shall be an "incurred cost" for reimbursement purposes under applicable cost-reimbursement contracts and for progress payment purposes under fixed-price contracts.

(b) *Cost of money as an element of the cost of capital assets under construction.* (1) Cost of money as an element of the cost of capital assets under construction is an imputed cost determined by applying a cost of money rate to the investment in tangible and intangible capital assets while they are being constructed, fabricated, or developed for a contractor's own use. The source of the investment for capital assets being constructed, whether equity or borrowed capital, is not considered in

this cost of money determination. The resulting cost of money is an imputed cost and is not a form of interest on borrowings as discussed in § 1–15.205–17.

(2) Cost of money computed on representative investments before the contractor's first fiscal year subsequent to December 15, 1980, is not allowable. Cost of money may be capitalized on assets under construction beginning with the contractor's first fiscal year after December 15, 1980. The amortization of cost of money will first be allowable for new awards made on or after the effective date of this cost principle change.

(3) Whether or not the contract is otherwise subject to the cost accounting standards, the cost of money for capital assets under construction, fabrication, or development is allowable only when:

(i) The cost of money is calculated, allocated to contracts, and costed in accordance with CAS 417 and § 1–3.1302,

(ii) The contractor maintains adequate records to demonstrate compliance with paragraph (b)(3)(i) of this section, and

(iii) The cost of money for tangible capital assets is included in the capitalized cost which provides the basis for allowable depreciation costs, or in the case of intangible capital assets, the cost of money is included in the cost of those assets for which amortization costs are allowable.

(4) Actual interest cost in lieu of the calculated imputed cost of money for capital assets under construction, fabrication, or development is unallowable.

(5) The cost of money for capital assets under construction need not be entered on the contractor's books of account. However, the contractor shall (i) make a memorandum entry of the cost, and (ii) maintain, in a manner that permits audit and verification, all relevant schedules, cost data, and other data necessary to support the entry.

(6) Cost of money that is allowable under paragraph (b) of this cost principle shall be an "incurred cost" for reimbursement purposes under applicable cost reimbursement contracts and for progress payment purposes under fixed price contracts.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: October 14, 1982.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 82-29270 Filed 11-4-82; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Parts 52 and 52h

Extension of 42 CFR Parts 52 and 52h To Cover Projects for Research on Adolescent Pregnancy and Family Life

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: The rules below amend the general health research regulations of the Department, 42 CFR Parts 52 and 52h, to make them applicable to research grants funded under the recently enacted Title XX of the Public Health Service Act. Title XX provides for research into questions relating to adolescent premarital sexual relations and adolescent pregnancy and parenthood. The amendments do not expand the scope of the current regulations to include a new type of research project. Rather, they indicate that research in the areas described above, which could have been funded under certain statutory authorities Part 52 presently implements, may also be funded under the new research authority. Public comment is not being requested on the amendments since they are technical in nature and no substantive modification of Parts 52 and 52h is being made.

EFFECTIVE DATE: November 5, 1982.

FOR FURTHER INFORMATION CONTACT: Donald Underwood, Grants Management Officer, Office of Adolescent Pregnancy Programs, Department of Health and Human Services, Room 602, Reporters' Building, Washington, D.C. 20201, (202) 472–5588.

SUPPLEMENTARY INFORMATION: On August 13, 1981, the Public Health Service Act was amended by the addition of Title XX (42 U.S.C. 300z *et seq.*). Pub. L. 97–35, sec. 955(a). Section 2008 of the new title establishes a program for research into the "societal causes and consequences of various social phenomena associated with adolescent premarital sexual relations, contraceptive use, pregnancy, and child rearing." Sec. 2001(b)(4), incorporated into 2008(a)(1). In addition, the title authorizes "evaluative research to identify effective services which alleviate, eliminate, or resolve any negative consequences of adolescent premarital sexual relations and childbearing for the parents, the child and their families." Sec. 2001(b)(5), incorporated into sec. 2008(a)(1).

The Secretary is implementing the grant authority under this new statute by making applicable the procedures of 42 CFR Part 52. Those regulations, which govern grants under a number of health research authorities, are familiar to the research community generally. Thus, the decision to implement sec. 2008 through use of Part 52 will expedite the development of acceptable projects under the new authority. Part 52 also provides procedural requirements that are compatible with the research to be undertaken under sec. 2008. Thus, no practical purpose would be served by developing separate regulations for the new statute.

Section 2008 also contains a requirement that applications under that section undergo peer review. Sec. 2008(e)(1). The peer review system established is required by the statute to be, at a minimum, "substantially similar" to the system presently used by the National Institutes of Health (NIH). The Secretary is implementing the peer review requirement of sec. 2008 by making applicable the peer review requirements of Part 52h. This decision is obviously consistent with the decision to implement sec. 2008 generally through adoption of the Part 52 procedures. Moreover, it is also consistent with the requirement that the peer review system be substantially similar to that of NIH, since Part 52h is the peer review system used by NIH.

Because the public and the research community affected by the amendments below are already thoroughly familiar with the provisions of the substantive rules, and the addition of the additional statutory authorities to the rules in any event does not affect their substance, the Secretary has determined that public comment on the amendments is unnecessary. There have been prior opportunities for public comment when substantive changes have been made in the rules.

Impact and Regulatory Flexibility Analyses

E.O. 12291 requires a regulatory impact analysis for any rule that has an annual impact on the economy of $100 million or more or certain other effects. Since the appropriation for this program is anticipated not to exceed $3.3 million, the Secretary has determined that an impact analysis is not required. Moreover, he hereby certifies that a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. Ch. 6), which requires reduction of impact and paperwork requirements where there will be a "significant economic impact on a substantial number of small entities." Because of the size of the anticipated

appropriation it is not expected that a substantial number of grants will be funded.

List of Subjects

42 CFR Part 52 [1]

Grant programs—health, Adolescent pregnancy, Adolescent parenting, Youth.

42 CFR Part 52h

Governmental contracts, Grant programs—health, Adolescent pregnancy, Adolescent parenting, Youth.

In consideration of the foregoing, Parts 52 and 52h of Title 42, Code of Federal Regulations are hereby amended, as set forth below.

Dated: September 3, 1982.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: October 19, 1982.

Richard S. Schweiker,

Secretary.

PART 52—[AMENDED]

1. 42 CFR Part 52 is amended by adding the following citation of authority to the end of the Statement of Authority:

Sec. 955(a), Pub. L. 97–35, 95 Stat. 589 (42 U.S.C. 300z–7(a)(1)).

2. 42 CFR Part 52 is amended by adding a new subparagraph (9) to paragraph (a) of § 52.1, to read as follows:

§ 52.1 To which programs do these regulations apply?

(a) * * *

(9) Research on the causes, consequences and approaches to coping with adolescent sexual relations, contraceptive use, pregnancy and parenthood authorized by section 2008 of the Act.

* * * * *

PART 52h—[AMENDED]

3. 42 CFR Part 52h is amended by adding the following citation authority to the Statement of Authority:

Sec. 955(a), Pub. L. 97–35, 95 Stat. 590 (42 U.S.C. 300–7(e)).

4. 42 CFR Part 52h is amended by adding a new paragraph (c) to § 52h.1, to read as follows:

§ 52h.1 Applicability.

* * * * *

(c) Applications for grants and contracts under sec. 2008 of the Act.

[FR Doc. 82–30521 Filed 11–4–82; 8:45 am]

BILLING CODE 4160–17–M

[1] The Public Health Service is providing this list in compliance with 1 CFR 18.20, which requires agencies to include a list of index terms for each CFR part affected by Rules and Proposed Rules documents published in the **Federal Register** beginning April 1, 1982.

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039 and 1300

[Ex Parte No. 387]

Railroad Transportation Contracts

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Staggers Rail Act of 1980 permitted rail carriers and purchasers of rail service to enter into contracts for rail service. These contracts must be filed with the Commission, with a summary of non-confidential information related to the contract provisions, and with the essential terms presented in tariff format for public inspection. The Commission is adopting rules to implement these provisions of the Rail Act providing for filing contract rates and for filing complaints related to these contracts.

EFFECTIVE DATE: January 4, 1983.

ADDRESS: Interstate Commerce Commission, Room 5340, Washington, DC 20423, Attention: Ex Parte No. 387.

FOR FURTHER INFORMATION CONTACT:

Douglas Galloway, (202) 275–7278

or

Michael Sullivan, (202) 275–0826.

SUPPLEMENTARY INFORMATION: We instituted this proceeding by notice of interim rules 45 FR 73841 (November 5, 1980), in response to the Staggers Rail Act of 1980. The interim rules were stayed at 45 FR 85641, December 29, 1980 and a Notice was issued which adopted the interim rules as proposed rules at 45 FR 85641, December 29, 1980. The notice addressed the contract rates provisions, 49 U.S.C. 10713. We have, on this date, issued a final decision including the final rules for rail contract rates. Copies of the complete decision are available by contacting TS Infosystems at 289–4357 in the DC Metropolitan area or toll-free at 800–424–5403.

Section 10713 allows contracts between rail carriers and purchasers of rail transportation. This section: (1) Sets out the requirements for filing contracts; (2) limits the basis of and sets time limits for complaints against contracts; (3) assures the confidentiality of the contract except for its essential terms; (4) requires the rail carriers to maintain their common carrier obligations; and (5) removes the contract service from Commission jurisdiction after approval of the contract is effective.

In this decision, modifications from the proposed rules have been made to the definition of contracts and to the format and procedures for filing contracts. The standing of various parties to enter into contracts and file to complaints against the contract is also discussed. The most pronounced changes from our proposed rules affect what are the essential terms of the contract and thus what must be publicly disclosed in contract summaries. We have expanded the information to include origin and destination when the contract involves agricultural commodities (including forest products and paper). Contract summaries for non-agricultural commodities moving through ports will not include origin/destination information, but tariff mileage to the nearest 50 miles. On the other hand, we have eliminated the tariff mileage information to be disclosed for the remaining contracts while expanding the car-data reporting requirements, as a party's right to relief is limited to whether a carrier can fulfill its common carrier obligation.

The adopted rules under 49 CFR 1039 and 49 CFR 1300 are set forth in Appendix A. Appendix B contains our Regulatory Flexibility Act Analysis.

List of Subjects

49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Railroads.

49 CFR Part 1300

Freight, Maritime carriers, Pipelines, Railroads.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10713)

Decided: October 8, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons and Gradison. Chairman Taylor and Vice Chairman Gilliam concurred with separate expressions. Commissioners Simmons and Gradison dissented in part with separate expressions.

Agatha L. Mergenovich,

Secretary.

Chairman Taylor concurring:

I depart from the majority's approval of the regulations adopted here today only on the question of disclosure of full rather than base rates and charges in the contract summary (Section 1300.313(a)(6)).

While Congress intended to encourage agricultural, forest products, and paper shippers to contract, it recognized the

difficulties such shippers might have in negotiations. The Commission was thus granted the power to find that a contract is unreasonably discriminatory or constitutes a destructive competitive practice. See Report of Committee on Conference on S. 1946, H.R. Rep. No. 1430, 96th Cong., 2nd Sess. 99 (1980).

Section 10713(b) leaves a certain amount of discretion as to what must be disclosed in a contract summary (i.e., it shall contain "such nonconfidential information as the Commission shall prescribe."). There is no discretion, however, as to the publication of essential contract terms. The second sentence of § 10713(b) provides that "(t)he Commission *shall assure* that the essential terms of the contract are available to the general public in tariff format." (Emphasis added.)

Congressional concerns for small businesses and the granting of powers to the Commission to find unreasonable discrimination or destructive competitive practices for shippers of agricultural commodities, forest products, and paper will be totally meaningless if all the applicable rates and charges are not set out in the contract summary. These *are* essential terms. Knowledge of only the base rates and charges, as defined in this decision, does not tell a shipper what it needs to know. Without this itemization, a complainant cannot determine whether a necessary factor for unreasonable discrimination—rate disparities—exists, or whether there are specific grounds to assert that the contract constitutes a destructive competitive practice.

Administratively, without disclosure of the exact rates and charges, we will be forced to develop a "blind procedure" whereby a complainant (1) will have to guess at the proposed contract rates, (2) proffer to enter into a similar type of contract (without knowing what the filed contract contained), and (3) then petition this Commission to see the actual contract rates and charges. Also, since the rates and charges will not be in the administrative record, there will not be the necessary substantial evidence which a reviewing court needs to uphold a ruling that the contract rates are not a destructive competitive practice or unreasonably discriminatory. Accordingly, rates and charges (including rates and charges for special features) are essential elements necessary to determine if unreasonable discrimination or a destructive competitive practice exists, and, therefore, such rates and charges should be fully disclosed.

Vice Chairman Gilliam, concurring:

The final rules do not require the full disclosure in contract summaries of all rates, charges, allowances, rebates, refunds, and any type of pricing or discount mechanism in connection with agricultural commodities (including forest products and paper) and commodities moving to or from ports. I believe that this position is compatible with the intent of the Staggers Act.

The contract rate provisions of the Staggers Act were designed to foster and promote contract ratemaking by railroads. It is also clear that only non-confidential information was to be required by the Commission in prescribing rules for contract summaries. Obviously, the most confidential provisions of any transportation contracts are the rate provisions agreed to by the parties. While I am sympathetic to the needs of affected shippers and ports in bringing discrimination complaints, I believe the overriding thrust of the Staggers Act is to protect the confidentiality of contract provisions and permit railroads a degree of confidentiality similar to that of other businesses throughout the country. To date, contract ratemaking has been very successful with approximately 2,500 contracts on file. Full disclosure of all rate provisions would, I believe, have a chilling effect on future railroad contract rate activity.

Commissioner Simmons, dissenting in part:

I concur in the rules promulgated here except in one respect: I would require the public summary of contracts involving ports to identify both the origin and destination of the contract movement, rather than merely the name of the port involved and the contract mileage. The rules adopted here otherwise properly balance the right of the public and of potential protestants to disclosure of a contract's "essential terms" against the right of contracting parties to confidentiality of competitive information.

The statute permits a port to challenge a contract for only one reason: "unreasonable discrimination". 49 U.S.C. 10713(d)(2)(A)(ii). The four elements to a case of unreasonable discrimination are (1) rate disparity; (2) potential competitive injury; (3) common control by the carrier(s) over the rates charged to both the preferred and disadvantaged ports; and (4) no differing transportation conditions that would justify the rate disparity. *H. Samuels, Inc.* v. *Atchison, T. & S.F. Ry. Co.*, 364 I.C.C. 280 (1980). Under the rules adopted by the majority, when a contract involving a port is filed a competing port will know from the contract summary the name of the port involved in the contract movement, the commodity, the names of participating carriers, rate information, and tariff mileage to the nearest 50 miles. From this data a port could, within the 18-day protest period, file a complaint showing a disparity in rates (Element No. 1) applicable on the same commodity by the same carriers (Element No. 2) over a similar distance, and could argue that this rate disparity would cause a competitive injury (Element No. 3). However, without knowing the origin or destination of the contract movement, a competing port has absolutely no basis for determining whether different transportation conditions apply to the contract movement and its own movement. Because no information is available to a port on a critical element of a discrimination case, the rules adopted by the majority effectively eliminate the port's statutory right to contest a proposed contract.

The burden of proof to show differing transportation conditions is, admittedly, on the contracting carriers and not on the port. *Harborlite Corp.* v. *Southern Pacific Transp. Co.*, 364 I.C.C. 585, 595 (1981). However, the port would have no time to rebut any arguments made by those carriers on differing transportation conditions. Nor would a port be able to anticipate those carriers' arguments by petitioning for additional information under section 1300.310(b)(1), for it could not as a practical matter draft a petition, obtain a Commission order, and receive the information before expiration of the 18-day complaint period.

To eliminate this unfairness to ports, I would require that the summaries in contracts involving ports disclose the origin and destination of the contract movements. This information is disclosed in agricultural contracts (also because such contracts can be challenged for discrimination) and would not release sensitive competitive information.

Commissioner Gradison, dissenting in part:

I voted to issue these final rules in the form of proposed rules inviting comments from carriers and shippers incorporating their experience to date with contract rates. The comments on which these rules are based are almost two years old and stale. They were prepared at a time when only a handful of contract rates were on file. In the ensuing months the number of contracts has increased a hundred fold and carriers' and shippers' experience with contracts has increased as dramatically. The Commission should have had the benefit of this invaluable experience before adopting final rules.

I encourage carriers and shippers to share their experience with us and provide comments or suggestions to the Commission on these rules so that we may make adjustments where needed.

Appendix A

Final Regulations

1. In Part 1039 of Title 49 of the Code of Federal Regulations, the part heading is revised and §§ 1039.1–1039.4 are revised and §§ 1039.5–1039.6 are added to read as follows:

PART 1039—CONTRACTS

Sec.

1039.1 Definition of the term "contract".
1039.2 [Reserved]
1039.3 Filing and approval.
1039.4 Common carrier responsibility.
1039.5 Enforcement.
1039.6 Limitation on agricultural equipment; and relief.

Authority: 49 U.S.C. 10713.

§ 1039.1 Definition of the term "contract."

(a) A contract subject to this section is a written agreement, including any amendment, entered into by one or more rail carriers with one or more purchasers of rail services, to provide specified services under specified rates, charges and conditions.

(b) A contract filed under this section shall:

(1) specify that the contract is made pursuant to 49 U.S.C. 10713, and

(2) be signed by duly authorized parties.

(c) The term "amendment" includes written contract modifications signed by the parties.

(d) An amendment is treated as a new contract. An amendment is lawful only if it is filed and approved in the same manner as a contract. To the extent terms affecting the lawfulness of the underlying contract are changed, remedies are revived and review is again available.

§ 1039.2 [Reserved]

§ 1039.3 Filing and approval.

(a) Rail carriers providing transportation subject to Subchapter I of Chapter 105 of Title 49, United States Code, shall file with the Commission an original and one copy of a contract entered into with one or more purchasers of rail service. The contract shall be accompanied by three copies of a summary of the nonconfidential elements of the contract in the format specified in 49 CFR 1300.300–1300.315. A contract and contract summary (and amendments and supplements) may be rejected for noncompliance with applicable statutes and regulations.

(b) *Grounds for review of contract.* Within 30 days of the filing date of a contract, the Commission may, on its own motion or on complaint, begin a proceeding to review it. Review can be based only on allegation of violations as described in paragraph (c) of this section.

(c) *Grounds for complaints.* A contract may be reviewed by the Commission on its own motion, or upon complaint, only on the following grounds:

(1) In the case of a contract other than a contract for the transportation of agricultural commodities (including forest products and paper), a complaint may be filed:

(i) By a shipper only on the grounds that the shipper individually will be harmed because the proposed contract unduly impairs the ability of the contracting carrier or carriers to meet common carrier obligations under 49 U.S.C. 11101; or

(ii) By a port only on the grounds that the port individually will be harmed because the proposed contract will result in unreasonable discrimination against that port.

(2) In the case of a contract for the transportation of agricultural commodities (including forest products and paper), in addition to the grounds for a complaint described in paragraph (e)(1) of this section, a complaint may be filed by a shipper on the grounds that the shipper individually will be harmed because:

(i) The rail carrier(s) unreasonably discriminated by refusing to enter into a contract with the shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue and the shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract was offered; or

(ii) The proposed contract constitutes a destructive competitive practice.

(3) "Unreasonable discrimination," as used in these rules, means, when applied to agricultural shippers, that the railroad has refused to enter into a contract with the shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that the shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered; and, when applied to a port, has the same meaning as the term has under 49 U.S.C. 10741.

(4) The definitions for "agricultural commodities," "forest products," and "paper" will be decided on a case-by-case basis.

(d) *Filing and service of complaints.*

(1) A complaint shall be filed with the Commission's Suspension Board by the 18th day after the filing date of the contract.

(2) A reply shall be filed by the 23rd day after the filing of the contract.

(3) An original and 6 copies of each shall be filed with the Commission.

(4) A copy of the complaint shall be served on each railroad participating in the contract and replies shall be served on complainant. Complaints shall be served by hand, express mail, or other overnight delivery service.

(5) An appeal of a Commission decision will be made in accordance with 49 CFR 1100.200(c), subject to the following exception:

(i) An appeal must be made at least two work days prior to the contract approval date as set out in paragraph (f).

(e) *Commission decision upon review of contract.* Within 30 days after the date a proceeding is commenced to review a contract upon the grounds specified in subsection (c), the Commission shall decide whether the contract violates the provisions of 49 U.S.C. 10713. If the Commission finds that the contract violates the provision of 49 U.S.C. 10713, it will:

(1) Disapprove the contract; or

(2) In the case of agricultural contracts where the Commission finds unreasonable discrimination by a carrier in accordance with paragraph (c)(3) of this section, allow the carriers the option to:

(i) Provide rates and services substantially similar to the contract at issue, with such differences in terms and conditions as are justified by the evidence; or

(ii) Cancel the contract.

(f) *Aproval date of contract.* (1) If the Commission does not institute a proceeding to review the contract, it shall be approved on the 30th day after the filing of the contract. The contract shall be considered "expressly approved" by the Commission.

(2) If the Commission institutes a proceeding to review a contract, the contract is approved:

(i) On the date the Commission approves the contract if the date of approval is 30 or more days after the filing date of the contract;

(ii) On the 30th day after the filing date of the contract if the ICC denies the complaint against the contract prior to the 30th day after the filing date of the contract; or

(iii) On the 60th day after the filing date of a contract, if the Commission fails to disapprove the contract.

(g) *Limitation of rights of a rail carrier to enter into future contracts.* The Commission may limit the right of a rail carrier to enter into future contracts if the Commission determines that additional contracts would impair the ability of the rail carrier to fulfill its common carrier obligations under 49 U.S.C. 11101. The Commission will handle these determinations on a case-by-case basis and may investigate either on its own initiative or upon the filing of a verified complaint by a shipper which demonstrates that it individually had been or will be harmed by a carrier's inability to fulfill its common carrier obligations as a result of existing contracts.

§ 1039.4 Common carrier responsibility.

(a) The terms of a contract approved by the Commission determine completely the duties and service obligations of the parties to the contract with respect of the services provided under the contract. The contract does not affect the parties' responsibilities for any services which are not included in the contract.

(b) Service under a contract approved by the Commission is deemed a separate and distinct class of service and the equipment used to fulfill the contract shall not be subject to car service decisions under 49 U.S.C. 11123.

§ 1039.5 Enforcement.

(a) The exclusive remedy for an alleged breach of a contract approved by the Commission shall be an action in an appropriate State Court or United

States District Court, unless the parties otherwise agree in the contract.

(b) The Commission may not require a rail carrier to violate the terms of a contract that has been approved under 49 CFR 1039.3(f), except to the extent necessary to comply with 49 U.S.C. 11128.

§ 1039.6 Limitation on agricultural equipment; and relief.

(a) A rail carrier may enter into contracts for the transportation of agricultural commodities (including forest products and paper) that involve the use of carrier's owned or leased equipment not in excess of 40 percent of the total number of the carrier's owned or leased equipment, by major car type, except as provided in paragraph (b) of this section.

(b) In the case of a proposed contract between a class I carrier and a shipper originating an average of 1,000 cars or more per year during the prior 3-year period by major car type on a particular carrier, not more than 40 percent of carrier owned or leased equipment used on the average during the prior 3-year period may be used for the contract without prior authorization by the Commission.

(c) The Commission may grant relief from the limitations of paragraphs (a) and (b) of this section if:

(1) A rail carrier or other party requests such relief; or the Commission on its own initiative considers granting such relief; and

(2) The Commission determines that making additional equipment available does not impair the rail carrier's ability to meet its common carrier obligations under 49 U.S.C. 11101.

2. Part 1300 of Title 49 of the Code of Federal Regulations is amended by adding the following new §§ 1300.300 and 1300.310 through 1300.315 to read as follows:

PART 1300—[AMENDED]

Sec.

* * * * *

1300.300 Special tariff rules for contracts entered into by one or more rail carriers with one or more purchasers of rail service—general provisions; definitions.

1300.310 Filing and availability of contract, contract amendments, contract summary and contract summary supplements.

1300.311 Contract and contract summary title pages.

1300.312 Contract and contract summary numbering system.

1300.313 Content of contract summary; format.

1300.314 Availability of contract summary.

1300.315 Statutory notice.

Authority: 49 U.S.C. 10713.

§ 1300.300 Special tariff rules for contracts entered into by one or more rail carriers with one or more purchasers of rail service—general provisions; definitions.

(a) This section, and the ensuing sections, numbered between 1300.300 and 1300.399, govern the filing of contracts for railroad transportation services entered into by one or more rail carriers with one or more purchasers of rail service.

(b) Contracts for railroad transportation services and contract summaries shall be filed with the Commission in accordance with the Special Tariff Rules for Contracts prescribed in these sections.

(c) All contracts and amendments shall be of a size not less than 8 by 10½ inches nor greater than 8½ by 14 inches; all contract summaries and supplements shall be of a size not less than 8 by 10½ inches nor greater than 8½ by 11 inches; any amendment to a contract shall be the same size as the contract and any supplement to a summary shall be the same size as the summary; all shall be clear, legible, and on durable paper.

§ 1300.310 Filing and availability of contract, contract amendments, contract summary and contract summary supplements.

(a) A railroad or railroads entering into a contract for railroad transportation services with one or more purchasers of rail service shall file with the Commission the original and one copy of the contract and two copies of the contract summary with the Commission's Bureau of Traffic, Section of Rates.

(1) Contracts and contract summaries shall not be filed in the same packages with standard tariff filings.

(2) The confidential contract shall not be attached to the contract summary.

(3) The envelope or wrapper containing the contract and summary shall be marked "Confidential, Rail Contract."

(4) A contract and summary shall be accompanied by a transmittal letter identifying the submitted documents, and the name and telephone number of a contract person.

(b)(1) The contract filed under these rules will not be available for inspection by persons other than the parties to the contract and authorized Commission personnel, except by petition demonstrating a likelihood of succeeding on the merits of the complaint and that the matter complained of could not be proven without access to additional contract information. The Commission's action in any contract-disclosure matter, including a petition filed under this subparagraph, is subject to the limitations imposed by 5 U.S.C. 552(b) and the Trade Secrets Act, 18 U.S.C. 1905.

(2) A contract and its summary filed under § 10713 may be labeled "Nonconfidential." Such a designation will permit the general public to inspect the entire contract.

(c) The contract summary filed under these rules shall include the information specified in § 1300.313 of this part. The contract summary shall be made available for inspection by the general public.

(d) The contract summary filed under these rules shall not be required to be posted in any stations, but shall be made available from carriers participating in the contract upon reasonable request.

§ 1300.311 Contract and contract summary title pages.

(a) The title page of every contract and amendment shall contain only the following information:

(1) In the upper right corner, the contract number (see § 1300.312).

(2) In the center of the page, the issuing carrier's name, followed by the word "CONTRACT" in large print.

(3) Amendments to contracts shall also show, in the upper right corner, the amendment number (see § 1300.312).

(4) A solid one inch black border down the right side of the title page.

(5) Date of issue and date to be effective.

(b) The title page of every contract summary and supplement shall contain only the following information:

(1) In the upper right corner, the contract summary number (see § 1300.312).

(2) In the center of the page, the issuing carrier's name, followed by the words "CONTRACT SUMMARY" in large print.

(3) Date of issue and date to be effective.

(4) In the center lower portion, the issuing individual's name and address.

(5) Supplements to contract summaries shall also show, in the upper right corner, the supplement number (see § 1300.312).

§ 1300.312 Contract and contract summary numbering system.

(a) Each issuing carrier shall sequentially number the contract and contract summary it issues. The contract and contract summary identification number shall include the word "ICC", the industry standard alphabet code for the issuing railroad (limited to four letters), the letter "C", and the

sequential number, with each separated by a hyphen. The following example: the 357th contract filed by the Milwaukee Road would have the following tariff identification number: "ICC–MILW–C–0357."

(b) Any amendment to a contract shall be reflected in a corresponding supplement to the contract summary. If the change in the contract is only in confidential matter, a statement to that effect will be made in the supplement.

(c) At the carrier's option, the carrier's tariff publishing officers may reserve blocks of numbers if tariffs are issued from different departments. An index to the blocks of reserved numbers shall be filed with the Commission.

(d) Contract amendments and contract summary supplements shall be sequentially numbered.

§ 1300.313 Content of contract summary; format.

(a) Contract summaries for agricultural commodities, forest products or paper shall contain the following terms in the order named.

(1) Name(s) of the participating carrier(s). A list, alphabetically arranged, of the corporate names of all carriers that are parties to the contract plus their addresses for service of complaints.

(2) The commodity or commodities to be transported under the contract.

(3) The origin station(s) and destination station(s), including the specific port(s) (if applicable).

(4) The duration of the contract.

(5) Rail car data by number of dedicated cars, or, at the carrier's option, car days:

(i) by major car type used to fulfill the contract or contract options:

(A) Available and owned by the carriers listed in paragraph (a)(1) of this section with average number of bad-order cars identified;

(B) Available and leased by the carriers listed in paragraph (a)(1) of this section, and average number of bad-order cars identified;

(C) (optional) on order (for ownership or lease) along with delivery dates; and

(D) In the event a complaint is filed involving common carrier obligation and carrier furnished cars, the carrier(s) shall immediately submit to the Commission and the complainant additional data on cars used to fulfill the challenged contract. Data shall include (by major car type used to fulfill the contract):

(*1*) total bad car orders;

(*2*) assigned car obligations; and

(*3*) free running cars.

(ii) In addition to paragraph (i) if agricultural commodities (including forest products and paper), a certified statement by the participating rail carrier/carriers:

(A) That the cumulative equipment total for all contracts does not exceed 40 percent of the capacity of the rail carrier's owned and leased cars by applicable major car type, and

(B) In the case of an agricultural shipper which originated an average 1,000 cars or more per year during the prior 3-year period by major car type, that the equipment used does not exceed 40 percent of the rail carrier's owned or leased cars used on the average by that shipper during the previous 3 years.

(iii) Rail car data need not be submitted if:

(A) The shipper furnishes the rail cars, unless the cars are leased from the carrier; or

(B) The contract is restricted to certain services which do not entail car supply.

(6) *Rates and charges.* Identification of base rates or charges, movement type (e.g. single car, multiple car, unit train), the minimum annual volume, and a summary of escalation provisions.

(7) *Special features.* Identification of existence (but not the terms or amount) of special features such as transit time commitments, guaranteed car supply, minimum percentage of traffic requirements, credit terms, discounts, etc.

(b) Contract summaries for other commodities or services not involving a port shall contain the information required in paragraphs (a)(1), (2), (4), (5) of this section. Paragraph (a)(7), *Special features,* shall be applicable to the extent that service requirements are placed in the contract.

(c) Contract summaries for other commodities or services involving a port shall contain the information required in paragraphs (a)(1), (2), (4), (5), (6), and (7) of this section. In addition, the port shall be named and the tariff mileage (rounded to the nearest 50 miles) shall be disclosed (or, at the contracting parties' option, the origin and destination shall be specified). The required information shall be disclosed for each movement involving multiple origins/destinations.

(d) *Format.* The contract summary and supplements shall enumerate and have each item completed. Where the item does not pertain to the contract or amendment, the term "Not applicable" ("NA") shall be used.

§ 1300.314 Availability of contract summary.

Copies of contract summaries shall be available from the Commission's Contract Advisory Service and Bureau of Traffic. Copies of contract summaries shall also be available from carriers participating in the contract.

§ 1300.315 Statutory notice.

All filed contracts (and amendments) and contract summaries (and supplements) shall provide 30-days notice to the public as required by 49 U.S.C. 10713(e).

Appendix B [1]—Regulatory Flexibility Act Analysis

In compliance with section 603(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the following information is provided. (1) The rules are being promulgated to implement 49 U.S.C. 10713 which permits railroads and purchasers of transportation to contract. (2) The objectives of the rules are to establish standards and procedures for filing contracts and to establish criteria (a) for the information to be disclosed in the contract summary, (b) for filing complaints, and (c) for filing contracts. (3) The small entities affected by these rules include railroads, governmental bodies, small businesses which purchase rail transportation, and, possibly, small ports; no estimate of the number affected by these rules can be made. (4) Recordkeeping and accounting requirements remain unchanged; we foresee no additional professional skills needed to comply with these rules. (5) These rules do not duplicate, overlap or conflict with other Federal rules.

There are no significant alternatives which can be established to minimize any significant impact on small entities; most of the requirements are statutorily imposed. The remaining requirements (informational and filing) have been established by balancing the need to maintain confidentiality with the public interest in obtaining sufficient information necessary to bring a successful challenge to a contract.

The rail car informational requirements under 49 CFR § 1300.313 should not impose significant burdens on small entities. Because of the relatively insignificant amount of equipment owned by small rail carriers, the burdens of recordkeeping should be minimal for small entities, and, any burdens imposed on rail carriers must be balanced against the right of other small entities to information about the ability of carriers (large or small) to maintain their common carrier obligation.

As with any contract, specialized assistance from the legal and accounting professions may be required. Whether any assistance would be necessary will depend upon the nature of the contract. In any event, our rules (or lack thereof) will not affect the need for professional advice; such advice is inherent in the contract process itself.

As far as the necessity for professional assistance in instituting complaints against proposed contracts, such assistance should not be any greater than that for other tariff filings, except for the desire to have additional contract information disclosed under FOIA. We see no effective alternative

[1] Appendix B will not be shown in the CFR.

to our requirements for additional disclosure. And, while a small entity might need professional assistance in this aspect of filing a complaint, a small entity is also protected, should it desire to contract with a rail carrier, against having its entire contract disclosed.

The contract filing requirements closely parallel our tariff filing requirements and should not increase costs of filing when a contract is involved. Several of the technical filing requirements (such as address, mailing of the envelopes, etc.), while they may create a little more work, are designed to ensure that the contract remains confidential. One area where expenses may be reduced over our normal tariff publishing requirements is that the contract need not be printed; certain items can be preprinted and the remaining information for the specific contract can be typed.

It is important to note that what must be addressed here is not the benefits or detriments of the statute and the benefits of contracting as compared to shipping under published rates; rather, what must be addressed is our implementation of the statute. Some small entities, including many lumber dealers, believe that it is an imposition to require complaints about contracts to be filed 18 days after the contract is filed. Because of the time factors required for finding out about a filed contract and for preparing a complaint, there have been proposals to extend the time to file a complaint from 30 to 120 days from the contract filing date. While such proposals may have practical merit in some cases, the *statute* gives us jurisdiction for only 30 days. After that, we no longer have jurisdiction, and our statutory authority no longer applies. As a practical matter, we cannot analyze and decide whether to institute an investigation, allow an appeal and decide that appeal in less than 12 days. Thus, our 18-day requirement for filing complaints must remain intact.

We are satisfied that our implementation of § 10713 is fair, equitable, and practical for small entities.

[FR Doc. 82-30617 Filed 11-4-82; 8:45 am]
BILLING CODE 7035-01-M

49 CFR Parts 1201, 1262, and 1263

[No. 38770]

Railroad Map Specifications

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Interstate Commerce Commission is eliminating Part 1263, Map Specifications, from the Code of Federal Regulations and is transferring significantly reduced map specifications to the property account instructions in the Uniform System of Accounts for Railroads, Part 1201. Due to improved technology in map making, it is no longer necessary to require railroad companies to maintain the detailed records required in Part 1263. However, because the Commission has a need for Class I railroad property records in rate, abandonment, merger and purchase proceedings, these carriers will still be required to maintain certain basic map information.

DATE: This Rule is effective for the reporting year beginning January 1, 1982.

ADDRESS: Copies of this Rule may be purchased by contacting: TS Infosystems, Inc., Room 2227, 12th & Constitution Avenue, NW., Washington, D.C. 20423, (202) 289-4357—D.C. Metropolitan Area, (800) 424-5403—toll free for outside D.C. area.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr., (202) 275-7448.

SUPPLEMENTARY INFORMATION: The Commission is authorized by the Interstate Commerce Act (49 U.S.C. 10781) to establish the value of all property owned or used by railroad companies subject to Subchapter I of Chapter 105, Title 49, Transportation. Carriers providing rail service subject to the Commission's jurisdiction are required to cooperate with the Commission in the valuation of their property. In so doing, the Commission may require carriers to provide maps, profiles, contracts, engineering reports and other records to assist it in investigating, ascertaining, reporting and recording the value of rail property.

On March 19, 1982, the Commission published a Notice of Proposed Rulemaking (NPR) requesting comments on the proposed elimination of Part 1263, Map Specifications, from the Code of Federal Regulations (47 FR 11910). In that NPR the Commission noted that improved technology in the area of map making no longer necessitates the maintenance of detailed records as required in Part 1263. However, the Commission also considers it essential that certain basic map information be maintained by Class I line-haul railroad companies for accounting, audit and valuation purposes. Therefore, the Commission proposed to delete the detailed map requirements in Part 1263 for all railroads and incorporate certain basic map requirements for Class I railroads in the property account instructions of Part 1201.

Review of Responses

There were two respondents to the NPR, Consolidated Rail Corporation (Conrail) and the Association of American Railroads (AAR). Conrail endorses the Commission's efforts to review the Code of Federal Regulations (CFR) and eliminate requirements for information not used regularly. However, Conrail believes the Commission did not achieve the desired result. Conrail believes that although the NPR would substantially reduce the written regulations, the essence is only to transfer the map requirements from one section of the CFR (Part 1263) to another section of the CFR (Part 1201). Conrail recognizes that maps are useful but does not consider them a part of basic accounting records. It is Conrail's opinion that maps should be a management prerogative, not a regulatory requirement. Therefore, Conrail recommends eliminating Part 1263 entirely and that no change be made to Part 1201.

The AAR supports the Commission's proposal. The AAR believes that the rule changes are a step in the right direction and reflect the Commission's commitment to review its regulations and eliminate those which impose unnecessary recordkeeping and reporting burdens. Therefore, the AAR supports this effort by the Commission to minimize detailed recordkeeping and reporting requirements.

Discussion and Conclusion

The Commission concludes that a map specifications requirement is necessary to properly execute its responsibilities prescribed under the Interstate Commerce Act.

Although maps are not typically viewed as basic accounting records, they have proven to be an integral part of rail property records. Maps are used extensively by the Commission to identify and value rail property. Therefore, it is necessary to prescribe a uniform and consistent basis for identifying rail property.

The Commission's ability to make proper determinations of the extent and value of rail property is of primary importance in rate, abandonment, merger and purchase proceedings. Oftentimes these proceedings become quite complex and controversial with both parties submitting conflicting data. To properly analyze supporting evidence and render a fair and proper decision, the Commission must have the ability to independently determine the extent and value of carrier property. Rail maps have been and will continue to be a major part of this determination.

We do not agree with Conrail that this rule fails to achieve its intended purpose. This rule substantially reduces the regulatory burden associated with maintaining and filing property maps with the Commission. Further, this rule is consistent with Commission policy on reporting financial and statistical data.

This rule will eliminate the extensive map requirements in Part 1263. Class II and III railroads will be relieved from all

map requirements. Class I railroads will be subject to a five-part map specification incorporated as Instruction 2–21, Map Specifications, in Part 1201. The revised map specification only requires Class I railroads to:

(1) Maintain a current map of its rail property

(2) Furnish copies of such maps to the Commission upon request

(3) Maintain sufficient detail to show right-of-way, track and other important facilities

(4) Provide appropriate indices and titles

(5) Comply with generally accepted map principles

We believe the revised map specifications will provide railroad management great latitude in developing and maintaining rail property maps and result in a minimal regulatory burden. In conclusion, we believe that the elimination of Part 1263 and the incorporation of the revised map specifications in Part 1201 is in the best interest of all parties.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b), the Secretary of the Commission has certified in the NPR that this rule will have a significant economic impact on a substantial number of small entities. In this proceeding, we do not add new reporting requirements; rather, we eliminate the existing burden on Class II and III railroad companies and reduce the reporting requirements for Class I railroad companies. Therefore, the effect of this revision will be a lessening of the expense and burden of recordkeeping.

This decision does not significantly affect the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Parts 1201, 1262 and 1263

Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts.

Accordingly, we are amending 49 CFR Parts 1201 and 1262 and deleting 49 CFR Part 1263, as shown in the Appendix.

(49 U.S.C. 10321 and 5 U.S.C. 553)

Decided: October 12, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Sterrett dissented in part with a separate expression. Commissioner Andre would propose to eliminate the map specifications in their entirety.

Agatha L. Mergenovich,

Secretary.

Commissioner Sterrett, dissenting in part:

We have received two comments from the public in this proceeding, and neither supports retention of map requirements. Thus the only basis offered for the remaining regulations is the Commission's own needs in "rate, abandonment, merger, and purchase proceedings." The parties to those proceedings, however, invariably submit adequate maps in their pleadings, and there is simply no need for the retention of any formal regulations in this area.

Appendix

Title 49 CFR is amended as follows:

PART 1201—[AMENDED]

1. 49 CFR Part 1201 shall be amended by adding instruction 2–21, *Map Specifications*, to the Instructions for Property accounts.

2–21 *Map Specifications.*

(a) Class I Railroad companies shall maintain current maps of its property and shall promptly record any changes that may take place.

(b) Class I companies shall furnish, on request, copies of maps showing its property as it exists on such date or dates as may be fixed by the Commission.

(c) Class I companies shall maintain planimetric maps that show right-of-way, track and other important facilities at a scale to show sufficient detail.

(d) Maps shall be indexed and titled to clearly indicate the specific area depicted.

(e) All maps shall be prepared in accordance with generally accepted mapping practices.

PART 1262—[AMENDED]

§ 1262.7 [Amended]

2. 49 CFR 1262.7(c), is amended by revising the cross reference which follows the paragraph to read as follows:

Cross Reference: From map specifications, see Part 1201, Instruction 2–21 of this chapter.

PART 1263—[REMOVED]

3. 49 CFR Part 1263 is removed.

[FR Doc. 82–30518 Filed 11–4–82; 8:45 am]

BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 47, No. 215
Friday, November 5, 1982

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

Summer Food Program for Children

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department is proposing to amend the Summer Food Service Program regulations by adding the required notice concerning collection of social security account numbers on applications for free and reduced price meal benefits in order to clarify the notification procedures. The Department is proposing that the current regulations for the Summer Food Service Program remain unchanged in all other respects.

DATE: Comments must be received on or before December 6, 1982 to be assured of consideration in the final rulemaking.

ADDRESS: Comments should be sent to Jordan Benderly, Director, Child Care and Summer Programs Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written submissions will be available for public viewing in Room 416, 3101 Park Center Drive, Alexandria, Virginia 22302, during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Benderly or Ms. Beverly Walstrom at the address listed above, or call (703) 756–3888.

SUPPLEMENTARY INFORMATION:

Classification. This proposed action has been reviewed under Executive Order 12291 and has been classified *not major* because it will not have an annual effect on the economy of $100 million, will not cause a major increase in cost or prices for Program participants, individual industries, Federal agencies, State or local government agencies or geographic regions, and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This proposal has also been reviewed with regard to the requirements of Public Law 96–354, the Regulatory Flexibility Act. Pursuant to the review, Samuel J. Cornelius, Administrator of the Food and Nutrition Service, has certified that this proposed rule does not have a significant economic impact on a substantial number of small entities.

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

Background

The Summer Food Service Program (SFSP) is authorized by Section 13 of the National School Lunch Act. Comprehensive regulations for the SFSP were last published on February 16, 1982 (47 FR 6790).

Section 13(q) of the National School Lunch Act requires the Secretary of Agriculture to publish regulations necessary to implement the SFSP in proposed form by November 1 and final form by January 1. The Department is proposing not to alter the regulations published February 16, 1982, except in one respect. The one proposed change adds to the regulations the requirement that the social security account number disclosure notice be placed on applications for free and reduced price meal benefits distributed by camps and other programs which document site eligibility through collection of family size and income information.

Section 803 of Pub. L. 97–35 requires that parents or guardians who apply for free and reduced price meals must disclose the social security numbers of all adult household members as a condition of eligibility. The Department proposes to amend Section 225.21(d) to include a requirement that the application form contain a notice which informs people of the authority under which the social security numbers are collected, whether disclosure of the numbers is mandatory, and what uses will be made of the numbers. The proposed notice is similar to that used in the SFSP last summer but is more detailed. The proposed change also conforms the notice which the notice required in Part 245 of the regulations governing the delivery of free and reduced price meal benefits in the National School Lunch Program.

The Department has determined that no other changes are necessary for successful implementation of the 1983 SFSP. Therefore, in all other respects, the final SFSP regulations published on February 16, 1982, will remain unchanged for the 1983 SFSP.

List of Subjects in 7 CFR Part 225

Food assistance programs, Grant programs—health, infants and children, Reporting requirements.

PART 225—SUMMER FOOD SERVICE PROGRAM

Accordingly, Part 225 is proposed to be amended as follows:

(1) In § 225.21(d) add subparagraphs (1) and (2) as follows:

§ 225.21 Free meal policy.

* * * * *

(d) * * *

(1) The application shall also contain the following statement, "Sections 9 and 13 of the National School Lunch Act require that in order for your child to be eligible for Program meals, you must provide the social security numbers of all adult members of your household. Provision of these social security numbers is not mandatory, but failure to provide the numbers will result in a denial of the application for Program meals. This notice must be brought to the attention of all household members whose social security numbers are disclosed. The social security numbers may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application. These verification efforts may be carried out through Program reviews, audits, and investigations, and may include contacting employers to determine income, contacting the State employment security office to determine the amount of benefits received and checking the documentation produced by household members to make sure that your child is eligible to receive Program benefits. These efforts may result in loss of benefits, administrative claims, or legal action if incorrect information is reported." State agencies

and institutions shall ensure that the notice complies with Section 7 of Pub. L. 93-579 (Privacy Act of 1974). If a State or local agency plans to use the social security numbers in a manner not described by this notice, the notice shall be altered to include a description of these uses; and

(2) The signature of the parent or guardian who has completed the application.

(Sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

Dated: November 2, 1982.

Robert E. Leard,

Associate Administrator.

[FR Doc. 82-30428 Filed 11-4-82; 8:45 am]

BILLING CODE 3410-30-M

Federal Crop Insurance Corporation

7 CFR Part 414

[Amdt. No. 1]

Forage Seeding Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA..

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the forage Seeding Crop Insurance Regulations (7 CFR Part 414), effective with the 1983 and succeeding crop years (1984 in New York), by amending the provisions of the policy to prescribe reductions in indemnity if the spring-seeded acreage is less than 75 percent of a normal stand and to add a further definition to reseeded acreage. In addition, FCIC proposes to make minor corrections to language and format by: (1) Deleting a subsection requiring a public notice of indemnities paid as that requirement is no longer a part of the Federal Crop Insurance Act; (2) substituting a multi-crop application for the present single-crop application to reduce paperwork; (3) prescribing the interest to be charged on unpaid premium balances; (4) amending the table of contents; (5) correcting the definition of the party responsible for securing the rights of the Corporation under provisions for subrogation; and, (6) redesignating Appendix B, listing all counties where Forage Seeding Crop Insurance is available, as Appendix A. This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended, and its intended effect is to prescribe the reduction of indemnity for less than a normal stand, clarify the provisions of the regulations with regard to reseeding, reduce paperwork and time for the applicant through an improved application form, and to correct both the language and format of the regulations.

DATE: Written comments, data, and opinions on this rule must be submitted not later than January 4, 1983, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512-1 (June 11, 1981).

Information collection requirements contained in the regulations to which this amendment applies (7 CFR Part 414) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35, and have been assigned OMB Nos. 0563-0003 and 0563-0007.

Merritt W. Sprague, Manager, FCIC, has determined that (1) this action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action does not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which this amendment applies are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically upon area and community development; therefore, review as established in OMB Circular A-95 was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

It has also been determined that this action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under the provisions of Secretary's Memorandum No. 1512-1 (June 11, 1981). A sunset review date will be established for these regulations as part of the final rule.

The principal changes involved in this rule are as follows:

1. The replacement of the present single-crop application form by a multi-crop application form designed to reduce paperwork and time on the part of the applicant.

2. The amendment of the interest provision to provide that unpaid premium balances will bear interest at the rate of 1½% simple interest per month or any part thereof starting on the first day of the month following the first premium billing date.

3. The addition of a provision which reduces the indemnity by 50% if spring-seeded acreage has less than 75 percent but more than 55% of a normal stand. Such acreage will not be insurable under the forage production policy, a companion policy to forage seeding, until it meets the definition of an "established stand" (at least 75 percent of a normal stand).

In addition to these changes, FCIC proposes to make minor changes to language and format to include correcting the table of contents, deleting a section no longer required by the Federal Crop Insurance Act, as amended, correcting the policy to indicate the party responsible for securing the rights of FCIC relative to subrogation, and redesignating Appendix B, listing counties where forage seeding crop insurance is available, as Appendix A.

All written submissions made pursuant to this rule will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 414

Crop insurance, Forage seeding.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Forage Seeding Crop Insurance Regulations (7 CFR Part 414), appearing at 45 FR 49501-49515, July 25, 1980, effective with the 1983 and succeeding crop years (1984 and succeeding crop years in New York State), in the following instances:

PART 414—[AMENDED]

1. The authority citation for 7 CFR Part 414 is revised to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 72, as amended (7 U.S.C. 1506, 1516).

2. The Table of Contents is revised to read as follows:

Secs.
414.1 Availability of Forage Seeding Insurance.
414.2 Premium rates and amounts of insurance.
414.3 Reserved.
414.4 Creditors.
414.5 Good faith reliance on misrepresentation.
414.6 The contract.
414.7 The application and policy.

Appendix A—Counties designated for Forage Seeding Crop Insurance.

§ 414.2 [Amended]

3. 7 CFR 414.2(a) is amended by revising the fifth and sixth lines thereof to read as follows:

(a) * * * on file in the service office and may be changed from year to year.

* * * * *

§ 414.3 [Removed and Reserved]

4. 7 CFR 414.3 is removed and reserved.

5. 7 CFR 414.6 is amended by revising the last sentence thereof to read as follows:

§ 414.6 The contract.

* * * Copies of forms referred to in the contract are available at the service office.

6. 7 CFR 414.7(a) is amended by revising the last sentence thereof to read as follows:

§ 414.7 The application and policy

* * * The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

7. 7 CFR 414.7(b) is amended by revising twelfth and thirteenth lines thereof to read as follows:

§ 414.7 The application and policy.

* * * * * *

(b) * * * date on file in the service office and publishing a notice in the

* * *

§ 414.7 [Amended]

8. 7 CFR 414.7(d) is amended by changing the year "1981", found in the third line thereof, to read "1983 (1984 in New York State)," and by removing the application found therein and substituting the following:

BILLING CODE 3410-08-M

Rev 19-81)

UNITED STATES DEPARTMENT OF AGRICULTURE
FEDERAL CROP INSURANCE CORPORATION

CROP INSURANCE APPLICATION

CONTINUOUS CONTRACT

1 Name of Applicant — 6 State ☐☐ - County ☐☐☐ - 7 Contract Number ☐☐☐☐☐

2 Agent, Administrator, Executor, Etc. — 8 County ☐☐☐ — 9 State ☐☐

3 Street or Mailing Address — 10 Identification Number ☐☐☐☐☐☐☐☐☐ — 11 SSN - TAX

4 City and State — 5 ZIP Code — 12 Type of Entity

13 Applicant is Over 18 Yes____ No____ — If No, Date of Birth

A The applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called "Corporation"), hereby applies to the Corporation for insurance on the applicant's share in the crop(s) shown below planted on insurable acreage as shown on the county actuarial table for the above-stated county. The applicant elects from the actuarial table the coverage level and, where applicable, a price election or plan of insurance. **THE PREMIUM RATE AND APPLICABLE PRODUCTION GUARANTEE OR AMOUNT OF INSURANCE PER ACRE SHALL BE THOSE SHOWN ON THE APPLICABLE COUNTY ACTUARIAL TABLE FILED IN THE OFFICE FOR THE COUNTY FOR EACH CROP YEAR.**

14 Effective Crop Year	15 Crop	16 Type, Class Plan of Ins.	17 Price Election	18 Level Election	19	20 For Agency Use Only (A)	21 (P)
					☐		
					☐		
					☐		
					☐		
					☐		
					☐		
					☐		
					☐		

22 Crop(s) **NOT** insured the first year.

B. This application is accepted by the Corporation unless the applicant is notified of rejection within 30 days of the date hereof. Rejection shall be accomplished by depositing notification thereof in the United States Mail, postage paid, to the above address. Rejection may be for any reason which would also serve as a basis for termination under the policy, the Federal Crop Insurance Act, or the regulations issued thereunder. Outstanding and delinquent indebtedness to any United States Government Agency may be grounds for rejection. The contract shall be in effect for the crop year specified above, unless the time for submitting applications has passed at the time this application is filed, **AND SHALL CONTINUE FOR EACH SUCCEEDING CROP YEAR UNTIL CANCELED OR TERMINATED** as provided in the contract. This accepted application, the insurance policy(ies), the attached appendix(es), and the provisions of the county actuarial table showing the insurable and uninsurable acreage, coverage levels, premium rates, and where applicable, the production guarantees, amounts of insurance, or plan of insurance shall constitute the contract. No term or condition of the contract shall be waived or changed except in writing by the Corporation. A material failure to include complete and accurate information on this application may invalidate the automatic acceptance provision hereof.

23 ☐ Applicant has received the policy(ies) and appendix(es) for the crop(s) shown above.

24 ☐ Previous Carrier _____ 25 Policy Number _____

_____ _____ 19__ ☐☐☐☐☐ _____

26 Applicant's Signature — 27 Date — 28 Code No — 29 Witness to Signature

30 Location of Farm Headquarters	31 Address of Your Service Office
Phone	Phone

SEE REVERSE SIDE OF FORM FOR STATEMENT REQUIRED BY PRIVACY ACT OF 1974

32 N S I O T - F U R

33 Page____ of____ pages

BILLING CODE 3410-08-C

9. Section 2(a) of the Terms and Conditions section of the policy, as found in 7 CFR 414.7(d), is revised to read as follows:

§ 414.7 The application and policy.

* * * * *

Forage Seeding Crop Insurance Policy

Terms and Conditions

* * * * *

2. Crop and Acreage Insured. (a) The crop insured shall be (1) forage seeded or reseeded the calendar year following seeding to establish a stand of forage intended for harvest as livestock feed, (2) for which the actuarial table shows an amount of insurance and premium rate per acre, and (3) which is seeded on insured acreage.

* * * * *

10. Section 3(a) and (b) of the Terms and Conditions section of the policy, as found in 7 CFR 414.7(d), is revised to read as follows:

* * * * *

Forage Seeding Crop Insurance Policy

Terms and Conditions

* * * * *

3. * * *

(a) all acreage of forage seeding and reseeding in the county (including a designation of any acreage to which insurance does not attach) in which the insured has a share, and (b) the insured's share therein at the time of seeding or reseeding. Such report shall be be submitted each year not later that the acreage reporting date on file in the service office.

11. Section 5(b) of the Terms and Conditions section of the policy, as found in 7 CFR 414.7(d), is revised to read as follows:

§ 414.7 The application and policy.

* * * * *

Forage Seeding Crop Insurance Policy

Terms and Conditions

* * * * *

5. * * *

(d) Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

* * * * *

12. Section 6(b) of the Terms and Conditions section of the policy, as found in 7 CFR 414.7(d), is amended to read as follows:

§ 414.7 The application and policy.

* * * * *

Forage Seeding Crop Insurance Policy

Terms and Conditions

* * * * *

6. * * *

(b) harvest of the forage crop if not reseeded.

* * * * *

13. Section 7(b)(1) of the Terms and Conditions section of the policy, as found in 7 CFR 414.7(d), is amended to read as follows:

§414.7 The application and policy.

* * * * *

Forage Seeding Crop Insurance Policy

Terms and Conditions

* * * * *

7. * * *

(b) * * * (1) during the period before harvest, the forage seeding is damaged to the extent that the insured does not expect to further care for the crop or intends to reseed acreage in the spring by the final seeding date for spring-seeded acreage, or * * *

* * * * *

14. Section 7(c) of the Terms and Conditions section of the policy, as found in 7 CFR 414.7(d), is amended in the fifth line to read as follows:

§ 414.7 The application and policy.

* * * * *

Forage Seeding Crop Insurance Policy

Terms and Conditions

* * * * *

7. * * *

(c) * * * at the service office not later than *30* * * *

15. Section 8(c)(4) of the Terms and Conditions section of the policy, as found in 7 CFR 414.7(d), is amended to read as follows:

§414.7 The application and policy.

* * * * *

Forage Seeding Crop Insurance Policy

Terms and Conditions

* * * * *

8. * * *

(c) * * * (4) any harvested acreage which was not reseeded.

16. Section 8(d) of the Terms and Conditions section of the policy, as found in 7 CFR § 414.7(d), is redesignated as 8(e), and a new section 8(d) is added to read as follows:

§ 414.7 The application and policy.

* * * * *

Forage Seeding Crop Insurance Policy

Terms and Conditions

* * * * *

8. * * *

(d) The amount of indemnity on any insured spring-seeded acreage determined in accordance with subsection (b) of this section shall be reduced by 50 percent if the stand is less than 75 percent but more than 55 percent of a normal stand, as determined by the Corporation.

* * * * *

17. Section 12(b) of the Terms and Conditions section of the policy, as found in 7 CFR 414.7(d), is amended to read as follows:

* * * * *

Forage Seeding Crop Insurance Policy

Terms and Conditions

* * * * *

12. * * *

(b) The contract will terminate as to any crop year if any amount due the Corporation is not paid on or before the termination date for indebtedness preceding such crop year. The date of payment for premium (1) if deducted from an indemnity claim shall be the date the insured signs such claim or (2) if deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved.

* * * * *

18. Section 1(a) of the Appendix to § 414.7 (appendix to the policy) (Additional Terms and Conditions), as found in 7 CFR 414.7(d), is amended in the fourth line thereof to read as follows:

§ 414.7 The application and policy.

* * * * *

Appendix

Additional Terms and Conditions

1. * * *

(a) * * * public inspection in the service office * * *

* * * * *

19. Section 1 of the Appendix is further amended by redesignating paragraphs (h) as (g), (i) as (h) and (g) as (i).

20. Section 1(g) as redesignated, of the Appendix to the policy (Additional Terms and Conditions), as found in 7 CFR 414.7(d), is revised to read as follows:

§ 414.7 The application and policy.

* * * * *

Appendix

Additional Terms and Conditions

1. * * *

(g) "Service office" means the office serving your contract as shown on the application for insurance or such other office as may, in writing, be selected by you after approval by us or designated by us upon written notice to you.

21. Section 1(l) of the Appendix to the policy (Additional Terms and Conditions), as found in 7 CFR 414.7(d), is amended in the thirteenth and fourteenth lines thereof to read as follows:

§ 414.7 The application and policy.

* * * * *

Appendix to § 414.7

Additional Terms and Conditions

1. * * *

(1) * * * applicable guidelines on file in the service office or by written agreement between * * *

* * * * *

22. Section 2(b) of the Appendix to the policy (Additional Terms and Conditions), as found in 7 CFR 414.7(d), is amended in the third and fourth lines thereof to read as follows:

§ 414.7 The application and policy.

* * * * *

Appendix to § 414.7

Additional Terms and Conditions

* * * * *

2. * * *

(b) * * * reporting date on file in the service office, the Corporation may elect to * * *

* * * * *

23. Section 6 of the Appendix to the policy (Additional Terms and Conditions), as found in 7 CFR 414.7(d), is amended by revising the last sentence thereof to read as follows:

§ 414.7 The application and policy.

* * * * *

Appendix to § 414.7

Additional Terms and Conditions

6. * * * The insured thereafter shall execute all papers required and take appropriate action as may be necessary to secure such rights.

Appendix B [Redesignated as Appendix A]

24. Appendix B to 7 CFR Part 414, listing counties where forage seeding crop insurance is available, is designated as Appendix A.

Approved by the Board of Directors on September 16, 1982.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: October 29, 1982.

Approved by:

Robert H. Sindt,

Deputy Manager.

[FR Doc. 82-30378 Filed 11-4-82; 8:45 am]

BILLING CODE 3410-08-M

Farmers Home Administration

7 CFR Parts 1930 and 1944

Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to revise its regulations governing the rental assistance program to allow for amendment and transfer of rental assistance agreements and to incorporate into the regulations clarifications of procedure and intraagency processing guidance now disseminated by memorandum and/or administrative notice. This action is taken in response to general public and FmHA staff requests for clarification of the rental assistance regulations and to incorporate into the regulations certain needed revisions identified by the Agency. The intended effect is to incorporate the requirements for administering the rental assistance program into the "Multiple Housing Management Handbook" which is issued to owners and managers of FmHA Multiple Family Housing projects.

DATES: Comments must be received on or before November 22, 1982.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to the notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanine L. Johnson, Loan Specialist, Multi-Family Housing Servicing and Property Management Division, FmHA, USDA, Room 5321, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. telephone 202–382–1611.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in Secretary's Memorandum 1512–1 which implements Executive Order 12291, and has been determined "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Agency has found that 77% of presently funded rental assistance units scheduled to expire pursuant to the 5-year term of their rental assistance contract, or 13,560 rental assistance units, are projected to have unused funds remaining when the rental assistance agreements expire during Fiscal Year 1983.

This constitutes a loss of previously authorized and obligated budget authority of approximately $84 million per year for the next three years. The Agency considered three alternatives.

The first alternative which was incorporated under the President's 1983 Budget was to allow any unliquidated balances remaining under the existing units to expire and be deobligated as needed. The President's budget requested budget authority from Congress for 17,560 rental assistance units to replace those units which were projected to expire in FY 83 either because the rental assistance agreement's term will expire or because obligated funds will be fully disbursed for eligible tenants. This would mean no loss of benefits to tenants or owners but would inflate the FY 83 budget authority requirements.

The second alternative was to request less budget authority for approximately 7,000 rental assistance units. This would represent a major loss of benefit to approximately 10,560 tenant households, including senior citizens, handicapped persons, low-income households and domestic and migrant farm laborers. Without the benefit of rental assistance, most of these tenant households will be forced to vacate their present units and move to substandard housing to find rents they can afford. Borrowers will find a narrowing group of prospective tenants.

Increased vacancy and loss of rental revenues will increase borrower delinquencies and subsequently cause foreclosure of projects. The average per unit cost to the government on foreclosed rental property is $5,670. In addition to this, there is hardship on a community in loss of revenue, taxes, trade, and services. The community could experience a temporary loss of housing for approximately one year since the average foreclosure and subsequent sale presently takes one year. There could be an added delay in resale of the property as most potential purchasers of inventory property require rental assistance as a condition of purchase.

The third alternative was to amend the existing rental assistance agreements so they do not expire until the obligated funds are fully used and to

request budget authority for 7,000 rental assistance units to renew agreements where funds will be fully disbursed before January 1, 1984.

The Agency has chosen alternative three which will maximize the benefit to tenant households and communities and will have the least impact on the National budget.

The action also incorporates clarifications to administrative procedures which have previously been contained in memoranda and Agency administrative notices. The rental assistance regulations will be renumbered from Exhibit C, Subpart E, Part 1944 to Exhibit E, Subpart C, Part 1930 becoming part of the Multiple Housing Management Handbook which is issued to borrowers and management agents.

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

It is the policy of this Department that rules relating on public property, loans, grants, benefits, or contracts shall be published for comments notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. Compliance with normal 60 day comment period following this proposed rulemaking announcement would greatly decrease the effectiveness of this change and would be contrary to the public interest.

This action is issued for a 15 day comment period to allow time to review the public comments; make necessary changes in the regulation based on the comments; and, publish the final rule by December 1, 1982. In January, 1983 approximately 3,668 of the 13,560 units of rental assistance must either be amended or replaced with new rental assistance units, to avoid loss of benefits to tenants and owners. Owners, tenants, and the Agency need the authority to amend and extend rental assistance agreements at least 30 days in advance of their expiration to insure the orderly processing of the amendments and to assure owners and tenants that benefits will continue without interruption. If the agreements cannot be amended, borrowers must have time to apply for replacement rental assistance units to avoid interruption of benefits and the agency must consider amending their request for FY 83 budget authority to cover the additional 13,560 rental assistance units which will need to be replaced to avoid hardship to tenants and owners.

FmHA proposes to revise the regulation on maintenance of a waiting list in paragraph V D of Exhibit B to Subpart C, Part 1930, to clarify the requirement for selection of tenants on a first come, first served basis.

The Rental Assistance Program regulations are presently in Exhibit C to Subpart E of Part 1944. Since the inception of the rental assistance program in 1977, the rental assistance regulations have not been substantially revised. Administration of the program by borrowers and FmHA field staff has identified areas which should be addressed and clarified in regulations. These needs are now addressed by agency memoranda and administrative notices. FmHA proposes to revise this regulation to address owner and management servicing concerns and incorporate clarifications now contained in memoranda and administrative notices. The regulation will be renumbered as Exhibit E to Subpart C of Part 1930. Some of the proposed changes are as follows:

1. In paragraphs II C and XI, the definition of "eligible tenants" is clarified. The priority for assigning rental assistance within the project is stated more clearly in paragraph XII.

2. An "existing" project is redefined as "operational" to better describe the project status and new definitions are included in paragraphs II E and F for "operational" and "new" projects.

3. The format of the regulation has been restructured for easier use.

4. In paragraphs IV B 2 and V A 2 the procedure for processing replacement rental assistance agreements when present rental assistance funds are fully used is incorporated for borrower and Agency information.

5. In paragraph V C 5, a new system of Rental Assistance Agreement numbers is incorporated for easier identification by the Agency.

6. In paragraph VI B 4, we propose to provide for amendment of present rental assistance agreements to extend their term until all obligated funds are fully used.

7. In paragraph VII B, the requirement that the District Director track rental assistance obligations and disbursements is included and a new Exhibit E–1 is included for that purpose.

8. Paragraph X B adds District Director authority to have a borrower's rental assistance checks delivered to the District Office temporarily, as part of a servicing plan for delinquent accounts.

9. Paragraph XI F incorporates the procedure to be followed when rental assistance is assigned to the wrong household in error.

10. Paragraphs XIII and XIV incorporate Agency procedures for rental assistance payment cancellations and termination rental assistance agreements.

11. Paragraph XV incorporates procedure for transferring a rental assistance agreement when a project is transferred to an eligible borrower.

12. Paragraph XVI C designates that borrower denial of rental assistance will be handled under Subpart L of Part 1944, "Farmers Home Administration Tenant Grievance and Appeals Procedure."

13. All references to Forms FmHA 444–7, "Interest Credit and Rental Assistance Agreement", FmHA 444–9, "Multiple Housing Certification and Payment Transmittal," FmHA 444–25, "Request For Rental Assistance," FmHA 444–26, "Request For Obligation of Rental Assistance," FmHA 444–27, "Rental Assistance Agreement," and FmHA 444–29, "Project Worksheet for Interest Credit and Rental Assistance," have been renumbered to Forms FmHA 1944–7, FmHA 1944–9, FmHA 1944–25, FmHA 1944–26, FmHA 1944–27 and FmHA 1944–29, respectively. All titles remain the same. Reference is added to a new Form FmHA 444–27A, "Amendment To Rental Assistance Agreement."

FmHA proposes to amend Subparts D and E of Part 1944 by changing the references to the Rental Assistance Program regulation from Exhibit C to Subpart E of Part 1944 to Exhibit E, Subpart C of Part 1930 and by renumbering forms.

In Subpart E of Part 1944, § 1944.212 is revised to incorporate a clarified definition for "major rehabilitation."

In Subpart L, Part 1944, § 1944.554, denial of rental assistance is added as a covered grievance. This change is proposed to include all grievances between borrowers and tenants under the same FmHA appeals procedure.

The FmHA programs and projects which are affected by this regulation are subject to State and local clearinghouse review in the manner delineated in FmHA Instruction 1901–H.

CFDA Numbers and Titles: 10.405, Farm Labor Housing Loans and Grants; 10.415, Rural Rental Housing Loans, and 10.427, Rural Rental Assistance Payments.

Approval has been requested from the Office of Management and Budget for the reporting and recordkeeping requirements contained herein.

List of Subjects

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Reporting requirements.

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—housing and community development, Low- and moderate-income housing—Rental, Mortgages, Nonprofit organizations, Migrant labor, Rent subsidies, Grant programs—housing and community development, Rural housing.

Accordingly, FmHA proposes to amend Part 1930, Subpart C, and Part 1944, Subparts D, E, and L, Chapter XVIII of Title 7 of the Code of Federal Regulations as follows:

PART 1930—GENERAL

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

1. Paragraph V D of Exhibit B is revised to read as follows:

Exhibit B—Multiple Housing Management Handbook

* * * * *

V *Renting Procedure.* * * *

* * * * *

D Maintenance of Waiting List.

1. If a living unit is not available when an applicant is determined eligible, the applicant's name and race or ethnic group designation will be placed on a written, master waiting list maintained in the chronological order in which the applications are received. If more than one household applies on the same date the applications will be time dated. Tenants will be selected on a first come, first served basis according to the eligibility criteria in paragraph V B of this Exhibit.

2. For ease of identification separate lists, cross referenced to the master list, may be maintained for categories listed below. When there are separate lists, they must be cross-referenced for applicants who qualify for more than one category or priority. Within each category, selection will be made on a first come, first served basis.

a. Persons who qualify for various sizes of units.

b. Senior citizens and families, or any other combination as planned for the project and shown on the borrower's loan agreement or loan resolution.

c. Persons who require special design features of the handicapped units in the project, such as persons confined to a wheelchair. Persons on this list have priority for these special design units over all other applicants.

d. Frail or impaired applicants in a congregate housing project. Priority will be given to the frail or impaired to sustain an occupancy level not to exceed 35 percent of the project units. After this occupancy level is attained, priority will be given to non-frail or non-impaired applicants.

e. Displacees from a prepaid FmHA financed project who possess a Letter of Priority Entitlement (LOPE) issued by a FmHA District Director. Applicants with a LOPE are placed at the top of the master waiting list and will be given first consideration for the size of unit for which they are eligible, before all other applicants for occupancy. Applicants with a LOPE will be selected first come, first served based on their date of application.

f. Displacees, such as victims of natural disaster and eminent domain action, who may be given priority consideration.

3. Each list by category will be available for inspection by applicants on the waiting list. When the application is first submitted, the applicant will be notified of the category(s) assigned to that application.

4. If an applicant cannot accept a living unit when it is available, but wants to be considered in the future, the contact and reason for not accepting at that time will be documented. The applicant's name will remain on the list in chronological order.

5. No applicant may be given preference for occupancy because he or she qualifies for rental assistance and the project has rental assistance available, except as required in paragraph XII B of Exhibit E to this Subpart.

6. Applicants will be responsible for keeping the borrower or rental agent informed of their availability to occupy a rental unit. This may be done at reasonable intervals established by the rental agent. Applicants who fail to respond to reasonable and documented attempts by the rental agent to provide notification of occupancy availability may be removed from the waiting list without right of appeal.

2. Exhibit C to Subpart E of Part 1944 is revised and redesignated as Exhibit E to Subpart C of Part 1930 and reads as follows:

Exhibit E—Rental Assistance Program (FmHA Instruction 1930–C)

I *General.* The objective of the rental assistance program is to reduce rents paid by low-income households. This Exhibit sets forth the policies and procedures and delegates authority under which rental assistance (RA) will be extended to eligible tenants occupying eligible Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) projects financed by FmHA. This Exhibit also applies to Farm Labor Housing (LH) projects when the borrower is a broadly-based nonprofit organization, nonprofit organization of farmworkers, or a State or local public Agency. Rental assistance will supplement the benefits available to tenants under the interest credit program outlined in Exhibit B to Subpart E of Part 1944.

II *Definitions.*

A *Adjusted Annual Income.* This is the total planned income of the household for the next 12 months as defined in Paragraph II N of Exhibit B to this Subpart, less 5 percent thereof, and less an additional $300 for each minor person, (excluding the tenant, co-tenant and foster children), who is a member of the household and lives in the rental unit.

B *Adjusted Monthly Income.* This is the amount obtained by dividing the Adjusted Annual Income by 12 and rounding to the nearest dollar.

C *Eligible Tenants.*—Any low-income household, handicapped person, or senior citizen meeting the following requirements:

1 Must be unable to pay the approved rental rate plus utility allowance for an eligible FmHA RA unit within 25 percent of their adjusted monthly income.

2 The household adjusted annual income must not exceed the low income limit established for the area as indicated in Exhibit C to Subpart A of Part 1944.

3 The household must meet the "occupancy standard" stated in paragraph V B 1 of Exhibit B of this Subpart and in the borrower's RA agreement, unless otherwise authorized in Exhibit B of this Subpart.

D *Eligible Project.*

1 All projects must operate under Interest Credit Plan II RA to be eligible to receive RA, except (a) LH loans and grants, and (b) direct RRH, and insured RRH loans approved prior to August 1, 1968, which must operate under Plan RA. To be an eligible project, the loan must be a:

a RRH insured or direct loan made to a broadly-based nonprofit organization, or State or local agency, or

b RRH insured loan to an individual or organization who has or will execute a Loan Resolution or Loan Agreement agreeing to operate the housing on a limited profit basis as defined in § 1944.205 (r) of Subpart E of Part 1944,

c RCH insured or direct loan, or

d LH loan, or an LH loan and grant combination, made to a broadly-based nonprofit organization or nonprofit organization of farmworkers or a State or local public Agency.

2 Projects with all or a part of the rental units under contract with the Department of Housing and Urban Development (HUD) developed under the Section 8 program for new construction or rehabilitation by either the dual or single track processing procedures will not be considered an eligible project. However, the borrower may utilize HUD's Section 8 Housing Assistance Payments Program for existing housing and FmHA RA for other eligible households in the same project.

E *Operational Project.* Any FmHA financed project which has been previously occupied by at least one tenant at the time the RA is granted.

F *New Project.* Any FmHA financed, newly constructed project or a project which meets the definition of a major rehabilitation in § 1944.212 of Supart E of Part 1944.

C *Rental Assistance.* Rental assistance (RA), as used in this Exhibit, is the difference between 25 percent of the household's adjusted monthly income and the approved rental rate (including costs of all utilities and services, when applicable) for the rental unit

being occupied by the household. When the household's adjusted monthly income is less than the allowance established for utilities and services billed directly to and paid by the tenant, the owner will pay the household that difference in accordance with paragraph VIII A of this Exhibit. Rental assistance is further defined as:

1 For projects operating on Interest Credit Plan II, the difference between 25 percent of the household's adjusted monthly income and the basic rent, including utilities for the rental unit.

2 For all direct RRH loans, insured RRH loans approved prior to August 1, 1968, and all eligible LH loans, the difference between 25 percent of the household's adjusted monthly income and the approved market rental rate, including utilities for the rental unit.

H *Approved Rental Rate.* The rental rates (basic and/or market rent) determined by the budget for the project and approved by FmHA. Rental rates will be considered approved if the budget for the year has been approved in accordance with § 1930.124 of this Subpart and utility allowances, when required, have been determined and approved in accordance with Exhibit A–5 to Subpart E of Part 1944. The rental rate includes the amortized principal and interest payments, operating and maintenance costs, required deposits to the reserve account and a return on the owner's initial investment when allowed by FmHA regulations. The cost of utilities and other public services, when paid by the owner, will be included in the operating and maintenance expenses to determine the approved project rental rates. Tenant paid utilities will be included in the determination of the utility allowance, but not in the calculations of project rental rates. Tenants' individual charges for telephone, TV cable and similar non-housing related costs (including meals and other social services) will not be included in the determination of the utility allowances or the approved rental rate.

I *Utility Allowances.* The allowance approved by FmHA to cover the cost of utilities which are payable directly by the household.

J *District Director.* Includes District Director, Alaska Area Loan Specialist, Director, Western Pacific Territories, or any employee with designated authority to act for the District Director, Alaska Area Loan Specialist or Director, Western Pacific Territories.

III *Eligibility of Borrower.*

A All borrowers with eligible projects as defined in paragraph II D of this Exhibit are eligible and are encouraged to utilize the RA program and receive RA payments on behalf of low-income tenants. Generally, the borrower, or the borrower's approved management agent, will initiate the processing of a RA application.

B Twenty percent or more of the households in an eligible project who are eligible for RA may petition the borrower to obtain RA on their behalf. The petitions must be in writing to the borrower and contain the signature of the head of each household which is paying more than 25 percent of household adjusted monthly income for rent, including utilities, and desire RA. A copy of the petition will be submitted to the District Director.

1 If RA units are available, the District Director should meet with and encourage the borrower to apply for sufficient RA units to meet the needs of the eligible tenants. If the borrower refuses to apply for RA, the borrower shall inform the tenants, in writing, of the reasons.

2 If RA units are not available, the District Director shall inform the petitioning tenants in writing.

IV *Priority of Rental Assistance Applications.* The National Office may establish a State quota on the number of rental units that may receive RA in any fiscal year. The State Director will limit the approval of RA to no more than the number of units allocated to the State. Unless otherwise stated by the National Office, the State allocation will indicate the number of RA units for existing projects and the number of RA units to be used for new construction. Priority in allocating RA units will be as follows:

A *Allocation to Projects Within a State.* The State Director will distribute any RA units allocated to the State in accordance with any specific guidance from the National office and approve requests for RA to projects in accordance with the provisions of this Exhibit.

1 *Operational Housing:* The State Director will distribute any RA units allocated to the State for operational RRH, RCH, and LH projects by considering Forms FmHA 1944–25, "Request for Rental Assistance," that have been submitted by eligible borrowers. The State Director will authorize RA to projects with priority given to projects based on the earliest date that Form FmHA 1944–25 and other required information is received by FmHA in acceptable form. (Also see paragraph VI). The number of RA units to be granted in any project will be based on the number of households in the project needing RA up to the maximum allowed. The National Office will notify the State Director each year of any specific date by which all requests for RA must be submitted to FmHA for consideration.

2 *New Housing:* Any RA units allocated to the State for new construction will be distributed on a priority basis in the following order.

a RRH or RCH projects to be provided in areas where HUD Section 8 units under the FmHA set-aside are not available.

b Applications for RRH and RCH loans where the market survey information indicates that without RA, a large percentage of the prospective tenants will be paying in excess of 25 percent of their adjusted monthly income for rent including utilities. When the number of RA units available is inadequate to cover all such applications, the units will be distributed giving priority to those projects located in areas identified as having the greatest housing needs and selected for funding in accordance with § 1944.231(d)(3) of Subpart E of Part 1944.

c For LH projects, RA units will be allocated by the National Office on a case-by-case basis at the time the projects are considered for funding at the National Office level.

3 *Limitation on number of units of rental assistance in each project:* The maximum number of rental units in a project to obtain RA is limited to the following:

a No limitation for eligible LH loan and grant projects.

b No limitation for RRH, RCH or SCH projects designed and limited to housing for the senior citizen or handicapped, except that the State Director may limit the percentage of RA units granted to senior citizen or handicapped projects to no more than 40 percent of the number of rental units if it appears that the number of RA units distributed to the State will not be adequate to approve all requests for RA.

c An RCH or RRH project designed and/or primarily occupied by low- and moderate-income households will be limited to not more than 40 percent of the total number of rental units in the project.

d An RCH or RRH project planned and designed for a mix of senior citizen or handicapped persons and low- and moderate-income households will be limited to not more than 40 percent of the total number of rental units designed for low- and moderate-income households but there will be no limitation on the rental units designed for and occupied by senior citizens or handicapped persons.

B *Granting Exceptions.*

1 *State Directors Authority.* An exception to the 40 percent limitation indicated in paragraphs IV A 3 b, c and d of this Exhibit may be granted by the State Director for up to 70 percent of the rental units in any particular project. (Number of units × 70 percent = number of RA units rounded to the next higher whole number.) However, the total number of units of RA granted by the State Director, including exceptions, cannot exceed the number of RA units allocated to that State. Exceptions will be granted only when RA units are available, or can be made available, and the following conditions exist:

a When more than 40 percent of the rental units are occupied by households who are paying more than 25 percent of their adjusted income for rent, including utilities, and such units are no larger than needed to meet the household's need, or

b The tenants in a project that is being assisted at the 40 percent level experience a hardship as a result of an income decrease or a rental increase and must obtain RA to remain in the project, or

c The project is located in or is being developed in an area of extremely low-income households and the majority of the proposed tenants will be paying in excess of 25 percent of their income for rent including utilities.

2 *Replacement Agreements.* The State Director may approve RA agreements for replacement units which exceed his/her approval authority provided the units were initially authorized by the National Office.

3 *National Office Authority.* The National Office may authorize the State Director to approve RA up to 100 percent of the rental units on a case-by-case basis. The project must be located in, or development be

proposed in, an area of extremely low-income households and the majority of the tenants are, or will be, paying in excess of 25 percent of their income for rent including utilities. Exception requests must be submitted to and approved by the National Office prior to approving the loan or requesting obligation of rental assistance for more than 70 percent of the rental units in the project.

C *Processing Exception Requests.*

1 A request for an exception to the 40 percent limitation for existing projects will be submitted by the borrower to the District Director. After reviewing the request for completeness, accuracy, and sufficient documentation to fully support the request, the District Director will submit the request with the documentation and recommendations to the State Office by memorandum for approval. Included in the memorandum will be the number and percentage of rental units in excess of the 40 percent limit and justification for the approval. When National Office authorization is required to exceed the 70 percent limitation, the State Director will request this authorization by memorandum and will include the following:

a For new projects: (1) Form FmHA 1944–25, (2) complete data and documentation on the rental housing market, (3) complete data and documentation on the income of households likely to be served, (4) the comments of the District Director, and (5) the comments and recommendations of the State Director.

b For operational projects: (1) Form FmHA 1944–25, (2) Form FmHA 1944–29, "Project Worksheet for Interest Credit and Rental Assistance," with all columns completed for each tenant in the project, (3) a copy of the project's waiting list for occupancy identifying eligible prospective tenants whose incomes have been verified and who are willing to occupy vacant units if an exception to the 70 percent limitation is made, (4) a copy of any existing RA agreement and modifications thereto which may be in effect on the project, (5) the comments of the District Director, and (6) the comments and recommendations of the State Director.

2 If an applicant requests authority to exceed the 70 percent limitation for a new project after the loan is approved, such requests will not be approved until the project is completed, and at least partially occupied and it is apparent that full rent-up will not occur unless the 70 percent limitation is exceeded.

V *Processing of Rental Assistance Applications.* All requests for RA will be processed in accordance with this paragraph and may be approved by the State Director.

A *Operational Projects.*

1 A borrower with an eligible project in which there are tenants paying in excess of 25 percent of their adjusted income for rent is encouraged to file Form FmHA 1944–25 with the District Director. A separate Form FmHA 1944–25 will be submitted for each project. The borrower should include the following with each request.

a Form FmHA 1944–29, with all columns completed for each tenant in the project. (All Forms FmHA 444–8, "Tenant Certification," must be current.)

b Approved or proposed budget for the year with Exhibit A–5 to Subpart E of Part 1944 attached, when applicable.

2 Prior to the full disbursement of obligated funds on any agreement, a borrower or approved management agent may submit a request for replacement RA units. This request should contain all the material requested in paragraph V A 1 of this exhibit and should be submitted no later than three (3) months prior to the expected full disbursement of obligated funds, to allow time for processing the request. The number of replacement units may not exceed the number of units that are expiring.

3 The District Director will review the budget, Exhibit A–5, Form FmHA 1944–29, and Form FmHA 1944–25 submitted by the borrower to assure that the items are complete and accurate. The District Director will complete Form FmHA 1944–25 and submit all data provided by the borrower to the State Director with appropriate comments and recommendations.

B *Projects to be Funded.*

1 Applicants requesting funding for new projects who are planning to utilize the RA program, should submit a completed Form FmHA 1944–25 to the County Supervisor or District Director, as appropriate, when submitting a preapplication or application for funding.

2 The number of units of RA requested should be based on the market data for the area, the proposed rental rates as reflected in a budget for the project, and the income levels of the prospective tenants.

C *State Director Action on Requests for Rental Assistance.*

1 *Timing of Action.* If the State Director determines that RA can be granted or replaced, or a change in the number of RA assisted rental units is needed, Form FmHA 1944–26, "Request for Obligation of Rental Assistance," will be prepared and distributed in accordance with the Forms Manual Insert. *Form FmHA 1944–27, "Rental Assistance Agreement" will not be executed until Form FmHA 1944–26 has been returned from the Finance Office indicating that the requested number of RA units and funds have been obligated for the project.*

2 *Initial or Replacement Request.* Once the initial or replacement request for RA has been obligated by the Finance Office, a copy of the Form FmHA 1944–26 indicating the date and amount of obligation will be forwarded to the District Director. The District Director will prepare an original and three copies of Form FmHA 1944–7, "Interest Credit and Rental Assistance Agreement", when the project has not had RA previously, and an original and two copies of Form FmHA 1944–27. The original and three copies of Form FmHA 1944–7 and the original and two copies of Form FmHA 1944–27 will be executed by the borrower and District Director. The forms will be executed and distributed in accordance with the appropriate Forms Manual Insert (FMI).

3 *Modification of an Existing Agreement.* When a change in the amount of RA has been obligated by the Finance Office, the Form FmHA 1944–27 will be prepared, signed and distributed in accordance with the FMI, except a Form FmHA 1944–7 is not required.

4 If RA cannot be provided, the State Director will inform the borrower, in writing, of the reasons. The borrower will be given appeal rights in accordance with Subpart B of Part 1900.

5 *Assigning Rental Assistance Agreement Numbers.* The initial RA agreement request will be coded 01–00. Associated modifications will be coded 01–01, 01–02, etc. Replacement RA agreements and associated modifications to those agreements will be coded sequentially beginning with "02–00". The State Director will assign the appropriate agreement number when preparing Form FmHA 1944–26.

VI *Terms of the Rental Assistance Agreement.*

A *Effective Date.* Each "Rental Assistance Agreement" will be effective the first day of the month it is executed. If assistance is granted under an appeal in accordance with paragraph XVI of this Exhibit, the effective date will be retroactive to the first day of the month in which assistance was denied.

B *Term.*

1 *Twenty (20) Year Agreement.* The agreement shall be effective for twenty (20) years from the effective date of the agreement for new projects. This agreement may be superceded by a modified agreement in accordance with Section 4 of the RA agreement or terminated in accordance with conditions stated in Section 8 or 9 of the RA agreement (Section 10 in RA agreements executed prior to (final rule)). The agreement will expire when the funds obligated for the units described in Section 1 of the agreement are fully disbursed. This can be any time before or after the end of the 20-year term. Upon expiration of the agreement, a replacement agreement may be executed. If a replacement agreement is considered, it will be for a five (5) year period.

2 *Five (5) Year Agreement.* The agreement shall be effective for five (5) years from the effective date of the agreement for operational projects, or for new projects when twenty (20) year units are not available. This five (5) year agreement may be superceded by a modified agreement in accordance with Section 4 of the RA agreement or terminated in accordance with conditions stated in Section 8 or 9 of the RA agreement (Section 10 in RA agreements executed prior to (final rule)). The agreement will expire when the funds obligated for the units described in Section 1, of the agreement are fully disbursed. This can be any time before or after the end of the five (5) year period.

3 Modification of the number of units assigned to any project will be limited to units of the same term as the original agreement.

4 Any existing RA agreement executed prior to (final rule), which will have a remaining obligation balance at the end of the 5-year or 20-year expiration date stated in Section 9, "Term of the Agreement," may be modified by the use of Form FmHA 444–27A, "Amendment to Rental Assistance Agreement". No additional RA units may be added to the agreement after the amendment is executed.

5 Replacement RA agreements will be for a five (5) year period. All requirements in paragraphs VI B 2 and 3 of this exhibit apply. Expiring RA agreements and replacement RA agreements may run concurrently for one month so any small undisbursed obligation balance on the expiring RA agreement can be used in full.

VIII *Recordkeping Responsibilities.*

A The State Director will maintain Form FmHA 444–28, "Record of Rental Assistance Agreements." The record will include the borrower's case number, fund code, loan number, RA agreement number, number of rental units in the project number of units for RA authorized and the effective date of each agreement and amendment. This information will be obtained from Form FmHA 1944–25, Form FmHA 1944–26, and Form FmHA 1944–27. Any changes which are made in the number of rental units assisted will be recorded on Form FmHA 444–28.

B The District Director is responsible for tracking the obligation and disbursement of funds for each RA agreement. The District Director will maintain Exhibit E–1 of this Subpart, "Payment and Rental Assistance Tracking Form", in accordance with Exhibit E–1. Exhibit E–1 will be inserted in the fold of Form FmHA 1905–6, "Management System Card—Multifamily Housing," for each project. At the end of each twelve month period Exhibit E–1 will be filed in Position 2 of the project case file and maintained indefinitely.

VIII *Responsibilities of Borrower in Administering the Rental Assistance Program.* Each borrower and management agent for each project receiving RA should fully understand the responsibilities and requirements of carrying out the program. The borrower and management agent are the key to the successful operation of the program. The following guidelines will be followed:

A Direct RA payments will not be made to eligible tenants receiving RA except in those instances when utilities are paid by the household and 25 percent of the household's monthly adjusted income is less than the allowance for utilities. In these cases, the borrower will pay the household that difference if the household provides the borrower evidence that the utility bills are due or have been paid (See paragraph IX A). The borrower will maintain an accurate accounting of each tenant's utility allowance and payments made to tenants.

B The borrower must submit Form FmHA 444–8 for each tenant as required in paragraph VI E of Exhibit B to this Subpart (Management Handbook).

C The incomes reported by the tenants must be verified by the borrower in accordance with paragraph VI of Exhibit B to this Subpart (Management Handbook).

D Borrowers utilizing RA must comply with § 1930.124 of this Subpart. RA will not be approved for projets until the operating budgets have been approved by the FmHA State Office or the District Director. District Directors, with assistance from the State Office, must closely supervise and assist borrowers in complying with all accounting and management requirements.

E A Borrower participating in the RA program must have an FmHA approved lease with the assisted household. Leases must comply with the provisions of paragraph VII of Exhibit B to this Subpart (Management Handbook).

IX *Handling Utility Allowances.*

A *Payment of Utilities.* In a project where the tenant is billed directly for the utilities, the tenant receiving the benefit of RA will pay the owner as rent the difference between the established allowance for utilities which the tenant pays and 25 percent of the household's adjusted monthly income. If, however, 25 percent of the household's adjusted monthly income is less than the monthly allowance for utilities, the owner will pay the tenant that difference as directed in paragraph VIII A of this exhibit. In a project where the owner pays all the utilities, the tenant will pay the owner the full 25 percent of the adjusted monthly income toward the approved rent for the rental unit being occupied.

B *Determining the Allowance.* The utility allowance will be determined and recorded by the use of Exhibit A–5 to Subpart E of Part 1944.

C *Changes in Allowances.* The utility allowance should be adjusted annually to reflect substantial changes in utility and public service rates. Normally, allowances will be adjusted on an annual basis if necessary when the owner submits a new budget for approval. Changes in utility allowance which will result in increasing the amount of the rent paid by tenants will be processed in accordance with Exhibit C to this Subpart.

X *Method of Payment of Rental Assistance to Borrower.*

A The borrower will prepare a separate report for the project using Form FmHA 1944–29. The worksheet will be prepared and distributed in accordance with the FMI. This information will be used by the District Director in preparation of Form FmHA 1944–9, "Multiple Housing Certification and Payment Transmittal." The form must be completed in accordance with the FMI. The requred loan payment will be transmitted with the form to the Finance Office. The RA payment will be mailed by the Finance Office directly to the borrower. Since the check will be sent directly to the borrower, the District Director should verify that the borrower's address on Forms FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request," and FmHA 450–14, "Annual Statement of Loan Account," is correct. If the address shown on these forms is not correct, the District Director should complete Form FmHA 450–10, "Advice of Borrower's Change of Address or Name," prior to any request for payment of RA. When a borrower has more than one project within a county, all checks must be sent to the same address.

B When a project loan account is delinquent, the District Director should counsel with the borrower and develop a servicing plan. This plan should incorporate detailed provisions for continuing operation of the project and paying the account current.

1 As part of this plan, the District Director may process a Form FmHA 450–10 to have the borrower's rental assistance checks delivered to the District Office. The Form FmHA 450–10 should be forwarded to Finance Office Multiple Family Housing Unit. If RA payment will be requested, Form FmHA 1944–9 should be attached to the Form FmHA 450–10. Only those data fields on the Form FmHA 1944–9 applicable to the RA checks reqest should be completed.

2 The RA check may be released to the borrower in accordance with the servicing plan. The District Director may require that all or a portion of the RA check be applied to the delinquent loan account.

3 At the District Director's discretion, another Form FmHA 450–10 may be processed to have the check again mailed directly to the borrower. This form should also be forwarded to the Finance Office Multiple Family Housing Unit.

XI *Eligibility of Tenants.*

A All tenants as defined in paragraph II C of this Exhibit are eligible to receive the benefits of RA when occupying a rental unit in an eligible project, provided the project owner has agreed to provide such assistance in accordance with this Exhibit and there are RA units available.

B Tenants occupying an inappropriate size unit, who are covered by paragraphs V B 1 h of Exhibit B to this Subpart, are considered eligible tenants for RA provided they agree, in writing, to move at their own expense to the next available unit of appropriate size. If the project does not contain a unit of appropriate size, the tenant may occupy an inappropriate size unit and receive RA.

C Tenants who initially occupied an apartment unit prior to November 14, 1977 and who were determined eligible for occupancy at that time under guidelines then in effect, may remain in that apartment for an indefinite period and receive RA (and interest credit benefits) without meeting the present occupancy standards, as long as they remain income eligible under current FmHA regulations. Such tenants may receive RA if it becomes available to them without meeting the present occupancy standard.

D Ineligible tenants, with State Director approval, who are income eligible but occupancy ineligible, may receive RA on a month-to-month basis if there is no eligible tenant to whom the RA unit can be assigned. The following clause must be included in the tenant's lease:

"I agree that I will receive the benefits of rental assistance (RA) temporarily, from month-to-month, and only until I can become eligible for RA or until there is an eligible tenant to whom the RA unit can be assigned, whichever comes first."

E An eligible person on the waiting list who qualifies for occupancy under paragraph V D of Exhibit B to this Subpart (Management Handbook) will be given preference for RA before tenants living in the project who do not meet the occupancy standards. RA benefits may be withdrawn from ineligible tenants living in the project if an eligible person on the waiting list accepts occupancy.

F If RA is assigned to a household in error, the RA should be cancelled and reassigned. This paragraph applies only when the tenant has correctly reported income and household size. Incidents involving incorrect reporting are addressed in paragraph VIII C

of Exhibit B to this Subpart (Management Handbook).

1 Before the borrower notifies the tenant, the borrower or management agent shall review the case with the District Director. If the District Director verifies that an error has been made, the tenant will be given 30 days written notice that the unit was assigned in error and that the RA benefit will be cancelled effective on the next monthly rental payment due date after the end of the 30 day notice period.

a The tenant has the right to cancel the lease based on the error made by the borrower and the loss of benefit to the tenant.

b The RA granted in error will not be recaptured.

c The tenant may meet with management to discuss the cancellation and the facts on which the decision was based. If the tenant clearly was not entitled to the RA, there will be no appeal from the decision.

2 Reassigning rental assistance:

a The RA unit will be reassigned to the household which was erroneously denied the RA unit. The assignment will be based on the Form FmHA 1944–29 from which the original priority list was established, when the unit was erroneously assigned. The RA will not be retroactive unless the reassignment was based on an appeal by the tenant.

b If the originally denied household now has RA, or is no longer a resident, the RA will be assigned based on a current Form FmHA 1944–29 and the priorities in paragraph XII of this Exhibit.

XII *Priority Among Eligible Households Within a Project Receiving Rental Assistance.* The borrower will determine priority for RA as follows:

A *In Operational Projects:* To determine priority for assigning an available RA unit the latest Form FmHA 1944–29 must be updated as of the date the unit is available assuring that columns 3 through 9 are current and accurate.

1 Priority for assigning RA is as follows:

a *Eligible tenant:*

(1) If the project is fully occupied at the time the RA is initially granted, first priority will be given to eligible households in residence paying the highest percentage of annual adjusted income for rent plus utilities.

(2) No eligible household occupying a rental unit in the project may be required to move from the project to allow a prospective tenant household, with a higher priority for RA, to move in.

(3) When the project has vacancies or vacancies occur and RA is available, first priority will be given to eligible households already living in the project who are eligible for RA, before any prospective tenants are considered for occupancy and/or RA.

b *Eligible applicants from waiting list.* Second priority will be given to eligible applicants on the waiting list. All tenants will be selected on a first come, first served basis as provided in paragraph V D of Exhibit B to this Subpart (Management Handbook).

c *Ineligible tenants:* Third priority for RA will be given to occupancy ineligible households living in the project. The requirement of paragraph XI D of this Exhibit must be met.

2 If the project has vacancies or vacancies occur and RA is not available, an applicant eligible for RA may elect to accept occupancy without the benefit of RA. After occupancy, the household will be considered for RA in accordance with paragraph XII A 1 of this Exhibit. If the applicant elects not to accept occupancy because RA is not available, their application for a unit will retain its original date for priority on the waiting list.

3 Eligible tenants receiving the benefits of RA may continue receiving such benefits as long as they remain eligible for rental assistance and there is a RA agreement in effect.

4 When a tenant receiving RA vacates before the end of the month, the RA unit should be immediately assigned to another tenant using the priority given above. If the borrower has collected RA for the vacating tenant for the full month, the benefit of RA should be immediately passed on to the new RA recipient as rent credit or as a refund of rent previously paid. The amount will be determined by the new recipient's income and will be prorated for the balance of the month.

B *In New Projects.* Applications for occupancy should be accepted during the construction phase of the project and placed on a waiting list as required in paragraph V D of Exhibit B of this Subpart (Management Handbook). During initial rent-up period the following priorities will apply:

1 Until all the RA units have been assigned, units will be rented *only* to applicant households who qualify for RA as defined in paragraph II C of this Exhibit. Applications qualifying for RA will be conidered on a first come, first served basis, by-passing those applicants on the waiting list whose income is above the low-income limit for the area. The District Director may grant a written waiver to this requirement when review of the borrower's method of advertising the rental units satisfactorily demonstrates that households eligible for RA are not available or do not desire occupancy.

2 If there are still vacant units, those applicants by-passed because they did not quality for RA will be considered for occupancy on a first-come first-served basis.

3 After the project is fully occupied, or when the District Director determines that the initital rent-up period is ended, the priority procedures in paragraph XII A for operational projects will be followed.

XIII *Rental Assistance Payment Cancellation:* When a RA check must be cancelled, the following procedure will be followed:

A *Return of the original rental assistance Treasury check:* The District Office will prepare Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation", as specified in the FMI.

B *Return of a portion of the monthly rental assistance payment or refund of rental assistance previously advanced:* A check from the borrower made payable to Farmers Home Administration will be submitted to the Finance Office as specified in the FMI for Form FmHA 1944–9.

XIV *Terminating Existing Rental Assistance Agreements Obligated in Prior and/or Current Fiscal Years.*

A *When Obligated Funds are Fully Disbursed:*

1 RA agreements will be automatically terminated when all obligated funds shown on the agreement are fully disbursed to the borrower. The District Office will enter a "final payment" code on Form FmHA 1944–9 when the last RA payment request is processed.

B *Prior to Full Disbursement of Obligated Funds.*

1 Only the State Director is authorized to terminate RA agreements prior to full disbursement of obligated funds.

2 RA Agreements will be terminated prior to full disbursements of the obligated funds only when RA is to be discontinued on the project in accordance with the provisions of the borrower's Rental Assistance Agreement and Interest Credit and Rental Assistance Agreements. The State Director will notify the borrower in writing of the reason for cancellation and provide the borrower appeal rights in accordance with Subpart B of Part 1900 of this Chapter. Form FmHA 1944–26 deobligating funds will not be forwarded to the Finance Office until the appeals process is completed.

3 When current year RA agreements are terminated, the undisbursed funds for the RA obligation will be returned to the current fiscal year obligation authority.

4 When prior fiscal year RA agreements are terminated the undisbursed funds (unliquidated balances for those obligations) cannot be reused and are lost as a result of the single year RA obligational authority. To ensure effective utilization of RA funds, it is imperative that RA agreements not be terminated prior to the full disbursement of obligated funds if RA payments continue and there are undisbursed funds for that rental assistance agreement obligation.

5 When a project account is accelerated the RA agreement should not be cancelled until Form FmHA 465–6, "Advice of Mortgaged Real Estate Acquired," is forwarded to the Finance Office.

XV *Transferring Existing Rental Assistance Agreements.*

When a loan is transferred to an eligible borrower the transferee may assume the transferor's RA agreement. The RA agreement will be described on the Assumption Agreement (Form FmHA 460–5 or FmHA 460–9) giving date executed, number of units, term of agreement and remaining obligation balance.

XVI *Rights for Appeal if Rental Assistance is not Granted or is Cancelled by Farmers Home Administration.*

A Borrowers who have requested RA in writing and are denied such assistance (whether in whole or in part) by Farmers Home Administration, or when RA is cancelled, will be notified in writing of the specific reasons why they have been denied RA as specified in Subpart B of Part 1900. A meeting will be required between the

borrower and the decision maker to explain the adverse decision before the appeals process will begin.

B If at any time it is determined that a borrower or a household was eligible for RA and assistance could have been made available in accordance with this Exhibit, the borrower or household will receive the next available RA unit.

C Borrower denial of RA to tenants will be handled under Subpart L of Part 1944.

XVII *Forms and Exhibits.* Exhibit A–5 to Subpart E of Part 1944 and Form FmHA 444–7 are to be used in determining amount of rental assistance to be provided.

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PAYMENT AND RENTAL ASSISTANCE TRACKING FORM

FmHA Instruction 1930-C
Exhibit E-1
Page 1

BORROWER :
CASE NUMBER :
LOAN CODE :
LOAN AMOUNT :
DATE OF NOTE :
INTEREST RATE:
YEARS :
INTEREST CREDIT EFFECTIVE DATE:
INTEREST CREDIT PLAN :

INSTALLMENT DUE DATE :
INTEREST CREDIT PAYMENT:
NOTE RATE PAYMENT :

RENTAL ASSISTANCE: ( ) 5 Year ( ) 20 Year
Total Units:
Obligation Amount: $
Rental Assistance Agreement No.:

BEGINNING RENTAL ASSISTANCE UNDISBURSED BALANCE:

DATE	AMOUNT DUE	TOTAL PAYMENT MADE	PAID ON INSTALLMENT	OVERAGE - - - - SURCHARGE	ACCOUNT STATUS MONTHLY	ACCOUNT STATUS ANNUAL	R.A. USED CURRENT MONTH	R.A. UNDISBURSED BALANCE
							( )	
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BILLING CODE 3410-07-C

Instructions For Use "Payment and Rental Assistance Tracking Form"

I *General.* These instructions are for completing Exhibit E–1, which is a form for recording borrower's loan payments and requests for rental assistance (RA). The objective is for the District Office (DO) to maintain a constant status of the undisbursed balance of the RA obligation so RA disbursements do not exceed obligated funds. Exhibit E–1 can also be used to monitor a borrower's loan account status, as a servicing tool when working with a delinquent borrower, and, as an audit form when requesting account corrections by the Finance Office.

II. *Uses for the Exhibit.*

A. *Tracking rental assistance.*

1. When an executed Form FmHA 1944–26, "Request for Obligation of Rental Assistance," is returned by the FO, each obligation or deobligation of RA (including modifications) will be recorded on Exhibit E–1.

2. Each request for payment of RA of Form FmHA 1944–9, "Multiple Housing Certification and Payment Transmittal," must be recorded on Exhibit E–1 and the "Rental Assistance Undisbursed Balance" must be brought current. When Form FmHA 451–26, "Transaction Record," is received the amount of the RA check issued must be verified against the requested amount shown on Exhibit E–1. If no Form FmHA 451–26 is received within 30 days from date of request, the DO should contact the Multiple Family Housing (MFH) unit in the FO by telephone to determine if the check has been issued. If the amount of a check received differs from the amount requested, the DO should contact the MFH Unit in FO immediately by telephone.

B. *Monitoring Loan Account Status.*

1. The date and amount of each payment due should be entered monthly and the Account Status columns brought current.

2. The date and amount of each payment submitted to the FO on Form FmHA 1944–9, and the applications to installment and overage/surcharge, should be entered in the appropriate columns. The current account status should be entered.

3. When Forms FmHA 451–26 are received they should be verified against the entries made from Form FmHA 1944–9. If there is an error, copies of documentation relating to the error and the DO guidance on needed corrections should be forwarded to the State Office (SO) with a request that they contact the FO.

4. If Forms FmHA 451–26 are not received within 30 days after Form FmHA 1944–9 is sent to the FO, the SO should be contacted immediately.

5. The SO is responsible for follow-up with the FO. However, the SO may instruct the DO to contract FO directly if the contact can be made more efficiently by the DO.

C. *Auditing Borrower Accounts.*

1. If the DO feels the account status shown by the FO is incorrect, Exhibit E–1 may be used to record a transaction-by-transaction audit of the borrower's account. This audit can be used to demonstrate to a borrower why the account is delinquent. The audit can also be used to identify where corrections should be made in FO records.

2. A request for action by the FO should be forwarded through the SO to the MFH Unit in the FO, "Open Addressee Only", the request should include a copy of the audit; copies of input and output documents showing the errors made and necessary corrections; and, a memorandum from the DO requesting correction of the account.

3. The FO will use the material submitted to research the account and to make necessary corrections.

III *Completing the Exhibit.*

A. *Heading.*

1. For routine tracking the DO may complete only those items necessary to identify the borrower. 2. For audit purposes, and/or to send to FO all items in the heading must be completed. Heading items should be verified as part of the audit procedure.

B. *Beginning Rental Assistance Undisbursed Balance.* This is the initial obligation for the rental assistance agreement or the balance carried forward from a previous year.

C. *Columns.*

1. *Date*—Due date of payment or transaction date.

2. *Amount Due*—Scheduled payment from promissory note or payment reduced by interest credit.

3. *Total Payment Made*—Amount of payment submitted by borrower including overage or surcharge.

4. *Paid on Installment*—Amount of total payment to be credited to scheduled note installment.

5. *Overage/Surcharge*—Amount of total payment which is applied as overage or surcharge.

6. *Account Status*—

a. *Monthly*—Status of the account after the amount paid on installment is applied. Show the amount of the monthly installment which is ahead (A) or behind (B) schedule as required by the promissory note and interest credit agreement. If the account is neither ahead nor behind schedule, indicate the account is even (E). If the account is ahead or behind schedule at the beginning of the tracking period, indicate the amount and status on the first line of the column and adjust the status with each succeeding entry.

b. *Annual*—Annual payment shown on annual promissory note or twelve times the monthly payment required by a monthly promissory note. The payment will be modified if the borrower has an interest credit agreement. Indicate on the first line any amount due by the date shown in the "Minimum Amount Due" box on Form FmHA 451–26. Include any carryover from a previous due date. Amount will be reduced with each payment made on the installment. This reduced figure should correspond to the "Minimum Amount Due" on Form FmHA 451–26. If these figures do not agree, further investigation is warranted to determine if there is an error and appropriate action should be taken to make the necessary corrections.

7. *R.A. Used Current Month*—Fill in dollar amount of rental assistance requested. The number of rental assistance units used this month should be inserted in ( ).

8. *R.A. Remaining Balance*—This amount is determined by subtracting the dollar amount of RA requested from the R.A. Undisbursed Balance for the previous month. Additional obligations, deobligations or refunds must be entered in this column and the proper balance adjustment must be made.

PART 1944—HOUSING

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

3. In § 1944.212, paragraphs (b) through (q) are redesignated as (c) through (r) respectively, a new paragraph (b) is added, and paragraph (c) is revised to read as follows:

§ 1944.212 Loan purposes.

* * * * *

(b) Purchase existing buildings only when major rehabilitation is necessary in accordance with paragraph (c) of this section.

(c) Rehabilitate existing buildings only when major modifications, repairs, or improvements to the structures are necessary to meet the requirements of decent, safe, and sanitary living units. Loans will not be made for the purchase of adequate housing not in need of major rehabilitation. Major rehabilitation shall not be considered to be minor items of developement work such as painting, cleaning, and improvements to related facilities.

* * * * *

Exhibit C [Removed and Reserved]

4. Exhibit C is removed and reserved.

Subpart L—Farmers Home Administration Tenant Grievance and Appeals Procedures

§ 1944.551 [Amended]

5. Section 1944.551 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

6. Section 1944.554 is amended by renumbering paragraph (a)(6) to paragraph (a)(7) and adding a new paragraph (a)(6) which reads as follows:

§ 1944.554 Reasons for grievance and appeal.

(a) * * *

* * * * *

(6) Denials of rental assistance.

* * * * *

(42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70)

Dated: October 5, 1982.

Charles W. Shuman,

Administrator, Farmers Home Administration.

[FR Doc. 82–30358 Filed 11–4–82; 8:45 am]

BILLING CODE 3410–07–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1101

Information Disclosure Under Section 6(b) of the Consumer Product Safety Act

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission proposes its policy and procedure for the public disclosure of product-specific information under section 6(b) of the Consumer Product Safety Act. That section limits the Commission's authority to disclose product-specific information to the public in various situations. The proposal explains how the Commission will carry out section 6(b) responsibilities to give manufacturers and private labelers notice and then to analyze information the Commission proposes to release to the public.

DATE: Comments should be submitted by January 4, 1983.

ADDRESSES: Written comments should be submitted to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Received comments may be reviewed during working hours either at 1111 18th Street NW., Washington, D.C. 20207, Eighth Floor, or at 5401 Westbard Avenue, Bethesda, Md. 20207, Room 332.

FOR FURTHER INFORMATION CONTACT: Alan H. Schoem or Mana L. Jennings, Office of the General Counsel, Consumer Product Safety Commission, Washingon, D.C. 20207, telephone (301) 492–6980.

SUPPLEMENTARY INFORMATION: These proposed rules would establish the policy and procedure of the Consumer Product Safety Commission (Commission or CPSC) when it proposes to release product-specific information subject to section 6(b) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2055(b). They also would establish the policy and procedure of the Commission for retracting any information it has disclosed as provided in section 6(b)(7) of the CPSA, 15 U.S.C. 2055(b)(7).

I. General Policy Under Section 6(b)

In enacting the CPSA, Congress gave the Commission broad powers to gather, analyze and disseminate information related to consumer product safety. Section 6(b) of the CPSA establishes limitations on the Commission's authority to disclose certain product specific information in its possession. Section 6(b) provides safeguards to afford manufacturers or private labelers of consumer products the opportunity to give the Commission explanatory data and information before the Commission discloses information from which the public could readily ascertain their identity. Section 6(b) also requires that the Commission take reasonable steps to assure that certain product-specific information to be disclosed is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the statutes the Commission administers. An additional safeguard requires the Commission to retract inaccurate or misleading information it may have disclosed, both product-specific and non product-specific.

In the first instance the Commission attempts to provide information that does not identify a manufacturer or private labeler. Thus, for example, the Commission releases product complains or technical reports and studies with all identifying information deleted.

The Commission has considered several previous draft rules (*e.g.*, proposed drafts submitted by its staff in September and November, 1980, February 1981, and February and April 1982). The Commission's policy under, and interpretation of, section 6(b) has evolved over time and was discussed extensively at Commission meetings held on, *e.g.*, September 25, 1980; June 11, 1981; February 11, March 4, September 9, and September 28, 1982. From these previous drafts and discussions the present draft rules evolved.

In issuing this proposal, the Commission has tried to balance its obligation to inform the public as fully and expeditiously as possible with its obligation to provide safeguards to manufacturers and private labelers when the Commission discloses product-specific information. The Commission intends to make as much information as possible available to the public, consistent with the law and public policy.

II. Reasonable Steps to Assure Accuracy

Section 6(b)(1) requires that before the Commission releases product-specific information it must take reasonable steps to assure the accuracy of the information. This is probably the most controversial and difficult provision of section 6(b). Due to the varied types of materials which the Commission may disclose, the Commission must analyze each release of information on its own merits to determine whether reasonable steps have been taken to assure accuracy. The proposed rules at § 1101.32, however, delineate measures which the Commission believes are reasonable steps.

Section 6(b) does not require the Commission to guarantee the accuracy of information. Rather, the Commission is charged to take "reasonable steps" to assure that the information is accurate. Congress chose the term "reasonable" to permit the Commission to strike a balance between the public's right to disclosure and the statutory protections afforded manufacturers and private labelers in arriving at those steps it would take to assure accuracy. Thus, the Commission has considered a number of factors in proposing the reasonable steps to assure accuracy set out in § 1101.32. Among these factors are the Commission's limited financial and personnel resources; the balance between the public's right to information and manufacturers' rights to safeguards contemplated by section 6(b); the types of information that the Commission possesses, their purposes, and their sources; and the volume of requests (particularly under the Freedom of Information Act) the Commission receives for information of all types.

In many instances, the activities of the Commission staff provide the requisite reasonable step to assure accuracy. For example, a substantial portion of the Commission's field staff time is devoted to performing in-depth investigations of accidents or incidents involving consumer products; inspections of manufacturers, distributors and retailers; and similar types of activities. The Commission believes that an investigation of a particular matter by trained Commission staff is in itself the reasonable step required by section 6(b)(1) to assure accuracy if the information is subsequently disclosed to the public.

Similarly, the technical staff of the Commission often collects and analyzes various types of engineering, toxicological, and epidemiological data in the course of their duties. In other cases, the staff acquires information developed as the result of investigations by state or local authorities or other outside parties with expertise in specific fields, such as fire officials, employees of public utilities, and coroners. The

Commission staff also samples and tests a variety of consumer products and often contracts to have studies and/or testing performed by independent laboratories. The Commission believes that the types of activites described above in themselves are reasonable steps under section 6(b)(1) to assure that the resulting information is accurate.

Accordingly, in those cases where the information to be released is a result of this type of activity, whether the activity is conducted by the Commission or by a qualified non-Commission source, the Commission will, as a matter of course, review the information and release it without further investigation unless (1) on its face there is an indication that the information is inaccurate or (2) a manufacturer or private labeler submits specific comments pursuant to section 6(b) that call into question the accuracy of the information.

The Commission also routinely acquires information that is not verified by a specific investigation or analysis. For the most part, this information consists of written and telephoned complaints about specific consumer products (product complaints). The Commission's experience is that consumers generally accurately report their experiences with products. The Commission recognizes, however, that the existence of a complaint is not always an assurance of the accuracy of the information contained in the complaint.

As the Commission discussed at several of its meetings, it is not in a position to devote substantial financial or personnel resources to conducting an in-depth investigation of each product complaint or other information to assure its accuracy in order to disclose it publicly. (In FY 1982 the average cost for a telephone in-depth investigation was $52.00 and $365.00 for an on-site investigation. In FY 1983 these costs will increase to $75.00 and $400.00 respectively.) Neither can the Commission test, analyze, or evaluate every consumer product about which the Commission receives information.

Every dollar or staff-hour devoted to verifying a product complaint or other information through an in-depth investigation or through testing, analyzing, or evaluating a product simply to permit public disclosure of the underlying information would be a dollar or staff-hour diverted from the projects contained in the Commission's Operating Plan and its Priority Projects. These projects are the vehicle by which the Commission takes regulatory action to protect broad segments of the public from product hazards.

For the Commission to divert resources from its priority and other projects to conduct an in-depth investigation or to test, analyze, or evaluate a product simply to permit public disclosure of the underlying information is, in our view, beyond congressional intent; is tantamount to guaranteeing the accuracy of the product complaint (a burden Congress did not impose); and is a needless expenditure of limited Commission resources especially when viewed in the context of the volume of requests the Commission receives for information from which a manufacturer or private labeler can be identified.

Between January 1980 and July 1982, the Commission received approximately 10,600 FOIA requests that required search, compilation, and review by the Freedom of Information staff.

Product complaints, for example, are responsive to approximately 41% of all FOIA requests received by the Commission. The "typical" FOIA request has numerous product complaints that are responsive to the request. If the Commisssion were required to conduct an investigation of each product complaint before release, the Commission would have to conduct many thousands of investigations just to address product complaints responsive to FOIA requests. For FY 82 the Commission had the resources to conduct 5,700 in-depth investigations and for FY 83 it has the resources to conduct only 5,400 in-depth investigations for all Commission projects. Obviously, in view of the limited financial and personnel resources of the Commission, the Commission cannot undertake an investigation of each product complaint simply for the purpose of disclosing the complaint. Such a burden would be unreasonable.

The Commission recognizes that, at the other end of the spectrum, simply releasing product complaints without restriction might well compromise the safeguards contemplated by Section 6(b) with regard to product complaints. The Commission believes that the procedures discussed below strike a reasonable balance between the obligation to disclose information and the safeguards afforded to manufacturers and private labelers by section 6(b). Accordingly, the Commission believes the procedures below are a reasonable step to assure the accuracy of the information contained in product complaints.

Upon receipt of a product complaint from which a manufacturer or private labeler is readily ascertainable, the Commission proposes to return a copy of the complaint (or a transcription of an oral complaint) to the complainant. The complainant will be requested to review the information contained in the complaint, to make any alterations or additions necessary to make the information accurate, and to return the complaint to the Commission with a statement confirming that the information in the complaint is accurate to the best of his or her knowledge and belief. (A copy of the letters the Commission proposes to send to complainants is attached as Appendix A below.) The Commission proposes that seeking and obtaining the consumer confirmation is a reasonable step to assure accuracy and will permit the Commission to release the information after obtaining section 6(b)(1) comment from the manufacturer or private labeler. Of course disclosure could be affected by the comments received from the complainant, manufacturer, or private labeler. Further, the Commission will not release a confirmed complaint if the complaint on its face does not show that the information was based on the complainant's own observation or experience if the information is not otherwise corroborated.

In situations where requested documents consist of a product complaint and a product confirmation and the manufacturer or private labeler offers specific comment that substantially calls into question the accuracy of the complaint, the Commission would not disclose the confirmed complaint unless it had taken one of the other reasonable steps set forth in the rule and disclosure is supported by the information obtained by having taken that other reasonable step.

The Commission proposes to disclose product complaints not confirmed by the complainant only if (1) the manufacturer or private labeler identified in the product complaint does not object to disclosure or (2) the Commission or some other qualified party has conducted an investigation or inspection, or the Commission has a technical, scientific or other evaluation of the product that is the subject of the complaint(s), the investigation or evaluation corroborates the substance of the information in the complaint(s), and the report of the investigation or evaluation accompanies the complaint(s) upon disclosure.

The Commission will not routinely attempt to obtain consumer confirmation of product complaints predating the effective date of this rule. To do so is extremely burdensome in

view of the Commission's limited resources. Instead, the Commission will disclose product complaint predating the effective date of this rule only if (1) the Commission or some other qualified person has conducted an investigation or inspection or the Commission has a technical, scientific or other evaluation of the product that is the subject of the complaint(s), the investigation or evaluation corroborates the substance of the information in the complaint(s), and the report of the investigation or evaluation accompanies the complaint(s) upon release *or* (2) the manufacturer or private labeler identified in the complaint does not object to disclosure.

In addition to taking reasonable steps to assure accuracy, section 6(b)(1) charges the Commission to take reasonable steps to assure that disclosure of the information is fair in the circumstances and reasonably related to effectuating the purposes of the statutes the Commission administers. In proposed sections 1101.33 and 1101.34 the Commission sets out the reasonable steps it proposes to take in these areas (see discussion below at IV).

III. Manufacturers and Private Labelers Opportunity To Comment

A number of manufacturers when asked to comment on information to be disclosed under section 6(b) have indicated that they are unaware of any incidents and/or have insufficient time to investigate. The Commission believes that section 6(b) contemplates that manufacturers and private labelers submit as detailed and specific comments as possible when challenging the accuracy of a proposed information disclosure. To assist manufacturers and private labelers, the Commission intends to routinely transmit to manufacturers and private labelers any information which pertains to a risk of injury associated with any consumer product they manufacture or private label that is received by he Commission. Thus, as they are obtained by the Commission, in-depth investigations and product complaints will be sent to those manufacturers and private labelers who can be identified from that information.

Providing this information to manufacturers and private labelers is an inplementation of section 5, the legislative history of which requires the Commission to provide to manufacturers, insofar as it is practical, any information which indicates that a product may be hazardous. The manufacturer or private labeler may, if it wishes, provide section 6(b) comments to the Commission at the time it receives the information discussed above. Should the Commission subsequently receive an information request covering the information transmitted to the manufacturer or private labeler, it will formally afford the manufacturer or private labeler the opportunity to submit comments under section 6(b)(1).

In the great majority of instances, we expect the manufacturer or private labeler, when asked formally to comment under section 6(b), to be able to provide specific comments on the accuracy of the information the Commission proposes to release to the public because it will have previously received the information through the notification process discussed above. This notification process will allow the manufacturer or private labeler the opportunity to perform its own investigation or analysis. The comments submitted by manufacturers and/or private labelers will, of course, be considered by the Commission in determining whether release of the information is appropriate. The notification process also should assist manufacturers or private labelers in determining whether they have any reporting obligation under section 15(b) of the CPSA.

IV. Reasonable Steps To Assure Disclosure Is Fair in the Circumstances

Section 6(b) requires that the Commission take reasonable steps to assure the disclosure of product-specific information is fair in the circumstances. The Commission has formulated the following procedures to ensure that information disclosures are fair in the circumstances.

Section 6(5) states that the Commission may, and upon the request of a manufacturer or private labeler shall, include with its disclosure any comments or other information (or summary thereof) submitted by the firm. To ensure that the public is aware of a firm's views of the disclosed information, the Commission intends to include the firm's comments with the disclosure unless the firm specifically request the Commission not to release its comments or a designated portion of the comments.

The Commission realizes that in some cases a manufacturer or private labeler may not want its comments or a portion thereof released to the public because the comments contain confidential, trade secret, or sensitive information. Since the Commission wants to encourage manufacturers and private labelers to be as open and forthcoming as possible when commenting on information under section 6(b), it will at the firm's request not release a firm's comments, or will release only that portion designated by the firm when such a request is made. (Any Freedom of Information Act request for the firm's comments will be considered under the FOIA and this rule when issued in final form.)

The Commission also generally will accompany the disclosure of information with an explanatory statement that places the information in context and makes the nature of the information disclosed clear to the public. In addition, other explanatory statements may be provided, as appropriate.

Initial Regulatory Flexibility Analysis

In accordance with Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this regulation will not have a significant economic impact upon a substantial number of small entities. Nevertheless, the Commission wishes to insure the participation of all affected parties, especially small entities, in the development of this proposed regulation.

Section 6(b) of the Consumer Product Safety Act itself may have economic impact on small business because this statute affects all business entities, regardless of size. Section 6(b) as enacted and subsequently amended demonstrates Congressional concern and intent that statutory safeguards be established and followed by the Commission in fulfilling its purpose of collecting and disseminating accurate product safety information. The proposed regulation merely enumerates the Commission's policy concerning the factors which are balanced in determining whether public disclosure of information is appropriate under section 6(b) and whether the statutory safeguards of that section have been satisfied. The proposed regulation, however, will have no economic impact on small business, either beneficial or negative beyond that which results from the statutory provision.

A certification that the proposed regulation will not have a significant impact on small businesses shall be provided to the Chief Counsel for Advocacy of the Small Business Administration.

Environmental Considerations

The rule proposed below does not fall within any of the categories of Commission activities described in 16 CFR 1021.5(b) which have the potential for producing environmental effects, and which, therefore, require environmental assessments, and, in some cases, environmental impact statements. The Commission does not believe that the

proposal contains any unusual aspects which may produce effects on the human environment, nor can the Commission foresee any circumstances in which the rule proposed below may produce such effects. For this reason, neither an environmental assessment nor an environmental impact statement is required.

Conclusion

The Commission believes that the rule proposed below is a reasonable approach to applying section 6(b) of the CPSA. While the rule is interpretive the Commission recognizes that its interpretation of section 6(b) is of great significance to the public, and therefore, it is proposing the rule for public comment. The Commission solicits comment on all aspects of the proposed rule and particularly on those items highlighted in the preamble to the proposal.

List of Subjects in 16 CFR Part 1101

Consumer protection, Disclosure of information, Administrative practice and procedure, Freedom of information.

Therefore, the Commission proposes that Title 16 Chapter II of the Code of Federal Regulations be amended by adding a new Part 1101 to Subchapter B, reading as set forth below.

PART 1101—INFORMATION DISCLOSURE UNDER SECTION 6(b) OF THE CONSUMER PRODUCT SAFETY ACT

Subpart A—Background

Sec. 1101.1 General background.
1101.2 Scope.

Subpart B—Information Subject to Notice and Analysis Provisions of Section 6(b)(1)

1101.11 General application of provisions of Section 6(b)(1).
1101.12 Commission must disclose information to the public.
1101.13 Public ability to ascertain readily identity of manufacturer or private labeler.

Subpart C—Procedure for Providing Notice and Opportunity to Comment Under Section 6(b)(1)

1101.21 Form of notice and opportunity to comment.
1101.22 Timing; request for time extensions.
1101.23 Providing less than 30 days notice before disclosing information.
1101.24 Scope of comments Commission seeks.
1101.25 Notice of intent to disclose.
1101.26 Circumstances when the Commission does not provide notice and opportuntiy to comment.

Subpart D—Reasonable Steps Commission Will Take To Assure Information It Discloses Is Accurate, and That Disclosure Is Fair in the Circumstances and Reasonably Related to Effectuating the Purposes of the Acts It Administers

Sec.
1101.31 General requirements.
1101.32 Reasonable steps to assure information is accurate.
1101.33 Reasonable steps to assure information release is fair in the circumstances.
1101.34 Reasonable steps to assure information release is "reasonably related to effectuating the purposes of the Act" the Commission administers.

Subpart E—Statutory Exceptions of Section 6(b)(4)

1101.41 Generally.
1101.42 Imminent hazard exception.
1101.43 Prohibited acts exception.
1101.44 Rulemaking proceeding exception.
1101.45 Adjudicatory proceeding exception.
1101.46 Other administrative of judicial proceeding exception.

Subpart F—Retraction

1101.51 Commission interpretation.
1101.52 Procedure for retraction.

Subpart G—Information Submitted Pursuant to Section 15(b) of the CPSA

1101.61 Generally.
1101.62 Statutory exceptions to Section 6(b)(5) requirements.
1101.63 Information submitted pursuant to Section 15(b) of the CPSA.

Subpart H—Delegation of Authority to Information Group

1101.71 Delegation of authority.

Authority: Sec. 6(b) of Pub. L. 92-573, 86 Stat. 1212, as amended by Pub. L. No. 97-35, 95 Stat. 703-25, 15 U.S.C. 2055(b); 5 U.S.C. 553.

Subpart A—Background

§ 1101.1 General background.

(a) *Basic purpose.* These rules set forth the Consumer Product Safety Commission's policy and procedure under sections 6(b)(1)–(5) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2055(b)(1)–(5)) which relate to public disclosure of product specific information. In addition, these rules provide for retraction of inaccurate or misleading information the Commission has disclosed that reflects adversely on the safety of a consumer product or class of products or the practices of any manufacturer, private labeler, distributor or retailer of consumer products as required by section 6(b)(7) of the CPSA (15 U.S.C. 2055(b)(7)).

(b) *Statutory requirements.* Section 6(b) establishes procedures that the Commission must follow when it releases certain product-specific information to the public and when it retracts certain information it has released.

(1) Generally, section 6(b)(1) requires the Commission to provide manufacturers or private labelers with advance notice and opportunity to comment on information the Commission proposes to release, if the public can readily ascertain the identity of the firm from the information. Section 6(b)(1) also requires the Commission to take reasonable steps to assure that the information is accurate and that disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the Acts administered by the Commission. Disclosure of information may be not less than 30 days after notice to the manufacturer or private labeler unless the Commission finds the public health and safety requires a lesser period of notice. Exceptions to these requirements are established in section 6(b)(4), and additional limitations on the disclosure of information reported to the Commission under section 15(b) of the CPSA are established in section 6(b)(5).

(2) Section 6(b)(2) requires the Commission to provide further notice to manufacturers or private labelers where the Commission proposes to disclose product-specific information the firms have claimed to be inaccurate.

(3) Section 6(b)(3) authorizes manufacturers and private labelers to bring lawsuits against the Commission to prevent disclosure of product-specific information after the firms have received the notice specified.

(c) *Internal Clearance Procedures.* Section 6(b)(6) requires the Commission to establish internal clearance procedures for Commission initiated disclosures of information that reflect on the safety of a consumer product or class of products, even if the information is not product specific. This rule does not address section 6(b)(6) because the Commission has internal clearance procedures in its directives system. (Directive 1450.2 "Clearance Procedures for Commission Staff to Use in Providing Information to the Public." See also Memorandum from Chairman Nancy Harvey Steorts to All employees dated November 27, 1981.

§ 1101.2 Scope.

Section 6(b) and these rules apply to information concerning products subject to the CPSA, 15 U.S.C. 2051–2085 and to the four other acts the Commission administers (transferred acts). These transferred acts are the Flammable Fabrics Act, 15 U.S.C. 1191–1204 (FFA); the Poison Prevention Packaging Act of 1970, 15 U.S.C. 1471–1476 (PPPA); the Federal Hazardous Substances Act, 15 U.S.C. 1261–1276 (FHSA); and the

Refrigerator Safety Act, 15 U.S.C. 1211–1214 (RSA). *See* section 6(d)(1) of the CPSA, 15 U.S.C. 2055(d)(1).

Subpart B—Information Subject to Notice and Analysis Provisions of Section 6(b)(1)

§ 1101.11 General application of provisions of Section 6(b)(1).

(a) *Information Subject to Section 6(b)(1).* To be subject to the notice an analysis provisions of section 6(b)(1), information must meet all the following criteria:

(1) The information must pertain to a product subject to the jurisdiction of the Commission under one or more of the statutes it administers and the product must be mentioned.

(2) The information must be obtained by the Commission as an entity or by individual members, employees, agents or representatives of the Commission acting in their official capacities.

(3) The Commission or its members, employees, agents or representatives must propose to disclose the information to the public (*see* § 1101.12).

(4) The information must be disclosed in such a way that the public can ascertain readily the identity of the manufacturer or private labeler of the product (*see* § 1101.13).

(b) *Information Not Subject to Section 6(b)(1).* The requirements of section 6(b)(1) do not apply to

(1) Information described in the exclusions contained in section 6(b)(4) of the CPSA (*see* Subpart E of these rules).

(2) Information the Commission is required by law to make publicly available. This information includes, for example, Commission notifications to foreign governments regarding certain products to be exported, as required by section 18(b) of the CPSA, 15 U.S.C. 2068(b); section 14(d) of the FHSA, 15 U.S.C. 1273(d); and section 15(c) of the FFA, 15 U.S.C. 1202(c). (See the Commission's Export Policy Statement, 16 CFR Part 1017.)

(3) Press releases issued by firms.

(4) Information filed or presented in public proceedings, such as hearings, administrative proceedings or litigation.

§ 1101.12 Commission must disclose information to the public.

Public. For the purposes of section 6(b)(1), the public includes any person except:

(a) Members, employees, agents, representatives and contractors of the Commission, in their official capacity.

(b) State officials who are commissioned officers under section29(a)(2) of the CPSA, 15 U.S.C. 2078(a)(2).

(c) Members of a Commission Chronic Hazard Advisory Panel established under section 28 of the CPSA; 15 U.S.C. 2077.

(d) The persons or firms to whom the information to be disclosed pertains, or their legal representatives.

(e) The persons or firms who provided the information to the Commission, or their legal representatives.

(f) Other Federal agencies or state of local governments to whom accident and investigation reports are provided pursuant to section 29(e) of the CPSA, 15 U.S.C. 2078(e). However, as required by that section, employees of Federal agencies or state or local governments may not release to the public copies of any accident or investigation report made under the CPSA by any officer, employee or agent of the Commission unless CPSC has complied with the applicable requirements of section 6(b).

(g) The Chairman or ranking minority member of a committee or subcommittee of Congress acting pursuant to committee business and having jurisdiction over the matter which is the subject of the information requested.

§ 1101.13 Public ability to ascertain readily identity of manufacturer or private labeler.

(a) The advance notice and analysis provisions of section 6(b)(1) apply only when the public can readily ascertain the identity of the manufacturer or private labeler of a particular product. This requirement does not apply when only a few members of the trade could readily identify the manufacturer or private labeler. It also does not apply when a member of the public would need to do research in order to learn the identity of the manufacturer or private labeler. The Commission will provide the advance notice and opportunity to comment if there is a close question whether the public could readily ascertain the identity of amanufacturer or private labeler.

Subpart C—Procedure for Providing Notice and Opportunity To Comment Under Section 6(b)(1)

§ 1101.21 Form of notice and opportunity to comment.

(a) *Notice may be oral or written.* The Commission will generally provide to manufacturers or private labelers written notice and opportunity to comment on information subject to section 6(b)(1). However, when the Commission believes time is of the essence, the notice and opportunity to comment may be made orally, either in person or by telephone.

(b) *Content of notice.* The Commission will provide the manufacturer or private labeler with:

(1) Either a summary of the information to be disclosed or the actual text of the information.

(2) A general description of the manner in which the Commission will disclose the information, including any other relevant information the Commission intends to include with the disclosure. If the Commission advises that the form of disclosure will be by press release, for example, the Commission need not provide further notice to disclose a summary of the press release.

(3) A request for comment with respect to the information, including a request for explanatory data or other relevant information for the Commission's consideration.

(4) A statement that the Commission will release to the public the firm's comments (or a summary thereof) unless the firm requests that its comments, or portions thereof, not be released.

(5) Notice that the firm may request confidential treatment for the information, in accordance with section 6(a)(3) of the Consumer Product Safety Act, 15 U.S.C. 2055(a)(3) (*see* § 1101.24(b)).

(6) The name, address, and telephone number of the person to whom comments should be sent and the time when any comments are due (*see* § 1101.22).

§ 1101.22 Timing; request for time extensions.

(a) *Time for comment.* (1) Generally firms must provide the Commission with comments within fifteen (15) calendar days from the date of the letter in which the Commission transmits the notice, so that the Commission can analyze the comments within the 30 day statutory time limit.

(2) The Commission may provide for a different amount of time for comment in unusual circumstances. In addition, the Commission may find that the public health and safety requires a lesser period of notice and may require a response in a shorter period of time (*see* § 1101.24).

(b) *No response submitted.* (1) If the Commission has not received a response within the time specified and if it has received no request for extension of time, the Commission will presume the manufacturer or private labeler has no comments and will proceed to analyze the information as provided in Subpart D. If no comments are submitted the Commission will assume that the firm does not dispute the accuracy of the information and therefore will not give the further notice provided in section 6(b)(2).

(2) Unless the Commission finds that the public health and safety requires a lesser period of notice (*see* § 1101.23), the Commission will not disclose the information less than 30 days after providing a manufacturer or private labeler notice and opportunity to comment.

(c) *Requests for time extension.* (1) Requests for extension of time to comment on information to be disclosed must be made to the person who provided the Commission's notice and opportunity to comment. The request for time extension may be either oral or written. An oral request for a time extension must be promptly confirmed in writing.

(2) Requests for extension of time must explain with specificity why the extension is needed and how much additional time is required.

(3) The Commission will promptly respond to requests for extension of time.

§ 1101.23 Providing less than 30 days notice before disclosing information.

There are two circumstances in which the Commission may disclose to the public information subject to section 6(b)(1) in a time less than 30 days after providing notice to the manufacturer or private labeler.

(a) *Firm agrees to lesser period or does not object to disclosure.* The Commission may disclose to the public information subject to section 6(b)(1) before the 30 day period expires when, after receiving the Commission's notice and opportunity to comment, the firm involved agrees to the earlier disclosure; notifies the Commission that it has no comment; or notifies the Commission that it does not object to disclosure.

(b) *Commission finding a lesser period is required.* Section 6(b)(1) provides that the Commission may find that the public health and safety requires a lesser period of notice than the 30 days advance notice that section 6(b)(1) generally requires. The Commission may determine that the public health and safety requires less than 30 days advance notice, for example, to warn the public quickly because individuals may be in danger from a product hazard or a potential hazard; to correct inaccurate or misleading product safety information released by third persons; or to provide information to a person who will use it for a safety-related purpose within a time limit.

(c) *Notice of finding.* The Commission will inform the firm involved of its finding that the public health and safety requires less than 30 days advance notice either orally or in writing, depending on the immediacy of the need for quick action; and the Commission will publish the finding in the **Federal Register**. Disclosure may be made concurrently with the filing of the **Federal Register** notice and need not await its publication. However, where applicable, before releasing information, the Commission will comply with the requirements of section 6(b)(2), which requires further notice before disclosing information claimed by a manufacturer or private labeler to be inaccurate (*see* § 1101.25).

§ 1101.24 Scope of comments Commission seeks.

(a) *Comment in regard to the information.* Manufacturers and private labelers in commenting on information to be disclosed must provide information that will assist the Commission in its evaluation of the information. The submission, therefore, must be specific and should be accompanied by documentation, where available. Comments of a general nature, such as general suggestions or allegations that a document is inaccurate or that the Commission has not taken reasonable steps to assure accuracy, are not sufficient to assist the Commission in its evaluation of the information or to justify a claim of inaccuracy.

(b) *Claims of Confidentiality.* If the manufacturer or private labeler believes the information involved cannot be disclosed because of section 6(b)(2) of the Consumer Product Safety Act, 15 U.S.C. 2055(a)(2), which pertains to trade secret or other confidential material, the firm may make claims of confidentiality at the time it submits its comments to the Commission under this section. Such claims must identify the specific information which the firm believes to be confidential or trade secret material and must state with specificity the grounds on which the firm bases it claims. (*See* Commission's Freedom of Information Act regulation, 16 CFR Part 1015, particularly 16 CFR 1015.18.)

§ 1101.25 Notice of intent to disclose.

(a) *Notice to manufacturer or private labeler.* In accordance with section 6(b)(2) of the CPSA, if the Commission, after following the notice provisions of section 6(b)(1), determines that information claimed to be inaccurate by a manufacturer or private labeler in comments submitted under section 6(b)(1) should be disclosed because the Commission believes it has complied with section 6(b)(1), the Commission shall notify the manufacturer or private labeler that it intends to disclose the information not less than 10 working days after the date of the receipt of notification.

(b) *Commission finding a lesser period is required.* The Commission may determine that the public health and safety requires less than 10 working days advance notice of its intent to disclose information claimed to be inaccurate. For example, the Commission may determine it is necessary to warn the public quickly because individuals may be in danger from a product hazard or a potential hazard; to correct inaccurate or misleading product safety information released by third persons; or to provide information to a person who will use it for a safety-related purpose within a time limit.

(c) *Notice of finding.* The Commission will inform the firm involved of its finding that the public health and safety requires less than 10 days advance notice either orally or in writing, depending on the immediacy of the need for quick action; and the Commission will publish the finding in the **Federal Register**. Disclosure may be concurrently with the filing of the **Federal Register** notice and need not await its publication. The **Federal Register** notice prepared under section 6(b)(2) may be submitted simultaneously with or after a **Federal Register** notice prepared under section 6(b)(1) (*see* § 1101.23(c)).

§ 1101.26 Circumstances when the Commission does not provide notice and opportunity to comment.

(a) *Notice to the extent practicable.* Section 6(b)(1) requires that "to the extent practicable" the Commission must provide manufacturers and private labelers notice and opportunity to comment before disclosing information from which the public can ascertain readiy their identity.

(b) *Circumstances when notice and opportunity to comment is not practicable.* The Commission has determined that there are various circumstances when notice and opportunity to comment is *not* practicable. Examples include the following:

(1) When the Commission has taken reasonable steps to assure that the company to which the information pertains is out of business and has no identifiable successor.

(2) When the information is inadvertently disclosed during an oral discussion at Commission meetings or meetings with outside parties, where the substance of the discussion cannot be predicted before the discussion.

(3) When the information is disclosed in testimony during litigation or in depositions.

(4) When the information is disclosed in response to a subpoena.

Subpart D—Reasonable Steps Commission Will Take To Assure Information It Discloses Is Accurate, and That Disclosure Is Fair in the Circumstances and Reasonably Related to Effectuating the Purposes of the Acts It Administers

§ 1101.31 General requirements.

(a) *Timing of decisions.* The Commission will attempt to make its decision on disclosure before the statutory 30-day period expires so that it may take action immediately upon expiration of the thirty days.

(b) *Inclusion of comments.* In disclosing any information under this section, the Commission will include with the disclosure any comments or other information submitted by the manufacturer or private labeler unless the manufacturer or private labeler requests the Commission not to include the comments or to include only a designated portion of the comments.

(c) *Explanatory statements.* Where appropriate, the Commission will accompany the disclosure of information subject to this subpart with an explanatory statement that makes the nature of the information disclosed clear to the public. To the extent practicable, the Commission will also accompany the disclosure with any other relevant information in its possession that places the released information in context.

(d) *Information previously disclosed.* If the Commission has previously disclosed, in accordance with section 6(b)(1), the identical information it intends to disclose again, it will not customarily take any additional steps to assure accuracy unless the Commission has some reason to question its accuracy. Before disclosing the information the Commission will again review the information to see if accuracy is called into question and will further look to whether disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the Acts the Commission administers.

§ 1101.32 Reasonable steps to assure information is accurate.

(a) The Commission considers that the following types of actions are reasonable steps to assure the accuracy of information it proposes to release to the public:

(1) The Commission staff or a qualified person or entity outside the Commission (*e.g.*, someone with requisite training or experience, such as a fire marshal, a fire investigator, an electrical engineer, or an attending physician) conducts an investigation or an inspection which yields or corroborates the product information to be disclosed; or

(2) The Commission staff conducts a technical, scientific, or other evaluation which yields or corroborates the product information to be disclosed or the staff obtains a copy of such an evaluation conducted by a qualified person or entity; or

(3) The Commission staff provides the information to be disclosed to the person who submitted it to the Commission for review and, if necessary, correction, and the submitter confirms the information as accurate to the best of the submitter's knowledge and belief, provided that:

(i) The confirmation is made by the person injured or nearly injured in an incident involving the product; or

(ii) The confirmation is made by a person who, on the basis of his or her own observation or experience, identifies an alleged safety-related defect in or problem with such a product even though no incident or injury associated with the defect or problem may have occurred; or

(iii) The confirmation is made by an eyewitness to an injury or safety-related incident involving such a product; or

(iv) The confirmation is made by an individual with requisite training or experience who has investigated and/or determined the cause of deaths, injuries or safety-related incidents involving such a product. Such persons would include, for example, a fire marshal, a fire investigator, an electrical engineer, an ambulance attendant, or an attending physician; or

(v) The confirmation is made by a parent or guardian of a child involved in an incident involving such a product, or by a person to whom a child is entrusted on a temporary basis.

(b) The steps set forth below are the steps the Commission will take to analyze the accuracy of information which it proposes to release to the public.

(1) The Commission will review each proposed disclosure to assure that reasonable steps have been taken to assure accuracy in accordance with § 1101.32(a).

(2) As described in Subpart C, the Commission will provide a manufacturer or private labeler with a summary or text of the information the Commission proposes to disclose and will invite comment with respect to that information.

(3) If no comments are submitted to the Commission, the Commission will review the information in accordance with § 1101.32(a) and release it, generally without further investigating its accuracy if there is nothing on the face of the information that calls its accuracy into question.

(4) If a firm comments on the accuracy of the information the Commission proposes to disclose, the Commission will review the information in light of the comments. Further steps may be taken, as appropriate, including asking the source of the information to address the firm's comments.

§ 1101.33 Reasonable steps to assure that disclosure is fair in the circumstances.

(a) The steps set forth below are the steps the Commission has determined are reasonable to take to assure disclosure of information to the public is fair in the circumstances:

(1) The Commission will accompany information disclosed to the public with the manufacturer's or private labeler's comments unless the manufacturer or private labeler asks that its comments or a designated portion thereof not accompany the information.

(2) The Commission generally will accompany the disclosure of information with an explanatory statement that makes the nature of the information disclosed clear to the public. When practicable, the Commission will disclose any other relevant information in its possession that will assure disclosure is fair in the circumstances.

(3) The Commission will limit the form of disclosure to that which it considers appropriate in the circumstances. For example, the Commission may determine it is not appropriate to issue a nationwide press release in a particular situation and rather will issue a press release directed at certain localities, regions, or user populations.

(4) The Commission may delay disclosure of information in some circumstances. For example, the Commission may elect to postpone an information release until an investigation, analysis or test of a product is complete, rather than releasing information piecemeal.

§ 1101.34 Reasonable steps to assure information release is "Reasonably Related to Effectuating the Purposes of the Acts" the Commission administers.

(a) The steps set forth below are the steps the Commission has determined are reasonable to take to assure that the disclosure of information to the public effectuates the purposes of the Acts it administers.

(1) *Purposes of the CPSA.* The Commission will look to the specific purposes of the CPSA, as set forth in sections 2(b) and 5, 15 U.S.C. 2051(b) and 2054, and to the general principles embodied throughout the Act and its legislative history that the public has the right to know about the activities of the Commission.

(2) *Purposes of the FHSA, FFA, PPPA and RSA.* The Commission will also look to the general purposes embodied in the transferred acts it administers and to the Commission's specific functions under those acts.

(3) *Purposes of the FOIA.* Freedom of Information Act requests will also be reviewed in accordance with the purposes of the FOIA. The FOIA establishes a general right of the public to have access to information in the Commission's possession, particularly information that reveals whether the Commission is meeting its statutory responsibilities or information upon which the Commission bases a decision that affects the public health and safety.

(b) In reviewing proposed information disclosures, the Commission will consider disclosing the material on the basis of whether release of the information, when taken as a whole, would effectuate one or more of the purposes of the acts the Commission administers.

Subpart E—Statutory Exceptions of Section 6(b)(4)

§ 1101.41 Generally.

(a) *Scope.* This Subpart describes and interprets the exceptions to the requirements of sections 6 (b)(1)–(b)(3) that are set forth in section 6(b)(4). These exceptions apply in situations where the Commission (1) files an imminent hazard action in federal court, (2) has reason to believe a product violates the prohibited act section of the CPSA, (3) has begun a rulemaking or adjudicatory proceeding, or (4) has begun or is involved in any administrative or judicial proceeding.

(b) *Application to transferred acts.* The Commission will apply the exceptions contained in section 6(b)(4) to those provisions in the transferred acts, comparable to the specific provisions in the CPSA to which section 6(b)(4) applies.

§ 1101.42 Imminent hazard exception.

(a) *Statutory provision.* Section 6(b)(4)(A) provides that the requirements of section 6(b)(1) do not apply to public disclosure of "information about any consumer product with respect to which product the Commission has filed an action under section 12 (relating to imminently hazardous products)."

(b) *Scope of exception.* This exception applies once the Commission has filed an action under section 12 of the CPSA, 15 U.S.C. 2061, in a United States district court. Once the exception applies, information may be disclosed to the public without following the requirements of section 6(b)(1) if the information concerns or relates to the product alleged to be imminently hazardous.

§ 1101.43 Prohibited acts exception.

(a) *Statutory provision.* Section 6(b)(4)(A) provides that the requirements of section 6(b)(1) do not apply to public disclosure of information about any consumer product which the Commission has reason to believe is in violation of a "prohibited act" under any of the statutes administered by the Commission.

(b) *Scope of exception.* This exception applies once the Commission has "reason to believe" there has occurred a violation of sections 19(a) (1), (2), (5) or (10) of the CPSA which pertains to a consumer product. This exception also applies once the Commission has "reason to believe" there has occurred a "prohibited act" pertaining to a product regulated under the transferred acts. Once the exception applies, the Commission may disclose information to the public without following the requirements of section 6(b)(1) if the information concerns the product alleged to be in violation of a "prohibited act" section.

§ 1101.44 Rulemaking proceeding exception.

(a) *Statutory provision.* Section 6(b)(4)(B) provides that the requirements of section 6(b)(1) do not apply to public disclosure of information "in the course of or concerning a rulemaking proceeding (which shall commence upon the publication of an advance notice of proposed rulemaking or a notice of proposed rulemaking) . . . under this Act."

(b) *Scope of exception.* This exception applies upon publication in the **Federal Register** of an advance notice of proposed rulemaking or, if no advance notice of proposed rulemaking is issued, upon publication in **Federal Register** of a notice of proposed rulemaking, under any of the acts the Commission administers. Once the exception applies, the Commission may publicly disclose information in the course of the rulemaking proceeding and concerning the proceeding without following the requirements of section 6(b)(1). A rulemaking proceeding includes a proceeding either to issue, to amend, or to revoke a rule.

(c) The phrase "in the course of" refers to information disclosed as part of the proceeding and may, therefore, include information generated before the proceeding began and later presented as part of the proceeding. A rulemaking proceeding ends once the Commission has published the final rule or a notice of termination of the rulemaking in the **Federal Register.**

(d) The phrase "concerning" refers to information about the proceeding itself both after the proceeding has begun and indefinitely thereafter. Therefore, the Commission may publicly disclose information that describes the substance, process and outcome of the proceeding. By issuing opinions and public statements, the Commissioners, who act as decisionmakers, may also publicly explain their individual votes and any decision rendered.

§ 1101.45 Adjudicatory proceeding exception.

(a) *Statutory provision.* Section 6(b)(4)(B) provides that the requirements of section 6(b)(1) do not apply to public disclosure of "information in the course of or concerning * * * [an] adjudicatory proceeding * * * under this Act."

(b) *Scope of exception.* This exception applies once the Commission begins an administrative adjudication under the CPSA. The Commission will also apply the exception to any administrative adjudicatory proceeding under FHSA, FFA, or PPPA. An adjudicatory proceeding begins with the filing of a complaint under section 15(c) or (d), 17(a)(1) or (3), or 20 of the CPSA (15 U.S.C. 2064(c) or (d), 2066(a)(1) or (3), or 2069); section 15 of the FHSA (15 U.S.C. 1274); section 5(b) of the FFA, (15 U.S.C. 1194(b)); or section 4(c) of the PPPA (15 U.S.C. 1473(c)). An adjudicatory proceeding ends when the Commission issues a final order, 16 CFR 1025.51–1025.58.

(c) The phrase "in the course of" refers to information disclosed as part of the adjudication, whether in documents filed or in testimony given in such proceedings, and may therefore, include information generated before the adjudication began.

(d) The phrase "concerning" refers to information about the administrative adjudication itself, both once it begins and indefinitely thereafter. Therefore, the Commission may publicly disclose information that describes the substance, process and outcome of the proceeding including, for example, the effectiveness of any corrective action

such as information on the number of products corrected as a result of a remedial action. By issuing opinions and public statements, the Commissioners and the presiding official, who act as decisionmakers, may publicly explain their individual votes and any decision rendered.

§ 1101.46 Other administrative or judicial proceeding exception.

(a) *Statutory provision.* Section 6(b)(4)(B) provides that the requirements of section 6(b)(1) do not apply to public disclosure of "information in the course of or concerning any * * * other administrative or judicial proceeding under this Act."

(b) *Scope of exception.* This exception applies to an administrative or judicial proceeding, other than a rulemaking or administrative adjudicatory proceeding, under the CPSA, FHSA, FFA, or PPPA. Proceedings within this exception include:

(1) A proceeding to act on a petition to start a rulemaking proceeding. This proceeding begins with the filing of a petition and ends when the petition is denied or, if granted, when the rulemaking proceeding begins.

(2) A proceeding to act on a request for exemption from a rule or regulation. This proceeding begins with the filing of a request for exemption and ends when the request is denied or, if granted, when the Commission takes the first step to implement the exemption, *e.g.*, when an amendment to the rule or regulation is proposed.

(3) A proceeding to issue a subpoena or general or special order. This proceeding begins with a staff request to the Commission to issue a subpoena or general or special order and ends once the request is granted or denied.

(4) A proceeding to act on a motion to quash or to limit a subpoena or general or special order. This proceeding begins with the filing with the Commission of a motion to quash or to limit and ends when the motion is granted or denied.

(5) Any judicial proceeding to which the Commission is a party. This proceeding begins when a complaint is filed and ends when a final decision (including appeal) is rendered with respect to the Commission.

(6) Any administrative proceeding to which the Commission is a party, such as an administrative proceeding before the Merit Systems Protection Board or the Federal Labor Relations Authority. This proceeding begins and ends in accordance with the applicable regulations or procedures of the administrative body before which the proceeding is heard.

(7) A proceeding to obtain a retraction from the Commission pursuant to Subpart F of these rules. This proceeding begins with the filing with the Secretary of the Commission of a request for retraction and ends when the request is denied or, if granted, when the information is retracted.

(c) *In the course of or concerning.* The phrase "in the course of or concerning" shall have the same meaning as set forth in either § 1101.44 (c) and (d) or § 1101.45 (c) and (d), whichever is applicable.

Subpart F—Retraction

§ 1101.51 Commission interpretation.

(a) *Statutory provision.* Section 6(b)(7) of the CPSA provides: If the Commission finds that, in the administration of this Act, it has made public disclosure of inaccurate or misleading information which reflects adversely upon the safety of any consumer product or class of consumer products, or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products, it shall, in a manner equivalent to that in which such disclosure was made, take reasonable steps to publish a retraction of such inaccurate or misleading information.

(b) *Scope.* Section 6(b)(7) applies to inacurate or misleading information only if it is *adverse—i.e.*, if it reflects adversely either on the safety of a consumer product or on the practices of a manufacturer, private labeler, distributor or retailer. In addition, the Commission will apply section 6(b)(7) to information about products, and about manufacturers and private labelers of products, the Commission may regulate under any of the statutes it administers. Section 6(b)(7) applies to information already disclosed by the Commission, members of the Commission, or the Commission employees, agents or representatives in their official capacities.

§ 1101.52 Procedure for retraction.

(a) *Initiative.* The Commission may retract information under section 6(b)(7) on the initiative of the Commission, upon the request of a manufacturer, private labeler, distributor, or retailer of a consumer product, or upon the request of any other person in accordance with the procedures provided in this section.

(b) *Request for retraction.* Any manufacturer, private labeler, distributor or retailer of a consumer product or any other person may request a retraction if it believes the Commission or an individual member, employee, agent or representative of the Commission has made public disclosure of inaccurate or misleading information which reflects adversely either on the safety of a product with which the firm deals or on the practices of the firm. The request must be in writing and addressed to the Secretary, CPSC, Washington, D.C. 20207.

(c) *Content of request.* A request for retraction must do each of the following:

(1) Identify the information disclosed for which retraction is requested, the date on which the information was disclosed, the manner in which it was disclosed, who disclosed it, the type of document (*e.g.*, letter, memorandum, press release) and any other relevant information the firm has to assist the Commission in identifying the information. A photocopy of the disclosure should accompany the request.

(2) Identify what specific aspects of the information the firm believes are inaccurate or misleading and reflect adversely either on the safety of a consumer product with which the firm deals or on the firm's practices.

(3) Explain the reasons the firm believes the information is inaccurate or misleading and reflects adversely either on the safety of a consumer product with which the firm deals or on the firm's practices.

(4) State what action the firm requests the Commission to take in publishing a retraction in a manner equivalent to that in which disclosure was made.

(5) Include any additional date or information the firm believes is relevant.

(d) *Commission action on request.* The Commission will act expeditiously on any request for retraction. If the Commission finds that the Commission or any individual member, employee, agent or representative of the Commission has made public disclosure of inaccurate or misleading information that reflects adversely either on the safety of the firm's produce or the practices of the firm, the Commission will publish a retraction of information in a manner equivalent to that in which the disclosure was made.

(e) *Notification to requester.* The Commission will promptly notify the requester in writing of its decision on request for retraction. Notification shall set forth the reasons for the Commission's decision.

Subpart G—Information Submitted Pursuant to Section 15(b) of the CPSA

§ 1101.61 Generally.

(a) *Generally.* In addition to the requirements of section 6(b)(1), section 6(b)(5) of the CPSA imposes additional limitations on the disclosure of information submitted to the

Commission pursuant to section 15(b) of the CPSA, 15 U.S.C. 2064(b).

(b) *Criteria for disclosure.* Under section 6(b)(5) the Commission shall not disclose to the public information submitted pursuant to section 15(b) respecting a consumer product (including information voluntarily submitted to assist the Commission's evaluation of information required to be submitted) unless:

(1) The Commission has issued a complaint under section 15 (c) or (d) alleging that such product presents a substantial product hazard; or

(2) In lieu of proceeding against such product under section 15 (c) or (d), the Commission has accepted in writing a remedial settlement agreement dealing with such product; or

(3) The person who submitted the information under section 15(b) agrees to its public disclosure.

§ 1101.62 Statutory exceptions to Section 6(b)(5) requirements.

(a) *Scope.* The limitations established by section 6(b)(5) do not apply to the public disclosure of:

(1) Information with respect to a consumer product which is the subject of an action brought under section 12 (*see* Section 1101.42);

(2) Information about a consumer product which the Commission has reasonable cause to believe is in violation of section 19(a) (1), (2), (5), or (10) of the CPSA (*see* Section 1101.43); or

(3) Information in the course of or concerning a judicial proceeding (*see* Section 1101.45).

§ 1101.63 Information submitted pursuant to Section 15(b) of the CPSA.

(a) Section 6(b)(5) applies only to information provided to the Commission by a manufacturer, distributor, or retailer which is identified as being submitted pursuant to section 15(b)

(b) Section 6(b)(5)'s limitation also applies to the portions of staff generated documents that contain, summarize or analyze such information submitted pursuant to section 15(b).

(c) Section 6(b)(5) does not apply to information independently obtained or prepared by the Commission staff.

Subpart H—Delegation of Authority to Information Group

§ 1101.71 Delegation of authority.

(a) *Delegation.* Pursuant to section 27(b)(9) of the CPSA 15 U.S.C. 2076(b)(9), the Commission delegates to an Information Group authority to render all decisions under this Part concerning the release of information subject to section 6(b) except as provided in paragraph (b) of this section.The Information Group shall be composed of the General Counsel and the Secretary of the Commission or their designees who shall be senior staff members.

(b) *Findings not deleted.* The Commission does not delegate its authority—

(1) To find, pursuant to section 6(b)(1) and § 1101.23(b) of this Part, that the public health and safety requires less than 30 days advance notice of proposed disclosures of information.

(2) To find, pursuant to section 6(b)(2) and § 1101.25(b) of this Part, that the public health and safety requires less than ten (10) days advance notice of its intent to disclose information claimed to be inaccurate;

(3) To decide whether it should take reasonable steps to publish a retraction of information in accordance with section 6(b)(7) and § 1101.52 of this Part.

(c) *Final agency action; Commission decision.* A decision of the Information Group shall be a final agency decision and shall not be appealable to the Commission. However, the Information Group may in its discretion refer an issue to the Commission for decision.

Dated: November 2, 1982.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Appendix A—Letters to Persons Who Make Product Complaints

Note.—This Appendix will not be published in the Code of Federal Regulations (CFR).

U.S. Consumer Product Safety Commission,
Washington, D.C.

Dear ————: Thank you for telling us about a potential product safety problem. The Commission depends on concerned people to share product safety information with us. We maintain a record of this information and use it to assist us in our activities.

We often receive requests for copies of product complaint information, such as your letter. Under the law we must take reasonable steps to assure the accuracy of the information before we can give it to others. Please help us by reviewing the attached letter you sent and make sure the details you provided about the incident are accurate. Please indicate any changes or add any comments you may have on the attached page.

When you have reviewed your letter and believe it is correct with any changes you have made or any comments you have added, we ask that you sign the attached page and return everything to the Commission in the enclosed stampled envelope. If you do not want your name released to the public, please check the box on the bottom of the attached page.

If you have any questions, you should call the Commission's toll-free Hotline number at 800–638–8326; Maryland residents only should call 800–492–8363.

Sincerely,

Enclosures.

If you have any changes, additions, or comments you wish to make concerning your attached letter, please make them in the space below.

I confirm that the information in the attached letter (including any changes, additions, or comments I have made) is accurate to the best of my knowledge and belief.

— Signature Date ————

( ) Do not release my name to the public.

U.S. Consumer Product Safety Commission,
Washington, D.C.

Dear ————: Thank you for calling us about a potential product safety problem. The Commission depends on concerned people to share product safety information with us. We maintain a record of this information and use it to assist us in our activities.

We often receive requests for copies of product complaint information. Under our law we must take reasonable steps to assure the accuracy of the information before we can give it to others. Please help us by reviewing the attached statement based on your call and make sure the details you provided about the incident are accurate. Please indicate any changes or add any comments you may have on the attached statement.

When you have reviewed the statement and believe it is correct, we ask that you sign at the bottom of the statement and return it to the Commission in the enclosed stamped envelope.

If you have any questions, please call the Commission's toll-free Hotline number at 800–638–8326; Maryland residents only should call 800–492–8363.

Sincerely,

Enclosures.

[FR Doc. 82–30530 Filed 11–4–82; 8:45 am]

BILLING CODE 6355–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33–6433; 34–19187; File No. 57–951]

Foreign Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment revisions of a current rule exempting certain foreign securities from registration under the Securities Exchange Act of 1935 that would generally treat foreign securities quoted in NASDAQ the same as foreign securities listed on a United States ("U.S.") exchange. These proposals and proposals relating to other rules would

further clarify the concept of voluntary entry into the U.S. capital markets.

DATE: Comments should be submitted on or before March 11, 1983.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Comment letters should refer to File No. S7–951. All comments received will be available for public inspection and copying in the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Carl T. Bodolus ((202) 272–3246) or Ronald Adee ((202) 272–3250), Office of International Corporate Finance, Division of Corporate Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment revisions to Rule 12g3–2 (17 CFR 240.12g3–2) under the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a et seq. (1976 and Sup. III 1979)) that would terminate the availability of that exemptive rule to foreign issuers with securities quoted in NASDAQ and clarify several provisions of that rule. Proposed amendments to Rule 12g–3 (17 CFR 240.12g–3) and Rule 15d–5 (17 CFR 240.15d–5) relating to successor would further clarify the application of the periodic reporting requirements of the Exchange Act to issuers that acquire reporting issuers by the issuance of securities. The concept of the "essentially U.S. issue" exemption in the definition of foreign private issuer in Rule 405 (17 CFR 230.405) and Rule 3b–4 (17 CFR 240.3b–4) is also proposed to be revised.

I. Background

A. Rule 12g3–2

The Commission adopted Rule 12g3–2 in 1967[1] as part of the project to implement the 1964 amendments to the Exchange Act. These amendments added section 12(g) that required issuers with more than $1 million of assets[2] and a class of equity securities with 500 holders worldwide to register that class under section 12(g). Section 12(g)(3) authorized the Commission to exempt foreign securities if in the public interest and consistent with the protection of investors. Congress recognized that it was imposing significant burdens and obligations on issuers, but indicated that it did not intend to impose these burdens on foreign issuers whose securities were imported into the U.S. and traded in the over-the-counter market without the issuer's approval, or, in some cases, knowledge.

Accordingly, the Commission has attempted to develop a regulatory structure applicable to foreign issuers that distinguishes between voluntary and involuntary entry into the U.S. capital markets.[3] Currently, foreign issuers either having securities listed on a U.S. exchange or having made a public offering of securities registered under the Securities Act of 1933 (the "Securities Act") (17 U.S.C. 77a et seq. (1976 and Supp. III 1979)) are deemed to have voluntarily entered the U.S. capital markets. Other foreign issuers are deemed not to have taken any voluntary acts to enter the U.S. markets.

Rule 12g3–2 provides several exemptions from section 12(g) of the Exchange Act to foreign issuers that have not voluntarily entered the U.S. capital markets. First, paragraph (a) exempts a class of foreign securities held by less than 300 shareholders resident in the U.S.[4] Second, paragraph (b), which is often referred to as the information-supplying exemption, exempts securities of a foreign issuer that furnishes the Commission with a copy of all documents of interest to investors that the issuer makes public or is required to make public under foreign law or regulations. The purpose of this exemption is to have the information that is available to foreign investors available to U.S. investors also. The rule was designed to limit the availability of the information-supplying exemption to foreign issuers that had not voluntarily entered the U.S. capital markets.

The Commission believes that the rule should be revised because of developments since its adoption. In 1971, an automated interdealer system for electronically disseminating quotations, known as NASDAQ, was initiated. The NASDAQ system has become the predominant quotation mechanism in the over-the-counter market. Under current NASDAQ eligibility standards, foreign issuers that comply with the information-supplying exemption are eligible for NASDAQ listing. Issuers must affirmatively apply for NASDAQ listing, pay fees, and meet specific listing standards. This is similar to the procedure to become listed on a U.S. exchange. The Commission believes that such activities constitute voluntary entry into the U.S. capital markets; accordingly, the issuer should not be eligible to use the information-supplying exemption. This is consistent with the treatment of U.S. issuers who must register their securities under section 12 (b) or (g) of the Exchange Act as a condition of listing in NASDAQ. Accordingly, the Commission desires to revise the rule so that it can be used only as originally intended, i.e., by foreign issuers that have not voluntarily entered the U.S. markets.[5]

Synopsis of Proposals

This discussion is included in order to assist all interested persons in understanding the proposals. However, attention is directed to the text of the proposals for a more complete understanding.

A. Rule 12g3–2

Paragraph (a) would be revised to require that separate accounts at brokers, dealers, or banks or their nominees are counted as separate record holders for purposes of determining the number of U.S. holders. Currently, only the separate accounts at U.S. brokers, dealers, or banks are counted as separate record holders.

A new paragraph (v) is proposed to be added to paragraph (b)(1). That paragraph would codify the staff's current practice of requesting certain information relating to the number of U.S. shareholders and the circumstances by which they acquired their shares.

Paragraph (b)(3) was designed to assure issuers that the rule did not require the furnishing of documents such as product catalogs and price lists but rather documents disclosing information of interest to investors. Documents need not be specially prepared to disclose such information. The proposed revision would clarify this purpose.

Paragraph (b)(4) is proposed to be revised to include an English language requirement identical to the one in Form 6–K that requires the furnishing of the same types of information as Rule 12g3–2(b). Foreign language documents would not be required to be furnished. An English translation, version, or summary of press releases and documents sent to shareholders would be required.

Paragraph (c) is proposed to be revised to clarify that the exemption relates only to depositary shares.

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[1] Release No. 34–8066 (April 15, 1967).

[2] Now the test is $3 million of assets. See Rule 12g–1 (17 CFR 240.12g–1) and Release No. 34–18647 (April 15, 1982) [47 FR 17046].

[3] See Release No. 33–6360 (November 20, 1981) [46 FR 56511] for a summary of this system.

[4] The Commission's proposals retain this exemption, although the proposal would slightly change the method of calculating the number of shareholders resident in the U.S.

[5] Currently the depositary banks that issue American Depositary Receipts for certain foreign securities have undertaken the obligations and paid the fees in order to list those securities in NASDAQ. If the proposals are adopted, the foreign issuers would be required to register their securities or to delist them from NASDAQ.

represented by American Depositary Receipts, not the underlying shares.

Paragraph (d) of the proposed rule would contain all the limitations on the availability of the information-supplying exemption in paragraph (b). Basically, an issuer that files periodic reports under section 13(a) of the Exchange Act, or had recently been required to, could not reduce its reporting obligation by using the information-supplying exemption. Similarly, an issuer that acquires, by issuing its stock, another issuer that is subject to the periodic reporting requirements could not use the information-supplying exemption. The information-supplying exemption could not be used for securities quoted in an automated inter-dealer quotation system such as NASDAQ. As explained above, the Commission believes that this exemption should be available only to issuers that have not voluntarily entered the U.S. capital markets. Accordingly, the Commission solicits comments on whether any other restrictions should be imposed on the availability of the exemptions, e.g., issuers named in the Foreign Restricted List could not use the exemption. In view of the number of foreign issuers with securities currently quoted in NASDAQ and complying with the information-supplying exemption, the Commission believes that it would be appropriate to provide a transition period for the effectiveness of the adoption of revisions similar to the proposals. The Commission solicits comments on the necessary length of any such period.[6]

Paragraphs (d), (e), and (f) of the current rule contain various limitations on the availability of the information-supplying exemption. The proposals would eliminate or revise these limitations. Paragraph (d) currently exempts from section 12(g) of the Exchange Act all foreign private issuers with a reporting obligation under section 15(d) of the Exchange Act and non-North Americans with a class of securities registered under section 12(b) of the Exchange Act. The original justification of this exemption was the avoidance of duplicate reporting obligations. Since the adoption of Rule 12g3-2, the Exchange Act has been amended by the Williams Act so the current paragraph (d) operates to exempt many foreign securities from the provisions of the Williams Act.

[6]The Commission is contemplating a transition period for each issuer that is the longer of six months after publication of the final rule in the Federal Register or four months after the end of the issuer's current fiscal year. This period is based on the period during which an issuer that becomes subject to section 12(g) must file a registration statement.

Reporting obligations relating to several classes of securities are not particularly burdensome because duplicate periodic reports are not necessary. The registrant can file one set of periodic reports relating to all classes of securities registered.

Paragraph (e) states that foreign private issuers meeting two conditions are deemed to be U.S. issuers. This paragraph is proposed to be moved to the definition of foreign private issuer in Rules 405 and 3b-4. The conditions are also proposed to be revised. One test, relating to the place of principal administration of the business and to the board of directors, is proposed to be deleted because the place of principal administration is often vague and the number of U.S. directors can be, as a practical matter, within the control of the issuer and so is a meaningless test. The Commission believes that there is an important public interest in issuers with a substantial number of U.S. shareholders and managed by U.S. persons. The proposal would use a dual test of shareholders and principal executive officers. The Commission solicits comments on whether the fifty percent figure should be changed and on whether any other tests should be used, e.g., percentage of total assets in the U.S.

Paragraph (f) is proposed to be deleted. The provisions of that paragraph are either obsolete or have become redundant due to the limitations in proposed paragraph (d).

B. Rules 12g-3 and 15d-5

Rules 12g-3 and 15d-5, which relate to the assumption of periodic reporting obligations by successor issuers, are proposed to be revised. The proposals would clarify that an issuer acquiring another issuer with a class of equity securities listed on a U.S. exchange and registered under section 12(b) of the Exchange Act would assume the periodic reporting obligations of the acquired issuer. The Commission believes that an acquisition involving the issuance of securities is another method of voluntarily entering the U.S. capital markets. Currently these rules may apply only when the acquired company has securities registered under section 12(g) and traded over-the-counter but not when the securities of the acquired company are listed on a U.S. exchange. The proposals would eliminate this loophole. The proposals would also clarify the forms on which a successor issuer should file.

Regulatory Flexibility Act

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposals. The analysis is presented at the end of this release.

List of Subjects in 17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

Text of Proposals

17 CFR Chapter II is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By revising the definition of "Foreign Private Issuer" in § 230.405 to read as follows:

§230.405 Definitions of terms.

* * * * *

Foreign private issuer. The term "foreign private issuer" means any foreign issuer other than a foreign government except an issuer meeting the following conditions: (1) More than 50 percent of the outstanding voting securities of such issuer are held of record either directly or through voting trust certificates or depositary receipts by residents of the United States; and (2) either the chief exective officer is a United States citizen or resident or the majority of the principal executive officers are United States citizens or residents. For the purpose of this paragraph, the term "resident," as applied to security holders, shall mean any person whose address appears on the records of the issuer, the voting trustee, or the depositary as being located in the United States.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

2. By revising the paragraph (c) of § 240.3b-4 to read as follows:

§ 240.3b-4 Definition of "foreign government," "foreign issuer," and "foreign private issuer".

* * * * *

(c) *Foreign private issuer:* The term "foreign private issuer" means any foreign issuer other than a foreign government except an issuer meeting the following conditions: (1) More than 50 percent of the outstanding voting securities of such issuer are held of record either directly or through voting trust certificates or depositary receipts by residents of the United States; and (2) either the chief executive officer is a United States citizen or resident or the majority of the principal executive

officers are United States citizens or residents. For the purpose of this paragraph, the term "resident," as applied to security holders, shall mean any person whose address appears on the records of the issuer, the voting trustee, or the depositary as being located in the United States.

3. By revising § 240.12g–1 to read as follows:

§ 240.12g–1 Exemption from section 12(g).

An issuer shall be exempt from the requirement to register any class of equity securities pursuant to section 12(g)(1) if on the last day of its most recent fiscal year the issuer had total assets not exceeding $3,000,000 and such securities were not quoted in an automated inter-dealer quotation system.

4. By revising paragraphs (a) and (b) and adding new paragraph (c) to § 240.12g–3 to read as follows:

§ 240.12g–3 Registration of securities of successor issuers.

(a) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of an issuer, not previously registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another issuer which is registered pursuant to section 12 of the Act, the class of securities so issued shall be deemed to be registered pursuant to section 12 of the Act unless upon consummation of the succession such class is exempt from such registration other than by Rule 12g3–2 (§ 240.12g3–2 of this chapter) or all securities of such class are held of record by less than 300 persons.

(b) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of an issuer, which are not registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another issuer which is required to file a registration statement pursuant to section 12 but has not yet done so, the duty to file such statement shall be deemed to have been assumed by the issuer of the class of securities so issued and such issuer shall file a registration statement pursuant to section 12 of the Act with respect to such class within the period of time the predecessor issuer would have been required to file such a statement, or within such extended period of time as the Commission may authorize upon application pursuant to § 240.12b–25 of this chapter, unless upon consummation of the succession such class is exempt from such registration other than by Rule 12g3–2 (§ 240.12g3–2 of this chapter) or all securities of the class are held of record by less than 300 persons.

(c) An issuer that is deemed to have a class of securities registered pursuant to section 12 according to either paragraph (a) or (b) of this section shall file reports on the same forms and such class of securities shall be subject to the provisions of sections 14 and 16 to the same extent as the predecessor issuer, except as follows:

(1) An issuer that is not a foreign issuer shall not be eligible to file on Form 20–F (§ 249.220f of this chapter) or to use the exemption in Rule 3a12–3 (§ 240.3a12–3 of this chapter).

(2) A non-North American foreign private issuer shall be eligible to file on Form 20–F and to use the exemption in Rule 3a12–3.

(3) A North American foreign private issuer shall be eligible to file on Form 20–F and to use the exemption in Rule 3a12–3 only if the predecessor issuer filed on Form 20–F and was eligible to use such exemption and it does not have or has not had during the twelve months prior to the consummation of the succession a reporting obligation (suspended or active) under section 15(d) of the Act or a class of securities registered under section 12.

5. By revising § 240.12g3–2 to read as follows:

§240.12g3–2 Exemptions for American depositary receipts and certain foreign securities.

(a)(1) Securities of any class issued by any foreign private issuer shall be exempt from section 12(g) of the Act if the class has fewer than 300 holders resident in the United states. This exemption shall continue until the next fiscal year end at which the issuer has a class of equity securities held by 300 or more persons resident in the United States. For the purpose of determining whether a security is exempt pursuant to this paragraph, securities held of record by persons resident in the United States shall be determined as provided in Rule 12g5–1 (§ 240.12g5–1 of this chapter) except that securities held of record by a broker, dealer, bank or nominee for any of them for the accounts of customers resident in the United States shall be counted as held in the United States by the number of separate accounts for which the securities are held. The issuer may rely in good faith on information as to the number of such separate accounts supplied by all owners of the class of its securities which are brokers, dealers, or banks or a nominee for any of them.

(2) Registration of any class of security by a foreign private issuer pursuant to section 12(g) of the Act shall be terminated ninety days, or such shorter period as the Commission may determine, after the issuer files a certification with the Commission that the number of holders resident in the United States of such class of security is reduced to less than 300 persons. The Commission shall, after notice and opportunity for hearing, deny termination of registration if it finds that there are 300 or more holders resident in the United States. Termination of registration shall be deferred pending final determination on the question of denial.

(b)(1) Securities of any foreign private issuer shall be exempt from section 12(g) of the Act if the issuer, or a government official or agency of the country of the issuer's domicile or in which it is incorporated or organized:

(i) Shall furnish to the Commission whatever information in each of the following categories the issuer during its last fiscal year (A) has made or is required to make public pursuant to the law of the country of its domicile or in which it is incorporated or organized, (B) has filed or is required to file with a stock exchange on which its securities are traded and which was made public by such exchange, or (C) has distributed or is required to distribute to its security holders;

(ii) Shall furnish to the Commission a list identifying the information referred to in paragraph (b)(1)(i) of this section and stating when and by whom it is required to be made public, filed with any such exchange or distributed to security holders;

(iii) Shall furnish to the Commission, during each subsequent fiscal year, whatever information is made public as described in (A), (B) or (C) of paragraph (b)(1)(i) of this section promptly after such information is made or required to be made public as described therein;

(iv) Shall, promptly after the end of any fiscal year in which any changes occur in the kind of information required to be published as referred to in the list furnished under paragraph (b)(ii) of this section or any subsequent list, furnish to the Commission a revised list reflecting such changes; and

(v) Shall furnish to the Commission in connection with the initial submission the following information to the extent known or which can be obtained without unreasonable effort or expense: the number of holders of each class of equity securities resident in the United States, the amount and percentage of each class of outstanding equity securities held by residents in the United States, the circumstances in

which such securities were acquired, and the date and circumstances of the most recent public distribution of securities by the issuer or an affiliate thereof.

(2) The information required to be furnished under paragraphs (b)(1)(i) and (b)(1)(ii) of this section shall be furnished on or before the date on which a registration statement under section 12(g) of the Act would otherwise be required to be filed. Any issuer furnishing information under paragraph (b)(1)(i) of this section shall notify the Commission that it is furnished under that paragraph.

(3) The information required to be furnished under this paragraph (b) is information material to an investment decision such as: the financial condition or results of operations; changes in business; acquisitions or dispositions of assets; issuance, redemption or acquisitions of their securities; changes in management or control; the granting of options or the payment of other remuneration to directors or officers; and transactions with directors, officers or principal security holders.

(4) Only one complete copy of any information or document need be furnished uder paragraph (b)(1) of this section. Such information and documents need not be under cover of any prescribed form and shall not be deemed to be "filed" with the Commission or otherwise subject to the liabilities of section 18 of the Act. Press releases and all other communications or materials distributed directly to security-holders of each class of securities to which the exemption relates shall be in English. English versions or adequate summaries in English may be furnished in lieu of original English translations. No other documents need be furnished unless the issuer has prepared or caused to be prepared English translations, versions, or summaries of them. If no English translations, versions, or summaries have been prepared, a brief description in English of any such documents shall be furnished. Information or documents in a language other than English are not required to be furnished. If practicable, the Commission file number shall appear on the information furnished or in an accompanying letter.

(5) The furnishing of any information or document under paragraph (b) of this rule shall not constitute an admission for any purpose that the issuer is subject to the Act.

(c) Depositary Shares registered on Form S–12 (§ 239.19 of this chapter), but not the underlying desposited securities, are exempt from section 12(g) of the Act under this paragraph (c).

(d) The exemption provided by paragraph (b) of this rule shall not be available for the following securities:

(1) Securities of a foreign private issuer that has or has had during the prior eighteen months any securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act;

(2) Securities of a foreign private issure issued in a transaction to acquire by merger, consolidation, exchange of securities, or acquisition of assets, another issuer that had securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act; and

(3) Securities quoted in an "automated inter-dealer quotation system" or securities represented by American Depositary Receipts so quoted.

6. By redesignating the first paragraph of § 240.15d–5 as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 240.15d–5 Reporting by successor issuers.

* * * * * *

(b) An issuer that is deemed to be a successor issuer according to paragraph (a) of this section shall file reports on the same forms as the predecessor issuer except as follows:

(1) An issuer that is not a foreign issuer or that is a North American foreign private issuer shall not be eligible to file on Form 20–F (§ 240.220f of this chapter).

(2) A non-North American foreign private issuer shall be eligible to file on Form 20–F.

Statutory Basis

These amendments are proposed pursuant to authority in sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933; Sections 12, 13, 15(d), and 23(a) of the Securities Exchange Act of 1934.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec 308(a)(2), 90 Stat. 57,; secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 203(a), 49 Stat., 704; sec. 202, 68 Stat. 686; secs. 3, 4, 6, 78 Stat. 565–568, 569, 570–574; secs. 1, 2, 82 Stat. 454; sec. 28(c), 84 Stat. 1435; secs. 1, 2, 84 Stat. 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1499, 1500; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78*l*, 78m, 78*o*(d), 78w(a))

The Commission is mindful of the cost to registrants and others of its proposals and recognizes its responsibilities to weigh with care the costs and benefits which result from its rules. Accordingly, the Commission specifically invites comments on the costs to registrants and others of the addition of the proposals, if adopted.

Pursuant to section 23(a)(2) of the Securities Exchange Act of 1934, the Commission specifically invites comments as to the competitive impact of these proposals, if adopted.

By the Commission.

George A. Fitzsimmons,

Secretary.

October 28, 1982.

Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis, which relates to the proposed revision of Rule 12g3–2 under the Securities Exchange Act of 1934 (the "Exchange Act"), has been prepared in accordance with 5 U.S.C. 603.

Reasons for Proposed Action

Rule 12g3–2(b) exempts certain foreign private issuers from registering their securities under Section 12(g) of the Exchange Act if the issuer furnishes the Commission with copies of the information relevant to investment decisions made public in its domicile. The exemption was intended to be available to foreign private issuers that had not voluntarily entered the United States ("U.S.") capital markets. Accordingly, currently the exemption is unavailable to securities listed on a U.S. exchange or registered under the Securities Act of 1933. Therefore, the exemption applies only to foreign securities trading in the over-the-counter ("OTC") market.

Since the adoption of the rule in 1967, the structure of the OTC market has substantially changes. The National Association of Securities Dealers ("NASD") had developed an automated interdealer system for electronically disseminating pricing quotations ("NASDAQ") that has become the predominant quotation mechanism displacing the use of printed daily quotation sheets ("pink sheets"). Quotations for securities can be placed in the pink sheets by market makers without the permision or knowledge of the foreign issuer. On the other hand, obtaining a NASDAQ quotation requires affirmative voluntary action of the foreign issuer.

U.S. issuers with securities quoted in NASDAQ are required to register their securities under Section 12 of the Exchange Act. Foreign securities quoted in NASDAQ, to the contrary, are eligible for the information-supplying exemption. Consequently, far less information is publicly available concerning foreign securities quoted in

NASDAQ than for domestic securities so quoted. Moreover, the Commission's administrative sanctions of deregistration proceedings under Section 12(j) of the Exchange Act and compliance orders under Section 15(c)(4) of the Exchange Act and compliance orders under Section 15(c)(4) of the Exchange act apply only to registered securities.

The proposed revisions to Rule 12g3–2 would not allow the use of the information-supplying exemption for securities quoted in NASDAQ. The proposals are intended to restore the availability of the exemption to its originally intended use and to eliminate the anomaly of special treatment of foreign securities and issuers that have voluntarily entered the U.S. markets.

Related proposals to revise Rules 12g–3 and 15d–5 would further clarify the concept of voluntary entry into the U.S. capital markets. Currently, these rules impose the periodic reporting obligations of an issuer with securities registered with the Commission and traded in the OTC market on any other issuer equity securities. The proposals would close a loophole by applying the rules to cover acquisitions of issuers of securities registered with the Commission and listed on a U.S. exchange.

Other proposals would revise the definition of a foreign private issuer. Generally, issuers organized outside the U.S. are considered foreign, however, Commission regulations deem foreign issuers organized, owned, and run by U.S. persons as domestic issuers. The proposals attempt to make more specific the circumstances in which foreign issuers would be deemed to be domestic issuers.

Objective

The objective of the proposed revision is to restore the availability of the information-supplying exemption to its intended purpose. The Commission believes that Congress did not intend to impose the burdens of registration and of the attendant obligations upon foreign issuers that had not voluntarily entered the U.S. capital markets. Accordingly the information-supplying exemption was developed for such issuers. Because an issuer must take voluntary action to list securities on NASDAQ, the information-supplying exemption should not be available to foreign private issuers that have taken such action.

Legal Basis

The Commission is proposing to revise Rule 12g3–2 under the authority of Sections 12(g)(3) and 23(a) of the Exchange Act. The authority for the other proposals is in sections 6, 7, 8, 10 and 19(a) of the Securities Act and in sections 12, 13, 15(d) and 23(a) of the Exchange Act.

Small Issuers Subject to the Proposals

Small entities, as defined in 17 CFR 240.0–10, are not required to register securities under Section 12(g) of the Exchange Act because their total assets are les than $3,000,000. 17 CFR 240.12g–1. Therefore, the proposals do not affect foreign private issuers that are small entities unless they voluntarily choose to have their securities quoted in NASDAQ. The proposed revision would merely treat U.S. and foreign issuers the same. Currently, approximately 320 issuers have established the information-supplying exemption; approximately 250 of them have securities quoted in NASDAQ. The number of them that are small entities is unknown.

Based on past experience, the proposed revisions to the successor issuer rules would have little impact on small entities. The Commission is aware of only two situations in recent years to which the proposals would apply—both of which involved large corporations. We believe that it is unlikely that a small entity could acquire another entity that is significantly larger. For example,it seems improbable that an entity with $3 million in assets could acquire an entity with more than $10 million in assets (more than three times larger). According to the data presented in Release No. 34–16866 (June 2, 1980), there are only 133 issuers with securities registered with the Commission and listed on a U.S. exchange with less than $10 million of assets. They represent less than 1.5 percent of the total reporting issuers. Moreover, small entities that choose not to list their securities would be eligible to terminate their reporting obligations under Rule 12g2–2.

Removing the Rule 12g3–2 registration exemptions for foreign securities listed on NASDAQ and foreign securities underlying ADRs listed on NASDAQ could conceivably result in some foreign securities being withdrawn from NASDAQ and quoted solely through the pink sheets. Although the manner in which broker-dealers (including possibly some small broker-dealers as defined in Commission Rule 0–10) disseminate quotations in these securities would change as a result of this withdrawal, broker-dealers would be free to continue making markets in these securities as before. The volume of trading in securities withdrawn from NASDAQ is likely to decline; however, securities quoted in the pink sheets characteristically display wider quotation spreads, thus providing market makers with increased revenue offsetting at least in part the loss of trading volume. Thus, the proposed revisions to Rule 12g3–2 would not appear to have a substantial economic impact on small broker-dealers.

Reporting, Recordkeeping and Other Compliance Requirements

The proposal would not alter the reporting or recordkeeping requirements of issuers that have established the information-supplying exemption. That exemption relies solely on the reporting requirements of foreign law and regulations.

Overlapping or Conflicting Federal Rules

The Commission believes no current federal rules duplicate or conflict with the proposed revision of Rule 12g3–2.

Significant Alternatives

Pursuant to Section 603 of the Regulatory Flexibility Act, the following types of alternatives were considered:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) The classification, consolidation, or simplification of compliance and reporting requirements under the Rule for small entities;

(3) The use of performance rather than design standards; and

(4) An exemption from coverage of the rule, or any part thereof, for small entities.

In the Commission's view, alternative (3) is irrelevant because the proposal is not related to either performance or design standards. With respect to alternative (4), small entities are exempt from registration by Rule 12g–1 and need not comply with the information-supplying exemption.

With respect to alternatives (1) and (2), the requirements of the exemption rely on foreign law and regulation so compliance with the exemption does not impose significant additional burdens on any entity. The Commission believes that special treatment of foreign small entities is more appropriately covered by foreign law and regulations.

Solicitation of Comments

The Commission encourages the submission of written comments on any aspect of this initial regulatory flexibility analysis. Such comments will be considered in the preparation of the final regulatory analysis, if the proposed revision is adopted. Persons wishing to

submit written comments should file four copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. All submissions should refer to File No. S7–951 and will be available for public inspection and copying at the Commission Public Reference Room.

[FR Doc. 82-30459 Filed 11-4-82; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM80-36-000]

Generic Determination of Rate of Return on Common Equity For Electric Utilities; Notice Extending the Comment Period and Scheduling a Public Conference

October 29, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice extending the comment period and scheduling a public hearing.

SUMMARY: On August 26, 1982, the Commission issued a Notice of Proposed Rulemaking to amend its regulations regarding the determination of allowed rates or return on common equity for electric utilities. Requests have been received by the Commission to extend the comment periods. The Commission grants these requests to the extent set forth in the Notice and schedules a public conference.

DATES: Comments are due by January 15, 1983. Reply comments are due by February 15, 1983. A public conference is scheduled for November 18, 1982. Requests to participate in the public conference are due by November 10, 1982.

ADDRESSES: All filings should reference Docket No. RM80–36–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Arnold Meltz, Office of Regulatory Analysis, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8153.

Joseph Stefan, Office of Regulatory Analysis, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8271.

SUPPLEMENTARY INFORMATION: Request have been received by the Federal Energy Regulatory Commission (Commission) to extend the period for filing comments in this docket. The Commission grants these requests as provided in this order. In addition, the Commission hereby schedules a public conference to discuss selected issues raised by this rulemaking.

On August 26, 1982, the Commission issued a Notice of Proposed Rulemaking in this docket (47 FR 38332, August 31, 1982). The proposed rule would essentially sever rate of return on common equity as a contested issue from individual electric utility rate cases and establish procedures for its determination on a generic basis. As originally scheduled by that Notice, comments on the proposal were to be filed by November 15, 1982.

Requests to extend the comment period in this rulemaking have been received from several parties all of whom cited the importance and complexity of the proposal and the need to undertake extensive technical analysis.

The Commission believes that these concerns are well founded. Accordingly, the initial comment period is extended to January 15, 1983, and the reply comment period is extended to February 15, 1983.

Although no requests have been received thus far for a public hearing, the Commission believes that important benefits would be derived by providing a forum for oral presentations and discussion in connection with this proposed rulemaking. Therefore, a public conference with a Commission staff panel will be scheduled for Thursday, November 18, 1982, in Washington, D.C. This hearing will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. The proceedings will begin at 10:00 a.m. Although participants will be able to place written statements in the record, the oral discussion will focus on the following topics:

(1) The relative merits of determining a rate of return of common equity for each of three risk classes compared with the alternative proposal of relying on an industry average rate of return for all companies.

(2) Whether it is appropriate over the proposed biennial to adjust generic rates of return on a quarterly basis by indexing them to long-term Treasury bond yields.

(3) Whether a biennium, as proposed, represents the appropriate time interval between rulemakings.

(4) Whether it is more appropriate to determine rate of return of common equity based on the evidence over the period of a rate's effectiveness as proposed or over the designated test year as proposed in the alternative.

(5) Whether the rule should include more explicit standards for obtaining waivers from the generic rule and whether timing and other filing limitations for petitions for waiver should be included.

Requests for participation in the conference should be directed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 and should be filed no later than Wednesday, November 10, 1982. Requests should make reference to Docket No. RM80–36–000, and should indicate the name of the person participating and a phone number at which that person may be contacted, and should indicate the amount of time the person requests for oral presentation. Those having related interests in the rulemaking are encouraged to consolidate their presentations and the Commission reserves the right to group commenters having related interests for the purpose of oral presentation. Persons making oral presentations will be required to file 15 copies of their testimony with the Secretary no later than Wednesday, November 17, 1982. A list of the participants and the room in which the presentation will be held will be available in the Comission's Office of Public Information in Room 1000, 825 North Capitol Street, N.E., Washington, D.C., prior to November 18, 1982, and will be available at the Commission on the morning of the hearing. A transcript will be placed in the public file for this docket and will be made available for inspection at the Commission's Office of Public Information.

Kenneth Plumb,
Secretary.

[FR Doc 82-30544 Filed 11-4-82; 8:45 am]
BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79–76–143; Texas–20

High-Cost Gas Produced From Tight Formations; Texas

November 1, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by

section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinay risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Railroad Commission of Texas that the Monte Christo, South (9000') Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on December 16, 1982. Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on November 16, 1982.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Walter W. Lawson, (202) 357–8556.

SUPPLEMENTARY INFORMATION:

I. Background

On September 29, 1982, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Monte Christo, South (9000') Formation in Hidalgo County, Texas, be designated as a tight formation. The formation is the stratigraphic equivalent of the Monte Christo Vicksburg 9000' Formation previously recommended for tight formation designation by Texas and adopted by the Commission by Order No. 240 issued June 30, 1982, in Docket No. RM79–76–095 (Texas–20). Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that the Monte Christo, South (9000') Formation be designated as a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Texas recommends that the Monte Christo, South (9000') Formation in the southern portion of Hidalgo County, Texas, Railroad Commission District 4, be designated as a tight formation. The recommendation covers the following surveys:

Macedona Jr. Vela No. 214, A–623; Tex.-Mex. R.R. No. 215, A–130; W.T. Bomar No. 218, A–626; Jas. L. Hudson, A–649; Walter A. Hoffhein, A–797; W. H. Kozel, A–798; Tex.-Mex. R.R. No. 217, A–131;

Northernmost 500 acres of the Nicolas Zamora Porcion No. 48, A–76;

Northernmost 500 acres of the Torebio Zamora Porcion No. 49, A–78; and

Southernmost 900 acres of the northern 1,800 acres of the Francisco Cantu Porcion No. 80, A–570.

The top of the Monte Christo, South (9000') Formation varies from 8,750 feet subsea to 9,600 feet subsea. The maximum thickness of the formation is 1,030 feet. The recommended formation is the stratigraphic and lithologic equivalent of the Monte Christo Vicksburg (9000') Formation.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Texas on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commision Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980) notice is hereby given of the proposal submitted by Texas that the Monte Christo, South (9000') formation as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before December 16, 1982. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–143 (Texas–20 Addition) and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of a desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than November 16, 1982.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended by revising (d)(91)(ii) to read as follows:

§ 271.703 Tight Formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(91) *Vicksburg (9000') Formation in Texas.* RM 79–86–143 (Texas–20)

(i) *Monte Christo Vicksburg 9000' Formation.*

* * * * *

(ii) *Monte Christo, South (9000') Formation.*

(A) *Delineation of formation.* The Monte Christo, South (9000') Formation is located in the southern portion of Hidalgo County, Texas, Railroad Commission District 4. The designated area includes the following surveys: Macedonia Jr. Vela No. 214, A–623; Tex.-Mex. R.R. No. 215, A–130; W. T. Bomar No. 218, A–626; Jas. L. Hudson, A–649; Walter A. Hoffhein, A–797; W.H. Kozel, A–798; Tex.-Mex. R.R. No. 217, A–131; the northernmost 500 acres of both the Nicolas Zamora Porcion No. 48, A–76 and the Torebio Zamora Porcion No.49, A–78; and the southernmost 900 acres of the northern 1,800 acres of the Francisco Cantu Porcion No. 80, A–570.

(B) *Depth.* The top of the Monte Christo, South (9000') Formation varies from 8,750 feet subsea to 9,600 feet subsea. The maximum thickness of the formation is 1,030 feet.

[FR Doc. 82–30540 Filed 11–4–82; 8:45 am]

BILLING CODE 6717–01–M

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18 CFR Part 271

[Docket No. RM79–76–144; Texas–25]

High-Cost Gas Produced From Tight Formations; Texas

November 1, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Railroad Commission of Texas that the Monte Christo, South (10,500') Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on December 16, 1982. Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on November 16, 1982.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Walter W. Lawson, (202) 357–8556.

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 1982, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Monte Christo, South (10,500') Formation, in Hidalgo County, Texas, be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that the Monte Christo, South (10,500') Formation be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Texas recommends that the Monte Christo, South (10,500') Formation in the southern portion of Hidalgo County, Texas, Railroad Commission District 4, be designated as a tight formation. The recommendation covers the following surveys:

Macedonia Jr. Vela No. 214, A–623;
Tex.-Mex. R.R. No. 215, A–130;
W. T. Bomar No. 218, A–626;
Jas. L. Hudson, A–649;
Walter A. Hoffhein, A–797;
W. H. Kozel, A–798;
Tex.-Mex. R.R. No. 217, A–131;
Northernmost 500 acres of the Nicolas Zamora Porcion No. 48, A–76;
Northernmost 500 acres of the Torebio Zamora Porcion No. 49, A–78; and
Southernmost 900 acres of the northern 1,800 acres of the Francisco Cantu Porcion No. 80, A–570.

The depth to the top of the Monte Christo, South (10,500') Formation varies between 10,200 feet subsea and 10,600 feet subsea. The maximum encountered thickness of the formation is approximately 900 feet.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing in support of this recommendation demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing State and Federal regulations assure that development of this formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Texas that the Monte Christo, South (10,500') Formation as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before December 16, 1982. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–144 (Texas–25) and should give reasons including supporting data for any recommendation. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of a desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than November 16, 1982.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below in the event Texas' recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703(d) is revised by adding subparagraph (144) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) Designated tight formations.

* * * * *

(112) through (143) [Reserved]

(144) *Monte Christo, South (10,500') Formation in Texas.* RM79–76–144 (Texas–25).

(i) *Delineation of formation.* The Monte Christo, South (10,500') Formation is located in the southern portion of Hidalgo County, Texas, Railroad Commission District 4, and includes the following surveys: Macedonia Jr. Vela No. 214, A–623; Tex.-Mex. R.R. No. 215, A–130; W. T. Bomar No. 218, A–626; Jas. L. Hudson, A–649; Walter A. Hoffhein, A–797; W. H. Kozel, A–798; Tex.-Mex. R.R. No. 217, A–131; the northernmost 500 acres of both the Nicholas Zamora Porcion No. 48, A–76 and the Torebio Zamora Porcion No. 49, A–78; and the southermost 900 acres of the northern 1,800 acres of the Francisco Cantu Porcion No. 80, A–570.

(ii) *Depth.* The depth to the top of the Monte Christo, South (10,500') Formation varies from 10,200 feet subsea to 10,600 feet subsea. The maximum thickness of the formation is approximately 900 feet.

[FR Doc. 82–30541 Filed 11–4–82; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Part 271

[Docket No. RM79–76–145; Texas–26]

High-Cost Gas Produced from Tight Formations; Texas

November 1, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Railroad Commission of Texas that the Anacacho Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on December 16, 1982. Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on November 16, 1982.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Walter W. Lawson, (202) 357–8556.

SUPPLEMENTARY INFORMATION:

I. Background

On October 4, 1982, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Anacacho Formation, located in Atascosa County, Texas; be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that the Anacacho Formation in the Benton City Area be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The recommended portion of the Anacacho Formation is located in the northwestern part of Atascosa County, Texas, Railroad Commission District 1. The recommended area is comprised of the following surveys: F. Brockinzen A–90, Abram Cole A–158 and A–159, W. J. Viser A–873 and A–874, Craner Ford A–247 and A–248, John C. Held A–368, John Sharp A–761, Robert C. Rogers A–721, J. S. Joline A–500, H. P. Benningfield A–97, Wm. H. Morris A–899, and Nepomucinco Flores A–244.

The Anacacho Formation is a low-permeability bioclastic limestone that is typically hydrocarbon-bearing wherever reservoir porosity is developed. In the Benton City Area the Anacacho Formation is encountered at measured depths ranging from 1,600 feet to 2,100 feet.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing in support of this recommendation demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing State and Federal regulations assure that development of this formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Texas that the Anacacho Formation as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting writen data, views of arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. on or before December 16, 1982. Each person submitting a comment should indicate that the comment is being submitted in docket No. RM79–76–145 (Texas–26 and should give reasons including supporting data for any recommendation. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of a desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than November 16, 1982.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703(d) is revised by adding subparagraph (145) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(112) through (144) [Reserved]

(145) *Anacacho Formation in Texas.* RM 79–76–145 (Texas–26).

(i) *Delineation of formation.* The Anacacho Formation is located in the northwestern part of Atascosa County, Texas, Railroad Commission District 1 and is comprised of the following surveys: F. Brockinzen A–90, Abram Cole A–158 and A–159, W. J. Viser A–873 and A–874, craner Ford A–247 and A–248, John C. Held A–368, John Sharp A–761, Robert C. Rogers A–721, J. S. Joline A–500, H. P. Benningfield A–97, Wm. H. Morris A–899, and Nepomucinco Flores A–244.

(ii) *Depth.* The Anacacho Formation in the Benton City Area is encountered at measured depths ranging from 1,600 feet to 2,100 feet.

[FR Doc. 82–30542 Filed 11–4–82; 8:45 am]

BILLING CODE 6717–01–M

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18 CFR Part 271

[Docket No RM79–76–142; Texas–10 Addition II]

High-Cost Gas Produced From Tight Formations; Texas

November 1, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Railroad Commission of Texas that an additional area of the Edwards Limestone Formation located in Live Oak County, Texas be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on December 16, 1982. Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on November 16, 1982.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Walter W. Lawson, (202) 357–8556.

SUPPLEMENTARY INFORMATION:

I. Background

On September 20, 1982, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR. 56034, August 22, 1980), that an additional area of the Edwards Limestone Formation located in Live Oak County, Texas be designated as a tight formation. The Commission previously adopted a recommendation that the Edwards Limestone Formation in Dewitt, Karnes, and Lavaca Counties, Texas be designated as a tight formation [Order No. 173, issued September 18, 1981, in Docket No. RM79–76 (Texas–10)]. On January 13, 1982, the Commission issued a Notice of Proposed Rulemaking for an additional area of the Edwards Limestone Formation in Fayette County, Texas, which was recommended by Texas for designation as a tight formation [Docket No. RM79–76 (Texas–10 Addition)]. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that an additional area of Edwards Limestone Formation be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Texas recommends that the Edwards Formation located in Live Oak County, Texas, Railroad Commission District 2, be designated as a tight formation. The recommended area includes a portion of Live Oak County lying to the north of the City of Three Rivers, Texas. The area is bounded on the south by the Frio River and includes the folowing surveys: Mrs. M. D. Proctor A–904, A.E. Brown A–828, John Hefferman A–11, Bridget Haughey A–9, Thos. Henry A–13, Patrick Henry A–12, Simon Ryan A–35, Lewis Ayers A–2, Walter Henry A–15, Daniel O'Boyle A–32, Mark Killely A–20, S. M. & S. A–442, S. M. & S. A–443, Laurence Jacobs A–659, and G. H. & H. R.R. A–205.

The recommended portion of the Edwards Formation is part of the Stuart City Trend which consists of a variety of lagoonal, reefal and shoal-water facies that were deposited in relatively quiet waters along the edge of a broad carbonate shelf during Lower Cretaceous (Albian) time. The Edwards

Formation of the Stuart City Trend of South Texas is present in a band several miles in width and extending from Mexico to eastern Texas.

The top of the Edwards Formation is found at depths ranging from approximately 12,000 feet below sea level on the east side of the recommended area to 14,400 feet below sea level on the west side.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing on March 10, 1982, convened by Texas on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM–80 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Texas that the Edwards Formation as described and delineated in Texas's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedure

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before December 16, 1982. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–142 (Texas–10 Addition II) and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than November 1, 1982.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703(d) is amended by adding paragraph (48)(iii) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(48) *Edwards Limestone Formation in Texas.* RM79–76–142 (Texas–10).

(i) *Six Fields in DeWitt, Karnes and Lavaca Counties.*

* * * * *

(ii) *Giddings (Edwards Gas) Field.*

* * * * *

(iii) *Live Oak County.*

(A) *Delineation of formation.* The Edwards Formation is found to the north of the City of Three Rivers in Live Oak County, Texas, Railroad Commission District 2. The designated area is bounded on the south by the Frio River and includes the following surveys: Mrs. M. D. Proctor A–904, A. E. Brown A–828, John Hefferman A–11, Bridget Haughey A–9, Thos. Henry A–13, Patrick Henry A–12, Simon Ryan A–35, Lewis Ayers A–2, Walter Henry A–15, Daniel O'Boyle A–32, Mark Killely A–20, S. M. & S. A–442, S. M. & S. A–443, Lawrence Jacobs A–659, and G. H. & H. R.R. a–205.

(B) *Depth.* The top of the Edwards Formation varies in depth from approximately 12,000 feet subsea on the eastern side of the designated area to 14,000 feet subsea on the west side.

[FR Doc. 82–30543 Filed 11–4–82; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 610

[Docket No. 82N–0134]

General Biological Products Standards; Sterility

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations clarify and update certain requirements for sterility testing of biological products. The proposal would ensure the reliability of the growth-promoting qualities of the sterility test media and maintain consistency with the requirements of the current United States Pharmacopeia (USP XX).

DATE: Written comments by January 4, 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: Paul Hiranaka, National Center for Drugs and Biologics (HFB–620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

SUPPLEMENTARY INFORMATION: Sterility tests are performed on both bulk and final container material of most biological products to reveal the presence of viable contaminating microorganisms, i.e., bacteria, molds, and/or yeasts. The reliability of a sterility test is dependent on the growth-promoting qualities of the sterility test culture medium. To ensure that the culture medium, Fluid Thioglycollate Medium or Soybean-Casein Digest Medium, has the necessary nutritive requirements, quality control tests must be performed by each product manufacturer on each lot of the sterilized culture medium.

The biologics regulations currently contain some basic requirements concerning the growth-promoting qualities of the sterility test culture

media in § 610.12 (21 CFR 610.12) and some requirements concerning the microorganisms that are used in the growth/promoting quality tests in § 610.18 (21 CFR 610.18). Annual FDA inspections of licensed biological product manufacturers have revealed that these requirements have been misunderstood. Several manufacturers have been cited for inadequate or improper quality control tests on culture media. Other deviations cited during inspections included failure to use two strains of microorganisms for each type of sterility test medium used, failure to verify that the cultures of microorganisms used were not contaminated, failure to record the results of verification of culture purity, and even failure to perform the growth/promoting quality test on some lots of media. Further, a comparison between the biologics regulations and the USP XX has revealed that the compendial standards for growth-promoting quality tests are more stringent than the biologics regulations and that some sections of the biologics regulations are in need of updating.

Accordingly, to clarify, update, and improve the biologics regulations governing tests for growth-promoting qualities of culture media, and to make those regulations consistent with current technology as reflected in the USP XX, FDA is proposing to amend and reorganize § 610.12(e)(2) and by (1) defining a lot of culture medium, (2) specifying the storage conditions for the culture media, (3) specifying two or more strains of microorganisms that are exacting in their nutritive and aerobic/anaerobic requirements for each of the two types of medium; (4) specifying the requirements for documentation of such cultures of test organisms, including their storage, maintenance, purity, and periodic verifications of their viability; and (5) specifying the criteria for a satisfactory growth/promoting quality test. The proposed criteria specify that if the first growth/promoting quality test fails, a second test may be performed. If the second test fails, the lot of culture medium being tested must be rejected. In addition, a negative control is required to ensure effective sterilization and freedom from contamination of each lot of culture medium. This test may be performed simultaneously with the sterility test of a biological product, provided the sterility test is considered invalid if the test medium shows no growth.

The current biological regulations for sterility testing of biological products specify in § 610.12(a)(1)(i), (f), and (g)(2) and (8) that Fluid Thioglycollate Medium shall be incubated at 30° C to 32° C. The current USP, however, prescribes a 30° to 35° C incubation range. A request to change the incubation temperature to be consistent with the USP provision was made at a liaison meeting held November 9, 1979, between the Bureau of Biologics (now the National Center for Drugs and Biologics) and the Pharmaceutical Manufacturers Association (PMA) because there is no scientific evidence that a 30° to 32° C range is superior to a 30° to 35° C range. FDA has considered the requested change and finds that the wider temperature range will ensure adequate sensitivity for demonstrating sterility of biological products. Accordingly, FDA is proposing to amend § 610.12(a)(1)(i), (f), and (g)(2) and (8) to require a temperature range of 30° to 35° C for the incubation of Fluid Thioglycollate Medium.

FDA has examined the regulatory impact and regulatory flexibility implications of the proposed regulation in accordance with Executive Order 12291 and the Regulatory Flexibility Act. The agency concludes that about 75 biological product manufacturers will be affected by these requirements, of whom approximately half are small. Costs per firm could possibly vary from 0 to about $600 per year, depending on the firm's current practices. The anticipated costs are insufficient to warrant designation as a major rule under any of the criteria specified under section 1(b) of Executive Order 12291. Further, the agency certifies that the proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. A copy of the threshold assessment for supporting this determination is on file with the Dockets Management Branch, Food and Drug Administration (address above).

The agency has determined pursuant to 21 CFR 25.24(d)(10) (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.

List of Subjects in 21 CFR Part 610

Biologics, Labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 502, 701, 52 Stat. 1050–1051 as amended, 1055–1056 as amended (21 U.S.C. 352, 371)) and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Part 610 be amended in § 610.12 by revising paragraphs (a)(1)(i), (e)(2), (f), and (g)(2), (3), and (8)(i) to read as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

§ 610.12 Sterility.

* * * * *

(a) * * *

(1) * * *

(i) *Bulk and final container material.* The volume of product, as required by paragraph (d) of this section (hereinafter referred to also as the "inoculum"), from samples of both bulk and final container material, shall be inoculated into test vessels of Fluid Thioglycollate Medium. The inoculum and medium shall be mixed thoroughly and incubated at a temperature of 30° to 35° C for a test period of no less than 14 days and examined visually for evidence of growth on the third, fourth, or fifth day, and on the seventh or eighth day, and on the last day of the test period. Results of each examination shall be recorded. If the inoculum renders the medium turbid so that the absence of growth cannot be determined reliably by visual examination, portions of this turbid medium in amounts of no less than 1.0 milliliter shall be transferred on the third, fourth, or fifth day of incubation, from each of the test vessels and inoculated into additional vessels of medium. The material in the additional vessels shall be incubated at a temperature of 30° to 35° C for no less than 14 days. Notwithstanding such transfer of material, examination of the original vessels shall be continued as prescribed above. The additional test vessels shall be examined visually for evidence of growth on the third, fourth, or fifth day of incubation and on the seventh or eighth day and on the last of the incubation period. If growth appears, repeat tests may be performed as prescribed in paragraph (b) of this section and interpreted as specified in paragraph (c) of this section.

* * * * *

(e) * * *

(2) *Culture media requirements.*—(i) *Definition of a lot of culture medium.* A lot of culture medium is that quantity of uniform material identified as having been thoroughly mixed in a single vessel, dispensed in equal volumes into a group of vessels of the same composition, design and capacity, sterilized in the same autoclave during a single autoclave run, and identified in a

manner to distinguish one lot from another.

(ii) *Test organisms, strains, characteristics, identity, and verification.* Two or more strains of microorganisms that are exacting in their nutritive and aerobic/anaerobic requirements shall be used to test the growth-promoting qualities of each lot of test medium. Spores of *Bacillus subtilis* (American Type Culture Collection (ATCC) No. 6633) and *Clostridium sporogens* (ATCC No. 11437), or, if spore-forming organisms are not desired, *Bacteroides fragilis* subspecies *vulgatus* (ATCC No. 8482) and either *Candida albicans* (ATCC No. 10231) or *Micrococcus luteus* (ATCC No. 9341), shall be among the test organisms used to test Fluid Thioglycollate Medium. *Candida albicans* (ATCC No. 10231) and *Micrococcus luteus* (ATCC No. 9341) shall be included among the test organisms used to test Soybean-Casein Digest Medium. (ATCC strains of microorganisms described in this section are available from American Type Culture Collection, 12301 Parklawn Dr., Rockville, MD 20852.) Periodic tests shall be performed to verify the integrity of the test organisms. The results of these periodic tests shall be recorded and retained in accordance with § 600.12(b) of this chapter.

(iii) *Storage and maintenance of cultures of test organisms.* Cultures of the test organisms used to determine the growth-promoting qualities of the medium shall be stored in a manner that will prevent cross contamination or loss of identity, at a temperature and by a method that will retain the initial characteristics of the organisms and ensure freedom from contamination and deterioration. If the test organisms are stored in the freeze-dried state, or frozen, they shall be reconstituted or thawed, whichever is applicable, and plated periodically to verify the colony count of the suspension. If the test suspensions are stored in a state other than freeze-dried or frozen, they shall be plated, and a colony count shall be performed at the time of each growth-promotion quality test to assure that not more than 100 organisms are used per test vessel. The results of tests for verification of the colony count shall be recorded and retained in accordance with § 600.12(b) of this chapter.

(iv) *Storage and condition of media.* A medium shall not be used if the extent of evaporation affects its fluidity, nor shall it be reused in a sterility test of the product. Fluid Thioglycollate Medium shall be stored in the dark at room temperature if the vessels are unsealed. Sealed vessels may be stored at 4° C. Fluid Thioglycollate Medium shall not be used if more than the upper one-third of the medium has acquired a pink color. The medium may be restored once by heating on a steam bath or in free-flowing steam until the pink color disappears. The design of the test vessel for Fluid Thioglycollate Medium shall provide favorable aerobic and anaerobic conditions for growth of the microorganisms throughout the test period. Soybean-Casein Digest Medium shall be stored at 2° to 25° C. Unsealed vessels of either medium may be stored for more than 10 days at the proper temperature, provided they are tested weekly for growth-promotion and found to be satisfactory. Sealed vessels of either medium may be stored for a period of time not to exceed 1 year, provided they are tested for growth-promotion every 3 months and found to be satisfactory. The results of such testing shall be recorded and retained in accordance with § 600.12(b) of this chapter.

(v) *Criteria for a satisfactory growth-promoting quality test.* (*a*) One hundred or fewer organisms of each strain tested shall be used. The test is satisfactory if evidence of growth appears within 7 days in all vessels inoculated. If a lot of medium fails to support the growth of any test organism, or if the test results show that more than 100 organisms of a strain were used or are necessary to promote growth in the lot of medium being tested, a second test may be performed. If it fails the second test, the lot of medium shall be rejected.

(*b*) Inoculated Fluid Thioglycollate Medium shall be incubated at 30° to 35° C for 7 days. If the test medium is to be used in determining the sterility of a product containing a mercurial preservative, a second test shall be performed by the method described above, except that the test shall be incubated at 20° to 25° C for 7 days. The sterility of each lot of medium shall be confirmed by the incubation of uninoculated control test vessels at the temperature(s) for that particular medium. The lot of medium is satisfactory if no growth is observed in the control test vessels within the incubation period. The tests for growth-promoting qualities of culture media may be performed simultaneously with sterility testing of biological products, provided the sterility test is considered invalid if the test medium shows no growth response.

(vi) *Volume of culture medium.* The volume of each culture medium shall be determined for each bulk and final container sterility test required for each product. The ratio of the volume of inoculum to the volume of culture medium shall result in a dilution of the product that is not bacteriostatic or fungistatic, except for products to be tested by membrane filtration. The volume of inhibitors or neutralizers of preservatives added should be considered in determining the proper ratio of inoculum/medium. Vessels of the product-medium mixture(s) and control vessels of the medium shall be inoculated with dilutions of cultures of bacteria or fungi which are viable in the product being tested, and incubated at the appropriate temperature for no less than 7 days.

(f) *Membrane filtration.* Bulk and final container material or products containing oil products in water-insoluble ointments may be tested for sterility using the membrane filtration procedure set forth in the United States Pharmacopeia (20th Revision, 1980), section entitled "Test Procedures Using Membrane Filtration," pages 881–882, except that (1) the test samples shall conform with paragraph (d) of this section; and (2) in addition, for products containing a mercurial preservative, the product shall be tested in a second test using Fluid Thioglycollate Medium incubated at 20° to 25° C in lieu of the test in Soybean-Casein Digest Medium.

(g) * * *

(2) *Alternate incubation temperatures.* Two tests may be performed as prescribed in paragraph (a)(1)(i) of this section, one test using an incubation temperature of 18° to 22° C, the other test using an incubation temperature of 35° to 37° C, in lieu of performing one test using an incubation temperature of 30° to 35° C.

(3) *Different tests equal or superior.* A different test may be performed provided that prior to the performance of such test a manufacturer submits data which the Commissioner of Food and Drugs finds adequate to establish that the different test is equal or superior to the tests described in paragraphs (a) and (b) of this section in detecting contamination and makes the finding a matter of official record.

* * * * *

(8) *Diagnostic products not intended for injection.* For diagnostic products not intended for injection, (i) only the Thioglycollate Medium test incubated at 30° to 35° C is required, * * *

* * * * *

Interested persons may, on or before January 4, 1983 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: October 14, 1982.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc 82-30182 Filed 11-4-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-42-78]

Group-Term Life Insurance; Individual Selection

Correction

In FR Doc. 82-27590 beginning on page 44343 in the issue of Thursday, October 7, 1982, make the following change:

On Page 44345, second column, § 1.79-1 (g)(3)(ii), third line, the date certain was omitted and should read "November 7, 1982".

BILLING CODE 1505-01-M

26 CFR Part 51

[LR-224-81]

Definition of Newly Discovered Oil

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations concerning the definition of the term "newly discovered oil" for purposes of the windfall profit tax. Changes to the applicable tax law were made by the Crude Oil Windfall Profit Tax Act of 1980 and by the Economic Recovery Tax Act of 1981. The regulations would provide guidance on the requirements for the qualification of crude oil as newly discovered oil, as well as a definition of production in "commercial quantities" that affects the new income limitation on windfall profit and the exemption for Alaskan oil.

DATES: Written comments and requests for a public hearing must be delivered or mailed by January 4, 1983. The amendments are proposed to be effective after February 29, 1980.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-224-81), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Robert H. Ginsburgh of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3297).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Excise Tax Regulations Under the Crude Oil Windfall Profit Tax Act of 1980 (26 CFR Part 51), as promulgated by Treasury Decision 7844, which appears in the Rules and Regulations section of this **Federal Register**, and by T.D. 7790, published on October 27, 1981 (46 FR 52334). These proposed regulations are to be issued under the authority contained in sections 4997 and 7805 of the Internal Revenue Code of 1954 (94 Stat. 249 and 68A Stat. 917; 26 U.S.C. 4997 and 7805).

The classification of certain crude oil as newly discovered oil was initially proposed by the Department of Energy ("DOE") in a notice of proposed rulemaking that was published in the **Federal Register** on January 8, 1979. In proposing that classification, DOE intended to parallel in substance the provisions of the National Gas Policy Act of 1978 that relate to the definition of new natural gas and the regulations that implement those provisions.

The newly discovered oil category was established by DOE in a final rule that was published in the **Federal Register** on May 2, 1979, and that became effective as of June 1, 1979. By establishing that classification, DOE permitted crude oil production that qualifies as newly discovered oil to be sold without regard to ceiling prices that would otherwise have been applicable to such production under the crude oil pricing provisions of DOE petroleum price regulations. The newly discovered oil qualification rules for crude oil produced from the Outer Continental Shelf are different from the newly discoverd oil qualification rules for crude oil produced other than from the Outer Continental Shelf. The qualification of crude oil (produced from the Outer Continental Shelf) as newly discovered oil is based on the "new lease" concept, and the qualification of crude oil (produced other than from the Outer Continental Shelf) as newly discovered oil is based on the "property" concept. The June 1979 energy regulations permit a producer to elect to treat a separate reservoir as a separate "property" and thereby possibly qualify post-1978 production (other than from the Outer Continental Shelf) from that reservoir as newly discovered oil. However, because newly discovered oil produced from the Outer Continental Shelf is classified only on a lease basis, the separate reservoir election cannot be used to give newly discovered oil treatment to crude oil produced from a new reservoir (*ie.*, a reservoir from which crude oil was not produced in commercial quantities before January 1, 1979) on an OCS lease that does not qualify as a "new lease."

Definition of Newly Discovered Oil for Purposes of the Windfall Profit Tax

Section 4991(e)(2) and the proposed regulations define the term "newly discovered oil." Taxable crude oil qualifies as "newly discovered oil" if it is produced from a "newly discovered crude oil property" or is imputed newly discovered oil from a unitized property. The imputing rules will be developed by another regulations project. The definition of the term "newly discovered crude oil property" is based largely on DOE's most recent definition of that term, which became effective as of January 1, 1981. In general, a "newly discovered crude oil property" is a property (not on the Outer Continental Shelf) that did not produce crude oil in "commercial quantities" in calendar year 1978, or is a new lease on the Outer Continental Shelf. A "new lease" is a lease entered into on or after January 1, 1979, of submerged acreage that did not produce crude oil in commercial quantities in calender year 1978. In addition, a lease is denied new lease status if any portion of its submerged acreage was included at any time during 1978 in a lease on the Outer Continental Shelf whose submerged acreage produced crude oil in commercial quantities in calendar year 1978. The proposed regulations define crude oil produced in "commercial quantities" as any production that is (1) sold or exchanged or (2) retained for beneficial economic use by the operator or by any producer. However, production that is incidental to the drilling of an exploratory well (including a test well) is to be disregarded. This definition of commercial quantities is also applicable for purposes of the net income limitation on windfall profit and the exemption for Alaskan oil.

Comments and Request for a Public Hearing

Before adopting those proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public

inspection and copying. A public hearing will be held upon written request of any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Although this document is a notice of proposed rulemaking which solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations is Robert H. Ginsburgh of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 51

Excise tax, Petroleum, Crude Oil Windfall Profit Tax Act of 1980.

Proposed Amendments to the Regulations

PART 26—[AMENDED]

The proposed amendments to 26 CFR Part 51 are as follows:

Paragraph 1. Section 51.4996–1 is amended by redesignating paragraph (m) as paragraph (o) and by inserting immediately after paragraph (l) new paragraphs (m) and (n), to read as follows:

§ 51.4996–1 Definitions.

* * * * *

(m) *Newly discovered oil.*—(1) *In general.* The term "newly discovered oil" means taxable crude oil that either is produced from a newly discovered crude oil property or is imputed newly discovered oil from a unitized property.

(2) *Newly discovered crude oil property.* The term "newly discovered crude oil property" means—

(i) A new lease on the Outer Continental Shelf; or

(ii) A property (not on the Outer Continental Shelf) that did not produce crude oil in commercial quantities in calendar year 1978; or

(iii) Any unitized property that is made up entirely of leases described in subdivision (i) of this subparagraph or properties described in subdivision (ii) of this subparagraph, or both.

(3) *Imputed newly discovered oil.* [Reserved]

(4) *New lease.* The term "new lease" means any lease of submerged acreage that satisfies all of the following three requirements:

(i) It was entered into on or after January 1, 1979;

(ii) Its submerged acreage did not produce crude oil in commercial quantities in calendar year 1978; and

(iii) No portion of its submerged acreage was included at any time during 1978 in a lease on the Outer Continental Shelf whose submerged acreage produced crude oil in commercial quantities in calendar year 1978.

Determinations under subdivision (i) of this subparagraph of the date on which a lease was entered into shall be made without regard to any extension, renewal, modification, assignment, or sublease of the lease. Accordingly, the original date on which that lease was entered into is controlling for purposes of that subdivision.

(5) *Outer Continental Shelf.* The term "Outer Continental Shelf" means Outer Continental Shelf as defined by section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)).

(6) *Production in commercial quantities in 1978.* A property (or submerged acreage on the Outer Continental Shelf) produced crude oil in commercial quantities in calendar year 1978 if any crude oil that was produced in calendar year 1978 (other than crude oil production that is disregarded under paragraph (n) of this section because it was incidental to the drilling of an exploratory well, including a test well) from that property (or submerged acreage) ultimately met the definition of crude oil produced in commercial quantities (set forth in paragraph (n) of this section).

(n) *Commercial quantities.* Crude oil is produced in commercial quantities if any of the crude oil produced is—

(1) Sold or exchanged; or

(2) Retained for beneficial economic use by the operator of that production; or

(3) Retained for beneficial economic use by any producer of that production. However, crude oil production that is incidental to the drilling of an exploratory well (including a test well) shall be disregarded. Whether or not crude oil production is incidental to such drilling shall be determined on the basis of all the facts and circumstances of the particular case. However, in no case shall crude oil produced from a well after its casing, including the so-called "Christmas tree," has been installed be considered crude oil production that is incidental to the drilling of an exploratory well.

(o) *Other.* * * *

Par. 2. Paragraph (b) of § 51.4991–1 is amended by revising the sixth sentence to read as follows:

§ 51.4991–1 Taxable crude oil; tiers of oil.

* * * * *

(b) *Tiers of oil.* * * * The term "newly discovered oil" has the meaning given to that term in § 51.4996–1(m). * * *

Par. 3. Section 51.4988–2 is amended by adding at the end of paragraph (b)(3)(iii) a sixth sentence to read as follows:

§ 51.4988–2 Net income limitation on windfall profit.

* * * * *

(b) *Calculation of net income limitation.* * * *

(3) *Taxable income from the property reduced by cost depletion.*

* * * * *

(iii) * * * See paragraph (n) of § 51.4996–1 for the definition of the term "commercial quantities."

* * * * *

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 82-30525 Filed 11-2-82; 4:32 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1902

Revision of Rules Regarding Final Approval of State Plans

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: As a result of a recent Congressional appropriations action, OSHA is prohibited from obligating or expending any appropriated funds to enforce or prescribe, as a condition for initial, continuing, or final approval of state plans under Section 18 of the Occupational Safety and Health Act of

1970, state administrative or enforcement staffing levels which are greater than levels which are determined by the Secretary to be equivalent to federal staffing levels. OSHA is required by this congressional mandate to calculate enforcement staffing levels for each state plan state which are equivalent to federal staffing levels. This document proposes to amend 29 CFR 1902.37(b)(1) through notice and comment rulemaking in order to incorporate therein the new method to be used by OSHA in arriving at the required enforcement staffing levels or "benchmarks" for state plans. This document also gives notice of the new benchmarks which result from the application of this methodology. Finally, this document proposes the reinstatement of 29 CFR 1902.39(a), which was suspended on January 20, 1978 (43 FR 11196), and which sets forth the procedure under which state plans will be reviewed for final approval under Section 18(e) of the Act.

DATE: Comments on this proposed rule must be postmarked by December 6, 1982.

ADDRESS: Comments are to be sent to: Docket Officer, Docket No. T-001, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-4212, Washington, D.C. 20210

FOR FURTHER INFORMATION CONTACT: Barbara Bryant, Office of State Programs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N-3613, Washington, D.C. 20210, (202) 523-8045.

SUPPLEMENTARY INFORMATION:

Background

A. History of the Benchmarks

As a result of the decision of the U.S. Court of Appeals in "AFL-CIO v. Marshall," 570 F.2d 1030 (D.C. Cir. 1978), OSHA was directed by the District Court for the District of Columbia to establish benchmarks for state plan staffing levels which reflect a fully effective enforcement effort. However, the Court of Appeals recognized in its decision that Congress may affect the ultimate implementation of the benchmarks through the appropriations process. The Court expressly stated that:

> We realize that the Secretary may draw up his plan and find that at some point in the future Congress is unwilling to appropriate the funds requested. The significance of such actions will depend on the nature of the Congressional action and its history. It may reflect a Congressional estimate that the some goals may be achieved with less expenditure, through greater efficiency. However, it may evince a legislative judgment that the administrative goal was excessive. If Congress approves only X percent of the Secretary's benchmark, a legitimate corollary would be the Secretary's approval of state plans that provide detailed assurances to meet at least X percent of the Secretary's benchmark during the appropriate time frame. "*AFL-CIO* v. *Marshall*," *Supra*. at 1042, n. 40.

The Court of Appeals remanded the case to the District Court for the District of Columbia for the entry of a decree implementing the appeals court's opinion. The District Court entered its order on December 5, 1978. That order directed the Secretary to: (1) Develop benchmarks for each state establishing the number of safety inspectors and industrial hygienists necessary to meet the standard of a "fully effective enforcement program," (2) develop funding criteria to achieve these levels, (3) develop for each state a schedule for meeting the new benchmarks within a five year period, and (4) submit draft regulations requiring each state to have achieved 100 percent of its benchmark in order to obtain and retain final approval under Section 18(e) of the Act. Additionally, consistent with the Court of Appeals decision, the District Court order directed the Secretary in developing his plan to provide procedures for revision of the benchmarks to reflect congressional action in response to previously established benchmarks.

In compliance with the District Court order, the Secretary submitted a report to the Court on April 25, 1980. The American Federation of Labor and Congress of Industrial Organizations, (AFL-CIO) stipulated and agreed that this report represented a satisfactory response to the Court's order. The report set out the Secretary's initial benchmarks and explained in detail the process utilized in arriving at the staffing levels. The report additionally described the various ways in which the benchmarks may be revised. With respect to congressional action, the report provided that such action may have the effect of either changing the benchmark itself or modifying the rate at which states would be required to move toward achievement of the benchmark.

B. Recent Congressional Action

On September 10, 1982, Congress enacted Pub. L. 97-257. This enactment provides supplemental appropriations for various agencies for the fiscal year ending September 30, 1982. With regard to OSHA's supplemental request, the bill provides:

> In addition to the amounts made available under Pub. L. 97-92, making further continuing appropriations for fiscal year 1982, for grants to States under section 23(g) of the Occupational Safety and Health Act of 1970, $3,800,000 shall be available for such expenses: Provided, that none of the funds made available under this head for fiscal year 1982 may be obligated or expended to enforce or prescribe, as a condition for initial, continuing, or final approval of State plans under section 18 of the Occupational Safety and Health Act of 1970, State administrative or enforcement staffing levels which are greater than levels which are determined by the Secretary to be equivalent to Federal Staffing levels.

The intent of Congress is made clear in the legislative history of this provision. This appropriations language "allows the Secretary to approve State plans that provide administrative and enforcement staffing levels equivalent to Federal levels." Conference Report on H.R. 6863, H. Rept. No. 97-747, 97th Cong., 2d Sess. (1982).

Accordingly, exercising the authority recognized by the Court of Appeals decision in "AFL-CIO v. Marshall" and the District Court order implementing that decision, Congress has required the modification of OSHA's original benchmarks. Although Congress did not establish specific staffing levels for each state operating an Section 18(b) plan, the provision embodies a congressional judgment that the benchmarks derived from the present "fully effective" formula were excessive, and permits the Secretary to grant final approval to those state plans that have staffing levels which are determined by the Secretary to be equivalent to federal staffing levels. Many of the procedures established by the 1978 District Court order and the 1980 Report to the Court (such as periodic reevaluation of the original benchmarks by OSHA, or state petitions for revision based on factors specific to individual states) are not directly addressed by Pub. L. 97-257 and therefore remain in effect. However, the congressional action sets an upper limit on the staffing level requirements which OSHA may impose during this process, in that the provision prohibits OSHA from requiring states to meet staffing levels greater than those determined to be equivalent to federal level.

C. Summary of Proposed Revision to 29 CFR 1902.37(b)(1)

29 CFR 1902.37(b)(1) presently provides that as a condition for final approval state plans shall provide sufficient number of adequately trained and qualified personnel necessary for the enforcement of standards. The proposed amendment sets forth the methodology for determining, consistently with the mandate of Congress and the District Court order in

"AFL–CIO v. Marshall", what number of compliance safety and health personnel particular states must have in order to satisfy the "sufficient personnel" requirement of § 1902.37(b)(1) and Section 18(c)(4) of the Act.

Public Law 97–257 requires the Secretary to determine when a state's staffing levels are equivalent to Federal staffing levels. A first step, therefore, is to calculate a measure of Federal staffing to which a similar measure of state staffing may be compared. This can be accomplished by developing a ratio of Federal staff to a measure of workload for which that staff is responsible. The benchmarks for states set forth in OSHA's April 25, 1980, Report to the District Court in "AFL–CIO v. Marshall" were developed with a methodology based on a measure of workload. Accordingly, the Department has determined that calculating the ratio of Federal staff to the staffing levels that would be produced by application of the April 25, 1980, Report methodology to the Federal area of responsibility would be the equivalent of a ratio of Federal staff to the workload for which it is responsible. Although this method relies in part upon the benchmarks previously established, it is not to be interpreted as a disagreement with the Congressional judgment that the previous benchmarks were excessive.

The formula for determining the new state benchmarks employs, as a preliminary step, the methodology originally used in calculating the 1980 "fully effective" benchmarks for states set forth in OSHA's April 25, 1980 Report to the District Court in "AFL–CIO v. Marshall". Using methods identical to those described in that report OSHA has calculated "federal comparison benchmarks". Next, allocated federal staffing levels (i.e., the total number of federal compliance officer positions allocated to OSHA for conducting enforcement visits in non-plan states) are compared with the federal comparison benchmarks to produce a ratio.

The new benchmarks for states are derived by applying the percentage factor just described to each state's 1980 benchmarks. The proposed revision to 29 CFR 1902.37(b)(1) provides that a state will be considered to have a sufficient number of enforcement personnel when the ratio of its currently allocated compliance safety and health staff to the benchmark for that state set forth in the April 25, 1980 *Report to the Court* in "AFL–CIO v. Marshall" is at least equivalent to the ratio of current federal allocated enforcement staff to the federal comparison benchmarks. The following Table sets forth the resulting equivalent staffing benchmarks for each state plan state as of 1982.

REVISED STATE BENCHMARKS

State plan States	Safety: Equivalent staffing benchmark	Health: Equivalent staffing benchmark
Alaska	2	1
Arizona	10	6
California	134	80
Connecticut	[1]1	[1]1
Hawaii	4	2
Indiana	32	24
Iowa	16	10
Kentucky	14	9
Maryland	12	7
Michigan	56	38
Minnesota	22	13
Nevada	3	2
New Mexico	4	3
North Carolina	33	20
Oregon	19	10
Puerto Rico	9	6
South Carolina	16	10
Tennessee	21	13
Utah	6	4
Vermont	4	2
Virginia	20	13
Virgin Island	1	[1]0
Washington	22	13
Wyoming	2	2
Total	463	289

[1] Denotes public sector coverage only.

E. Proposed Reinstatement of 29 CFR 1902.39(a)

As a result of the Court of Appeals decision in "AFL–CIO v. Marshall" OSHA on January 20, 1978 suspended 29 CFR 1902.39(a), which sets forth procedures for making determinations under Section 18(e) of the Act (43 FR 11196). Section 1902.39(a) of 29 CFR establishes time frames for making final approval determinations under Section 18(e) and provides for state petitions for initiating the determination procedures. Suspension of these procedures was necessary because, until OSHA had established benchmarks and states had reached 100 percent of these benchmarks, no Section 18(e) determinations could be made. However, several states now meet or exceed the benchmarks required by the recent congressional action and proceedings to determine whether such states meet the remaining tests for final approval are now appropriate. Accordingly, it is proposed that 29 CFR 1902.39(a) be reinstated.

Regulatory Assessment

The proposed actions described herein (amendment to 29 CFR 1902.37(b)(1)); proposed reinstatement of 29 CFR 1902.39(a), and revision of the benchmarks under terms of the court's order in "AFL–CIO v. Marshall") do not constitute a major action as defined by Executive Order No. 12291 (46 FR 13193, February 19, 1980) as they will not have an annual effect on the economy of $100 million or more, cause major increases in costs or prices or have any other significant adverse effects. Additionally these actions are taken in response to an express mandate of Congress and a decision of the United States Court of Appeals for the District of Columbia Circuit.

Regulatory Flexibility Act

The Regulatory Flexibility Act provides that in developing regulatory proposals, agencies should evaluate and include alternatives that minimize any adverse impact on "small entities." Today's proposed rule does not directly impact upon "small entities" within the meaning of the Regulatory Flexibility Act. The proposed rule concerns safety and health staffing levels of certain state governments, whereas the Regulatory Flexibility Act defines small governmental entities as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with populations of less than fifty thousand." Theoretically, the proposed rule could indirectly affect small business entities by affecting the number of state inspectors available for conducting inspections of small firms in state plan states. However, the economic impact is not expected to be significant. Moreover, most state plan states already meet or exceed the benchmark levels expected to result from the proposed regulation, and the new benchmark levels would be substantially below those established under the previous 1980 benchmarks. For these reasons, no regulatory flexibility analysis is required.

Regulatory Flexibility Act Certification

For the foregoing reasons, Thorne A. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, hereby certifies that the proposed actions described herein (amendment to 29 CFR 1902.37(b)(1), proposed reinstatement of 29 CFR 1902.39(a), and revision of the benchmarks under the terms of the court's order in "AFL–CIO v. Marshall") will not have a significant economic impact on a substantial number of small entities. A letter containing this certification has been transmitted by the Assistant Secretary to the Chief Counsel for Advocacy of the Small Business Administration.

Public Participation

Interested persons are invited to submit written data, views and arguments on the specific provisions and issues raised in this proposed

rulemaking. These comments must be postmarked on or before December 6, 1982 and submitted in quadruplicate to: Docket Officer, Docket No. T–001, Room S–4212, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Written submissions must clearly identify the provisions of the proposal which are addressed and the position taken with respect to each issue.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding and will be considered in formulating the final rule.

List of Subjects in 29 CFR Part 1902

Administrative practice and procedure, Occupational safety and health.

Authority

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Accordingly, pursuant to Sections 8(g) and 18 of the Occupational Safety and Health Act of 1970 (84 Stat. 1600, 1608; 29 U.S.C. 657, 667), and Secretary of Labor's Order No. 8–76 (41 FR 25059), it is proposed to amend 29 CFR Part 1902 as set forth below.

Signed at Washington, D.C. this 29th day of October 1982.

Thorne G. Auchter,

Assistant Secretary of Labor.

PART 1902—[AMENDED]

1. It is proposed that 29 CFR 1902.39(a) be reinstated.

2. It is further proposed to revise 29 CFR 1902.37(b)(1) to read as follows:

§ 1902.37 Factors for determination.

* * * * *

(b) * * *

(1) The State has a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan. With respect to compliance staffing levels, this factor is considered satisfied when the ratio of the State's currently allocated staff to the benchmarks set forth in the April 25, 1980 Report to the Court in "AFL–CIO v. Marshall" is at least equivalent to the ratio of the current Federal allocated staff to the federal comparison benchmarks. The federal comparison benchmarks are a hypothetical projection applying the formula used to derive the April 25, 1980 State plan benchmarks to the Federal program.

* * * * *

[FR Doc. 82–30200 Filed 11–4–82; 8:45 am]

BILLING CODE 4510–26–M

SELECTIVE SERVICE SYSTEM

32 CFR Part 1662

Selective Service Regulations; Freedom of Information Act Procedures

AGENCY: Selective Service System.

ACTION: Proposed rule.

SUMMARY: Fees for the processing of Freedom of Information Act requests are revised to assure the recovery of costs of such processing.

DATES: Comment Date: Written comments received on or before December 4, 1982 will be considered. Effective date. Subject to the comments received the amendments are proposed to become effective upon publication in the Federal Register of a final rule not earlier than December 6, 1982.

ADDRESS: Written comment to: Selective Service System, ATTN: General Counsel, Washington, D.C. 20435.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, D.C. 20435 Phone (202) 724–1167.

SUPPLEMENTARY INFORMATION: This amendment to Selective Service Regulations is published pursuant to 5 U.S.C. 552

Interested persons are invited to submit written comments on the proposed regulations. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the office of the General Counsel from 9:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

As required by Executive Order 12291, I have determined that this proposed rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612). I have determined that these regulations do not have significant economic impact on a substantial number of small entities.

List of Subjects in 32 CFR Part 1662

Freedom of information.

Dated: October 29, 1982.

Thomas K. Turnage,

Director.

PART 1662—[AMENDED]

32 C.F.R. 1662.6 is revised to read:

§ 1662.6 Fees.

(a) Following is the fees schedule for the search and reproduction of information available under the Freedom of Information Act (5 U.S.C. 552), as amended.

(1) Search for records—the product of the time used in the search, in units of ¼ hour (a fraction thereof to be counted a ¼ hour) X the hourly pay of the employee making the search. No charge will be made for searches the estimated cost of which is less than $5.00.

(2) Duplication of records. The charge for office copy reproduction is 25 cents per page. The charge for shelf stock is 10 cent per page.

(3) Other—When no specific fee has been established for a service, or the request for a service does not fall under one of the above categories due to the amount or type thereof, the Associate Director for Administration is authorized to establish an appropriate fee based on "direct costs" as provided in the Freedom of Information Act and in accordance with Office of Management and Budget Circular No. A–25, "User Charges." Examples of services covered by this provision include searches involving computer time or special travel, transportation, or communications costs.

(b) If records requested under this part are stored elsewhere than the headquarters of the Selective Service System (SSS) at Washington, D.C., the special costs of retrieving and returning such records to the headquarters for review will be added to the search costs.

(c) A search will not be undertaken until the requester pays the estimated cost thereof in excess of $5.00. No other service will be rendered until the requester pays the estimated cost thereof.

(d) Fees must be paid in full prior to issuance of requested copies. In the event the requester is in arrears for previous requests, copies of records will not be provided for any subsequent request until the arrears have been paid in full.

(e) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Selective Service System and mailed or delivered to the Records Manager,

Selective Service System, Washington, D.C. 20435.

(f) A receipt for fees paid will be given upon request. Refund of fees paid for services actually rendered will not be made.

(g) The Associate Director for Administration or an officer designated by the Associate Director for Administration may, in accordance with the Freedom of Information Act, as amended, waive all or part of any fee provided for in this section when the Associate Director for Administration or the designated officer deems it to be in the general public's interest.

[FR Doc. 82-30460 Filed 11-4-82; 8:45 am]

BILLING CODE 8015-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-14)]

Rail General Exemption Authority—Miscellaneous Agricultural Commodities

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Rulemaking—Exemption.

SUMMARY: The Commission proposes to exercise its authority under 49 U.S.C. 10505 to exempt the transportation by rail of all farm products (STCC No. 01) not previously exempt, with the exception of grain (STCC No. 0113) and soybeans (01144), from the provisions of Subtitle IV of Title 49 U.S.C.; except that carriers shall continue to comply with the Commission's accounting and reporting requirements and shall include in their annual reports a brief statement of operations under this exemption authority. Because of the large quantities of grain and soybeans moving by rail, if exemption of these commodities were considered, separate treatment would be warranted. The purpose of this exemption is to provide the railroads full flexibility to compete with unregulated motor carriage which has already captured the predominant share of traffic in these agricultural commodities, and to accommodate the needs of shippers and receivers in responding to fundamental changes or substantial fluctuations taking place in these industries.

DATE: Comments by interested persons shall be filed with the Secretary of the Commission on or before December 6, 1982.

ADDRESS: An original and 10 copies, if possible, of each submission should be forwarded to: Secretary, Interstate Commerce Commission, Washington, DC 20423.

For copies of the Complete Text of the Exemption Decision Contact: Secretary, Interstate Commerce Commission, Washington, DC 20423, (202) 275-7428.

FOR FURTHER INFORMATION CONTACT: Leland L. Gardner or Robert Lundy, Office of Transportation Analysis, Interstate Commerce Commission, Washington, DC 20423, (202) 275-0811 or 275-6853.

SUPPLEMENTARY INFORMATION: This proceeding is not a major Federal action significantly affecting the quality of the human environment or the conservation of energy resources. It does not appear that the proposed exemption would have a significant economic impact upon small businesses, within the meaning of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Railroads.

(49 U.S.C. 10505 and 5 U.S.C. 553)

Decided: October 29, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-30490 Filed 11-4-82; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 47, No. 215
Friday, November 5, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Allegheny Electric Cooperative, Inc., Harrisburg, PA; Proposed Loan Guarantee

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed loan guarantee.

SUMMARY: Under the authority of Pub. L. 93–32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20–22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $200,000,000 to Allegheny Electric Cooperative, Inc., (Allegheny). This loan guarantee will provide supplemental funds needed to complete the financing of Allegheny's 10 percent undivided ownership interest in the Susquehanna Steam Electric Nuclear Station Units 1 and 2 and for completion of associated transmission facilities being constructed by Allegheny.

FOR FURTHER INFORMATION CONTACT: Mr. William F. Matson, General Manager and Executive Vice President, Allegheny Electric Cooperative, Inc., P.O. Box 1266, Harrisburg, Pennsylvania 17108.

SUPPLEMENTARY INFORMATION: Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for advances to the borrower of the guaranteed loan funds from Mr. Matson at the address given above.

In order to be considered, proposals must be submitted on or before December 6, 1982 to Mr. Matson. The right is reserved to give such consideration and to make such evaluation or other disposition of all proposals received as Allegheny and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20–22 are available from the Director, Public Information Office, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: October 29, 1982.

Jack Van Mark,

Acting Administrator.

[FR Doc. 82-30336 Filed 11-4-82; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Aha Quin Public Water-Based Recreation Development RC&D Measure, Arizona; 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 Aha Quin Public Water-based Recreation Development RC&D Measure, Colorado River Indian Reservation, La Paz County, Arizona.

FOR FURTHER INFORMATION CONTACT: Verne M. Bathurst, State Conservationist, Soil Conservation Service, 230 North First Avenue, Room 3008, Phoenix, Arizona 85025, telephone (602) 261–6711.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Verne M. Bathurst, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for the development of a relatively small recreation facility for local public use. The planned works of improvement include picnic tables, grills, benches, comfort station, ramada, swimming beach and utility lines.

The Notice of Finding of No Significant Impact (FNSI) 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 FNSI are available, to fill single copy requests, at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Verne M. Bathurst.

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 A95, regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Verne M. Bathurst,

State Conservationist.

[FR Doc. 82-30391 Filed 11-4-82; 8:45 am]

BILLING CODE 3410-16-M

Arroyo Colorado Watershed, Texas; Intent To Deauthorize Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Arroyo Colorado Watershed project, Cameron County, Texas.

FOR FURTHER INFORMATION CONTACT: George C. Marks, State Conservationist, Soil Conservation Service, W. R. Poage Federal Building, 101 South Main, Temple, Texas 76503, telephone 817/774–1214.

SUPPLEMENTARY INFORMATION: A determination has been made by George C. Marks that the proposed works of improvement for the Arroyo Colorado Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from George C. Marks, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. 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: October 27, 1982.

George C. Marks,

State Conservationist.

[FR Doc. 82–30463 Filed 11–4–82; 8:45 am]

BILLING CODE 3410–16–M

Los Fresnos Resaca Watershed, Texas; Intent To Deauthorize Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Los Fresnos Resaca Watershed project, Cameron County, Texas.

FOR FURTHER INFORMATION CONTACT: George C. Marks, State Conservationist, Soil Conservation Service, W. R. Poage Federal Building, 101 South Main, Temple, Texas 76503, telephone 817/774–1214.

SUPPLEMENTARY INFORMATION: A determination has been made by George C. Marks that the proposed works of improvement for the Los Fresnos Resaca Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from George C. Marks, State Conservationist, at the above address and telephone number..

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. 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: October 27, 1982.

George C. Marks,

State Conservationist.

[FR Doc. 82–30462 Filed 11–4–82; 8:45 am]

BILLING CODE 3410–16–M

Rancho Viejo Watershed, Texas; Intent To Deauthorize Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Rancho Viejo Watershed project, Cameron County, Texas.

FOR FURTHER INFORMATION CONTACT: George C. Marks, State Conservationist, Soil Conservation Service, W. R. Poage Federal Building, 101 South Main, Temple, Texas 76503, telephone 817/774–1214.

SUPPLEMENTARY INFORMATION: A determination has been made by George C. Marks that the proposed works of improvement for the Rancho Viejo Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from George C. Marks, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. 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: October 27, 1982.

George C. Marks,

State Conservationist.

[FR Doc. 82–30461 Filed 11–4–82; 8:45 am]

BILLING CODE 3410–16–M

Sam Houston RC&D Area, Northwest Montgomery County Critical Area Treatment RC&D Measure, Texas; 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 Northwest Montgomery County Critical Area Treatment RC&D Measure, Montgomery County, Texas.

FOR FURTHER INFORMATION CONTACT: George C. Marks, State Conservationist, Soil Conservation Service, W. R. Poage Federal Building, 101 South Main, Temple, Texas 76503, telephone 817–774–1214.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, George C. Marks, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for treatment of critical erosion at 14 identified sites and includes 142 acres of shaping, 232 acres of vegetation, 14 grade stabilization structures, and 6800 feet of fencing.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on

file and may be reviewed by contacting George C. Marks.

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: October 28, 1982.

Jimmy W. Hill,

Assistant State Conservationist for Water Resources.

[FR Doc. 82-30465 Filed 11-04-82; 8:45 am]

BILLING CODE 3410-16-M

Shawnee RC&D Critical Area Treatment Measures, Illinois Finding of No. Significant Impact U.S.D.A.

AGENCY: Soil Conservation Service, U.S.D.A.

ACTION: Notice of 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 Critical Area Treatment RC&D Measures, Alexander, Edwards, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jefferson, Johnson, Massac, Perry, Pope, Pulaski, Saline, Union, Wabash, Wayne, White, and Williamson Counties, Illinois.

FOR FURTHER INFORMATION CONTACT: John J. Eckes, State Conservationist, Soil Conservation Service, Springer Federal Building, 301 North Randolph Street, Champaign, Illinois 61820, telephone 217/398-5267.

SUPPLEMENTARY INFORMATION: The environmental assessment of these federally assisted actions indicates that the projects will not cause significant local, regional or national impacts on the environment. As a result of these findings, John J. Eckes, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measures concern plans for critical area treatment. Conservation practices include subsurface drains, diversions, stone waterways, streambank stabilization, and seeding.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting John J. Eckes. The FONSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 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)

John J. Eckes,

State Conservationist

October 29, 1982.

[FR Doc. 82-30397 Filed 11-4-82; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Preliminary Affirmative Countervailing Duty Determination; Roses and Other Cut Flowers From Colombia

AGENCY: International Trade Administration, Commerce.

ACTION: Preliminary affirmative countervailing duty determination.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Colombia of roses and other cut flowers, as described in the "Scope of Investigation" section of this notice. Therefore, we are directing the U.S. Customs Service to suspend liquidation of all entries of the merchandise subject to this determination which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond on this merchandise in an amount equal to 4 percent of the f.o.b. value of the subject merchandise on entries made prior to January 1, 1983, and 5 percent of the f.o.b. value of the subject merchandise on entries made on or after January 1, 1983. If this investigation proceeds normally, we will make our final determination by January 13, 1983.

EFFECTIVE DATE: November 5, 1982.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone (202) 377-0161.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Colombia of roses and other cut flowers (cut flowers), as described in the "Scope of Investigation" section of this notice.

For purposes of this investigation, the export payments made under the Tax Reimbursement Certificate Program (CAT) are preliminarily determined to bestow a countervailable benefit on the subject merchandise. We estimate the net bounty or grant to be equal to 4 percent of the f.o.b. value of the subject merchandise on entries made prior to January 1, 1983, and 5 percent of the f.o.b. value of the subject merchandise on entries made on or after January 1, 1983.

Case History

On August 6, 1982, we received a petition from a group of independent producers of cut flowers, filed on behalf of the U.S. industry producing cut flowers. The petition alleged that certain benefits which constitute bounties or grants within the meaning of section 303 of the Act are being provided, directly or indirectly, to the manufacturers, producers, or exporters in Colombia of cut flowers.

We found the petition to contain sufficient grounds upon which to inititate a countervailing duty investigation, and on August 26, 1982, we initiated a countervailing duty investigation (47 FR 38570). We stated that we expected to issue a preliminary determination by November 1, 1982.

Since Colombia is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303 of the Act applies to this investigation. Because the subject merchandise is dutiable, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product cause

or threaten to cause material injury to a U.S. industry.

We presented a questionnaire concerning the allegations to the government of Colombia in Washington, D.C. On October 6, 1982, we received the response to the questionnaire. A supplemental response was received on October 13, 1982.

Scope of Investigation

The merchandise covered by this investigation is roses and other fresh cut flowers (excluding miniature carnations), and bouquets, wreaths, sprays, or similar articles made from such flowers or other fresh plant parts. Roses are currently classifiable under item number 192.1800 and other fresh cut flowers (excluding miniature carnations) under item number 192.2100 of the *Tariff Schedules of the United States Annotated.*

There are approximately 140 known producers and exporters of cut flowers. The period for which we are measuring subsidization is January through June of 1982.

Analysis of Programs

In its response, the government of Colombia provided data for the applicable period. Based upon our analysis to date of the petition and response to our questionnaire, we have preliminarily determined the following:

I. Program Preliminarily Determined To Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Colombia of cut flowers included in this investigation under the program discussed below.

Tax Reimbursement Certificate Program (CAT)

The government of Colombia provides payments to exporters of cut flowers in the form of negotiable tax certificates, which may be used for the payment of various taxes (i.e. income, sales, and customs taxes), or may be sold on the stock exchange at a discount. Under Government Decree No. 2401 of 1981, the current level of payment is 4 percent of the domestic value-added content of the exported product and the certificates cannot be redeemed until three months after issuance. However, effective January 1, 1983, as authorized by Government Decree No. 2440 of August 20, 1982, the rebate will rise to 5 percent of the domestic value-added content of the exported product and the certificate will be redeemable upon issuance.

The government of Colombia and Asocoflores, a Colombian trade association of producers and exporters of cut flowers, jointly contend that the CAT is not a bounty or grant because it represents a non-excessive rebate of indirect taxes.

In support of this contention, the respondents have submitted copies of various government decrees, which either implemented or modified the CAT program with respect to cut flowers, and an economic study, prepared by Asocoflores and verified by the Government of Colombia, which purportedly measures the tax incidence borne by the Colombian cut flower producers and which the respondents appear to claim was the basis for calculating the amount of the CAT rebate.

Under U.S. countervailing duty law, the primary considerations in determining whether an export rebate program can be considered a *bona fide* indirect tax rebate are: (1) Whether the program operates for the purpose of rebating indirect taxes, (2) whether there is a clear link between eligibility for the export payments and the payment of indirect taxes, and (3) whether the government has reasonably calculated and documented the actual indirect tax incidence borne by the exported product and has demonstrated a clear link between such tax incidence and the amount of the export payments. See, e.g., *Industrial Fasteners Group, American Importers Association v. United States,* 585 F. Supp. 885, 890 (CIT 1981).

We preliminarily determine that the CAT program does not satisfy the first criterion because its purpose appears to have been to rebate taxes in general, not just indirect taxes.

Although the respondents contend that their tax study demonstrates the government's intent to link the CAT payments to indirect taxes paid, it appears that the study was prepared to enable the rebate of many direct taxes as well. The study concludes that Colombian cut flower producers purportedly bear a tax incidence of approximately 25 percent of the value added in Colombia, of which roughly 90 percent concerns social security taxes and other social welfare taxes which appear to be in the form of taxes on income or profits. We consider these types of taxes to be direct, not indirect, taxes. This view is consistent with international consensus and U.S. obligations under the *Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade,* Illustrative List of Export Subsidies, n. 1, which states in part: "(T)the term 'direct taxes' shall mean taxes on wages, profits, interest, rents, royalties, and all other forms of income, and taxes on the ownership of real property." Given that the study includes the analysis of significant amounts of direct taxes, and that the CAT rebate calculations were evidently based on the conclusions of this study, we preliminarily determine that the CAT study fails to meet our established criteria.

The government of Colombia also claims that the applicable CAT rate on exports of cut flowers is payable only on the value-added component of the export value, which they claim to be 90 percent of the value of the exported merchandise. No evidence supporting this claim has been presented, however. Therefore, we have calculated the CAT rebate for purposes of the preliminary determination as though it were payable on the entire value of the exported merchandise.

Finally, the government claims that the value of the CAT certificate is diminished because the government mandates a three-month delay in payment of the CAT rebate which results in a loss of the use of the payments during a period of inflation or devaluation. However, since the CAT certificates may be sold at a discount at any time during that three-month period, we have preliminarily determined not to consider the loss which might result from a government-mandated deferral at this time.

Therefore, we preliminarily determine that the net benefit to exporters of cut flowers under the CAT program amounts to 4 percent of the f.o.b. value of the subject merchandise on entries made prior to January 1, 1983, and 5 percent of the f.o.b. value of the subject merchandise on entries made on or after January 1, 1983.

II. Program Preliminarily Determined Not To Confer Bounties or Grants

We preliminarily determine that the government of Colombia is not providing bounties or grants to manufacturers, producers, or exporters of cut flowers under the following program.

Foreign Currency Exchange Controls

Petitioners alleged that the exporters in Colombia of cut flowers benefit from an exchange rate advantage over other products. Information available to the Department when this investigation was initiated indicated that all foreign currency receipts were sold to the Central Bank in Colombia for foreign currency certificates of exchange. Those certificates issued on the sale of flowers

could then be redeemed at a fixed discount rate lower than the discount rate applicable to other products.

In its response, the government of Colombia indicates that this system is no longer in effect. Currently, all foreign currency receipts are sold to the Central Bank and exchanged for Colombian pesos at the exchange rate in effect on that day. Foreign currency certificates of exchange are no longer issued. A single exchange rate system now exists without discounts. Therefore, we preliminarily determine that no countervailable benefit exists.

III. Program for Which Additional Information is Needed

We preliminarily determine that additional information is needed for the following program alleged by the petitioners to provide bounties or grants to the manufacturers, producers, or exporters in Columbia of the product subject to this investigation.

Air Freight Reductions

The government of Colombia, through the Administrative Department of Civil Aeronautics (DAAC), issued Resolution No. 5833 on September 1, 1981. That resolution established new air freight rates for the transport of cut flowers from Colombia to the United States and Europe. While setting only rate ceilings on shipments of cut flowers to Europe, the DAAC set both minimum and maximum rates for shipments of cut flowers from Bogota, Cali, and Medellin to Miami.

We will seek additional information on the international freight rates established by DAAC covering other products that are transported to the United States to determine whether the rates for cut flowers are comparable. We will also seek information on the air freight rates established by the DAAC that the cut flower producers are charged for the domestic transport of their products.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in making our final determination.

Suspension of Liquidation

In accordance with section 703 of the Act, we are directing the U.S. Customs Service to suspend liquidation of entries of the roses and other cut flowers (excluding miniature carnations) which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or the posting of a bond for each such entry of the merchandise in an amount equal to 4 percent of the f.o.b. value of the subject merchandise on entries made prior to January 1, 1983, and 5 percent of the f.o.b. value of the subject merchandise on entries made on or after January 1, 1983.

This suspension will remain in effect until further notice.

Public Comment

In accordance with § 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on November 29, 1982 at the U.S. Department of Commerce, Room 3708, 14th and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs must be submitted to the Deputy Assistant Secretary by November 22, 1982. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.43, within thirty days of this notice's publication, at the above address and in at least ten copies.

Judith Hippler Bello,

Acting Deputy Assistant Secretary for Import Administration.

November 1, 1982.

[FR Doc. 82-30523 Filed 11-4-82; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

[Docket No. 21013-210]

Planned Companion Standard To Federal Information Processing Standard 86; Additional Controls for Use with ASCII

Under the provisions of Pub. L. 89-306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform Federal automatic data processing standards.

On January 29, 1981, a notice was published in the **Federal Register** (46 FR 9687-9688), announcing the approval of Federal Information Processing Standard Publication (FIPS PUB) 86, Additional Controls for Use with ASCII. As a result of comments received after the standard was approved, the National Bureau of Standards (NBS) is proposing to revise the "Applicability" section of FIPS PUB 86, and is planning to develop and issue a companion standard to FIPS PUB 86. On February 5, 1982, a notice was published in the **Federal Register** (47 FR 5450) indicating that the Secretary of Commerce had amended FIPS PUB 86 by changing the effective date from January 29, 1982 to September 30, 1982, and indicated that a proposed revision to the applicability section of FIPS PUB 86 would be forthcoming. On May 21, 1982 that proposed revision to FIPS PUB 86 was announced in the **Federal Register** (47 FR 22139-22140) and comments were solicited.

This present notice announces an intention to develop a planned companion standard that may be used as an alternative to the revised FIPS PUB 86. This companion standard will be based upon bit-oriented control techniques, as contrasted to the character-oriented controls of FIPS PUB 86. Such a bit-oriented standard would be compatible with many existing user terminals and printing devices.

The controls of FIPS PUB 86 apply to devices whose control is based upon ASCII characters and control extensions comprised of character strings, as employed by many existing graphics and alphanumeric screen-editing terminals.

The character-oriented controls of FIPS PUB 86 and the bit-oriented controls of the planned FIPS PUB each have the capability to provide graphics, drawing and display capability and other features requiring "transparent" or "code insensitive" representation and communication capabilities, such as that required for facsimile data stream picture communication. The need for this planned standard as a companion to FIPS 86 is based on the fact that these two techniques for controlling transparency and for controlling other aspects of text and graphics representations and communication are currently incompatible, and each is currently used in a substantial base of existing equipment.

This announcement solicits both candidate proposals and comments on the impact and applicability as well as benefits and costs of such a bit-oriented standard.

This accouncement provides 90 days for comment to ensure adequate opportunity for vendors of relevant terminal equipment and software, potentially impacted favorably or unfavorably by this planned companion standard to FIPS PUB 86, to prepare and

submit responses or for persons to submit proposals. Interested parties may submit comments or proposals in writing to the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, DC 20234, Attention: Planned Companion Standard to FIPS PUB 86 on Additional Controls. To be considered, comments and proposals in response to this announcement must be received on or before February 3, 1983.

Written comments and proposals received in response to this notice will be made part of the public record and will be available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6622, Main Commerce Building, 14th Street between Constitution Avenue and E Street, N.W., Washington, DC 20230.

Persons desiring further information about this planned companion standard to FIPS PUB 86 may contact Mr. John L. Little, System Components Division, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, telephone 301/921-3723.

Dated: November 1, 1982.

Ernest Ambler,

Director.

[FR Doc. 82-30501 Filed 11-4-82; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adusting the Import Restraint Level for Certain Cotton Textile Products from Taiwan

November 2, 1982.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Granting an increase by application of swing from 657,295 dozen to 696,733 dozen for men's and boys' woven cotton shirts in Category 340, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1982. (A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (47 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926), and May 13, 1982 (47 FR 20654)).

SUMMARY: The bilateral textile agreement of June 8, 1978, as amended, concerning cotton, wool, and man-made fiber textile products from Taiwan provides, among other things, for percentage increases in certain specific category ceilings during an agreement year (swing). Pursuant to the terms of the bilateral agreement, the import restraint level established for Category 340 is being increased to 696,733 dozen for the twelve-month period which began on January 1, 1982 and extends through December 31, 1982.

EFFECTIVE DATE: November 2, 1982.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On December 17, 1981, there was published in the **Federal Register** (46 FR 61497) a letter dated December 14, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specific categories of cotton, wool, and man-made fiber textile products, including Category 340, produced or manufactured in Taiwan and exported to the United States during the twelve-month period which began on January 1, 1982 and extends through December 31, 1982. In accordance with the terms of the bilateral agreement, the level of restraint for cotton textile products in Category 340 is being increased to 696,733 dozen. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase that level to the designated amount.

Paul T. O'Day,

Acting Chairman, Committee for the Implementation of Textile Agreements.

November 2, 1982.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: On December 14, 1982, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, during the twelve-month period beginning on January 1, 1982 and extending through December 31, 1982 of cotton, wool, and man-made fiber textile products in certain specified categories, produced or manufactured in Taiwan, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the bilateral textile agreement of June 8, 1978, as amended, concerning cotton, wool, and man-made fiber textile products from Taiwan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to increase, effective on November 2, 1982, the twelve-month level of restraint established for cotton textile products in Category 340 to 696,733 dozen.[2]

The action taken with respect to the authorities in Taiwan and with respect to imports of cotton textile products from Taiwan has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-30522 Filed 11-4-82; 8:45 am]

BILLING CODE 3510-25-M

[1] The term "adjustment" refers to those provisions of the bilateral textile agreement of June 8, 1978, as amended, concerning cotton, wool, and man-made fiber textile products from Taiwan which provide, in part, that: (1) Within the aggregate and applicable group limits of the agreement, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward; up to 11 percent of the applicable category limit; and (3) administrative arrangement or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The level of restraint has not been adjusted to reflect any imports after December 31, 1981.

DEPARTMENT OF DEFENSE

Department of the Army

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The

point of contract from whom a copy of the information proposal may be obtained.

Extension

Application for Establishment of an Army Senior Reserve Officer's Training Corps Unit, DA Form 918.

College level institutions desiring to host an Army ROTC Unit make application and commit themselves to an agreement by completing and forwarding DA Form 918. Once approved, the application is kept on file as a record of agreement.

Colleges and Universities: 16 responses; 160 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and John V. Wenderoth, DOD Clearance Officer, OASD(C), DIRMS, IRAD, Room 1A658, Pentagon, Washington, D.C. 20301, telephone (202) 697–1195.

A copy of the information collection proposal may be obtained from David O. Cochran, DAAG–OPI, Room 1D667, Pentagon, Washington, D.C. 20310, telephone (202) 695–51111.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

Dated: November 2, 1982.

[FR Doc. 82–30495 Filed 11–4–82; 8:45 am]

BILLING CODE 3710–08–M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Uniform Cost Accounting Reporting Systems (UCARS)

The Military Standard (UCARS) was needed to bring uniformity to the accounting systems at the Government Owned Contractor Operated (GOCO) Ammunition plants. USCARS provides uniform cost accounting data that can be used to evaluate individual contractor performance, and to make comparisons among the plants of cost and manpower information.

Government-owned-Contractor-Operated (GOCO) Plants: 132 responses; 2,640 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and John V. Wenderoth, DOD Clearance Officer, OASD(C), DIRMS, IRAD, Room 1A658, Pentagon, Washington, D.C. 20301, telephone (202) 697–1195.

A copy of the information collection proposal may be obtained from David O. Cochran, DAAG–OPI, Room 1D667, Pentagon, Washington, D.C. 20310, telephone (202) 695–5111.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

November 2, 1982.

[FR Doc. 82–30496 Filed 11–4–82; 8:45 am]

BILLING CODE 3710–08–M

Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Application for Correction of Military or Naval Records

The DD Form 149 allows an applicant to request correction of a Military or Naval Record. The routine uses are (1) To docket a case (2) Source of information for review board in determining – A. Relief sought B. Qualifications C. Analysis of actual records.

Individuals requesting change in military records; 31,000 responses; 31,000 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and John V. Wenderoth, DOD Clearance Officer, OASD(C), DIRMS, IRAD, Room 1A658, Pentagon, Washington, D.C. 20301, telephone (202) 697–1195.

A copy of the information collection proposal may be obtained from David O. Cochran, DAAG–OPI, Room 1D667, Pentagon, Washington, D.C. 20310, telephone (202) 695–5111.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

November 2, 1982.

[FR Doc. 82–30497 Filed 11–4–82; 8:45 am]

BILLING CODE 3710–08–M

Office of the Secretary

Defense Advisory Committee on Women in the Services (DACOWITS); Meeting

Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS) is scheduled to be held from 1:30 p.m. to 5:00 p.m., 7 December 1982 in MRA&L Conference Room #3E794, The Pentagon, and from 9:30 a.m. to approximately 12:00 noon, 8 December 1982 in MRA&L Conference Room #3E794, The Pentagon. Meeting sessions will be open to the public.

The purpose of the meeting is to review the recommendations/requests for information/continuing concerns made at the 1982 Fall Meeting, discuss current issues relevant to women in the Services, and to begin planning the itinerary/program for the next Semiannual Meeting scheduled for 24–28 April 1983 in Washington, D.C.

Persons desiring to make oral presentations or submit written statements for consideration at the Executive Committee Meeting must contact Captain Mary J. Mayer, Executive Secretary, DACOWITS, OASD (Manpower, Reserve Affairs, and Logistics), Room 3D769, The Pentagon, Washington, D.C. 20301, telephone (202) 697–2122 no later than 22 November 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

November 2, 1982.

[FR Doc. 82–30493 Filed 11–4–82; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement—Request Submitted To OMB for Review

The Department of Defense has submitted to OMB for review the following request for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Youth Attitude Tracking Study (YATS)

Used to determine and evaluate knowledge of, and attitudes and motivations toward Military Service (active duty) of youth (16–21 years of age). Generate cross-sectional time series data on propensity to serve and on other key issues for trend analyses. Used by DoD and Services to develop recruiting strategies and incentive programs including different bonus levels, various types of educational assistance, and other enlistment options.

16 to 21 year old males and females who are not beyond their second year of college and who have not previously served nor are currently serving in the Military; 10,400 responses, 5,200 burden hours.

Forward comments to Mr. Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, DC 20503, and Mr. John V. Wenderoth, DoD Clearance Officer, OASD(C), DIRMS, IRAD, Room 1A658, Pentagon, Washington, DC 20301, telephone (202) 697–1195.

A copy of the information collection request may be obtained from Mr. Robert L. Newhart, OASD, MRA&L(PI), Room 3C800, Pentagon, Washington, DC 20301, telephone (202) 695–0643. This survey is under contract.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

November 2, 1982.

[FR Doc. 82-30494 Filed 11-4-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Advisory Council on Vocational Education, Meeting

AGENCY: National Advisory Council on Vocational Education.

ACTION: Notice of public meeting of the council.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Adivsory Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: December 6, 1982, 9:00 a.m.–4:30 p.m.

ADDRESS: The Holiday Inn Riverfront, 4th and Pine Streets, St. Louis, Missouri, The Riverfront Room.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Vocational Education is established under Section 104 of the Vocational Education Amendments of 1968, Pub. L. 90–576. The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to the Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

The meeting of the National Advisory Council, in conjunction with the Annual Convention of the American Vocational Association, is open to the public. The proposed Agenda will include:

Report from the U.S. Department of Education: Departmental Activities
Presentation on Vocational Student Organizations
Report from the National Center for Research in Vocational Education

Records are kept of the Council's proceedings, and are available for public inspection at the office of the National Advisory Council on Vocational Education from 9:00 a.m. to 5:00 p.m., 425 13th Street NW, Suite 412, Washington, D.C. 20004.

For further information contact: Virginia Solt, NACVE Staff, at above address. Telephone (202) 376–8873.

Signed at Washington, D.C. on November 2, 1982.

George Wallrodt,

Acting Exceutive Director, National Advisory Council on Vocational Education.

[FR Doc. 82-30429 Filed 11-4-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Record of Decision To Provide a Point-of-Delivery To Serve the Mt. Tolman Project, Ferry County, Washington

AGENCY: Bonneville Power Administration (BPA), DOE.

DECISION SUMMARY: The Bonneville Power Administration (BPA) has decided to provide a point-of-delivery (POD) to serve a copper and molybdenum mine to be developed at some future time near Mt. Tolman on the Colville Indian Reservation in Ferry County, Washington. The POD consists of modifying one of BPA's transmission towers along its 17-mile long, 230-kV transmission line extending from a BPA substation near Grand Coulee Dam to BPA's Keller substation so that a tapline to serve the Mt. Tolman Project can be accommodated. BPA will provide a metering device and transformer on this modified tower when the Mt. Tolman load materializes and the facilities to serve the project are in place. The tapline and facilities to interconnect with the mine will be provided by Public Utility District (PUD) No. 1 of Ferry County in whose service area the mine is located. Ferry County PUD is a BPA preference customer, and upon request, BPA is obligated to meet its net firm load requirements including the Mt. Tolman mining project. This new POD will be incorporated into Exhibit H of BPA's utility power sales contract offered August 25, 1981, as required by the Pacific Northwest Electric Power Planning and Conservation Act (Pub. L. 96–501 or Regional Act), Section 5 (a), (b), and (c).

SUPPLEMENTARY INFORMATION: The mine and its associated facilities were described in the Mt. Tolman Project Final Environmental Impact Statement (EIS) prepared by the U.S. Department of the Interior. This EIS was filed with the Environmental Protection Agency

(EPA) and issued to the public July 20, 1981. BPA was a cooperating agency in the preparation of the EIS because providing a POD so that Ferry County PUD can serve the electrical needs of the mining project is considered a connected action. BPA's Grand Coulee-Keller 230-kV transmission line was described in an environmental assessment (EA) issued in February 1980. The EA resulted in a finding of no significant impact (FONSI) approved April 21, 1980, and published as Appendix F-2 in the Mt. Tolman Project Draft EIS filed with EPA and issued to the public January 1981.

Ferry County PUD has requested that BPA incorporate into Exhibit H of the August 25, 1981, power sales contract offer a provision for a POD to serve the Mt. Tolman Mine Project, even though it is uncertain when the mine will be developed. BPA has made the determination that the Colville Confederated Tribe's Mt. Tolman mining project is a "committed to" load of Ferry County PUD, under Section 3(13)A and 5(b) of the Regional Act. The size of the committed to load as of September 1, 1979, was 75 peak megawatts at an 87 percent load factor or 65.25 average megawatts. As a result of this determination, BPA is obligated to provide power to Ferry County PUD to service this load when it materializes, provided that the PUD sign the new power sales contract offered August 25, 1981.

The point of interconnection between the tapline to serve the mine and BPA's Grand Coulee-Keller 230-kV transmission line determines the POD. Although only one tapline location was discussed in the EIS, it was determined to be the best location from both an engineering and environmental standpoint. Ferry County PUD located its proposed 2-mile, 230-kV tapline between two proposed tailing areas. This location provides the least disruption to the mining activities occurring around the mill site. From the receiving substation at the mill, aboveground connections would be made to the various project load centers. Auxiliary diesel generators would be available to operate essential services in the event of an outage in the main transmission line.

FOR FURTHER INFORMATION CONTACT:
Anthony R. Morrell, Environmental Manager, Bonneville Power Administation, P.O. Box 3621-SJ, Portland, Oregon 97208; telephone (503) 230-5136.

Issued in Portland, Oregon, September 1, 1982.

Peter T. Johnson,
Administrator.

[FR Doc. 82-30436 Filed 11-4-82; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 82-CERT-019]

Yale University; Recertification of Eligible Use of Natural Gas To Displace Fuel Oil

On October 20, 1982, Yale University (Yale), Central P.O. Box 1501-A, New Haven, Connecticut 06520, filed with the Administrator of the Economic Regulatory Administration (ERA) pursuant to 10 CFR Part 595 an application for recertification of an eligible use of up to 750,000 Mcf of natural gas per year to displace approximatley 121,000 barrels of No. 6 fuel oil (0.5 percent sulfur) at its New Haven, Connecticut campus. The eligible seller of the natural gas is National Fuel Gas Distribution Corporation, 10 Lafayette Square, Buffalo, New York 14203. The gas will be transported by National Fuel Gas Supply Corporation (same address); Tennessee Gas Pipeline Company, a division of Tenneco, Inc., P.O. Box 2511, Houston, Texas 77001; and The Southern Connecticut Gas Company, 55 Church Street, New Haven, Connecticut 06510.

On November 5, 1981, Yale received a recertification (ERA Docket No. 81-CERT-021, effective November 7, 1981) of an eligible use of natural gas purchased from National Fuel Gas Distribution Corporation for a period of one year expiring on November 6, 1982, for use at its New Haven, Connecticut campus. Yale has requested that this new recertification be handled expeditiously because of the November 6, 1982 expiration date of its current certificate.

The ERA has carefully reviewed Yale's application in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that Yale's application satisfies the criteria enumerated in 10 CFR Part 595, and therefore, has granted the recertification and transmitted that recertification to the Federal Energy Regulatory Commission. More detailed information, including a copy of the application, transmittal letter, and the actual recertification, is available for public inspection at the ERA, Natural Gas Branch Docket Room, Room 6144, RG-64, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

This recertification is being issued prior to the 10-day public comment period and being made effective on November 7, 1982, to provide continuity with the current certificate's November 6, 1982, expiration date. The recertification involves the displacement of large volumes of fuel oil and it is in the public interest to maximize the displacement of fuel oil. It is not, therefore, in the public interest to permanently lose this opportunity to displace large volumes to fuel oil while public comments are being solicited, especially since this same purchase and use of gas at this facility has qualified as an "eligible use" for the past two years.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Natural Gas Branch, Room 6144, RG-64, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461, Attention: Paula Daigneault, within ten (10) calendar days of the date of publication of this notice in the **Federal Register.**

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to Yale and any persons filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., November 1, 1982.

James W. Workman,
Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-30435 Filed 11-4-82; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. GP82-56-000]

Amoco Production Co.; Petition for Declaratory Order

Issued November 2, 1982.

Take notice that on September 19, 1982, Amoco Production Company (Amoco) filed a petition for a declaratory order pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207. Amoco requests a declaratory order stating that the interest rate on refunds made pursuant to certain types of excess collections governed principally by the refund provisions of § 270.101(e) of the Commission's regulations were never intended by the Commission to be subject to the prime interest rate level set forth in Commission Order No. 47, Docket No. RM77-22, 44 FR 53493 (September 14, 1979).

Specifically, Amoco states that the Commission could not have intended to apply the prime rate to every conceivable refund situation which might arise under either the Natural Gas Act or the Natural Gas Policy Act of 1978. Amoco further states that there are three general types of refund situations which Amoco believes should not be included within the ambit of Commission Order No. 47: (1) Stripper well disqualifications, (2) Payments in excess of those sought by the seller, and (3) Payments where the seller is a mere stake-holder of the funds.

Amoco requests that the pre-existing 9 percent simple interest per annum figure should become the applicable measure of interest in the above referenced refund situations (except for the disputed zone refunds which should carry 7% simple interest per annum as discussed in Amoco's application for rehearing in Docket No. RI77-32-000).

Any person desiring to be heard or to make any protest with reference to any or all of said petitions for declaratory orders should file, within 30 days, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered but will not 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 must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-30480 Filed 11-4-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RA82-26-000]

Ashland Oil, Inc.; Filing of Petition for Review Under 42 U.S.C. 7194

November 1, 1982.

Take notice that Ashland Oil, Inc. on August 16, 1982, filed a Petition for Review [1] under 42 U.S.C. 7194(b) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a motion to intervene. However, any such person wishing to be a participant must file a notice of participation on or before November 9, 1982, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a motion to intervene on or before November 9, 1982, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.1005(c)).

A notice of participation or motion to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through the Office of General Counsel, the Assistant General Counsel for Regulatory Litigation, Department of Energy, Room 6H-025, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-30479 Filed 11-4-82; 8:45 am]
BILLING CODE 6717-01-M

[1] The petition, styled "Application for Temporary Stay," meets the requirements of 18 CFR 385.1004(a) for purposes of commencing this proceeding.

[Docket No. ER 82-751-000]

Delmarva Power & Light Co.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Granting Waiver, Denying Motion To Reject, Denying Motion for Summary Judgment, and Establishing Hearing and Price Squeeze Procedures

Issued: October 29, 1982.

On August 31, 1982, Delmarva Power & Light Company (Delmarva) submitted for filing a proposed rate increase for firm power service to its three electric cooperative and ten municipal customers. [1] Delmarva is also proposing a new firm wheeling service. The proposed rates would increase revenues by approximately $6.8 million (10.6%) for the calendar year 1983 test period. Delmarva also requests waiver of § 35.14 of our regulations because it proposes to recover capacity-related costs through its fuel clause where power is purchased for purposes of reducing energy costs and where total cost per kilowatt-hour is less than Delmarva's fuel cost. Delmarva requests an effective date of October 30, 1982, for proposed rates. In addition, Delmarva requests that the Commission issue a rate order authorizing the use of normalization for cost of service purposes in order that it may qualify for the ACRS benefits afforded by the Economic Recovery Tax Act of 1981 (ERTA).

Notice of the filing was published in the **Federal Register** with comments due on or before September 23, 1982. On September 22, 1982, five municipalities filed a motion for an extension of time to file protests and motions to intervene. By notice issued September 23, 1982, the Commission's Secretary granted an extension until September 30, 1982. The Public Service Commission of Maryland filed a timely notice of intervention.

Old Dominion Electric Cooperative and three of its member cooperatives (Cooperatives) [2] filed a timely protest, motion to intervene, request for hearing, and a maximum suspension of the proposed rates. In support of their requests, the Cooperatives state that the rates proposed are excessive under the demand allocation methodology employed, and that the information supplied suggests that another methodology should be used. In addition to raising a number of cost of service issues, the Cooperatives also state that

[1] Designated as follows:
Delmarva Power & Light Company
FERC Electric Tariff, Original Volume No. 11. Original Sheet Nos. 1-38 (Supersedes Original Volume No. 10).

the proposed rate increase may create a price squeeze and therefore request a phased hearing.

On September 30, 1982, a group of municipal utilities ("Eastern Shore Cities")[3] filed a protest, motion to intervene, motion to reject part of the filing, and motion for maximum suspension and other relief. The Eastern Shore Cities state that a five month suspension is justified under the suspension standard set forth in *Boston Edison Company*, 12 FERC ¶ 61,211 (1980), and that *Boston Edison* is the proper precedent to apply rather than the standard set forth in *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982). The Eastern Shore Cities allege that a one day suspension would result in Delmarva collecting a rate increase prior to the start of the test year underlying the increase which would be inconsistent with the Commission's rules regarding future test years. In addition to raising various cost of service issues, the Eastern Shore Cities move to reserve price squeeze as an issue if further inquiry reveals the existence of a price squeeze.

Berlin also moves to reject Delmarva's entire increase as applied to Berlin. In support of its request for rejection, Berlin states that as a partial requirements customer which can operate its own generating capacity to reduce its demands on Delmarva's system during hours of peak demand, Delmarva has improperly credited it with an excessive amount of generating capacity. Berlin alleges that although it owns the capacity at issue, Delmarva arbitrarily refuses to recognize contracts which Berlin has made with other utilities to commit that capacity for other purposes.

Also on September 30, 1982, a second group of municipal utilities ("Delmarva Municipalities")[4] filed a motion to intervene, protest, and request for suspension of the filed rates and other relief. In support of their request for a maximum suspension, Delaware Municipalities state that their preliminary analysis shows that under the *West Texas* standard a five month suspension is warranted. In addition, Delaware Municipalities raise cost of service issues involving rate base, expenses, allocation factors, and rate of return.

Delaware Municipalities also move for summary disposition on the issue of a separate rate for each wholesale customer. In support of their motion, the Delaware Municipalities state that the issue was extensively litigated in Docket No. ER80–363–000, that individual customer classifications violate the Federal Power Act, that differences between customers are minor and cannot serve to justify the classifications, and that there have been no significant changes related to this issue since it was litigated. The Delaware Municipalities further request that the Commission initiate an investigation into Delmarva's fuel procurement practices. In support of this request, they state that the Delaware Public Service Commission has found that Delmarva was guilty of imprudence in entering into coal contracts at prices higher than market rates. The municipalities note also that this issue has been set for hearing by the presiding judge in a separate phase of Delmarva's previous rate case in Docket No. ER81–504–000. In addition, the Delaware Municipalities request a price squeeze investigation and raise several issues concerning the proposed wheeling tariff.

Also on September 30, 1982, Joseph R. Biden, Jr., United States Senator from Delaware, filed a protest and request for rejection of the proposed rates or suspension for five months. Senator Biden states that the rate increase would substantially increase the retail rates charged by municipalities to their respective customers, that the wheeling rates proposed will result in a price squeeze, that the proposed individual rates for each customer cannot be cost-justified and are therefore discriminatory, and that the requested rate of return on common equity is excessive.

On October 1, 1982, Delmarva moved for an extension of time until October 15, 1982, in which to respond to the pleadings of the Cooperatives and others in a single additional pleading rather than in several pleadings. By notice issued October 6, 1982, the motion was granted.

On October 15, 1982, Delmarva filed its answer. Delmarva states that its estimates with respect to Berlin's operation of its peaking capacity are reasonable, and cannot be so unreasonable as to require rejection of the filed rates. Delmarva also contends that Berlin will be fully protected by a refund obligation. The company disputes challenges to its method of demand allocation and objects to a proposal that the Commission bifurcate Delmarva's submittal and suspend the transmission rate for a different period than the full and partial requirements rates. With respect to the Delmarva Municipalities' request for a fuel cost investigation, Delmarva acknowledges that the presiding judge has ordered such an investigation in Docket No. ER81–504–000, but states that the Delaware Commission has not issued its final order in Docket No. 81–39. Therefore, Delmarva suggests that if such an investigation is deemed to be appropriate, it should be consolidated with Docket No. ER81–504–000 and deferred pending final resolution of the Delaware Commission's proceedings. Delmarva states that the issue of individual customer classsification should be litigated again in the instant docket because significant changes have occurred since the issue was litigated in Docket No. ER80–363–000, namely that certain customers will now receive wheeling sevices. Finally, Delmarva expresses its view that a one day suspension is appropriate under the Commission's *West Texas* criteria.

On October 21, 1982, the Easton Utilities Commission and the Town of Easton, Maryland (Easton) filed a motion for leave to intervene out of time and a protest and motion to intervene. Because of the lateness of Easton's pleadings and the fact that the period for responses to the motion to intervene has not yet elapsed, we shall leave to the discretion of the presiding judge the question whether to permit Easton to participate as an intervenor.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the Maryland Commission's timely notice of intervention and the unopposed motions to intervene of the Cooperatives, Eastern Shore Cities, and Delaware Municipalities serve to make them parties to this proceeding.

We shall deny Berlin's motion to reject Delmarva's filing. The development of load projections, customer peak-shaving and demand allocators are issues which should be resolved during the course of the hearing which we shall order below. Our review of the submittal indicates that Delmarva has substantially complied with our filing requirements[5] and that no basis exists for rejection.

We shall also deny the motion for summary disposition as to the issue of individual rates for each wholesale customer. This issue has been addressed in Docket No. ER80–363–000 and the parties are now awaiting the presiding

[3] The Mayor and Council of Berlin, Maryland ("Berlin"), the City of Milford, Delaware, and the Board of Public Works of Lewes, Delaware.

[4] The Cities of Newark, New Castle, and Seaford, the Towns of Smyrna and Clayton, and the Mayor and Council of the Town of Middletown, all in Delaware.

[5] *See Municipal Light Boards of Reading and Wakefield, Massachusetts* v. *FPC*, 450 F. 2d 1341 (D.C. Cir. 1971).

judge's initial decision. It would be premature to grant summary disposition on this matter since its has been fully litigated but not yet resolved. However, further hearing on the issue in the instant docket should not be necessary unless there has been a material change in circumstances. The pleadings indicate that the Delaware Municipalities and Delmarva do not agree as to whether conditions have changed significantly since the issue was litigated in Docket No. ER80–363–000. We note that the presiding judge in Docket No. ER81–504–000 has ordered that the decision on this issue in the earlier docket will be binding in the later docket. In the instant proceeding, we will leave it to the presiding judge to determine whether conditions have changed materially since the earlier litigation took place and whether further consideration of the issue is warranted here.

We shall also permit the presiding judge to exercise discretion as to the appropriateness and timing of an investigation into Delmarva's fuel procurement practices. Delmarva is not necessarily correct in its assertion that it makes no sense to investigate the coal purchase issue both in Docket No. ER81–504–000 and in the instant docket since each case involves different test periods and, presumably, different fuel purchases. Again, the presiding judge will be in the best position to ascertain the extent to which circumstances may or may not differ in the two cases.

Consistent with the Commission's decision in *Gulf States Utilities Company*, Docket No. ER82–375–000, 20 FERC ¶ 61,037 (1982), we shall grant waiver of § 35.14 of our regulations in order to allow Delmarva to pass through its fuel clause capacity costs incurred solely to reduce its overall energy cost. However, this waiver is granted on a preliminary basis only and the issue is to be investigated during the hearing in this docket, with revenues recovered under the fuel clause remaining subject to refund.

Our preliminary examination of Delmarva's filing and the pleadings indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

The Commission explained its suspension policy in *West Texas Utilities Company*, Docket No. ER82–23–000, 18 FERC ¶ 61,189 (February 26, 1982). As noted there, where our preliminary examination indicates that revised rates may be unjust and unreasonable, but may not be substantially excessive as described in *West Texas*, we will ordinarily suspend the rates for one day. Despite the contentions of the protestants, our preliminary review suggests that the rates proposed by Delmarva may not yield substantially excessive revenues. As a result, we shall suspend the proposed rates for one day from sixty days after filing, to become effective, subject to refund, on November 1, 1982.[6]

In accordance with the Commission's policy and practice established in *Arkansas Power & Light Company*, Docket No. ER79–339–000 (August 6, 1979), we shall phase the price squeeze issue raised by the intervenors.

Finally, we note that Delmarva has requested that the Commission issue an order approving the use of tax normalization with respect to Accelerated Cost Recovery System (ACRS) property in order to satisfy the requirements of ERTA. According to our review, it appears that the instant filing reflects a normalization method of accounting for post-1980 property additions, that Delmarva's cost of service correctly reflects the effects of normalization, and that Delmarva's submittal meets the requirements of ERTA.

The Commission orders:

(A) The motions for rejection or summary disposition are hereby denied.

(B) Waiver of § 35.14 of the Commission's regulations is hereby granted on a preliminary basis as discussed in the body of this order.

(C) Delmarva's submittal is hereby accepted for filing and suspended for one day from sixty days after filing to become effective, subject to refund, on November 1, 1982.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of Delmarva's rates.

(E) The Commission staff shall serve top sheets in this proceeding on or before November 12, 1982.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) The Commission hereby orders initiation of price squeeze proceedings and further orders that this case be phased so that the price squeeze proceedings begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may order a change in this schedule for good cause shown. The price squeeze issue shall be governed by § 2.17 of the Commission's regulations as it may be modified prior to the commencement of the price squeeze phase of the instant proceeding.

(H) The Secretary shall promply publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-30481 Filed 11-4-82; 8:45 am]

BILLING CODE 6717-01-M

[6] The Commission will not enter into a debate with the Eastern Shore Cities as to the appropriateness of our suspension policy as explained in *West Texas*. Furthermore, we note that the Commission's regulations (18 CFR 35.13) permit a utility to utilize a Period II test year which begins up to three months after the proposed effective date. In this regard, the Eastern Shore Cities are incorrect in asserting that a one day suspension is inconsistent with the regulations regarding future test years.

[Docket No. ER82–732–000]

Duke Power Co.; Order Accepting for Filing and Suspending Rates, Noting Interventions, and Initiating Price Squeeze and Hearing Procedures

Issued: October 29, 1982.

On August 18, 1982, Duke Power Company (Duke) tendered for filing a rate increase for service to 56 wholesale customers.[1] The proposed rate would increase revenues by approximately $44 million (14.7%) for the calendar year 1983 test period. Duke proposes an effective date of November 1, 1982, and requests that the rates be suspended for no more than one day, or until November 2, 1982.

Notice of Duke's filing was published in the **Federal Register** with responses due on or before September 14, 1982. On

[1] *See* Attachment A for customers and rate schedule designations.

September 13, 1982, Lockhart Power Company (Lockhart) filed a motion to intervene and a conditional protest. Lockhart notes that on August 25, 1982, it filed a proposed increase in its own wholesale rates to reflect a pass-through of the Duke rate increase.[2] Lockhart asks that the effective dates for the two rate increases be made coincident.

On September 14, 1982, the South Carolina Association of Municipal Power Systems (SCAMPS) filed a motion to intervene. SCAMPS requests that the proposed rates be suspended but does not object to a one day suspension; SCAMPS briefly notes that the rate increase may prove to be excessive and reserves the right to seek price squeeze procedures at a later date.

ElectriCities of North Carolina (ElectriCites) also filed a timely motion to intervene which seeks suspension of Duke's proposed rates but does not object to a one day suspension. ElectriCities contends that the proposed rates may be excessive although it indicates that it has not yet been able to review the rate filing in detail.

On September 14, 1982, the North Carolina Electric Membership Corporation, the Blue Ridge Electric Membership Corporation, the Saluda River Electric Cooperative, and the Laurens Electric Cooperative (Cooperatives) filed a motion to intervene. As with the other intervenors, the Cooperatives seek suspension of the proposed rate increase, but do not oppose a one day suspension. The Cooperatives briefly address a number of cost of service and rate of return issues.

Finally, on September 14, 1982, the Haywood Electric Membership Corporation (Haywood) filed a protest objecting to Duke's proposed rate increase as well as a proposed rate increase by Carolina Power and Light Company in Docket No. ER82-743-000. Haywood urges a five month suspension but does not identify any specific issues in this proceeding.

Discussion

Under Rule 214(c)(1) of the Commission's Rules of Practice and Procedure, the timely motions to intervene serve to make Lockhart, SCAMPS, ElectriCities, and the cooperatives parties to this proceeding absent opposition within fifteen days of their respective motions.

Our preliminary review of the instant filing and the pleadings indicates that the rates proposed by Duke have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, Docket No. ER82-23-000, 18 FERC ¶ 61,189 (February 26, 1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. In the instant proceeding, our examination suggests that the proposed rates may not yield excessive revenues. We shall therefore suspend the rates for one day to become effective, subject to refund, on November 2, 1982.[3]

In addition, in accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, Docket No. ER79-339 (August 6, 1979), we shall phase the price squeeze issue noted by SCAMPS so that it may be raised, if appropriate, following a commission determination of the rates which would be just and reasonable but for price squeeze.

The Commission orders:

(A) Duke's proposed rates are hereby accepted for filing and suspended for one day from the proposed effective date, to become effective, subject to refund, on November 2, 1982.

(B) Pursuant to the authority contained in and subject to the jurisdiction upon the Federal Energy Regulatory Comission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of Duke's rates.

(C) The Commission staff shall serve top sheets in this proceeding on or before November 10, 1982.

(D) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(E) The Commission hereby orders initiation of price squeeze proceedings and further orders that this case be phased so that the price squeeze proceedings begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The price squeeze issue shall be governed by section 2.17 of the Commission's regulations as it may be modified prior to the commencement of the price squeeze phase of the instant proceeding.

(F) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A.—Duke Power Co., Docket No. ER82-732-000

Rate Schedule Designations, Schedule No. 10—Municipalities and Public Utility Companies

Filed: August 18, 1982.

Note.—The following rate schedule designations incorporate the set of rates on the company's proposed Revised Leaf Nos. 40 and 42 to Schedule Nos. 10 and 11.

Supplement No.	Supersedes supp. No.	FPC rate schedule No.	Customer
23	22	225	City of Albemarle, N.C.
5	4	277	Town of Bostic, N.C.
18	17	258	City of Cherryville, N.C.
22	21	245	City of Concord, N.C.
20	19	232	Town of Cornelius, N.C.
19	18	254	Town of Dallas, N.C.
18	17	257	Town of Drexel, N.C.
25	24	237	Town of Forest City, N.C.
65	64	227	City of Gastonia, N.C.
19	18	255	Town of Granite Falls, N.C.
18	17	264	City of High Point, N.C.
17	16	251	Town of Huntersville, N.C.
22	21	260	City of Kings Mountain, N.C.
21	20	230	Town of Landis, N.C.
15	14	267	City of Lexington, N.C.
19	18	229	Town of Lincolnton, N.C.
24	23	246	Town of Maiden, N.C.
24	23	238	City of Monroe, N.C.
26	25	261	City of Morganton, N.C.
15	12	266	City of Newton, N.C.
19	18	234	Town of Pineville, N.C.
34	33	235	City of Shelby, N.C.
22	20	240	City of Statesville, N.C.
24	23	231	City of Abbeville, S.C.
16	15	259	Clemson University, S.C.
17	16	249	City of Clinton, S.C.
12	11	269	Town of Due West, S.C.
36	35	241	City of Easley, S.C.
21	20	243	Commission of Public Works, Gaffney, S.C.
38	37	250	Commissioners of Public Works, Greenwood, S.C
27	26	226	City of Greer, S.C.

[2] Approximately 80% of the Lockhart rate increase in Docket No. ER82-746-000 represents the pass-through of increased purchased power costs attributable to Duke's rates.

[3] We note that Duke's cost of service reflects rate and accounting treatment for post-1980 property that is normalized in accordance with the requirements of the Economic Recovery Tax Act of 1981. This treatment was previously approved by a letter order dated August 26, 1982, which accepted a rate settlement in Docket No. ER81-550-000.

Supplement No.	Supersedes supp. No.	FPC rate schedule No.	Customer
26	25	244	Commission of Public Works, Laurens, S.C.
15	14	268	City of Newberry, S.C.
21	20	242	Town of Prosperity, S.C.
36	35	228	City of Rock Hill, S.C.
14	13	263	Town of Seneca, S.C.
16	15	256	Town of Westminster, S.C.
19	18	236	Heath Springs Light and Power Company (S.C.)
24	23	252	Lockhart Power Company (S.C.)
18	17	262	South Carolina Electric & Gas Company (Town of Chappels, S.C.)
13	12	11	Yadkin, Inc.
Schedule No. 11—Cooperatives			
40	39	131	Blue Ridge EMC (N.C.)
85	84	248	Crescent EMC (N.C.)
57	56	134	Davidson EMC (N.C.)
32	31	136	Haywood EMC (N.C.)
31	30	137	Pee Dee EMC (N.C.)
35	34	138	Piedmont EMC (N.C.)
90	89	139	Rutherford EMC (N.C.)
45	44	140	Surry-Yadkin EMC (N.C.)
47	46	141	Union EMC (N.C.)
12	11	270	Wake EMC (N.C.)
107	106	142	Blue Ridge Elec. Coop., Inc. (S.C.)
77	76	143	Broad River Elec. Coop., Inc. (S.C.)
131	130	144	Laurens Elec. Coop., Inc. (S.C.)
46	45	145	Little River Elec. Coop., Inc. (S.C.)
89	88	146	York Elec. Coop., Inc. (S.C.)

[FR Doc. 82-30482 Filed 11-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6748-000]

Energenics Systems, Inc.; Application for Preliminary Permit

November 2, 1982.

Take notice that Energenics Systems, Inc. (Applicant) filed on October 4, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6748 to be known as the DeQueen Lake Dam Project located on the Rolling Fork River in Sevier County, Arkansas. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Granville J. Smith II, President, Energenics Systems, Inc., 1717 K Street, NW. Suite 706, Washington, D.C. 20006.

Project Description—The proposed project would utilize the existing Corps of Engineers' DeQueen Dam and Reservoir and would consist of : (1) A new powerhouse containing a single Francis Turbine having a rated capacity of 1.4 MW; (2) the existing 34.5-kV transmission lines owned by the Southwestern Electric Power Company; and (e) appurtenant facilities. The Applicant estimates that the average annual energy output would be 7.4 GWh. The most likely market for the derived energy would be Southwestern Electric Power Company.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $35,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before February 14, 1983, the competing application itself (see: 18 CFR 4.30 et seq. (1981)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be filed with the Commission on or before March 11, 1983, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of the Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before February 14, 1983.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-30466 Filed 11-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6750-000]

Energenics Systems, Inc.; Application for Preliminary Permit

November 1, 1982

Take notice that Energenics Systems, Inc. (Applicant) filed on October 4, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for Project No. 6750 to be known as the Fresno Dam Project located on the Milk River near Havre, in Hill County, Montana. The application in on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Granville J. Smith II, President, Energenics Systems, Inc., 1717 K Street, NW., Suite 706, Washington, D.C. 20006.

Project Description—The proposed project would be located at the Bureau of Reclamation's Fresno Dam and consists of: (1) A proposed steel penstock; (2) a proposed powerhouse to be located on the east side of the existing stilling basin with an installed capacity of 2.5 MW and an average annual generation of 10.2 GWh; (3) transmission lines; and (4) appertenant facilities. All power generated would be sold to the Montana Power Company.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 36 months, during which time engineering,

economic and environmental studies will be conducted to ascertain project feasibility and to support application for a license to construct and operate the project. The estimated cost of permit activities is $35,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before February 11, 1983, the competing application itself (see: 18 CFR 4.30 et seq. (1981)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to file such an application in response to this notice. A notice of intent to file an application for license or exemption must be filed to the Commission on or before January 12, 1983, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et. seq. (1981), as appropriate).

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before February 11, 1983.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-30487 Filed 11-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4241-001]

Hydro Development, Inc.; Application for Exemption for Small Hydroelectric Power Project of 5 MW or Less Capacity

November 1, 1982.

Take notice that on August 30, 1982, Hydro Development, Inc. (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric Project No. 4241 would be located on Volcano Creed near Foresthill, in Placer County, California. Correspondence with the Applicant should be directed to: Mr. David C. Auslam, Jr., Auslam & Associates, Inc., 3327 Longview Drive, Suite 250, North Highlands, California 95660.

Project Description—The proposed Volcano Creek Hydroelectric Project would consist of: (1) A 6-foot-high by approximately 35-foot-long diversion structure; (2) a 42-inch-diameter, 2,000-foot-long conduit; (3) a 27-inch-diameter, 1,800-foot-long penstock; (4) a powerhouse to contain an impulse-type, turbine-generating unit with a rated capacity of 2 MW; and (5) a 1,500-foot-long, 60-kV transmission line to connect to an existing Pacific Gas and Electric Company line. The project would produce about 8.7 million kWh.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the California Department of Fish and Game are requested, for the purposes set forth in Section 408 of the Act, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representative.

Competing Application—Any qualified license applicant desiring to file a competing application must file with the Commission, on or before December 22, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Filing of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Application for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Motion to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Commission Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 22, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION",

"COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-30468 Filed 11-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-764-000]

Jersey Central Power & Light Co.; Order Rejecting for Filing Revised Fuel Adjustment Clause

Issued: October 29, 1982.

On August 25, 1982, as part of a compliance filing required by the Commission to reflect an item of summary disposition in Docket No. ER82-426-000,[1] Jersey Central Power & Light company (JCP&L) tendered for filing a revised fuel adjustment clause which would permit a pass-through of demand-related charges associated with power purchases made in lieu of economic dispatch energy transactions. JCP&L requests an effective date of October 31, 1982, for the clause and further requests that the Commission suspend it for one day to become effective on November 1, 1982, contemporaneous with the designated effective date for the company's proposed Phase B rates filed in Docket No. ER82-426-000.

Notice of the instant filing was published in the **Federal Register.**[2] Timely motions to intervene were filed on September 28, 1982, by the Borough of Madison, New Jersey (Madison), and jointly by Allegheny Electric Cooperative, Inc., and the Boroughs of Butler, Pemberton, Lavallette, and Seaside Heights, New Jersey (Boroughs).

Madison alleges that the fuel adjustment clause may be unjust, unreasonable, unduly preferential and discriminatory; accordingly, Madison requests that the Commission suspend the revised fuel adjustment clause for the maximum period permitted by statute and set the matter for hearing. Madison does not raise any substantive issues, however.

The Boroughs request that the proposed inclusion of demand charges in JCP&L's fuel clause be rejected. In support of their position, the Boroughs contend that the Commission's regulations do not permit the inclusion of demand costs in the fuel clause, and that JCP&L has failed to allege good cause for a waiver of the Commission's regulations. The Boroughs also challenge JCP&L's reliance on *Gulf States Utilities Company* (*Gulf States*),[3] arguing that the instant situation is distinguishable from that presented in *Gulf States.* In particular, the Boroughs state that JCP&L is already recovering the demand charges in its cost of service, and that inclusion of such charges in the fuel adjustment clause would result in double recovery.

On October 6, 1982, JCP&L filed an answer to the motions to intervene. While not opposing the requests to intervene, the company disputes the Boroughs' assertion that JCP&L is already recovering the demand charges which it proposes to pass through the fuel clause in its base rates. The company reiterates its position that the filing is consistent with the Commission's order in *Gulf States.*

Discussion

Because no opposition to their motions to intervene has been received, we note that Madison and the Boroughs are parties to this proceeding, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure.[4]

Absent waiver, § 35.14 of the Commission's regulations precludes the recoupment of demand charges by a utility through its fuel adjustment clause. In addition, without special permission under § 35.17 of the regulations, JCP&L is precluded from filing substitute rate provisions while its previously filed Phase B rates remain subject to suspension. Nonetheless, the company has neither requested nor demonstrated good cause for waiver of these regulations.

As explained in JCP&L's letter of transmittal, the instant filing has been submitted in order to correct for a rate design error discovered in the company's original filing in Docket No. ER82-426-000. Previously, on June 14, 1982, JCP&L sought permission to correct for this error in the Phase A rates by adjusting its base rates (rather than its fuel adjustment clause).[5] By order dated August 12, 1982, the Commission accepted the revised Phase A rates for filing, suspended them for one day, and consolidated the matter with Docket No. ER82-426-000 for purposes of hearing. In the interim, the Commission issued its order in *Gulf States.* Citing the approach taken by the Commission in that order, JCP&L now seeks to correct for the same rate design error not by a revision to its base rates, but rather by interposing an entirely new fuel clause provision which on its face is inconsistent with the Commission's regulations. The company has, however, provided us with no explanation as to why this approach is preferable to the base rate adjustment proposed for the Phase A rates, no indication that the results would differ or that the base rate revision constitutes an inadequate mechanism for correcting the original error and making the company whole, no examples or calculations indicating when and how the fuel clause provisions are intended to operate, and no explanation of the specific criteria under which the clause would operate.

Because it appears that a revision to JCP&L's base rates provides an adequate mechanism to correct for the company's inadvertent rate design error and because no attempt has been made to demonstrate good cause for waiver, we do not find it necessary or appropriate to go further at this stage of the proceeding and take the extraordinary step of allowing the company to revise an improperly developed rate design by waiving both the filing regulations and the fuel clause regulations. In this regard, we do not believe that our decision in *Gulf States* is controlling. In that case, the utility specifically requested appropriate waivers as part of its original submittal and was not seeking to amend a rate during a suspension period. Furthermore, Gulf States provided substantial explanation of and justification for its proposed fuel clause treatment which the Commission considered as presenting good cause for waiver of the regulations and a basis for pursuing the issue at hearing. Given the timing of JCP&L request and the absence of any suporting materials, we cannot

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[1] JCP&L filed a two-phased rate increase in Docket No. ER82-426-000. Summary disposition was ordered as to the cost of service treatment of nuclear radwaste systems. The Phase A rates were suspended for one day to become effective, subject to refund, on June 1, 1982. The Phase B rates, as modified, were suspended until November 1, 1982.

[2] 47 FR 40836 (Sept. 16, 1982).

[3] Docket No. ER82-375-000 (July 9, 1982).

[4] 18 CFR 385.214.

[5] The revisions to the Phase A rates were docketed as Docket No. ER82-610-000.

conclude that similar treatment is warranted and, accordingly, we shall reject the proposed fuel adjustment clause without prejudice to the submittal of revised base demand and energy rates to correct the company's rate design error.

The Commission orders:

(A) JCP&L's revised fuel adjustment clause is hereby rejected as noted in the body of this order.

(B) Docket No. ER82-764-000 is hereby terminated.

(C) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-30483 Filed 11-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CS82-7-001, et al.]

Kaiser Energy, Inc. (Ross and Barker Gas Company, et al.); Applications for "Small Producer" Certificates [1]

November 1, 1982.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 17, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS82-7-001	[1] 10/13/82	Kaiser Energy Inc. (Ross and Barker Gas Company), Kaiser Center, 300 Lakeside Drive, Oakland, California 94643.
CS76-297-000	[2] 9/30/82	OKC Limited Partnership (OKC Corp.), P.O. Box 34190, Dallas, Texas 75234.
CS82-99-000	9/16/82	Sooner Resources, Inc., One Shell Square, 50th Floor, New Orleans, Louisiana 70139.
CS82-100-000	9/27/82	Anderson Oil Company, Inc., P.O. Box 2216, Natchez, Mississippi 39120.
CS83-1-000	10/1/82	March Oil Company, P.O. Box 8505, Wichita, Kansas 67208.
CS83-2-000	10/4/82	Reese Oil & Gas, A Limited Partnership, One Shell Square, Room 1428, New Orleans, Louisiana 70139.
CS83-3-000	10/1/82	Ronald W. Waschka & Patricia H. Waschka, Co.-Trustees of the Ronald W. Waschka Trust (Custodial Agent), c/o First Nat'l Bank & Trust Co., Trust Energy Dept. Box 1, Tulsa, Oklahoma 74193.
CS83-4-000	10/7/82	Heritage Energy Corporation, 3201 Franklin Avenue, Waco, Texas 76710.
CS83-5-000	10/7/82	Doran Energy Corporation, P.O. Box 1091, Alice, Texas 78332.
CS83-6-000	10/12/82	D & D Energy Corporation, P.O. Box 1193, Stillwater, Oklahoma 74076.
CS83-7-000	10/15/82	Delbert W. Chumley, III, 800 Johnson Building, Shreveport, Louisiana 71101.
CS83-8-000	10/18/82	Timothy Biff Chumley, 800 Johnson Building, Shreveport, Louisiana 71101.
CS83-9-000	10/18/82	Delbert W. Chumley, Jr, 800 Johnson Building, Shreveport, Louisiana 71101.
CS83-10-000	10/18/82	Hillin Oil Company, 1212 Main Street, Suite 399, Houston, Texas 77002.
CS83-11-000	10/18/82	A. L. Rhodes, Operator, et al., aba Trey Oil Company, 534 Cypress, Suite 107, Abilene, Texas 79601.
CS83-12-000	10/21/82	A A Energy Corporation, 1500 Fidelity Union Tower, Dallas, Texas 75201.
CS83-13-000	10/21/82	Florence E. King (A A Energy Corporation as Agent), 1500 Fidelity Union Tower Dallas, Texas 75201.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[1] On June 2, 1982, Ross and Barker Gas Company, a West Virginia Corporation, was dissolved. Since Ross and Barker Gas Company is dissolved, Kaiser Energy, Inc., requests that the certificate issued Ross and Barker Gas Company in Docket No. CS76-855 be canceled and the docket closed and that Kaiser Energy, Inc., be shown as successor in interest to Ross and Barker Gas Company.

[2] Effective May 1, 1981, OKC Corp. assigned, transferred and conveyed all its title and interst to OKC Limited Partnership.

[FR Doc. 82-30484 Filed 11-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RM81-45-000, GP83-2-000]

Ladd Petroleum Corp.; Petition for Declaratory Order and Assignment of New Docket Number

November 1, 1982.

On September 18, 1981, Ladd Petroleum Corporation (Ladd) filed with the Federal Energy Regulatory Commission (Commission) a petition for clarification or amendment of Subpart A of Part 271 of the Commission's regulations determine whether qualification or disqualification of stripper wells under section 108 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301, 3318 (Supp. IV 1980), may be based on residue volumes of gas measured at the plant tailgate after the production of natural gas liquids, including reduction of wellhead volumes by volumes used as plant and compressor fuel.

On June 22, 1981, the Commission Staff issued a letter to Ladd indicating only liquid volumes may be excluded from volumes used in qualifying wells as stripper wells under section 108 of the NGPA. Ladd's petition in effect seeks to overturn the interpretation in Staff's letter. It contends that "the qualification and disqualification of stripper wells based on residue volumes is consistent with the NGPA, Congressional intent as expressed in relevant legislative history and jurisdictional agency practice."

Ladd requested that the Commission consider its petition either as one for an interpretive rule under § 1.42 of the Rules of Practice and Procedure (now Rule 1901(i)) or a declaratory order under §§ 1.7(c) and 1.43 of the rules (now Rule 207(a)(2)). Although Ladd's petition was originally docketed as a rulemaking, the Commission will now assign the petition a new docket number consistent with its treatment as a declaratory order and terminate the rulemaking docket.

Any person desiring to participate in this declaratory order proceeding must file a motion to intervene in accordance

with Rule 214 of the Rules of Practice and Procedure, Order No. 225, issued April 28, 1982, effective August 26, 1982 (47 FR 19014, May 3, 1982). All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-30545 Filed 11-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-746-000]

Lockhart Power Company; Order Accepting for Filing and Suspending Rates, Noting Intervention, Establishing Procedures, and Consolidating Dockets

Issued: October 29, 1982.

On August 25, 1982, Lockhart Power Company (Lockhart) tendered for filing proposed changes in its Resale Electric Service Tariff Rate Schedule[1] which would increase rates for firm power service to the City of Union, South Carolina (Union), its only wholesale customer, by approximately $170,300 (5.24%) for the calendar year 1983 test period. Because Lockhart purchases over 80 percent of its power and energy requirements from Duke Power Company (Duke), Lockhart's filing is designed primarily to pass through Lockhart's increased purchased power costs resulting from Duke's revised rates filed in Docket No. ER82-732-000. Lockhart requests an effective date for its rates to coincide with that established for Duke's corresponding rates in Docket No. ER82-732-000.[2]

Notice of Lockhart's filing was published in the **Federal Register** with comments due on or before September 20, 1982. Union filed a timely protest, motion to intervene, request for suspension, and request for a hearing. Union does not oppose the request to place Lockhart's rates into effect coincident with Duke's increase. However, Union stresses that Lockhart's rates must be suspended to preserve Union's right to refunds. Union further requests that any reduction in Duke's proposed rates in Docket No. ER82-732-000 be ordered carried over as a reduction in Lockhart's purchased power costs and rates. Union notes that Lockhart's filing does not simply track Duke's wholesale rate increase; about 26 percent of Lockhart's increase is due to factors other than the increases in the cost of purchased power. Union also asserts that there are various confusing adjustments that have been made to both revenues and expenses that make it difficult, if not impossible, to verify various components of Lockhart's rate increase. In addition, Union states that Lockhart has carried forward many erroneous adjustments which were made in the previous Lockhart rate filing (Docket No. ER81-561-000) and which remain unresolved in that earlier proceeding. Specifically, Union challenges Lockhart's (1) use of an excessive rate case expense, (2) use of an improper capital structure with an excessive rate of return on common equity (3) use of improperly developed allocation factors and wholesale losses, (4) use of improperly developed labor ratios, (5) improper classification of hydroelectric expenses to demand and energy, (6) use of a zero cash working capital allowance, and (7) inclusion of annual hydroelectric license charges dating from November, 1963.

On October 5, 1982, Lockhart filed a response to Union's pleading. The Company does not oppose Union's intervention but responds to the various arguments presented and reiterates its request for an effective date coincident with the effective date of Duke's rates.

Discussion

Since no objection has been made to Union's motion to intervene, pursuant to Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), Union's moton to intervene makes it a party to this proceeding.

Our preliminary review indicates that Lockhart's rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, Docket No. ER82-23-000, 18 FERC ¶ 61,189 (February 26, 1982), we explained that where the Commission's preliminary review suggests that proposed rate may be unjust and unreasonable and may produce substantially excessive revenues, as defined in *West Texas*, we would ordinarily impose a five month suspension. While it appears, under the *West Texas* criteria, that Lockhart,s rates may produce substantially excessive revenues, we shall nonetheless impose a shorter suspension so that the Lockhart and Duke increases may become effective at the same time. As noted, Lockhart's increase (as has been its recent practice) is intended in substantial part to reflect a pass-through of increased purchased power costs attributable to Duke's rates. Lockhart's only affected customer has expressed no objection to a nominal suspension or to coincident effective dates. Under these circumstances, we do not believe that a maximum suspension is either necessary or appropriate. By order issued concurrently in Docket No. ER82-732-000, we are suspending Duke's increased rates for one day from November 1, 1982, to become effective on November 2, 1982, subject to refund. Accordingly, we shall similarly suspend Lockhart's rates to become effective, subject to refund, on November 2, 1982.

Inasmuch as the purchased power expenses properly reflected in Lockhart's cost of service are dependent upon the outcome of the Duke proceeding, we shall require that Lockhart's proposed rates be adjusted, as appropriate, to reflect the rate level ultimately approved for Duke in Docket No. ER82-732-000. Furthermore, we note that the remaining cost of service issues presented by Lockhart's instant filing are essentially identical to those already pending before the Commission in Docket No. ER81-560-000. Given the existence of common questions of law and fact, we shall consolidate Docket Nos. ER82-746-000 and ER81-560-000 for purposes of hearing and decision.[3]

The Commission orders:

(A) Lockhart's proposed rates are hereby accepted for filing and suspended to become effective, subject to refund, on November 2, 1982.

(B) That portion of Lockhart's rates which reflects a flow-through of purchased power costs attributable to Duke's submittal in Docket No. ER82-732-000 shall be subject to the outcome of Docket No. ER82-732-000.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of Lockhart's rates.

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[1] Designated as: *Lockhart Power Company*, Supplement Nos. 13 to Rate Schedule FPC Nos. 2 and 3 (Supersedes Supplement No. 12 to Rate Schedule FPC Nos. 2 and 3).

[2] Duke has requested a November 1, 1982 effective date for its proposed rates.

[3] Our decision to consolidate should engender no undue delay since the prior Lockhart proceeding had been held in abeyance until very recently pending consideration of a settlement in Duke's prior rate case By order dated September 1, 1982, the Commission reinitiated hearing proceedings in Docket No. ER81-560-000.

(D) Docket Nos. ER82-746-000 and ER81-560-000 are hereby consolidated for purposes of hearing and decision.

(E) The Commission staff shall serve top sheets in this proceeding on or before November 11, 1982.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-30465 Filed 11-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6574-000]

Lynn Mines & Mining Co.; Application for Preliminary Permit

November 1, 1982.

Take notice that Lynn Mines and Mining Company (Applicant) filed on August 6, 1982, and supplemented October 4, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a) 825(r)) for Project No. 6574 to be known as the Crow Creek Hydropower Project located on Crow Creek near Radersburg, in Jefferson and Broadwater Counties, Montana. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Kenneth Eggert, Simons, Li & Associates, Inc., 3555 Standford Road, P.O. Box 1816, Fort Collins, Colorado 80522.

Project Description—The proposed project would consist of: (1) Two proposed reinforced concrete dams where the upper dam would be located at Crow Creek Falls and the lower dam would be located a[1] Crow Creek Canyon; (2) two proposed steel penstocks with a total length of approximately 10 miles; (3) a proposed powerhouse containing two turbine generators with a maximum installed capacity of 4 MW and an annual energy output of 9.85 GWh; (4) transmission lines; and (5) appurtenant facilities. The proposed Crow Creek Hydroelectric Project would be located in the Helena National Forest and U.S. lands administered by the Bureau of Land Management. All power generated would be sold to the Montana Power Company.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 36 months, during which time engineering, economic and environmental studies will be conducted to ascertain project feasibility and to support application for a license to construct and operate the project. The estimated cost of permit activities is $280,000.

Competing Application—Anyone desiring to file a competing application for preliminary permit must file to the Commission, on or before January 17, 1983, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept applications for license or exemption from licensing, or a notice of intent to file such an application in response to this notice. A notice of intent to file an application for license or exemption must be filed to the Commission on or before January 17, 1983, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Filing of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than March 18, 1983.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comment, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before January 17, 1983.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above nemed documents must be filed by providing the original and those copies required by the Commission 's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-30469 Filed 11-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-769-000]

Minnesota Power & Light Co.; Order Accepting Rates for Filing, Granting Late Intervention, and Terminating Docket

Issued: October 29, 1982.

On September 2, 1982, Minnesota Power and Light Company (MP&L) submitted for filing an unexecuted amendment to its Integrated Transmission Agreement (IT Agreement) with Cooperative Power Association (CPA) providing for an increase in its charge for system control and load dispatching services to CPA from 0.12 mills/kWh to 0.935 mills/kWh.[1] The proposed charges would

[1] *See* Attachment A for rate schedule designations. The IT Agreement provides for the joint planning and operation of an integrated MP&L/CPA bulk transmission system (34.5 kV and above) in order to supply the parties' load requirements transmission through maximum utilization of transmission facilities without duplication. The agreement provides, *inter alia*, that MP&L will schedule and dispatch CPA's load requirements and that CPA will be assessed accordingly. CPA has similar IT Agreements with Northern States Power Company (NSP) and Otter Tail Power Company (OTP).

produce increased revenues of about $121,000 annually based on the 12 month period ending October 31, 1983.

In addition, MP&L submitted for filing an unexecuted Outlet Facilities Agreement No. 3 applicable to CPA.[2] Under the agreement, MP&L would transmit over its interconnection facilities power and energy from CPA's recently constructed Coal Creek Unit Nos. 1 and 2 to the integrated transmission system. For use of this capacity of the interconnection facilities, CPA may share in the ownership of the interconnection facilities or delay its investment for up to 10 years and pay an annual fixed charge rate of 20 percent of the weighted average annual CPA investment obligation. MP&L requests that the instant submittals become effective on November 1, 1982.

Notice of the filing was published in the Federal Register, with comments due on or before September 29, 1982. On September 21, 1982, CPA filed a protest in which it claimed that the proposed Outlet Agreement No. 3 imposes upon CPA charges that are contrary to both the IT and GA agreements in that such charges "are not based upon a service that MP&L provides for CPA." CPA also asserted that MP&L's proposed charges for scheduling and dispatching services are contrary to the provisions of the IT Agreement.

CPA did not initially move to intervene in this docket; its protest indicated that the parties' disagreements "should be resolved by good faith negotiations." Subsequently, on October 7, 1982, CPA filed a late motion to intervene. in addition to the issues raised in its protest, CPA requests that the MP&L submittal be rejected on the grounds that MP&L has no authority to impose unilaterally upon CPA contracts which are not acceptable to CPA and that the filing is in contravention of existing contracts between CPA and MP&L. In the alternative, CPA requests a maximum suspension and investigation.

On October 21, 1982, MP&L filed a response to CPA's petition to intervene. MP&L does not object to CPA's intervention but does oppose CPA's request for rejection of the filing and for a five-month suspension. MP&L states that previous agreements between the parties do not prohibit either the amendment to the IT Agreement or the new Outlet Facilities Agreement No. 3, and therefore that the *Sierra-Mobile* doctrine has no bearing whatsoever on its filing.

Discussion

Under Rule 211(a)(2) of the Commission's Rules of Practice and Procedure (18 CFR 385.211(a)(2)), CPA's timely protest does not make CPA a party to this proceeding. However, we find that good cause exists to permit CPA to intervene out of time inasmuch as CPA will be directly affected by MP&L's filing, no disruption to the proceeding will result from permitting intervention, and no prejudice or additional burdens will be placed upon existing parties. Accordingly, we shall grant late intervention under Rule 214(d).

With respect to CPA's motion to reject, we note that the intervenor's vague reference to the *Sierra-Mobile* doctrine and contractual inconsistencies provide little basis on which the Commission can consider such claims. CPA has cited no relevant contract provisions or other substantiation for its position. Our own review of the underlying contracts does not reveal an apparent *Sierra-Mobile* bar to the instant unilateral rate filings. As a result, we shall deny CPA's motion to reject the filing.

With respect to the proposed amendment to the IT Agreement, CPA's protest states that MP&L is attempting to impose some of its operating expenses upon CPA and that its rate study contains other errors which accrue to MP&L's benefit. CPA's vague allegations appear to suggest that MP&L somehow failed to functionalize overall system control and load dispatching expenses and that, as a result, CPA will be overcharged. Our analysis indicates that CPA's contention is without merit. MP&L's submittal indicates that it has assigned approximately 40 percent of its system control and load dispatching costs exclusively to the production function and that such costs have been excluded form the CPA charges. Similarly, the balance of the system control and load dispatching expenses (60 percent) have been spread over the total kilowatt-hour sales at appropriate voltage levels and therefore have been implicitly assigned to the distribution function. Moreover, CPA's statement that MP&L's analysis contains other errors which accrue to MP&L's benefit is unspecific and unsupported. In reviewing the filing, we have identified no such errors. Therefore, in the absence of more specific information, we must conclude that CPA's protest is without merit.

With respect to the proposed Outlet Facilities Agreement No. 3, CPA alleges that MP&L's proposed facilities charges are not based on a service that MP&L provides for CPA. Our analysis indicates that CPA's unsupported allegation is in direct conflict with MP&L's submittal and is also at odds with past service relationships between the parties in that integration of CPA's prior power resources into the joint transmission network similarly required its use of interconnection facilities between MP&L and other electric utilities. Use of such facilities is provided for in Outlet Facilities Agreement Nos. 1 and 2. We note also that the terms and conditions of the proposed Outlet Facilities Agreement are similar to those contaned in FERC Rate Schedule No. 126 on file for service between MP&L and United Power Association. As to the rate proposed under the Outlet Facilities Agreement, our analysis indicates that the 20% fixed charge rate is reasonable.

Since CPA has raised no issues of law or fact which would warrant an evidentiary hearing, and since our preliminary analysis indicates that the rates tendered for filing by MP&L are not excessive, MP&L's submittal will be accepted for filing to become effective on November 1, 1982, as requested.

The Commission orders:

(A) CPA's untimely motion to intervene is hereby granted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure.

(B) CPA's motion to reject MP&L's filing is hereby denied.

(C) MP&L's submittal in this docket is hereby accepted for filing to become effective on November 1, 1982, without suspension.

(D) Docket No. ER82–769–000 is hereby terminated.

(E) The Secretary shall promptly publish this order in the **Federal Register.**

[2] In 1967, when MP&L originally filed its IT Agreement, it also filed three related agreements—General Coordinating Agreement (GA) and Outlet Facilities Agreement Nos. 1 and 2. NSP, OTP, MP&L, and CPA are all parties to these agreements. The GA establishes the general framework for the operation of the various IT Agreements and provides that each party has the responsibility to construct transmission facilities (outlet facilities) necessary to deliver its power and energy resources into the integrated transmission system or to contract for use of another party's facilities. Outlet Agreement Nos. 1 and 2 provide and define the transmission facilities used as outlet facilities to deliver power and energy from CPA's then-existing power sources. The proposed Outlet Agreement No. 3 has been filed to provide outlet facilities to wheel power from CPA's newly constructed Coal Creek generating station located in Underwood, North Dakota.

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A—Minnesota Power & Light Co., Docket No. ER82-769-000

Designations	Descriptions
(1) Supplement No. 8 to Rate Schedule FPC No. 89 (Supersedes Supplement No. 5).	Agreement for System Control and Load Dispatching Service.
(2) Rate Schedule FERC No. 137.	Outlet Facilities Agreement No. 3.

[FR Doc. 82-30486 Filed 11-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2853-002]

Montana Department of Natural Resources and Conservation; Application for License (Over 5 MW)

November 1, 1982.

Take notice that Montana Department of Natural Resources and Conservation (Applicant) filed on May 28, 1982, an application for license (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for construction and operation of a water power project to be known as Broadwater Dam Project No. 2853. The project would be located on the Missouri in Broadwater County, Montana. Correspondence with the Applicant should be directed to: Mr. Richard L. Bondy, Montana Department of Natural Resources and Conservation, 32 South Ewing, Helena, Montana 59601.

Project Description—The proposed project would consist of: (1) An existing reservoir with a surface area of 313 acres and a storage capacity of approximately 3,600 acre-feet at normal power pool elevation of 3950.2 feet m.s.l.; (2) an existing concrete gravity dam, 705 feet long and 25 feet high; (3) proposed radial gates to replace existing flashboard system; (4) a proposed powerplant which would include 4 generating units rated at 2,500 kW each; (5) a proposed 100-kV transmission line; and (6) appurtenant facilities. Part of the project would utilize lands owned by the U.S. Bureau of Land Management.

Purpose of Project—The Applicant intends to obtain a power purchase agreement with a public utility or an electric cooperative in the state of Montana.

Competing Applications—Anyone desiring to file a competing application must file to the Commission, or or before January 17, 1983, either the competing application itself (See 18 CFR 4.33 (a) and (d)) or a notice of intent (See 18 CFR 4.33 (b) and (c)) to file a competing application. Filing of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of the Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before January 17, 1983.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above name documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-30470 Filed 11-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-56-000]

Northwest Pipeline Corp.; Settlement Conference

November 1, 1982.

On November 9, 1982, at 10:00 a.m., and on November 10, 1982, at 10:00 a.m., settlement conferences will be convened in the above-referenced proceeding. The conference will be held in a room to be designated at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

All interested parties and Staff will be permitted to attend.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-30471 Filed 11-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-43-004]

Panhandle Eastern Pipe Line Co.; Proposed Changes

In FERC Gas Tariff November 1, 1982.

Take notice the Panhandle Eastern Pipe Line Company (Panhandle) on October 19, 1982, tendered for filing First Revised Sheet Nos. 2370 and 2404 to it's FERC Gas Tariff, Original Volume No. 2.

Panhandle states that these changes are made to reflect Panhandle's current transportation rate in Rate Schedules T–48 an LT–1, which provide for the transportation of natural gas on behalf of United Gas Pipe Line Company (United). These rates reflect Panhandle's current transportation charge effective October 1, 1982, subject to refund, as filed August 31, 1982, in compliance with Ordering Paragraph (B) of the Commission's Order dated April 30, 1982, in Docket No. RP82–58. Panhandle proposes an effective date of October 1, 1982.

A copy of this filing has been served on United.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20416, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 8, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-30472 Filed 11-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP79-84-009]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

November 1, 1982.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on Oct.

15, 1982 tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2:

Third Revised Sheet No. 1666.1
Fourth Revised Sheet No. 1667
Ninth Revised Sheet No. 1733
Ninth Revised Sheet No. 1741
Ninth Revised Sheet No. 1749
Ninth Revised Sheet No. 1759
Sixth Revised Sheet No. 1760.5
Fourth Revised Sheet No. 1768
Ninth Revised Sheet No. 1834
Ninth Revised Sheet No. 1842

Panhandle proposes that these tariff sheets become effective February 1, 1982.

Third Revised Sheet No. 1688
Third Revised Sheet No. 1689
Tenth Revised Sheet No. 1733
Tenth Revised Sheet No. 1741
Tenth Revised Sheet No. 1749
Tenth Revised Sheet No. 1759
Seventh Revised Sheet No. 1760.5
Second Revised Sheet No. 1789
Second Revised Sheet No. 1790
Tenth Revised Sheet No. 1834
Tenth Revised Sheet No. 1842

Panhandle proposes that these tariff sheets become effective November 1, 1982.

Panhandle states that such changes are made to amend Rate Schedules TS–4 and TS–5 for the transportation and storage of natural gas on behalf of various Panhandle customers, with ANR Storage Company (ANR). Specifically, such changes are made to reflect (1) settlement of ANR's rate proceeding in Docket No. RP81–98–000 which was approved to become effective on February 1, 1982 pursuant to the Commission's Order issued August 2, 1982 and (2) Michigan Wisconsin Pipe Line Company's (Mich-Wisc) current transportation charges as filed in compliance with the Commission's Order issued May 28, 1982 in Docket No. RP82–80–000.

A copy of this filing has been served on the various Panhandle customers involved in the service.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Commission's Rule of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 8, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-30487 Filed 11-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6652-000]

Pioneer Hydropower, Inc.; Application for Preliminary Permit

November 2, 1982.

Take notice that Pioneer Hydropower, Inc. (Applicant) filed on August 30, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 6652 to be known as the Middle Fork Hood River Hydroelectric Project located on Middle Fork Hood River, within Mount Hood National Forest in Hood River County, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Carl Rounds, 1885 W. Washington Avenue, Slayton, Oregon 97383.

Project Description—The proposed project would consist of: (1) A 6-foot-high diversion structure; (2) a 60-inch-diameter, 15,300-foot-long penstock; (3) a powerhouse containing a generating unit with a rated capacity of 3,200 kW; and (4) appurtenant facilities. The applicant estimates a 18,720,000 kWh average annual energy production.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant has requested a 36-month permit to prepare a definitive project report including preliminary designs, and results of geological, environmental, and economic feasibility studies. The cost of aforementioned activities along with preparation of an environmental impact report, obtaining agreements with Federal, State, and local agencies, and preparing a license application is estimated by the Applicant to be $77,000. Power would be sold to Portland General Electric Company.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before January 24, 1983, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et. seq. (1981); and Docket No. RM 81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept applications for license or exemption from licensing, or a notice of intent to file such an application in response to this notice. A notice of intent to file an application for license or exemption must be filed to the Commission on or before January 24, 1983, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate).

Filing of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than February 22, 1983.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Commission Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before January 24, 1983.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APLICATION," "COMPETING APPLICATION," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative

of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-30473 Filed 11-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6651-000]

Pioneer Hydropower, Inc.; Application for Preliminary Permit

November 2, 1982.

Take notice that Pioneer Hydropower, Inc. (Applicant) filed on August 30, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6651 to be known as the West Fork Hood River #2 Hydroelectric Project located on West Fork Hood River, within Mount Hood National Forest in Hood River County, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Carl Rounds, 1885 W. Washington Avenue, Slayton, Oregon 97383.

Project Description—The proposed project would consist of: (1) A 6-foot-high diversion structure; (2) a 72-inch-diameter, 11,600-foot-long penstock; (3) a powerhouse containing a generating unit with a rated capacity of 1,350 kW; and (4) appurtenant facilities. The applicant estimates a 7,774,000 kWh average annual energy production.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. Applicant has requested a 36-month permit to prepare a definitive project report including preliminary designs, and results of geological, environmental, and economic feasibility studies. The cost of aforementioned activities along with preparation of an environmental impact report, obtaining agreements with Federal, State, and local agencies, and preparing a license application is estimated by the Applicant to be $77,000. Power would be sold to Portland General Electric Company.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before January 24, 1983, the competing application itself, or a notice of intent to file such an application [see: 18 CFR 4.30 et. seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to file such an application in response to this notice. A notice of intent to file an application for license or exemption must be filed to the Commission on or before January 24, 1983, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate]

Filing of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than February 22, 1983.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Commission Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before January 24, 1983.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-30474 Filed 11-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6650-000]

Pioneer Hydropower, Inc.; Application for Preliminary Permit

November 1, 1982

Take notice that Pioneer Hydropower, Inc. (Applicant) filed on August 30, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6650 to be known as the West Fork Hood River Hydroelectric Project located on West Fork Hood River, within Mount Hood National Forest in Hood River County, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Carl Rounds, 1885 W. Washington Avenue, Slayton, Oregon 97383.

Project Description—The proposed project would consist of: (1) A 6-foot-high diversion structure; (2) a 72-inch-diameter, 10,000-foot-long penstock; (3) a powerhouse containing a generating unit with a rated capacity of 1,880 kW; and (4) appurtenant facilities. The applicant estimates a 10,902,000 kWh average annual energy production.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. Applicant has requested a 36-month permit to prepare a definitive project report including preliminary designs, and results of geological, environmental, and economic feasibility studies. The cost of aforementioned activities along with preparation of an environmental impact report, obtaining agreements with Federal, State, and local agencies, and preparing a license application is estimated by the Applicant to be $77,000. Power would be sold to Portland General Electric Company.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before January 17, 1983, the competing application itself, or a notice of intent to file such an application [see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to file such an application in response to

this notice. A notice of intent to file an application for license or exemption must be filed to the Commission on or before January 17, 1983, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Filing of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than March 18, 1983.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Commission Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before January 17, 1983.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–30475 Filed 11–4–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 3620–001]

Power Authority of the State of New York; Application for Exemption for Small Hydroelectric Power Project of 5 MW or Less Capacity

November 2, 1982.

Take notice that on September 30, 1982, the Power Authority of the State of New York (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 as amended), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric Project No. 3620 would be located on the Mohawk River near the City of Rome in Oneida County, New York. Correspondence with the Applicant should be directed to: Mr. Scott Lilly, Acting General Counsel, 10 Columbus Circle, New York, New York 10019.

Project Description—The proposed Delta Project would consist of (1) The existing New York State—owned Delta Dam, a cyclopean masonry dam, 76 feet high and 1,016 feet long; (2) a reservoir having an area of 2,700 acres and a storage of 63,200 acre-feet at an elevation of 549 feet msl; (3) a new two-branch manifold and a new 84-inch-diameter, 56-foot-long steel penstock; (4) a new 51 by 36.5-foot reinforced concrete powerhouse containing one new 2.2-MW turbine/generator unit operating under an average net head of 61 feet; (5) a new 88-foot-long tailrace lined with 4 inches of reinforced shotcrete; (6) a new switchyard 80 feet east of the existing stilling basin; (7) a new 13.2-kV transmission line 400 feet long; and (8) appurtenant facilities. This exemption application was filed during the term of the Applicant's preliminary permit for Project No. 3620.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the New York State Department of Environmental Conservation are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application—Any qualified license applicant desiring to file a competing application must file to the Commission, on or before December 27, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project or notice of intent to file such a license application. Filing of a timely notice of intent allows an interested person to file the competing license application no latter than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of the Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before December 27, 1983.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTESTS," or "MOTION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-30476 Filed 11-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2789-001]

Raft River Rural Electric Cooperative, Inc.; Application for License (Over 5 MW)

November 2, 1982.

Take notice that Raft River Rural Electric Cooperative, Inc. (Applicant) filed on February 25, 1982, an application for license (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for contruction and operation of a water power project to be known as Eagle Rock Hydroelectric Project No. 2789. The project would be located on Snake River in Power County, Idaho, on lands of the United States administered by the Bureau of Land Management. Correspondence with the Applicant should be directed to: Mr. Bud Tracy, Raft River Rural Electric Cooperative, Inc., Box 617, Malta, Idaho 83342.

Project Description—The proposed project would consist of: (1) A 600-foot-long, 20-foot-high ungated gravity arch concrete spillway structure at rivermile 708.6 on the north channel; (2) a 550-foot-long, 40-foot-high rockfill dam at rivermile 708.5 on the south channel; (3) a reservoir extending 4.7 miles upstream at normal surface elevation 4242 feet; (4) a 3,100-foot-long power canal extending from the south channel; (5) two powerhouses, one on the power canal containing two turbine generating units, each with a rated capacity of 23.5 MW and the other at the spillway containing a turbine generating unit with a rated capacity of 800 kW, producing together an average annual output of 195.1 GWh; and (6) a 3-mile-long transmission line interconnecting with an existing Idaho Power Company distribution line. Proposed recreational development includes fishing access at the dam and tailrace and improved boat launch facilities at the existing Mary's Mine boat ramp. the project requires an access road about one mile long and is expected to cost $89 million.

Purpose of Project—The Applicant expects to sell project output to either the Bonneville Power Administration or to other member utilities of the Pacific Northwest Generating Company.

Competing Applications—Anyone desiring to file a competing application must file with the Commission, on or before January 13, 1983, either the competing application itself (See 18 CFR 4.33 and Part 16) or a notice of intent (See 18 CFR 4.33(b) and (c)) to file a competing application. Filing of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) (1981).

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Commission Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before January 13, 1983.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene, must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-30477 Filed 11-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-43-003]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

November 1, 1982.

Take notice that Trunkline Gas Company (Trunkline) on October 19, 1982, tendered for filing First Revised Sheet Nos. 3078 and 3112 to its FERC Gas Tariff, Original Volume No. 2.

Trunkline states that these changes are made to reflect Panhandle Eastern Pipe Line Company's (Panhandle) current transportation rate in Rate Schedules T–72 and LT–3, which provide for the transportation of natural gas on behalf of United Gas Pipe Line Company (United). These rates reflect Panhandle's current transportation charge effective October 1, 1982, subject to refund, as filed August 31, 1982, in compliance with Ordering Paragraph (B) of the Commission's Order dated April 30, 1982, in Docket No. RP82–58. Trunkline proposes an effective date of October 1, 1982.

A copy of this filing has been served on United.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 8, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-30478 Filed 11-4-82; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act [Pub. L. 92–463, 86 Stat. 770], notice is hereby given of the following advisory committee meeting:

Name: National Petroleum Council.

Date and Time: Wednesday, December 1, 1982—9:00 a.m.

Place: The Madison Hotel, Dolley Madison Ballroom, 15th and M Streets, NW., Washington, D.C.

Contact: Gloria Decker, Information Management Systems Branch, U.S. Department of Energy, 1000 Independence Avenue, SW., Forrestal Building, Room 4D–024, Washington, D.C. 20585; telephone 202/252–8990.

Purpose of Committee: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Tentative Agenda:

—Call to Order by Chairman of the National Petroleum Council.
—Remarks by the Secretary of Energy.
—Reports of the Committees of the National Petroleum Council:
a. Committee on Third World Petroleum Development;
b. Committee on Enhanced Oil Recovery.
—Consideration of Administrative Matters.
—Discussion of Any Other Business Properly Brought Before the National Petroleum Council.
—Public Comment (10 Minute rule).

Public Participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gloria Decker at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on November 1, 1982.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 82-30434 Filed 11-4-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2241-2]

Availability of Environmental Impact Statements Filed October 25 Through October 29, 1982, Pursuant to 40 CFR 1506.9

RESPONSIBLE AGENCY: Office of Federal Activities, General Information, 382–5075 or 382–5076.

Corps of Engineers:
EIS No. 820701, Final, COE, SD, Gregory Hydroelectric Pumped Storage Facility, Gregory County, Due: Dec. 6, 1982.
Department of Energy:
EIS No. 820708, Draft, DOE, MA, Mt. Tom Generating Station Unit 1, Coal Conversion, Hampden County, Due: Dec. 20, 1982.
EIS No. 820707, Final, DOE, CO, PRO Naval Oil Shale Reserves Development Options, Garfield County, Due: Dec. 6, 1982.
Department of Interior:
EIS No. 820705, Draft, BLM, CO, White R. Resource Area, Wilderness Amendments, Moffat/Rio Bianco Cos, Due: Feb. 7, 1983.
EIS No. 820710, Draft, BLM, CO, Glenwood Springs Resource Area Management Plan, Due Feb. 2, 1983.
EIS No. 820709, Draft, BLM, ID, Shoshone and Sun Valley Planning Areas Wilderness Designation, Due: Jan. 11, 1983.
EIS No. 820702, Final, FWS, TX, Matagorda Island, Federal Land Disposition (DOI/GSA), Calhoun County, Due: Dec. 6, 1982.
EIS No. 820699, F Suppl, IBR, NM, Brantley Dam Alignment and Construction, Pecos River, Eddy County, Due: Dec. 6, 1982.
Department of Transportation:
EIS No. 820698, Draft, FHW, NY, NY–31 Relocation, Washington Street to I–490, Monroe County, Due: Dec. 20, 1982.
Environmental Protection Agency:
EIS No. 820704, Draft, EPA, NY, Lake George-Upper Hudson Region WWT Facilities, Grant, Warren County, Due: Jan. 8, 1983.
EIS No. 820706, Final, EPA, MO, Lower Missouri River Basin WWT Facilities, Grant, St. Louis County, Due: Dec. 6, 1982.
General Services Administration:
EIS No. 820703, Final, GSA, TX, Matagorda Island, Federal Land Disposition (GSA/DOI), Calhoun County, Due: Dec. 6, 1982.
Department of Agriculture:
EIS No. 820700, Draft, AFS, OR, Deschutes National Forest Land and Resource Management Plan, Due: Feb. 15, 1982.
Amended Notices:
EIS No. 820505, Draft, AFS, MT, Lewis and Clark National Forest Land and Resource Management Plan, Published FR Aug. 6, 1982—Review extended, Due: Nov. 30, 1982.
EIS No. 82686, *D Revised, COE, FL, Eastpoint Breakwater Harbor Construction, Franklin County, *Published FR Oct. 29, 1982—Incorrect status, Due: Dec. 13, 1982.

Dated: November 2, 1982.

Paul C. Cahill,

Director, Office of Federal Activities.

[FR Doc. 82-30500 Filed 11-4-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59107; TSH-FRL-2240-4]

Toxic Substances; Certain Chemicals; Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's revised statement of interim policy published in the **Federal Register** of November 7, 1980 (45 FR 74378). This notice, issued under section 5(h)(6) of TSCA, announces receipt of three applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by November 22, 1982.

ADDRESS: Written comments, identified by the document control number "[OPTS–59107]" and the specific TME number should be sent to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Management Support Division, Environmental Protection Agency, Rm. E–401, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Dull, Chief, Notice Review Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E–107.

TME 83-6

Close of Review Period. December 10, 1982.

Manufacturer. Confidential.

Chemical. (G) Polymer from PMDA and diamines.

Use/Production. (G) Industrial coating. Prod. range: confidential.

Toxicity. No data submitted.

Exposure. Manufacture and processing, a total of 2 workers, up to 1 hr/da, up to 12 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr will be released to air, land or water.

TME 83-7

Close of Review Period. December 10, 1982.

Importer. American Hoescht.

Chemical. (S) 1,2-benzenediamine, 4-ethoxy, sulfate (1:1).

Use. (S) Intermediate in dye production. Import range: 9 mos. 15,000 kg. (max).

Toxicity Data. No data submitted.

Exposure. Use-dermal, a total of 3 workers, up to 68 hrs/total.

Environmental Release/Disposal. No release. Residues will be disposed of through an on-site NPDES permitted treatment facility.

TME 83-8

Close of Review Period. December 10, 1982.

Manufacturer. Minnesota Mining & Manufacturing.

Chemical. Modified fluoroaliphatic adduct.

Use/Production/Import. (S) Carpet fiber coating. Prod. range: 6 mos.-1000 lbs.

Toxicity Data. Acute oral: > 5 g/kg: Irritation: Skin-(FHSA) 0.5/8.0, minimally; Eye-(FHSA)-43/110.0, mildly: Ames test: Negative.

Exposure. Manufacture-dermal, 3 workers, up to 8 hrs/da, up to 19 da/yr; Processing-dermal, 20 workers, 8 hrs/da, an unknown number of days per year.

Environmental Release-Disposal. Minimal residues will be disposed of in approved landfills.

Dated: November 1, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82-30305 Filed 11-4-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51438; TSH-FRL 2240-5]

Toxic Substances; Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of thirteen PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 83-63, 83-64, 83-65, 83-66, 83-67 and 83-68—January 19, 1983

PMN 83-69, 83-70 and 83-71—January 22, 1983

PMN 83-72, 83-73 and 83-74—January 23, 1983

PMN 83-75—January 24, 1983

Written comments by:

PMN 83-63, 83-64, 83-65, 83-66, 83-67 and 83-68—December 20, 1982

PMN 83-69, 83-70 and 83-71—December 23, 1982

PMN 83-72, 83-73 and 83-74—December 24, 1982

PMN 83-75—December 25,1982

ADDRESS: Written comments, identified by the document control number "[OPTS-51438]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: David Dull, Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460 (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107.

PMN 83-63

Manufacturer. Confidential.

Chemical. (G) Succinate ester amide.

Use/Production. (G) Contained use. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >2 g/kg; Irritation: Skin—0/8.0, Eye—5.0/110 @ 24 hrs.

Exposure. Use: dermal, up to 56 da/yr.

Environmental Release/Disposal. Confidential.

PMN 83-64

Manufacturer. Werner G. Smith, Inc.

Chemical. (G) Oxo alcohol (high boilers), ethoxylated alcohol esters of citric acid.

Use/Production. (S) Metal working lubricant. Prod. range: 20,000-100,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 4 workers, up to 12 hrs/da, up to 72 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air, water and land. Disposal by publicly owned treatment works (POTW)

PMN 83-65

Manufacturer. Confidential.

Chemical. (G) Polymer of disubstituted propenoates.

Use/Production. (G) Component of a specialized industrial formulation. Prod. range: 10-150 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing minimal dermal and inhalation, a total of 10 workers, up to 2 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. No Release. Disposal by incineration.

PMN 83-66

Manufacturer. Confidential.

Chemical. (G) Polymer of disubstituted propenoates.

Use/Production. (G) Component of a specialized industrial formulation. Prod. range: 10-150 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing minimal dermal and inhalation, a total of 10 workers, up to 2 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. No Release. Disposal by incineration.

PMN 83-67

Manufacturer. American Cyanamid Company.

Chemical. (G) Substituted thionocarbamate.

Use/Production. (G) Mineral processing. Prod. range: Confidential.

Toxicity Data. Acute oral: 0.773 g/kg; Acute dermal: > 2 gm/kg; Irritation: Skin—Mild, Eye—Mild; Ames Test: Positive; CHO/HGPRT Forward Mutation Assay—Negative.

Exposure. Manufacture: dermal, up to 16 workers, up to 24 hrs/da, up to 200-300 da/yr.

Environmental Release/Disposal. Minimal release to water.

PMN 83-68

Manufacturer. Confidential.

Chemical. (G) Alkylated isopropylbenzene.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. Acute oral: > 5,000 mg/kg; Acute dermal: > 2,000 mg/kg; Acute Inhalation: 4.39 mg/1; Irritation: Skin—Mild, Eye—Non-irritant; Ames Test: Negative.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 83-69

Manufacturer. Confidential.

Chemical. (G) Mixed C_{21} dicarboxylic amino alkyl amines.

Use/Production. (G) Open use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal and inhalation, a total of 3 workers, up to 3 hrs/da, up to 38 da/yr.

Environmental Release/Disposal. Up to 200kg/yr released to water 38 da/yr. Disposal by POTW.

PMN 83-70

Manufacturer. The Goodyear Tire & Rubber Company.

Chemical. (G) Benzenedicarboxylic acid saturated mixed glycols copolyester.

Use/Production. (S) Industrial resin for powder coating. Prod. range: 100,000-800,000 kg/yr.

Toxicity Data. Acute oral > 5 g/kg; Irritation: Skin—None.

Exposure. Manufacture: dust, a total of 10 workers, up to 8 hrs/da, up to 120 da/yr.

Environmental Release/Disposal. 100-1,000 kg/yr released to land. Disposal by on-site lagoon systems, settling ponds/water treatment basin, incineration and approved landfill.

PMN 83-71

Manufacturer. ALCOLAC, INC.

Chemical. (S) 2-propenoic acid, 2 methyl-, octahydro-2, 5-methane-2H-indeneone [1,2-(b)] oxiren-3(or 4)-yl ester.

Use/Production. (S) Industrial photocurable coating. Prod. range: 5,000-15,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 1 hr/da, up to 3 da/yr.

Environmental Release/Disposal. Disposal by landfill.

PMN 83-72

Importer. Confidential.

Chemical. (G) Benzoquinolinyl-sulfoindenedione.

Use/Import. (S) Colorant for paper. Import range: Confidential.

Toxicity Data. Acute oral: > 5 g/kg; LC_{50}, 48 hrs: > 500 mg/1; Irritation: Skin—Non-irritant, Eye—Moderate.

Exposure. Processing, use, and disposal: dermal, a total of 4 workers, up to 2 hrs/da, up to 60 da/yr.

Environmental Release/Disposal. 100-1,000 kg/yr released to water with 10-100 kg/yr to land. Disposal by incineration.

PMN 83-73

Manufacturer. Confidential.

Chemical. (G) Polymer from PMDA and diamine.

Use-Production. (G) Industrial coating. Prod. range: Confidential.

Tosicity Data. No data submitted.

Exposure. Manufacture: a total of 2 workers, up to 1 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. Less than 10/ kg/yr release to air, water and land.

PMN 83-74

Importer. Confidential.

Chemical. (G) Polymer of styrene, alkyl acrylates and substituted alkyl methacrylates.

Use/Import. Confidential. Import range: 10,000-180,000 kg/yr.

Toxicity Data. Ames Test: Negative.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

PMN 83-75

Manufacturer. Confidential.

Chemical. (G) Sodium 2-substituted propanoate.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: 2 workers, up to 60 min., up to 310 man/hrs/yr.

Environmental Release/Disposal. Disposal by applicable by regulations.

Dated: November 1, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 82-30317 Filed 11-4-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

[Docket No. 82-24]

Order of Further Investigation and Hearing and "Pendente Lite" Approval; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on Docket No. 82-24 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

The proceeding relates to Agreement No. 9925-3, an extension of the cooperative working agreement between Associated Container Transportation, Ltd. and Australian Shipping Commission, trading as Australian National Line. The purpose of this proceeding is to determine, among other things, whether the limitation to six container vessels of an average capacity of 1,350 TEU's per vessel should be varied.

This Finding of No Significant Impact (FONSI) will become final within 20 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 547.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Francis C. Hurney,

Secretary.

[FR Doc. 82-30430 Filed 11-4-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by a Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Allied Bancshares, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares or assets of Allied Bank North Belt, N.A., Houston, Texas, a proposed new bank. Comments on this application must be received not later than November 29, 1982.

Board of Governors of the Federal Reserve System, November 1, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-30440 Filed 11-4-82; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Hartford National Corporation*, Hartford, Connecticut; to acquire 100 percent of the voting shares or assets of The Mattatuck Bank & Trust Company, Waterbury, Connecticut. Comments on this application must be received not later than December 1, 1982.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *SBT Corporation*, Savannah, Georgia; to acquire 90 percent of the voting shares or assets of Central Bank of Georgia, Macon, Georgia. Comments on this application must be received not later than December 1, 1982.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Northeast United Bankcorp, Inc. of Texas*, Fort Worth, Texas; to acquire 100 percent of the voting shares or assets of Cedar Hill National Bank, Cedar Hill, Texas. Comments on this application must be received not later than December 1, 1982.

D. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Ellis Banking Corporation*, Bradenton, Florida; to acquire 51 percent of the voting shares or assets of First Commercial Bank of Live Oak, Live Oak, Florida. This application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Comments on this application must be received not later than December 1, 1982.

Board of Governors of the Federal Reserve System, November 1, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-30445 Filed 11-4-82; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Co.; Proposed de Novo Nonbank Activities

The organization identified in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to this application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggreived by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays Bank PLC* and its subsidiary, Barclays Bank International Limited, each a bank holding company whose principal office is in London, England (consumer finance; Wappingers Falls, New York): To engage through their subsidiaries, BarclaysAmerican/Financial, Inc. and BarclaysAmerican/Retail Services, Inc., in making direct consumer loans, including loans secured by real estate, and purchasing sales finance contracts representing extensions of credit such as would be made or acquired by a consumer finance company, and wholesale financing (floor planning) and acting as agent for the sale of related credit life, credit accident and health and credit property insurance. Credit life and credit accident and health insurance sold as agent may be underwritten or reinsured by BAC's insurance underwriting subsidiaries. This activity would be conducted from an office of BAC located in Wappingers Falls, New York, serving customers in Wappinger Falls and surrounding areas in New York. this notification is for the relocation of an existing office located in Newburgh, New York. Comments on this application must be received not later than November 29, 1982.

Board of Governors of the Federal Reserve System, November 1, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-30439 Filed 11-4-82; 8:45 am]

BILLING CODE 6210-01-M

Barnett Banks of Florida, Inc.; Acquisition of Bank

Barnett Banks of Florida, Inc., Jacksonville, Florida, has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. section 1842(a)(5)) to merge with Great American Banks, Inc., North Miami, Florida. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. section 1842(c)).

Barnett Banks of Florida, Inc., Jacksonville, Florida, is also engaged in the following nonbank activities: servicing and marketing residential mortgage loans originated by

Applicant's banking subsidiaries and furnishing operational support services for its subsidiary banks. In addition to the factors considered under section 3 of the Act (banking factors), the Board will consider the proposal in the light of the company's nonbanking activities and the provisions and prohibitions in section 4 of the Act (12 U.S.C. section 1843).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than November 29, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 1, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-30441 Filed 11-4-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NBSC Corporation*, Sumter, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to The National Bank of South Carolina, Sumter, South Carolina. Comments on this application must be received not later than November 29, 1982.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Interedec (Georgia) N.V.*, Curacao, Netherlands Antilles and Interedec (Georgia) Limited, Nassau, Bahamas; to each become a bankholding company by acquiring directly or indirectly 100 percent of the voting shares NBG Financial Corporation (formerly GRP, Inc.) Atlanta, Georgia and indirectly the shares of its subsidiary banks, The National Bank of Georgia, Atlanta, Georgia; First Bank & Trust Co., Marietta, Georgia; Clayton County Bank, Riverdale, Georgia; and First Commercial Bank, Buford, Georgia. Comments on these applications must be received not later than November 29, 1982.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Sherman Banc Shares, Inc.*, Sherman, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to Sherman Community Bank, Sherman, Illinois. Comments on this application must be received not later than November 29, 1982.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Fordyce Bancshares, Inc.*, Fordyce, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to The First National Bank of Fordyce, Fordyce, Arkansas. Comments on this application must be received not later than November 29, 1982.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Comban Shares, Inc.*, Oklahoma City, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank, Oklahoma City, Oklahoma. Comments on this application must be received not later than November 29, 1982.

F. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Capital Bancshares, Inc.*, Dallas, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Capital Bank, Dallas, Texas. Comments on this application must be received not later than November 29, 1982.

G. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Charter 17 Bancorp, Inc.*, Richmond, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to The First National Bank of Richmond, Richmond, Indiana. This application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Comments on this application must be received not later than November 29, 1982.

Board of Governors of the Federal Reserve System, November 1, 1982

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-30442 Filed 11-4-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First LeHigh Corporation*, Walnutport, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Walnutport State Bank, Walnutport Pennsylvania. Comments on this application must be received not later than December 1, 1982.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Peoples Liberty Bancorporation*, Covington, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Liberty Bank & Trust Company, Covington, Kentucky. Comments on this application must be received not later than December 1, 1982.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Pickens County Bancshares, Inc.*, Jasper, Georgia; to become a bank holding company by acquiring at least 80 percent of the voting shares of Pickens County Bank, Jasper, Georgia. Comments on this application must be received not later than December 1, 1982.

D. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *SBI Corporation*, Southgate, Michigan; to become a bank holding company through the merger with Security Bancorp, Inc., Southgate, Michigan, for the purpose of effectuating a change in the State of Incorporation from Delaware to Michigan. Comments on this application must be received not later than December 1, 1982.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *National Bankshares of La Jolla*, La Jolla, California; to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of La Jolla, La Jolla, California. Comments on this application must be received not later than December 1, 1982.

Board of Governors of the Federal Reserve System, November 1, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 81-30444 Filed 11-4-82; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0433]

Reduction and Pricing of Federal Reserve Float

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board of Governors is requesting public comment on several proposals to reduce and price Federal Reserve float. Public comment is requested on proposals to change Reserve Bank crediting procedures for interterritory check deposits, adopt a new procedure for handling large dollar return items and explicitly price several float categories.

DATE: Comments must be received by December 15, 1982.

ADDRESS: Comments, which should refer to Docket No. R-0433, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding the Availability of Information, 12 CFR 261.6(a).

FOR FURTHER INFORMATION CONTACT: Elliott C. McEntee, Assistant Director (202/452-2231) or Morgan J. Hallmon, Program Manager, Payments Mechanism Planning (202/452-3878), Division of Federal Reserve Bank Operations; or Gilbert T. Schwartz, Associate General Counsel (202/452-3625) or Daniel L. Rhoads, Attorney (202/452-3711), or Robert G. Ballen, Attorney (202/452-3265), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Monetary Control Act of 1980 (Pub. L. 96-221) ("MCA") requires that fees be established for Federal Reserve Bank services and that the Board shall begin putting into effect a schedule of fees not later than September 1, 1981. The MCA sets forth specific services to be priced and requires the Board to establish principles on which the schedules of fees for priced services are to be based.

On December 31, 1980, the Board adopted a set of pricing principles and fee schedules for certain Federal Reserve services. Subsequently, the Board adopted fee schedules for virtually all Reserve Bank services in accordance with the MCA. In its December 31, 1980 action, the Board determined, in response to comments received to the Board's proposals to reduce and price float (45 FR 58689), to proceed with internal operational improvements with high benefit/cost ratios to reduce float before initiating changes in availability schedules and explicit pricing of float. The Board directed the staff to continue studying methods of changing availability schedules as an alternative to explicit pricing of float and report back to the Board.

For several years, the Federal Reserve System has been taking action to reduce float. Since passage of the Monetary Control Act of 1980, float reduction efforts have been intensified. In 1979, daily average Federal Reserve float was $6.7 billion. In 1980, daily average Federal Reserve float decreased to a level of $4.2 billion. During the second quarter of 1982, Federal Reserve float averaged $1.8 billion daily—73 percent below 1979 levels.

After review of proposals to implement additional float reduction efforts and pricing, the Board has determined to solicit comment on three proposals which, collectively, could result in the elimination or pricing of about 80 percent of the $1.8 billion daily average float. The proposals represent a combination of operational changes to reduce Federal Reserve float and explicit pricing of such float remaining after operational improvements are implemented. It is expected that these proposals, if adopted, would be implemented during the second quarter of 1983. The value of Federal Reserve float would be calculated on the basis of the Federal funds rate published in the Board's H.15 (519) release titled "Selected Interest Rates."

The Board believes these proposals are: (1) Consistent with the MCA and previous Board decisions, (2) reasonable in their impact on depository institutions, and (3) operationally feasible for the Reserve Banks. Moreover, these proposals, together with steps taken previously, should contribute to the efficiency of the payments mechanism.

The largest component of Federal Reserve float is associated with the shipment of checks (cash items) between Federal Reserve offices. This interterritory float is created when a Reserve Bank credits, on the basis of a fixed availability schedule, the institution that deposits the checks, but the checks are not received by the paying institution's Federal Reserve office on a timely basis and thus the charge to the paying institution is delayed. Interterritory float arises from checks, including checks contained in "Other Fed" cash letters, shipped on Federal Reserve arranged transportation as well as those shipped on transportation arranged by depository institutions. The Board is requesting comment on a proposal to eliminate or price this category of float by permitting Reserve Banks to modify their crediting practices for interterritory check shipments. The Board expects these crediting procedures, if adopted, to

reduce daily average Federal Reserve float by approximately $900 million. Specifically, each Reserve Bank would offer depository institutions in its district a choice between two or more of the following crediting options:

1. Credit would be given on the day the checks are received on a timely basis by the collecting Federal Reserve Bank ("actual availability");

2. Credit would be given on the basis of a fixed availability schedule (unique to each institution) so that part of an institution's credit for a deposit are deferred an additional day, and, on average, float is zero ("fractional availability"); and

3. Credit would be given on the basis of a fixed availability schedule, with compensation for float being made through either:

a. "as of " adjustments to correct for float after it occurs ("fixed availability with 'as of' adjustments"), or

b. earnings credits on a clearing balance maintained by the depository institution, with the value of float determined at the Federal funds rate, which is the same rate used to compute the earnings credits.

Actual availability would be implemented through an interterritory cash letter monitoring system whereby a Reserve Bank and the depositing bank would know early in the day which cash letters arrived timely at the processing Federal Reserve office. Since the Reserve Banks would be passing credit when charges are made to payor institutions, no float would be created. With fractional availability, a depositing institution would receive partial availability for its interterritory check shipments on the basis of a fixed schedule. This availability would be based on the Reserve Bank's actual experience during a prior period in collecting items for that institution. On average, Federal Reserve float under this procedure should be about zero during the course of a year. Under the fixed availability with "as of" adjustments crediting procedure, the Federal Reserve office in whose territory the depositing institution is located would give provisional credit, based on fixed availability schedules, for check deposits (both direct and consolidated shipments) sent to other Federal Reserve offices. Float incurred by a depositing institution during a reserve maintenance period (Week one) would be caluclated by a Federal Reserve office during the following reserve maintenance period (Week two). An "as of" adjustment would then be made to the depositing institution's account to be effective during the next reserve maintenance period (week three). More detailed descriptions of the four options may be obtained from the Reserve Banks.

As an alternative to changing crediting procedures, it has been suggested that Reserve Banks could explicitly price interterritory check float by charging payor institutions directly for "actual" float or by folding the value of float into check prices. Charging payor institutions directly for float entails complex technical, administrative, accounting, and legal issues. With respect to folding the value of float into check prices, the Federal Reserve does not believe that a consensus exists within the banking industry with respect to the best approach to be taken. The Federal Reserve believes further that to explicitly charge for this float category in an equitable manner would necessitate keeping track of the float created by each individual check. This would be operationally burdensome and would increase costs to depository institutions using Federal Reserve check services.

Another significant component of float is associated with return items. Return item float generally occurs with interterritory shipments when a Reserve Bank office receives from a payor institution within its territory a returned check deposited originally by an institiution outside its territory ("depositing institution"). Current System procedures specify that payor (returning) institutions receive immediate credit for return items. Float arises since current interterritory accounting procedures do not provide for immediate debiting of the depositing institution's account for return items prior to receipt of the items by the depositing institution's local Federal Reserve office. The Board is requesting comment on a proposal to eliminate or price this float by charging the depositing institutions' account for large interterritory return items ($50,000 or more) based on receipt of a wire notification from the returning Federal Reserve office. The depositing institution whose account was being charged would receive from its Reserve Bank the wire notifications as they become available, but in no event later than 3:00 p.m. As an alternative to having its account debited immediately, a depository institution could compensate for return item float through an "as of" adjustment to its account. The accounting notification would reduce return item float by permitting Reserve Banks to make same-day debits and credits. It is contemplated that the notification would contain information concerning the returned item; for example, the notification may state the name of the drawee bank, dollar value of check, payee, reason for return, etc. The dollar cut-off for the wire notification would be reviewed periodically to determine the feasibility of lowering the cut-off value. This proposal would eliminate approximately $150 million of the $200 million in return item float and, if adopted, would be implemented during the second quarter of 1983. Remaining return item float would be valued at the average Federal funds rate and be added to the overhead costs for the check collection service.

Public comment is also requested on a proposal to explicitly price two additional categories of float: holdover float and other intraterritory float. During the first two quarters of 1982, these two categories averaged $390 million daily. Holdover float, resulting when a Federal Reserve office is unable to process for collection check deposits received on a timely basis, would be valued at the average Federal funds rate and added to the overhead costs for the check collection service. Other intraterritory float, resulting primarily from the inability of a Federal Reserve office to make presentment of checks to payor institutions as a result of severe weather, transportation equipment failure, or operational delays, would be priced in the same method as holdover float.

Comment is also requested on operational difficulties that depository institutions may encounter as a result of the anticipated implementation of these proposals, if they are adopted, during the second quarter of 1983.

Further study will be done on the pricing of two other categories of float: float associated with non-check activities such as wire transfers, securities transfers, automated clearing house items and other miscellaneous items ("non-check float"), and float incurred by the System incident to the maintenance of an efficient and reliable payments system during times of a natural disaster and other extraordinary circumstances ("residual float"). It is expected that the results of these further studies and recommendations for pricing these categories of float will be presented to the Board in 1983.

By order of the Board of Governors, November 1, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-30443 Filed 11-4-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meeting: New York District Office, chaired by Mr. George J. Gerstenberg, New York District Director.

DATE: Tuesday, November 16, 1982, 10 a.m. to 12:30 p.m.

ADDRESS: Marymount College, Library Lecture Hall, Marymount Ave., Tarrytown, NY 10591.

FOR FURTHER INFORMATION CONTACT: Marta De Arce or Carolyn L. Hommel, Consumer Affairs Officers, Food and Drug Administration, New York District Office, 850 Third Ave., Brooklyn, NY 11232, 212–965–5043.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices,and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 28, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–30187 Filed 11–4–82; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 82N–0095; DESI 6514]

Drugs for Human Use; Drug Efficacy Study Implementation; Prescription Drugs Offered for Relief of Symptoms of Cough, Cold, or Allergy; Amendment

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: FDA amends a notice of opportunity for hearing which proposed to withdraw approval of the entire new drug application (NDA) for Ambenyl Expectorant. As amended, the proposal applies to the NDA only as it pertains to the old formulation of the product. FDA announces the conditions for marketing the reformulated product, named Ambenyl Cough Syrup, for the indication for which it is regarded as effective.

EFFECTIVE DATE: November 5, 1982.

ADDRESSES: Communications in response to this notice should be identified with Docket No. 82N–0095, and directed to the attention of the appropriate office named below:

Supplements to full new drug applications (identify with NDA number): Division of Surgical-Dental Drug Products (HFN–160), National Center for Drugs and Biologics, Food and Drug Administration, 560 Fishers Lane, Rockville, MD 20857.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFN–530), National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN–310), National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFN–501), National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David T. Read, National Center for Drugs and Biologics (HFN–8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 25, 1982 (47 FR 22604), FDA revoked the temporary exemption from the time limits for completing certain phases of the Drug Efficacy Study Implementation (DESI) program that had been granted for two oral prescription products offered for the relief of symptoms of cough, cold, or allergy. One of these products was Ambenyl Expectorant (NDA 9–319) containing codeine sulfate, bromodiphehydramine hydrochloride, diphenhydramine hydrochloride, ammonium chloride, potassium guaiacolsulfonate, and menthol. The other product, NDA 5–914, which is unaffected by today's amendment. FDA reclassified the two products as lacking substantial evidence of effectiveness, proposed to withdraw approval of the new drug applications for those products in their entirety, and offered an opportunity for a hearing on the proposal.

As previously formulated, NDA 9–319 contained codeine sulfate, bromodiphenhydramine hydrochloride, diphenhydramine hydrochloride, ammonium chloride, potassium guaiacolsulfonate, and menthol; Marion Laboratories, Inc., Pharmaceutical Division, Marion Industrial Park, 10236 Bunker Ridge Rd., Kansas City, MO 64137. The manufacturer of NDA 9–319 has supplemented its NDA to provide for a reformulation of its product. The supplement changes the name of the product from "Ambenyl Expectorant" to "Ambenyl Cough Syrup." The new product contains 10 milligrams codeine phosphate and 12.5 milligrams bromodiphenhydramine hydrochloride per 5 milliliters.

Codeine phosphate was classified as generally recognized as safe and effective by the OTC drug review panel for cough, cold, allergy, bronchodilator, and antiasthmatic (CCABA) drugs (41 FR 38339). Bromodiphenhydramine hydrochloride, which was not reviewed by the OTC drug review panel, was classified by the FDA as effective on September 2, 1977 (DESI 6290; 42 FR 44275). The OTC drug review panel for CCABA drugs concluded that combinations containing an antihistamine and an antitussive, each present in amounts within the effective dosage range, are safe and effective (41 FR 38326).

FDA now amends the May 25, 1982 notice (47 FR 22604): the proposal to withdraw approval of NDA 9–319 does not apply to NDA 9–319 as it pertains to the reformulation described above. The notice, insofar as it affects NDA 9–319, is also amended to include the following:

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that the drug product, as reformulated, is effective for the indication in the labeling conditions below. The drug product lacks substantial evidence of effectiveness in its old formulation, and for other labeled indications. This notice does not prevent FDA, in any future OTC drug monograph, from including any of the ingredients listed above, and requiring labeling different from that approved for prescription use.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications for the formulation now regarded as effective and a supplement to the previously approved new drug application under conditions described herein.

1. *Form of drug.* The preparation is in a syrup form suitable for oral administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The Indication is as follows:

For relief of upper respiratory symptoms and coughs associated with allergy or the common cold.

3. *Marketing Status.* a. Marketing the drug product that is now the subject of an approved or effective new drug application may be continued provided that, on or before January 4, 1983, the holder of the application has submitted (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD–356H (21 CFR 314.1(c)) to the extent required in abbreviated new drug applications (21 CFR 314.1(f)).

b. Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained before marketing such products. The bioavailability regulations (21 CFR 320.21) require any person submitting a full or abbreviated new drug application after July 7, 1977, to include either evidence demonstrating the in vivo bioavailability of the drug or information to permit waiver of the requirement. Marketing drug products before approval of a new drug application will subject those products, and the persons who caused the products to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)), and under the authority delegated to the Director of the National Center for Drugs and Biologics (see 21 CFR 5.70, 5.82 and 47 FR 26913 published in the **Federal Register** of June 22, 1982).

Dated: October 27, 1982.

Harry M. Meyer, Jr.,

Director, National Center for Drugs and Biologics.

[FR Doc. 82-30438 Filed 11-4-82; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Reconsideration Of Disapproval of Alabama State Plan Amendments; Hearing

AGENCY: Health Care Financing Administration (HCFA), HSS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on December 14, 1982 in Atlanta, Georgia to reconsider our decision to disapprove modified Alabama State Plan Amendments 80–13 and 80–18.

CLOSING DATE: Request to participate in the hearing as a party must be received by 15 days after publication.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Bureau of Program Policy, G–20 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207; Telephone (301) 594–8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove two Alabama State plan amendments.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a denial of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with additional requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with additional requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Alabama originally submitted State Plan Amendments 80–13 and 80–18 in 1981. These original submissions were disapproved on November 10, 1981 and the State requested a reconsideration of the determination. The announcement of the reconsideration on these amendments was published on January 22, 1982 (47 FR 3206). At the same time the State requested the reconsideration, it submitted modified State Plan Amendments 80–13 and 80–18 which were also disapproved and on which the State has also requested a reconsideration. This notice addresses the reconsideration request on Alabama's modified State Plan Amendments 80–13 and 80–18.

The issue in this matter relates to the imposition of a copayment on prescription drugs for those eligible individuals who have spendable incomes of more than $25. The effect of this amendment would be to exempt institutionalized individuals from the copayment requirement. The Health Care Financing Administration contends that this provision violated section 1902(a)(10) of the Social Security Act and comparability rules set forth in 42 CFR 440.240.

The notice to Alabama announcing an administrative hearing to reconsider our denial of its State plan amendments reads as follows:

Ms. Faye S. Baggiano,
Acting Commissioner, Alabama Medicaid Agency, 2500 Fairlane Drive, Montgomery, Alabama 36130.

Dear Ms. Baggiano: This is to advise you that your request for reconsideration of the decision to disapprove modified Alabama State Plan Amendments 80–13 and 80–18 was received on October 4, 1982. You have requested a reconsideration of the issue of whether the provisions in these plan amendments with respect to the application of drug copayment requirements for those eligible individuals who have spendable incomes of more than $25, conform to the requirements for approval under the Social Security Act and pertinent Federal requirements.

I am scheduling a hearing on your request to be held on December 14, 1982, at 10:00 a.m. in the 7th floor conference room, 101 Marietta Tower, Spring and Marietta Streets, Atlanta, Georgia. If, however, you wish to postpone the hearing until a hearing date is rescheduled for reconsideration of the original Alabama State Plan Amendments 80–13 and 80–18, so that the hearings can be consolidated we would be glad to set another time.

I have designated Mr. Stanley Krostar as the presiding official. In order to facilitate any communications which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached on (301) 594–8261.

Sincerely yours,
Carolyne K. Davis, Ph.D.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: November 1, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 30510 Filed 11-4-82; 8:45 am]

BILLING CODE 4120-03-M

Medicare Program; Schedule of Limits on Hospital Inpatient Operating Costs for Cost Reporting Periods Beginning on or After October 1, 1982

Correction

In FR Doc. 82-27068, beginning on page 43296 in the issue of Thursday, September 30, 1982, portions of the table appearing in Appendix II were printed illegibly. Those pages are republished as follows:

BILLING CODE 1505-01-M

Appendix II

TABLE HOSPITAL CASE MIX INDEXES

PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX
01-0001	1.0346	* 01-0057	.9298	01-0117	.9857	03-0003	.9587	03-0067	.9547
01-0004	.9522	* 01-0058	.9889	01-0118	.9849	* 03-0004	1.0078	03-0068	.9376
01-0005	1.0141	01-0059	.9242	01-0119	1.0380	03-0005	1.0294	03-0069	1.0563
01-0006	1.0210	01-0060	.9740	01-0120	.9325	03-0006	1.1539	* 03-0070	.8310
01-0007	.9402	01-0061	.9417	01-0121	.9433	03-0007	1.0036	03-0080	1.0825
01-0008	.9685	01-0062	.9211	01-0122	.9212	03-0008	1.0372	04-0001	.9155
01-0009	.9093	01-0064	1.1458	01-0123	.9617	03-0009	1.1357	04-0002	.9540
01-0010	.9061	01-0065	1.0005	01-0124	.9507	03-0010	1.1192	04-0003	.9521
01-0011	1.0243	01-0066	.8925	01-0125	.9360	03-0011	.9685	04-0004	1.1255
01-0012	.9699	01-0067	.9277	01-0126	.9267	03-0012	1.0005	04-0005	1.0219
01-0013	.9236	01-0068	1.0259	01-0127	.9825	03-0013	1.0775	04-0006	1.0051
01-0014	1.0025	01-0069	.9918	01-0128	.8697	03-0014	1.0904	04-0007	1.0803
01-0015	1.0532	01-0070	.9196	01-0129	.9270	03-0016	.9870	04-0008	.9697
01-0016	1.0175	01-0071	.9708	01-0130	1.0073	03-0017	1.0012	04-0009	.9019
01-0017	.9842	01-0072	1.0301	01-0131	.8299	03-0018	1.0812	04-0010	1.0091
01-0018	.5499	01-0073	.9655	01-0133	.8382	03-0019	1.0037	04-0011	.9129
01-0019	.9459	01-0074	.8080	01-0134	.9559	03-0020	1.0054	04-0013	.9524
01-0020	.8562	* 01-0075	1.0139	* 01-0136	.8252	03-0022	1.1612	04-0014	.9027
01-0021	.9372	01-0078	1.0236	01-0137	1.1494	03-0023	1.0266	04-0015	.9342
01-0022	.9405	01-0079	.9910	01-0138	.9878	03-0024	1.1894	04-0016	1.1506
01-0023	1.0314	01-0080	.8942	01-0139	1.2040	03-0025	1.0036	04-0017	1.0754
01-0024	1.0290	01-0081	1.0744	01-0140	1.1453	* 03-0026	.9278	04-0018	.9656
01-0025	.9707	01-0082	.9260	* 01-0141	1.4744	03-0027	.9936	04-0019	.9237
01-0026	.9373	01-0083	.9600	* 01-0142	.8088	03-0030	1.0339	04-0020	1.0134
01-0027	.9004	01-0084	1.0412	01-0143	.9541	03-0033	.9708	04-0021	.9503
01-0028	.9543	01-0085	1.0219	01-0144	.9714	03-0034	.9624	04-0022	.9949
01-0029	1.0491	01-0086	.9238	01-0145	.9471	03-0035	1.0336	04-0024	.9565
01-0030	.9012	01-0087	1.0473	01-0146	.8783	03-0036	.9010	04-0025	.8794
01-0031	.9596	01-0089	.9490	* 01-0147	.9338	03-0037	1.2264	04-0026	1.0268
* 01-0032	.8430	01-0090	1.0407	01-0148	.9483	03-0038	1.0944	04-0027	.9984
01-0033	1.3904	01-0091	.9703	01-0149	1.0635	* 03-0039	.8674	04-0028	.9712
01-0034	.8580	01-0092	1.0646	02-0001	1.0596	03-0040	.9889	04-0029	1.0044
01-0035	.9452	01-0094	.8869	* 02-0002	1.0677	* 03-0041	.9423	04-0030	.8833
01-0036	.8878	01-0095	1.0057	* 02-0004	.9879	03-0043	1.0477	04-0031	.9241
01-0038	.8633	* 01-0096	.9921	* 02-0005	1.1574	03-0044	.9793	04-0032	.9811
01-0039	1.1107	01-0097	.9566	* 02-0006	1.0106	* 03-0046	.9736	04-0033	.8538
01-0040	1.0338	01-0098	.9647	* 02-0007	.9195	* 03-0047	.9275	04-0034	1.0014
* 01-0041	.9851	01-0099	.9291	02-0008	.9155	03-0048	1.0380	04-0035	.9354
01-0043	.9181	01-0100	.9939	* 02-0009	.6116	03-0049	.9682	04-0036	.9895
01-0044	.9219	01-0101	.9457	* 02-0010	.9337	03-0051	.8984	04-0037	1.0776
01-0045	.9578	* 01-0102	.9197	* 02-0011	.9868	03-0054	.9112	04-0039	.9740
01-0046	.9749	01-0103	1.1033	02-0012	1.0292	03-0055	1.0231	04-0040	.9417
01-0047	.8668	01-0104	1.1028	* 02-0013	.9987	03-0057	1.0253	04-0041	1.0417
01-0049	.9286	01-0108	.9305	* 02-0014	.9533	03-0059	.8656	04-0042	1.0471
01-0050	.9248	01-0109	1.0493	* 02-0016	.8522	03-0060	1.0495	04-0043	.9247
* 01-0051	.9308	* 01-0110	.9864	02-0017	.9797	03-0061	1.1273	04-0044	.8993
01-0052	.9170	01-0111	.8592	* 02-0024	.7816	03-0062	.9490	04-0045	.9177
01-0053	1.0054	01-0112	.9511	* 02-0025	1.0737	03-0063	1.0300	04-0047	.9448
01-0054	.9698	01-0113	1.0677	* 02-0026	.8396	03-0064	1.1777	04-0048	.9465
01-0055	.9486	01-0114	1.0036	03-0001	1.0707	03-0065	1.0979	04-0050	.9574
01-0056	1.0870	01-0115	1.0042	03-0002	1.1963	* 03-0066	1.1014	04-0051	.9992

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TABLE HOSPITAL CASE MIX INDEXES

PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX
04-0053	.9185	* 04-0126	1.0822	05-0060	1.0632	05-0117	1.0379	05-0175	1.0623
04-0054	.8869	* 05-0001	1.0503	05-0061	.9693	05-0118	1.0281	05-0177	1.1082
04-0055	1.0773	05-0002	1.0993	05-0063	1.0653	* 05-0119	.8079	05-0179	1.1081
04-0057	.9274	05-0004	1.0329	05-0065	1.0641	05-0121	1.0591	05-0180	1.0887
04-0058	.9376	05-0005	1.0062	05-0066	1.0253	05-0122	1.1661	05-0181	.9678
04-0060	.9152	05-0006	1.0674	05-0067	1.1003	* 05-0123	1.1938	05-0182	1.0978
04-0062	1.0609	05-0007	1.0983	05-0068	.9791	05-0124	1.0841	05-0183	1.0228
04-0063	1.0247	05-0008	1.1221	05-0069	1.1052	05-0125	1.0672	* 05-0185	.9942
04-0064	.9187	05-0009	1.0936	05-0070	1.0491	05-0126	1.0201	05-0186	1.0888
04-0066	.8838	* 05-0010	1.1899	05-0071	1.0868	05-0127	1.1309	05-0187	.9315
04-0067	.8938	05-0011	.9417	05-0072	1.1121	05-0128	1.0881	05-0188	1.1122
04-0068	.9851	05-0013	1.3489	05-0073	1.0736	05-0129	1.0604	* 05-0189	1.0781
04-0069	.9531	05-0014	1.0040	05-0074	.9698	* 05-0130	2.9394	* 05-0190	1.1129
04-0070	.9207	05-0015	1.0420	05-0075	1.1450	05-0131	1.0529	05-0191	1.1058
04-0071	.9965	05-0016	1.0660	05-0076	1.1194	05-0132	1.0510	05-0192	1.0373
04-0072	.9105	05-0017	1.1221	05-0077	1.1434	05-0133	.9907	05-0193	1.0505
04-0074	.9937	05-0018	.9417	05-0078	1.0870	05-0134	1.0181	05-0194	1.0455
04-0075	1.0068	* 05-0019	.9100	05-0079	1.0818	05-0135	.9567	05-0195	1.0529
04-0076	.9882	* 05-0020	.9896	05-0080	1.0429	05-0136	1.0869	05-0196	1.1696
04-0077	.9449	05-0021	.9988	05-0081	1.1381	05-0137	1.0601	05-0197	1.1567
04-0078	1.0009	05-0022	1.1115	05-0082	1.0831	05-0138	1.1444	05-0199	1.1250
04-0080	.9141	05-0024	1.0492	05-0084	1.1915	05-0139	1.1122	05-0200	1.0583
04-0081	.9006	05-0025	1.2531	05-0085	1.0346	05-0140	1.1171	05-0201	1.0606
04-0082	.9679	05-0026	1.0502	05-0086	1.0020	05-0141	1.0420	05-0202	1.0010
04-0084	.9260	* 05-0027	1.1839	05-0087	1.1757	05-0143	.9417	05-0204	1.1469
04-0085	.9208	05-0028	1.1100	05-0088	1.0077	05-0144	1.1534	05-0205	1.0508
04-0087	.9378	05-0029	1.0655	05-0089	1.0915	05-0145	1.1178	05-0207	1.0901
04-0088	1.0296	05-0030	1.0080	05-0090	1.0842	05-0146	1.1398	05-0208	1.0029
04-0090	.9700	* 05-0031	1.1119	05-0091	.9820	05-0147	.9608	* 05-0209	.7240
04-0091	.9381	05-0032	1.0158	05-0092	1.0106	05-0148	.9923	05-0210	1.0689
04-0093	.8725	05-0033	1.0999	05-0093	1.1654	05-0149	1.0466	05-0211	1.0108
04-0095	.8906	05-0034	1.0343	05-0095	1.0640	05-0150	1.1124	05-0212	1.0102
04-0098	1.0039	05-0036	1.0895	05-0096	.9921	05-0151	1.0114	05-0213	1.1067
04-0100	1.0063	05-0038	1.1609	05-0097	1.0683	05-0152	1.0445	05-0214	1.0585
04-0105	.9866	05-0039	1.2146	05-0098	1.0327	05-0153	1.1293	05-0215	1.0984
04-0106	1.0018	05-0040	1.0864	05-0099	1.1207	05-0154	1.0189	05-0216	.9545
04-0107	.9539	05-0041	1.0082	05-0100	1.2639	05-0155	1.0039	05-0217	1.0049
04-0108	.9011	05-0042	.9762	05-0101	1.0427	05-0156	1.0306	05-0219	1.0504
04-0109	.9335	05-0043	1.1811	05-0102	1.0773	05-0158	1.1568	05-0220	.9536
* 04-0113	.9675	05-0045	1.0963	05-0103	1.1932	05-0159	1.0354	05-0221	1.0872
04-0114	1.1595	05-0046	1.0975	05-0104	1.1061	05-0161	.9552	05-0222	1.0323
04-0115	.9674	05-0047	1.3103	05-0107	1.0416	* 05-0162	1.0056	05-0224	1.1189
04-0116	1.0442	05-0049	1.0085	05-0108	1.0849	05-0164	1.0542	05-0225	1.0356
* 04-0117	1.1311	05-0051	.9448	05-0109	1.3265	05-0166	1.2751	05-0226	1.1054
04-0118	.9791	* 05-0052	.9288	05-0110	.9716	05-0167	1.0898	05-0228	1.0844
04-0119	.9696	05-0053	1.1069	05-0111	1.0206	05-0168	1.1207	05-0229	1.0069
* 04-0121	.9364	05-0054	1.1029	05-0112	1.1131	05-0169	1.0666	05-0230	1.0242
04-0122	.9734	05-0055	1.1206	05-0113	1.0196	05-0170	1.0984	05-0231	1.1042
04-0123	.9169	05-0056	1.0334	05-0114	1.0725	05-0172	1.1134	05-0232	1.1021
04-0124	.9507	05-0057	1.1089	05-0115	1.1499	05-0173	1.0071	05-0233	1.0767
04-0125	.8534	05-0058	1.0150	05-0116	1.1537	05-0174	1.1232	05-0234	1.0281

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TABLE HOSPITAL CASE MIX INDEXES

PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX
05-0235	1.0990	05-0299	1.0495	05-0369	1.1126	* 05-0430	.8826	05-0502	1.3915
05-0236	1.0035	05-0300	1.0497	05-0371	1.0813	05-0431	.9537	05-0503	1.0708
* 05-0237	.8983	05-0301	1.0996	05-0372	1.0812	05-0432	1.1060	05-0506	1.0875
05-0238	1.0619	05-0302	1.1155	05-0373	.9721	* 05-0433	.9911	05-0510	1.0649
05-0239	1.1002	* 05-0303	1.0063	05-0375	1.0313	05-0434	1.0618	05-0512	1.1111
05-0240	1.0443	05-0305	1.1071	05-0376	1.1360	05-0435	1.0200	* 05-0513	.9664
05-0241	1.0976	05-0307	1.0662	05-0377	1.0048	05-0436	1.0036	05-0515	1.1002
05-0242	1.1602	05-0308	1.1407	05-0378	1.0130	05-0438	1.1155	05-0516	1.0732
05-0243	1.0764	05-0309	1.0243	05-0379	.9332	05-0440	1.0777	05-0517	1.0420
05-0245	1.1057	05-0310	1.0532	05-0380	1.3454	05-0441	1.3993	* 05-0521	1.1116
05-0248	1.0004	05-0312	1.1577	05-0381	.8845	05-0442	1.0595	05-0522	1.0235
05-0251	1.0077	05-0313	.9583	05-0382	1.0721	05-0443	.9261	05-0523	.9603
05-0253	.9967	05-0314	.9110	05-0383	1.2176	05-0444	1.0365	* 05-0525	1.0766
05-0254	1.0286	05-0315	1.0969	05-0385	1.0487	* 05-0446	.9326	05-0526	1.0355
05-0255	.9390	05-0317	1.0906	05-0387	.8755	05-0447	1.0949	05-0527	1.0513
05-0256	1.3208	05-0318	.9192	05-0388	.9550	05-0448	1.0127	05-0528	1.0920
05-0257	1.0354	05-0319	1.0532	05-0390	1.1106	05-0449	.9370	* 05-0530	.9640
05-0258	.9811	05-0320	1.0525	05-0391	.9881	* 05-0450	1.0573	05-0531	.9041
* 05-0260	1.1385	* 05-0322	1.0555	* 05-0392	1.2100	* 05-0451	1.0101	05-0534	.9184
05-0261	1.0816	05-0323	1.0246	05-0393	1.1586	05-0454	1.3804	05-0535	1.0518
05-0262	1.1190	05-0324	1.1321	05-0394	1.0484	05-0455	1.1442	05-0537	1.0849
05-0263	1.0747	05-0325	1.0465	05-0395	.9514	05-0456	1.0671	05-0539	1.0013
05-0264	1.1383	05-0326	1.0336	05-0396	1.2059	05-0457	1.1651	05-0540	1.0809
05-0266	1.0317	05-0327	1.1433	* 05-0397	1.0350	05-0458	1.0153	05-0541	1.3908
05-0267	1.1833	05-0328	.9962	* 05-0398	1.1045	05-0459	1.0865	05-0542	.9231
05-0268	1.0756	05-0329	.9628	* 05-0399	.8857	* 05-0463	1.0579	05-0543	1.0315
05-0269	1.0368	05-0331	1.0025	05-0400	1.0556	05-0464	1.0729	05-0544	1.0482
05-0270	1.1206	* 05-0333	1.0519	05-0401	1.0851	05-0467	1.0901	05-0549	1.0729
05-0272	1.0457	05-0334	1.0913	05-0403	1.0154	05-0468	1.0478	05-0550	1.0344
* 05-0273	.8579	05-0335	.9486	05-0404	1.0112	05-0469	1.0532	05-0551	1.0817
* 05-0274	.9182	05-0336	1.1598	05-0405	.9514	05-0470	1.1120	* 05-0552	.9953
* 05-0275	1.0802	05-0337	1.0398	* 05-0406	.9480	05-0471	1.0847	* 05-0554	1.1790
05-0276	.9865	05-0342	.9806	05-0407	1.0548	05-0473	1.2459	05-0557	1.0698
05-0277	.9664	05-0343	.9323	05-0410	.9682	05-0476	.9948	05-0559	1.0710
05-0278	1.0413	05-0345	.9918	05-0411	1.0974	05-0477	.9940	05-0560	1.0413
05-0279	1.0057	05-0348	1.1359	05-0413	1.1307	05-0478	1.0485	05-0561	1.1213
05-0280	1.0653	05-0349	.9819	05-0414	1.1125	05-0481	1.0273	05-0562	.9637
05-0281	1.1099	05-0350	1.1158	05-0415	.8636	* 05-0482	.9875	05-0564	1.0121
05-0282	1.0941	05-0351	1.1363	* 05-0416	.9444	05-0483	.9858	05-0565	1.0305
05-0283	1.1172	05-0352	1.0326	05-0417	.9889	05-0485	1.0913	* 05-0566	1.0317
05-0284	1.1284	05-0353	1.1598	05-0418	1.0842	05-0486	1.0504	05-0567	1.0370
05-0285	1.0254	* 05-0355	.9079	05-0419	1.0072	* 05-0487	.9403	05-0568	1.1065
05-0286	.9594	05-0357	1.2248	05-0420	1.0749	05-0488	1.1055	05-0569	1.0741
05-0289	1.0855	05-0359	1.1183	05-0421	1.0771	* 05-0489	1.0789	05-0570	1.1065
05-0290	1.0323	05-0360	1.0917	05-0423	.9665	05-0491	1.0579	05-0571	1.0560
05-0291	1.1492	* 05-0361	1.0395	05-0424	1.1409	05-0492	1.0083	05-0573	1.1066
05-0292	1.1608	05-0362	1.0654	05-0425	1.0968	* 05-0494	1.0395	05-0575	.9224
* 05-0293	.9075	05-0363	1.0364	05-0426	1.0498	05-0496	1.1950	05-0576	.9640
05-0295	1.0769	05-0366	1.0481	* 05-0427	.9760	* 05-0497	.9367	05-0577	1.0591
05-0296	1.0088	05-0367	1.0743	* 05-0428	.9858	05-0498	1.0932	05-0578	.9592
05-0298	.9972	05-0368	.9390	* 05-0429	.9097	* 05-0500	.9199	05-0579	.9911

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PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX
05-0580	.9896	* 05-0640	1.0892	06-0050	.9255	07-0016	1.1284	10-0012	.9770
05-0581	1.0506	05-0641	1.0138	06-0051	.9283	07-0017	1.0225	10-001	.9862
05-0583	1.2181	* 05-0642	.8044	* 06-0052	.9333	07-0018	1.0242	10-0014	1.0416
05-0584	1.0801	05-0644	1.0416	* 06-0053	.9738	07-0019	1.0689	10-0015	1.0358
05-0585	1.0888	* 05-0645	1.1279	06-0054	.9907	07-0020	1.1472	10-0016	.9753
05-0586	.9753	05-0646	.8064	* 06-0055	.8626	07-0021	1.0464	10-0017	1.0839
05-0587	.9757	06-0001	.9486	* 06-0056	.9618	07-0022	1.2445	10-0018	1.0602
05-0588	1.0868	06-0003	1.0336	* 06-0057	.7797	07-0023	.9838	10-0019	1.0808
05-0589	1.0767	06-0004	.9989	* 06-0058	1.0251	07-0024	1.0484	10-0020	1.0086
05-0590	1.0868	06-0005	1.0168	06-0059	.9088	07-0025	1.1823	10-0021	.9695
05-0591	1.0125	06-0006	.9911	06-0060	1.0282	07-0026	1.0465	10-0022	1.2158
05-0592	1.0511	06-0007	1.0078	06-0061	1.0600	07-0027	1.0410	10-0023	1.0085
05-0593	.9632	06-0008	.8868	* 06-0062	1.0315	07-0028	1.1679	10-0024	.9385
05-0594	1.1075	06-0009	1.0184	* 06-0063	1.1251	07-0029	.9985	10-0025	1.1551
05-0595	1.0793	06-0010	.9463	06-0064	1.0099	07-0030	1.0636	10-0026	1.0115
05-0597	1.0394	06-0011	.9858	06-0065	.9968	07-0031	1.0970	* 10-0027	.9664
05-0598	.9729	06-0012	.9686	06-0066	.9139	07-0033	1.1020	10-0028	.9793
05-0599	1.2935	06-0013	1.0154	06-0067	.8997	07-0034	1.0354	10-0029	.9804
05-0601	1.0079	06-0014	1.0369	* 06-0068	.9758	07-0035	1.1284	10-0030	.9513
05-0602	1.1496	06-0015	1.0337	* 06-0069	.8450	07-0036	1.1019	* 10-0031	.8560
05-0603	1.0547	06-0016	.9527	* 06-0070	1.0144	* 07-0037	.6499	10-0032	1.1290
05-0604	1.1203	06-0017	.9992	06-0071	1.0304	* 07-0038	1.1421	10-0033	1.0373
* 05-0605	1.0200	06-0018	.8635	* 06-0072	.9190	08-0001	1.1615	10-0034	1.1021
05-0606	1.0900	06-0019	1.0706	* 06-0073	.9781	08-0002	1.0376	10-0035	1.0338
05-0607	.9800	06-0020	.9613	* 06-0074	.8667	08-0003	1.1027	10-0036	.9892
05-0608	1.0778	06-0022	1.0014	06-0075	1.0633	08-0004	1.1287	10-0038	1.0800
05-0609	1.1174	06-0023	.9647	06-0076	.9018	08-0005	1.0851	10-0039	1.0915
* 05-0611	.8966	06-0024	1.3115	* 06-0077	.8362	08-0006	1.0687	10-0040	1.0897
* 05-0613	.9605	06-0025	.9562	* 06-0081	1.2428	08-0007	1.0391	10-0042	.9966
05-0615	1.0997	06-0026	1.0401	* 06-0083	1.0869	09-0001	1.1799	10-0043	1.0739
05-0616	1.0532	06-0027	1.0632	* 06-0085	.9047	09-0002	1.0920	10-0044	1.0761
* 05-0617	.8250	06-0028	1.1101	06-0087	1.0131	09-0003	1.1162	10-0045	1.0173
05-0618	.9684	* 06-0029	.9215	* 06-0088	.9658	09-0004	1.2551	10-0046	1.0564
05-0619	1.1363	06-0030	1.0857	* 06-0090	.9840	09-0005	1.1097	10-0047	1.0309
05-0622	1.0110	06-0031	1.0368	* 06-0092	.8044	09-0006	1.0508	10-0048	.8510
05-0623	.9256	06-0032	.9919	* 06-0093	.7680	09-0007	.9552	10-0049	1.0703
05-0624	1.0245	06-0033	.9405	07-0001	1.1716	09-0008	1.0531	10-0050	.9590
05-0625	1.2079	06-0034	.9662	07-0002	1.1743	09-0009	.9489	10-0051	.9069
05-0626	.8056	06-0035	1.0208	07-0003	1.0857	* 09-0010	1.0326	10-0052	.9956
05-0627	.8112	06-0036	.9925	07-0004	1.1239	09-0011	1.1699	10-0053	1.0136
05-0628	.8028	06-0037	.9577	07-0005	1.1297	* 09-0014	1.8156	10-0054	.9737
* 05-0629	.8568	* 06-0038	.9725	07-0006	1.0879	10-0001	1.1047	10-0055	.9530
05-0630	1.1375	06-0039	.9189	07-0007	1.1239	10-0002	1.0492	10-0056	.9059
* 05-0631	.8044	* 06-0041	.9562	07-0008	1.0011	10-0004	.9044	10-0057	.9928
05-0632	1.0244	* 06-0042	.9777	07-0009	1.1279	10-0005	1.0036	10-0059	1.0920
05-0633	1.1113	* 06-0043	.8455	07-0010	1.1104	10-0006	.9772	10-0060	1.1890
05-0635	1.0942	06-0044	.9304	07-0011	1.0433	10-0007	1.1535	10-0061	1.0229
05-0636	1.0210	06-0045	.9455	07-0012	1.1111	10-0008	1.0891	10-0062	1.1909
05-0637	1.0329	* 06-0046	.9147	07-0013	1.0735	10-0009	1.0607	10-0063	1.0585
* 05-0638	.8866	* 06-0047	.9334	07-0014	.9824	10-0010	1.0908	10-0065	.9663
* 05-0639	.9900	* 06-0049	.8723	07-0015	1.0063	10-0011	.8645	10-0067	1.0919

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PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX
10-0068	1.0194	* 10-0130	1.0001	10-0191	.9879	10-0249	.9889	* 11-0050	.9495
10-0069	.9774	10-0131	1.0055	10-0193	.8522	* 10-0250	3.6042	11-0051	.9488
10-0070	1.1124	10-0132	1.0454	10-0194	.9503	10-0251	.8703	11-0052	.8921
10-0071	.9729	* 10-0133	.9300	10-0195	1.1248	10-0252	.9354	11-0054	1.0374
10-0072	1.0017	10-0134	.8705	10-0196	1.0076	10-0253	1.1150	11-0055	.9760
10-0073	1.0496	10-0135	1.0648	* 10-0197	1.0208	10-0254	.9234	11-0056	.9613
10-0074	.9607	10-0137	.9518	10-0199	1.0668	11-0001	.9974	11-0059	.9152
10-0075	1.0141	10-0138	.8359	10-0200	1.0819	11-0002	.9603	11-0061	.9567
10-0076	.9899	10-0139	1.0114	10-0201	1.0796	11-0003	1.0356	11-0062	.9341
10-0077	1.0284	10-0140	.8846	10-0203	1.0656	11-0004	1.0166	11-0063	1.0196
10-0078	.8852	10-0142	.9154	10-0204	1.1849	11-0005	1.0828	11-0064	1.1128
10-0079	.9767	10-0143	.9519	10-0206	1.0490	11-0006	.9942	* 11-0065	1.0006
10-0080	1.0332	10-0144	.9881	10-0207	1.0218	11-0007	1.0728	11-0066	1.1051
10-0081	.8676	10-0145	.9887	10-0208	1.0036	11-0008	1.0097	11-0067	.9780
10-0082	1.0544	10-0146	.9399	10-0209	1.0484	11-0009	.9305	11-0069	.9929
10-0083	1.0132	10-0147	.9254	10-0210	1.0439	11-0010	1.3396	11-0070	.8163
10-0084	.9237	10-0149	1.0663	10-0211	.9495	11-0011	.9779	11-0071	.8966
10-0085	.9632	10-0150	.9093	10-0212	.9903	11-0013	.9867	11-0072	.8774
10-0086	1.0474	10-0151	1.0727	10-0213	1.0488	11-0014	.9274	11-0073	.8801
10-0087	1.1213	10-0152	.8621	10-0214	1.0116	11-0015	.9556	11-0074	1.0783
10-0088	1.0924	10-0153	.8601	10-0217	.9847	11-0016	1.0322	11-0075	.9760
10-0089	1.0245	10-0154	1.0564	10-0218	.9773	11-0017	.9245	11-0076	1.1072
10-0090	.9882	10-0156	.8414	10-0219	1.0096	11-0018	.9741	11-0077	.8886
10-0092	1.0535	10-0157	1.0564	10-0220	1.1056	11-0020	.9787	11-0078	1.0745
10-0093	1.0125	10-0159	.9243	10-0221	1.1431	11-0023	.9112	11-0079	1.0780
10-0098	.9748	10-0160	.9319	10-0222	.9371	11-0024	1.0189	11-0080	.9646
10-0099	1.0144	10-0161	1.0465	10-0223	1.0456	11-0025	1.0298	11-0081	1.0469
10-0100	1.0104	10-0162	1.0927	10-0224	.9976	11-0026	.9608	11-0082	1.2181
10-0102	.9059	10-0164	.9364	10-0225	1.0160	11-0027	.9425	11-0083	1.0803
10-0103	.8989	10-0165	.9105	10-0226	.9975	11-0028	1.0789	11-0084	.8953
10-0105	1.0555	10-0166	1.0113	* 10-0227	1.0342	11-0029	1.0317	11-0085	.9776
10-0106	.8790	10-0167	.9782	10-0228	.9764	11-0030	1.0133	11-0086	.9841
10-0107	.9630	10-0168	1.0642	10-0229	1.0459	11-0031	1.0443	11-0087	.9420
10-0108	.8755	10-0169	1.0115	10-0230	.9740	11-0032	.9653	11-0088	.9015
10-0109	.9323	10-0170	1.0257	10-0231	1.2444	11-0033	.9734	11-0089	.9504
10-0110	.9612	10-0172	1.0081	10-0232	.9504	11-0034	1.1193	11-0091	1.0840
10-0112	.8807	10-0173	1.0292	10-0234	1.0258	11-0035	1.1004	11-0092	.9652
10-0113	1.2977	10-0174	.9358	10-0235	1.0534	11-0036	1.2330	11-0093	.9048
10-0114	1.0040	10-0175	.9331	10-0236	.9715	11-0037	.9279	11-0094	.8678
10-0115	.9320	10-0176	1.0514	10-0237	1.1720	11-0038	1.0419	11-0095	1.0702
10-0117	.9864	10-0177	.9559	10-0238	.9783	11-0039	.9886	11-0096	.9533
10-0118	.9901	10-0179	1.0960	10-0239	1.0610	11-0040	.9129	11-0097	.8906
10-0120	.9028	10-0180	1.1515	10-0240	.5652	11-0041	.9626	11-0098	.9393
10-0121	.8678	10-0181	.8695	* 10-0241	.8718	11-0042	.9197	11-0099	.9772
10-0122	.8447	* 10-0182	.9125	10-0242	.9858	11-0043	1.1070	11-0100	1.0052
10-0124	.8598	10-0183	.9125	10-0243	1.0598	11-0044	1.0077	11-0101	.8561
10-0125	.9769	* 10-0184	1.1555	10-0244	1.0611	11-0045	.9523	11-0103	.8847
10-0126	1.0338	10-0185	.9178	* 10-0245	1.1092	11-0046	.9768	11-0104	.9867
10-0127	1.0593	10-0186	1.0584	10-0246	1.0820	11-0047	.9776	11-0105	.9115
10-0128	1.4980	10-0187	1.0043	* 10-0247	.7752	11-0048	.9674	11-0107	1.1934
10-0129	1.0110	10-0189	.9792	10-0248	1.0358	11-0049	.8667	11-0108	.8876

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PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX
14-0131	1.0757	14-0186	1.0059	14-0250	1.1083	15-0032	1.3328	15-0089	1.0891
14-0132	1.1030	14-0187	.9985	14-0251	.9727	15-0033	1.0784	15-0090	1.0402
14-0133	1.0949	14-0188	.9332	14-0252	1.0784	15-0034	1.0002	15-0091	.9713
14-0134	.8843	14-0189	1.0245	14-0253	1.0365	15-0035	1.0292	15-0092	.9613
14-0135	1.0001	14-0190	.9067	* 14-0255	.9337	15-0036	.9461	15-0094	1.0018
14-0136	.9459	14-0191	1.0387	14-0257	.8816	15-0037	1.0041	15-0095	1.0040
14-0137	.9532	14-0192	.9877	14-0258	1.0178	15-0038	.9773	15-0096	.9796
14-0138	.9561	14-0193	.9137	14-0261	1.0674	15-0039	.9895	15-0097	.9888
14-0139	.9725	14-0197	1.0565	14-0271	.9247	15-0042	1.0172	15-0098	.9781
14-0140	1.0045	14-0199	.9592	14-0273	.9015	15-0043	.9707	15-0099	1.0043
14-0141	1.0728	14-0200	1.0574	14-0275	1.0178	15-0044	.9993	15-0100	1.0954
14-0142	1.0965	* 14-0201	.9982	14-0276	1.3649	15-0045	1.0052	15-0101	.9600
14-0143	.9476	14-0202	.9941	14-0280	1.0397	15-0046	1.0729	15-0102	.9647
14-0144	1.0164	14-0203	1.1076	14-0281	1.1799	15-0047	1.0006	15-0103	.9715
14-0145	1.0121	14-0204	1.0508	* 14-0283	2.3495	15-0048	1.0396	15-0104	1.0415
14-0146	.9535	14-0205	.9157	14-0285	.9235	15-0049	.9094	15-0105	1.0010
14-0147	.9941	14-0206	.8806	14-0286	1.0599	15-0050	.9644	15-0106	.9298
14-0148	1.0630	14-0207	1.0110	14-0288	1.0806	15-0051	1.0169	15-0109	1.0217
14-0150	1.1055	14-0208	1.0685	14-0289	1.1009	15-0052	.8781	15-0110	.9448
* 14-0151	.9560	14-0209	1.0833	14-0290	1.0074	15-0053	.9661	15-0111	.9573
14-0152	1.0750	14-0210	1.0080	14-0291	1.0675	15-0054	.9460	15-0112	1.0267
14-0153	.9944	14-0211	1.0427	14-0292	1.0514	15-0056	1.1940	15-0113	.9599
14-0154	1.0394	14-0212	.9807	15-0001	.9787	15-0057	.8652	15-0114	.9761
14-0155	.9948	14-0213	1.0434	15-0002	.9822	15-0058	1.1080	15-0115	.9391
14-0156	1.0546	14-0215	.9742	15-0003	1.0309	15-0059	.9446	15-0122	.9857
14-0157	1.0337	* 14-0216	.9005	15-0004	1.0340	15-0060	1.0174	15-0123	.8553
14-0158	1.0824	14-0217	1.0028	15-0005	1.0277	15-0061	1.0301	15-0124	1.0135
14-0159	.9420	14-0218	.9898	15-0006	1.0284	15-0062	.9578	15-0125	1.0551
14-0160	1.0431	14-0219	.9784	15-0007	1.0149	15-0063	.9717	15-0126	1.2009
14-0161	.9541	14-0220	.9509	15-0008	1.1535	15-0064	.9855	15-0127	.9382
14-0162	1.0286	14-0223	1.1131	15-0009	1.0020	15-0065	1.0155	15-0128	.9452
14-0163	1.0164	14-0224	1.0714	15-0010	1.0072	15-0066	1.0147	15-0129	.9166
14-0164	1.0583	14-0226	.9311	15-0011	1.0521	15-0067	.9263	15-0130	.9525
14-0165	.8730	14-0228	1.0846	15-0012	1.0987	15-0069	.9368	15-0132	1.0524
14-0166	1.0424	14-0229	1.0040	15-0013	.8986	15-0070	.9648	15-0133	1.0403
14-0167	.9681	14-0230	.9467	15-0014	1.0034	15-0071	.9580	15-0134	.9680
14-0168	1.0418	14-0231	1.0658	15-0015	1.0303	15-0072	1.0573	* 15-0135	.9764
14-0170	1.0215	14-0232	1.0187	15-0017	1.2015	15-0073	.9591	16-0001	.9205
14-0171	.9154	14-0233	1.0619	15-0018	1.0592	15-0074	1.1401	16-0002	.9502
14-0172	1.0630	14-0234	.9484	15-0019	.9399	15-0075	1.0524	16-0003	.9897
14-0173	.9496	14-0235	.9532	15-0020	.9974	15-0076	.9954	16-0004	1.0834
14-0174	1.0566	* 14-0236	.8992	15-0021	1.1841	15-0077	1.0376	16-0005	.9499
14-0176	.9868	14-0239	1.0843	15-0022	.9558	15-0078	.9615	* 16-0007	.8623
14-0177	1.0211	14-0240	1.0352	15-0023	1.0127	15-0079	.9625	16-0008	.9767
14-0178	.9128	14-0241	.8310	15-0024	1.0772	15-0081	.9536	16-0009	1.0134
14-0179	1.0802	14-0242	1.0878	15-0025	1.0451	15-0082	1.1286	16-0012	.9807
14-0180	1.1050	14-0243	1.0541	15-0026	.9633	15-0083	.9210	16-0013	1.0353
14-0181	1.0735	14-0245	.9687	15-0027	.9711	15-0084	1.2308	16-0014	.9436
14-0182	1.0406	14-0246	.9598	15-0029	1.1171	15-0085	.8912	16-0016	1.0276
14-0184	.9558	14-0247	.9362	15-0030	.9697	15-0086	.9998	16-0018	.8945
14-0185	1.0298	14-0248	.9415	15-0031	.9029	15-0088	.9699	16-0020	.8993

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16-0021	.9581	16-0074	.9808	16-0134	.8440	17-0039	.8941	17-0098	.9353
16-0023	1.0160	16-0075	.9061	16-0135	.8767	17-0040	1.1699	* 17-0099	1.0272
16-0024	.9611	16-0076	.9179	* 16-0136	.9925	* 17-0041	.9626	* 17-0100	.8490
16-0025	1.1137	16-0077	.9092	16-0138	.9331	17-0043	.9311	17-0101	.9091
16-0026	.9166	16-0079	1.0741	* 16-0139	1.0357	17-0044	.8810	17-0102	.9280
16-0027	1.0456	16-0080	.9781	16-0140	1.0011	17-0045	.8305	17-0103	.9459
16-0028	1.0267	16-0081	1.0225	16-0141	.9115	17-0046	.9044	17-0104	1.0365
16-0029	1.0450	16-0082	1.1818	16-0142	.9403	17-0049	1.0401	17-0105	.9691
16-0030	1.0473	16-0083	1.1449	16-0143	1.0710	* 17-0050	.9425	17-0106	.8446
16-0031	.9544	16-0085	1.1847	16-0145	1.0412	17-0051	.9106	* 17-0108	.8258
16-0032	.9307	16-0086	.9272	16-0146	1.0251	17-0052	.9737	17-0109	.9547
16-0033	1.0855	16-0088	.9139	16-0147	.9815	17-0053	.8806	17-0110	.9756
16-0034	.9578	16-0089	1.0033	* 16-0151	.8897	17-0054	.9530	17-0112	.8927
16-0035	.9000	16-0090	.9390	16-0152	.9414	* 17-0055	.8441	17-0113	1.0255
16-0036	1.0222	16-0091	1.0610	16-0153	1.0469	17-0056	.9074	17-0114	.9989
16-0037	.9784	16-0092	.8927	17-0001	.9804	17-0057	.9101	17-0115	.8819
16-0038	1.0058	16-0093	.9208	17-0002	.9519	17-0058	.9775	17-0116	.9195
16-0039	.9134	16-0094	1.0379	17-0003	1.0500	17-0060	1.0323	* 17-0117	.9174
16-0040	.9568	16-0095	.9385	17-0004	.9334	17-0061	1.0030	* 17-0119	.9149
16-0041	.9560	16-0097	.9333	17-0005	.8790	17-0062	.8635	17-0120	.9478
16-0043	1.0234	* 16-0098	.9197	17-0006	.9879	* 17-0063	.9511	* 17-0121	.9751
16-0044	1.0227	16-0099	.9240	17-0007	.9432	* 17-0064	.8501	17-0122	1.1650
16-0045	1.1427	16-0101	.9995	17-0008	.9114	17-0066	1.0493	17-0123	1.1147
* 16-0046	.9501	16-0102	1.0102	17-0009	.9623	17-0067	.9093	17-0124	.8690
16-0047	1.0347	16-0103	.8508	17-0010	.9665	17-0068	.9580	17-0125	1.0009
16-0048	1.0128	16-0104	.9808	17-0011	1.0141	17-0069	.9182	17-0126	.8696
16-0049	.8698	16-0106	.9571	17-0012	1.1290	17-0070	.9034	17-0128	.8889
16-0050	.9812	16-0107	.9553	17-0013	.9946	17-0072	.8821	17-0130	.9303
* 16-0051	.9901	16-0108	.9884	17-0014	.9344	17-0073	.9041	17-0131	.9607
16-0052	1.0289	* 16-0109	.9328	17-0015	.9967	17-0074	.9848	17-0133	.9858
16-0053	.9819	16-0110	1.1096	17-0016	1.1760	* 17-0075	.9217	* 17-0134	.9263
16-0054	.9678	* 16-0111	1.0084	17-0017	1.0083	17-0076	1.0290	17-0137	1.0516
16-0055	1.0171	16-0112	.9901	17-0018	1.0141	17-0077	.8984	17-0138	.9398
16-0056	.9654	16-0113	.9448	17-0019	1.0148	* 17-0079	.8425	* 17-0139	.8597
16-0057	1.0286	16-0114	.9141	17-0020	1.0225	* 17-0080	.8898	17-0140	.8947
16-0058	1.1657	16-0115	.9372	17-0021	.9227	* 17-0081	1.0354	17-0142	.9509
16-0059	1.0559	16-0116	.9512	17-0022	.9242	* 17-0082	.9320	17-0143	.9998
16-0060	.9281	16-0117	1.1318	17-0023	.9833	17-0084	.9081	17-0144	.9944
16-0061	.8833	16-0118	.9214	17-0024	.9496	17-0085	.9436	17-0145	.9885
16-0062	.9244	* 16-0119	.9106	17-0025	.9231	17-0086	1.1580	17-0146	1.0282
* 16-0063	.9647	16-0120	.8688	17-0026	.9297	17-0087	1.0626	17-0147	1.0502
16-0064	1.0179	16-0121	.9185	17-0027	.9482	17-0088	.9736	17-0148	1.0607
16-0065	.9634	16-0122	.9784	17-0030	.8855	* 17-0089	.9062	17-0150	.9141
16-0066	.9308	16-0123	1.0356	17-0031	.8403	* 17-0090	.8742	17-0151	.9467
16-0067	1.0290	16-0124	.9510	17-0032	.9178	17-0091	.9427	17-0152	.8871
16-0068	.8997	16-0126	.9759	17-0033	.9557	17-0092	.9814	* 17-0159	.9814
16-0069	1.1154	16-0129	.9464	* 17-0034	.9445	17-0093	1.0835	17-0160	.9265
16-0070	.9180	16-0130	.9528	17-0035	.9522	17-0094	.9649	17-0164	.8525
* 16-0071	1.0497	16-0131	1.0527	17-0036	.8950	17-0095	.9685	* 17-0166	1.0426
16-0072	1.0114	* 16-0132	.9886	17-0037	1.0380	* 17-0096	.8993	* 17-0168	.9448
16-0073	.9391	16-0133	1.0089	17-0038	.8562	17-0097	.9378	* 17-0170	.9242

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PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX
17-0171	.9717	18-0048	1.0497	18-0123	1.0436	19-0050	.9178	19-0134	.9204
17-0172	1.0120	18-0049	.9988	18-0124	.9783	19-0053	.9056	19-0135	1.1368
* 17-0173	.9454	18-0050	.9783	18-0125	.9063	19-0054	1.0439	19-0136	.8764
* 17-0174	.9558	18-0051	1.0002	18-0126	.9006	19-0058	.9682	19-0137	.8498
17-0175	1.0579	18-0053	.9866	18-0127	.9969	19-0059	.9419	19-0138	.5773
17-0176	1.0010	18-0054	.9401	18-0128	.9254	19-0060	.9864	19-0139	.9243
* 17-0177	.9164	18-0055	.9449	18-0129	1.0330	19-0064	1.0612	19-0140	.8749
18-0001	1.0122	18-0056	.9912	18-0130	1.0750	19-0065	1.1454	19-0141	.8961
18-0002	.9376	18-0058	.9036	18-0132	1.0564	* 19-0066	.9207	19-0142	.8818
18-0004	.9780	18-0059	.9740	18-0133	1.0649	19-0067	.9409	19-0144	.9663
18-0005	1.0032	18-0060	.8611	19-0001	.9174	19-0071	.8918	19-0145	.8928
18-0006	.8639	18-0062	.8859	19-0002	1.2789	19-0073	.8840	19-0146	1.1411
18-0007	1.0649	18-0063	.8986	19-0003	.9658	19-0075	.9672	19-0147	.9542
18-0008	1.1047	18-0064	.9944	19-0004	1.0075	19-0077	.9987	19-0148	.9517
18-0009	.9675	18-0065	.8533	19-0005	1.0233	19-0078	.9674	19-0149	.9210
18-0010	1.1925	18-0066	.9660	19-0006	1.0148	19-0079	.9462	19-0151	.9628
18-0011	.9579	18-0067	1.2113	19-0007	.8803	19-0081	.8535	* 19-0152	.9838
18-0012	.9795	18-0069	1.0319	19-0008	1.0207	19-0083	.8894	* 19-0155	.9410
18-0013	1.0884	18-0070	.9352	19-0009	.9671	19-0086	1.0137	19-0156	.9267
18-0014	1.0360	18-0072	1.0095	19-0010	.8864	19-0088	.9490	19-0157	.9267
18-0015	.9155	18-0075	.8439	19-0011	.9360	19-0089	1.0009	19-0158	.9844
18-0016	.9699	18-0078	.9465	19-0012	.8814	19-0090	.8424	* 19-0159	.9644
18-0017	1.0037	18-0079	.8907	19-0013	.9803	19-0092	1.0230	19-0160	.9831
18-0018	1.0065	18-0080	.9940	19-0014	.9004	19-0095	.8775	19-0161	.9392
18-0019	.9824	18-0081	1.0675	19-0015	.9627	19-0098	1.1795	19-0162	1.0801
18-0020	.8908	18-0085	1.0824	19-0016	.9893	19-0099	.9810	19-0163	.9547
18-0021	.9064	18-0087	1.0137	19-0017	.9310	19-0101	.8737	19-0164	.8787
18-0023	.9021	18-0088	1.1517	19-0018	.9375	19-0102	1.1081	19-0165	.8611
18-0024	.9271	18-0092	.9191	19-0019	1.0591	19-0103	.8878	19-0166	.9333
18-0025	1.0876	18-0093	1.1228	19-0020	.9669	19-0106	.9563	19-0167	.9420
18-0026	.8585	18-0094	.9708	19-0023	.9003	19-0109	1.0159	19-0168	1.1071
18-0027	.9595	18-0095	.9605	19-0025	1.0073	* 19-0110	1.0195	* 19-0169	.9063
18-0028	.9296	18-0099	.9917	19-0026	1.0000	19-0111	.9848	19-0170	.8880
18-0029	.9716	18-0100	1.0459	19-0027	.9941	19-0112	.9982	* 19-0172	.9548
18-0030	.9341	18-0101	.9256	* 19-0028	.8768	19-0113	1.0491	19-0173	1.0609
18-0031	.8912	18-0102	1.0869	19-0029	1.0121	19-0114	.8853	19-0175	.9783
18-0032	.9382	18-0103	1.1559	19-0033	.8831	19-0115	.9846	19-0176	1.2539
18-0033	.9442	18-0104	1.0416	19-0034	1.0032	19-0116	.9608	19-0177	.9513
18-0034	.9538	18-0105	.9123	19-0035	1.0296	19-0117	.8776	* 19-0178	.9817
18-0035	1.0912	18-0106	.9075	19-0036	1.1530	19-0118	.9524	19-0179	.9411
18-0036	.9096	18-0108	.9367	* 19-0037	.9285	19-0119	.9688	19-0180	.9315
18-0037	1.0687	18-0112	.9345	19-0039	1.0040	19-0120	.8763	19-0182	.9546
18-0038	1.0067	18-0114	.8507	19-0040	.9453	19-0122	.9492	19-0183	.8476
18-0040	1.2414	18-0115	.9200	19-0041	1.0962	19-0124	1.0266	19-0184	.9139
18-0041	.9232	18-0116	.9915	19-0043	.9625	19-0125	1.0500	19-0190	.8928
18-0042	.9290	18-0117	.8604	19-0044	.9023	19-0127	.9472	20-0001	1.1542
18-0043	.9450	18-0118	.9065	19-0045	.9913	* 19-0128	.9146	20-0002	.9663
18-0044	.9571	* 18-0119	.8575	19-0046	1.0724	19-0130	.9105	20-0003	.9418
18-0045	.9607	18-0120	.9169	19-0047	.8959	19-0131	.9010	20-0005	.8287
18-0046	.9980	18-0121	.8653	19-0048	.9627	19-0132	.9766	20-0006	1.0202
18-0047	.9742	18-0122	.9261	19-0049	.9517	19-0133	.9516	20-0007	1.0408

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20-0008	1.0348	21-0007	1.1256	22-0006	1.0690	22-0069	1.0513	22-0129	1.0403
20-0009	1.2570	21-0008	1.0893	22-0008	1.0856	22-0070	1.0531	22-0130	.8948
20-0012	1.0541	21-0009	1.1877	22-0009	1.0391	22-0071	1.3418	22-0131	1.0270
20-0013	1.1206	21-0010	.9586	22-0010	1.0813	22-0072	.9464	* 22-0133	.8903
20-0015	1.0912	21-0011	1.1419	22-0011	1.1047	22-0073	1.0883	22-0135	1.0621
20-0016	1.0160	21-0012	1.0528	22-0012	1.0972	22-0074	1.0257	* 22-0153	.8381
20-0017	1.0195	21-0013	1.0291	22-0015	1.0725	22-0075	.6135	22-0154	.9081
20-0018	.9890	21-0015	1.0890	22-0016	1.0120	22-0076	1.0716	22-0156	1.0532
20-0019	1.0470	21-0016	1.1114	22-0017	1.1343	22-0077	1.0913	* 22-0159	1.1322
20-0020	1.0333	21-0017	1.0328	22-0019	1.0389	22-0079	1.0208	22-0162	1.0539
20-0021	.9798	21-0018	1.1006	22-0020	1.0414	22-0080	1.0895	22-0163	1.2802
* 20-0023	.9221	21-0019	1.1554	22-0021	1.0228	22-0081	.9167	* 22-0167	.5330
20-0024	1.0725	21-0021	1.0111	22-0022	.9233	22-0082	1.0107	* 22-0171	.9701
20-0025	.9990	21-0022	1.1489	22-0023	1.0371	22-0083	1.0490	23-0001	.9001
20-0026	.9751	21-0023	1.0638	22-0024	1.0623	22-0084	1.0752	23-0002	1.0899
20-0027	.9607	21-0024	1.1139	22-0025	1.0631	22-0086	1.1475	23-0003	1.0526
20-0028	.9212	21-0025	.9810	22-0026	1.0501	22-0087	.9053	23-0004	1.1176
* 20-0029	.8781	21-0026	1.0514	22-0028	1.0167	22-0088	1.2643	23-0005	.9903
* 20-0030	1.0667	21-0027	1.0322	22-0029	1.0133	22-0089	1.0742	23-0006	.9663
20-0031	1.0467	21-0028	.9610	22-0030	.9724	22-0090	1.0145	23-0007	.8475
20-0032	1.0921	21-0029	1.2160	22-0031	1.1367	22-0091	1.0125	23-0008	.9735
20-0033	1.2005	21-0030	.9633	22-0033	1.0680	22-0092	1.0452	23-0011	1.0652
20-0034	1.0383	21-0031	1.4180	22-0034	.9636	22-0094	1.0052	23-0012	.9442
20-0037	1.0031	21-0032	1.0238	22-0035	1.0775	22-0095	1.0139	23-0013	1.0779
20-0038	.9609	21-0033	1.0941	22-0036	1.1273	22-0096	.8993	23-0014	.9115
20-0039	1.0693	21-0034	1.0674	22-0038	1.0861	22-0097	.9543	23-0015	1.0057
20-0040	.9744	21-0035	1.1310	22-0040	1.0048	22-0098	1.0137	23-0017	1.1264
20-0041	1.0016	21-0036	1.0745	22-0041	1.1151	22-0099	.9286	23-0019	1.1360
* 20-0043	1.0654	21-0037	1.0281	22-0042	1.0158	22-0100	1.1262	23-0020	1.0384
20-0044	1.0294	21-0038	1.0049	22-0044	1.5153	22-0101	1.0939	23-0021	1.1285
20-0046	1.0923	21-0039	1.0095	22-0045	1.0646	* 22-0102	.9050	23-0022	1.0517
20-0047	.9960	21-0040	1.1698	22-0046	1.0623	22-0104	1.0672	23-0023	1.0135
* 20-0049	.9499	21-0041	1.0280	22-0048	1.0233	22-0105	1.0643	23-0024	1.1266
20-0050	1.0066	21-0042	1.0793	22-0049	.9826	22-0106	1.0525	23-0027	.9902
20-0051	1.0150	21-0043	1.0740	22-0050	.9166	22-0107	.9692	23-0029	1.0781
20-0052	1.0245	21-0044	.9627	22-0051	1.0758	22-0108	1.0716	23-0030	1.0720
* 20-0053	1.0633	21-0045	.9591	22-0052	1.0847	22-0110	1.4161	23-0031	1.0638
* 20-0054	.9639	21-0046	.8778	22-0053	1.0310	22-0111	1.0795	23-0032	1.2909
20-0055	.9502	21-0047	.8542	22-0054	1.0540	* 22-0113	1.0068	23-0034	.9736
* 20-0056	.6518	21-0048	.9861	22-0055	1.0530	22-0114	.9770	23-0035	.9689
20-0062	.9952	21-0049	1.0130	22-0057	1.0286	22-0115	1.0583	23-0036	1.0570
20-0063	1.0699	21-0051	1.1282	22-0058	.9688	22-0116	1.3035	23-0037	1.0990
* 20-0064	.9868	21-0054	1.0135	22-0060	1.0541	22-0117	.9356	23-0038	1.2677
* 20-0065	.9611	21-0055	1.0319	22-0061	1.0307	22-0118	1.2522	23-0039	1.1020
20-0066	1.0967	21-0056	1.1307	22-0062	.8675	22-0119	1.1369	23-0040	1.0149
21-0001	1.0460	21-0057	1.1326	22-0063	1.0012	22-0120	1.0327	23-0041	1.0448
21-0002	1.2424	22-0001	1.0654	22-0064	1.0128	22-0121	.9574	23-0042	.9858
21-0003	1.0945	22-0002	1.2137	22-0065	1.0193	* 22-0122	1.1334	23-0043	.9143
21-0004	1.0691	22-0003	.9432	22-0066	1.0344	22-0123	1.0192	23-0044	.9182
21-0005	1.0886	22-0004	1.0415	22-0067	1.1180	22-0126	1.0500	23-0046	1.1451
21-0006	1.0373	22-0005	1.0650	22-0068	.9745	22-0128	1.0706	23-0047	1.0208

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* 23-0049	.8455	23-0110	.9873	23-0169	1.0750	23-0238	.9554	24-0030	.9867
23-0051	.9821	23-0111	.9960	* 23-0170	.9422	23-0239	.9476	24-0031	.9051
23-0052	1.0386	23-0113	.8063	* 23-0171	.9016	* 23-0240	1.6514	* 24-0033	.9362
23-0053	1.2072	23-0114	.7636	23-0172	.9425	23-0241	1.0063	24-0035	.9908
23-0054	1.1307	23-0115	.9645	23-0173	1.0036	23-0244	1.0368	24-0036	1.0486
23-0055	.9967	23-0116	.9248	23-0174	1.0454	23-0253	1.0061	24-0037	.9316
23-0056	.9656	23-0117	1.2374	* 23-0175	1.0649	23-0254	1.0457	24-0038	1.1182
23-0057	.9486	23-0118	.9849	23-0176	1.0069	* 23-0255	.9682	24-0040	.9863
23-0058	1.0690	23-0119	.9762	23-0177	.8949	23-0256	.9555	24-0041	1.0133
23-0059	1.1489	23-0120	.9417	23-0178	1.0000	23-0257	.9730	24-0043	1.0943
23-0060	.9719	23-0121	1.0000	* 23-0179	.9152	* 23-0258	.8890	24-0044	1.0564
23-0062	.9815	23-0122	1.0053	23-0180	.9485	23-0259	.9931	24-0045	.9748
23-0063	1.0620	* 23-0123	.9099	23-0181	.9621	* 23-0260	.7722	24-0046	1.1192
23-0065	1.0642	23-0124	1.0747	23-0183	.9513	23-0261	1.0595	24-0047	1.0605
23-0066	1.0149	23-0125	1.2363	23-0184	.9435	* 23-0262	1.1735	24-0048	.9796
* 23-0067	.8938	23-0126	1.1601	23-0186	.8739	* 23-0264	.8651	24-0049	1.2427
23-0068	1.0975	23-0128	1.0797	23-0188	1.0262	23-0265	1.0451	24-0050	.9879
23-0069	1.0182	23-0129	1.2708	23-0189	.9714	23-0266	1.0327	24-0051	1.0323
23-0070	1.0451	23-0130	1.1545	* 23-0190	.8755	23-0268	1.0833	24-0052	1.1077
* 23-0071	1.0608	23-0132	1.0952	23-0191	.8970	23-0269	1.0678	24-0053	1.1601
23-0072	1.0472	23-0133	1.0803	23-0193	.9767	23-0270	1.0197	24-0054	.9500
23-0075	1.0511	23-0134	.9545	23-0194	1.0035	23-0271	1.0146	24-0055	1.0660
23-0076	1.1255	23-0135	1.0014	23-0195	1.1300	* 23-0272	.8755	24-0056	1.0424
23-0077	1.1733	23-0137	1.0047	* 23-0196	.8802	23-0273	1.2589	24-0057	1.1249
23-0078	.9466	23-0138	.8970	23-0197	1.0523	24-0001	1.0656	24-0058	1.0069
23-0079	.9881	23-0139	.9357	23-0199	.9859	24-0002	1.1283	24-0059	.9169
23-0080	.9756	23-0140	.9577	23-0201	.8719	24-0003	.9951	24-0061	1.1724
23-0081	1.0196	23-0141	1.1122	* 23-0203	.9321	24-0004	1.2218	24-0062	.9931
23-0082	.9461	23-0142	1.1031	23-0204	1.1156	* 24-0005	.9512	24-0063	1.1076
23-0084	.9237	23-0143	1.0139	23-0205	1.0521	24-0006	.9328	24-0064	.9471
23-0085	.9287	23-0144	.9612	23-0207	1.0266	24-0007	.9512	24-0065	.9365
23-0086	.9242	23-0145	1.0225	23-0208	.9517	24-0008	1.0410	24-0066	.9358
23-0087	1.0576	23-0146	1.1145	* 23-0211	.9315	24-0009	.9740	* 24-0068	1.4289
23-0089	1.0329	23-0147	1.0164	23-0212	1.0032	24-0010	1.3412	24-0069	1.0280
23-0090	1.0040	23-0149	1.0399	23-0213	.9925	24-0011	1.0023	24-0071	.9339
23-0092	1.0503	23-0150	1.1375	23-0216	1.1073	24-0013	.9536	24-0072	.8808
23-0093	1.0873	23-0151	1.1642	23-0217	.9092	24-0014	1.0053	24-0073	.9363
23-0095	.9848	23-0152	1.0088	23-0219	.9320	24-0016	1.0454	24-0074	.9632
23-0096	.9776	23-0153	1.0161	23-0221	1.0071	24-0017	.9514	24-0075	1.0413
23-0097	1.0900	23-0154	.9997	23-0222	1.0553	24-0018	.9845	24-0076	.9624
23-0098	1.0978	23-0155	.9854	23-0223	1.0645	24-0019	.8914	* 24-0077	.8600
23-0099	.9788	23-0156	1.1978	23-0224	.9951	24-0020	.9570	24-0078	1.0444
23-0100	1.0042	23-0157	1.0871	23-0225	.9934	* 24-0021	.9362	24-0079	.9191
23-0101	.9659	23-0158	.8946	23-0227	.9757	24-0022	1.0091	24-0080	1.1055
23-0102	1.0280	23-0159	1.0064	23-0228	1.0492	24-0023	.9175	24-0081	1.0838
23-0103	.9883	* 23-0161	.9430	23-0230	1.1236	24-0024	1.0207	24-0082	.9974
23-0104	1.1505	* 23-0162	.9334	23-0231	.9588	24-0025	.9579	24-0083	.9231
23-0105	1.1475	23-0163	.8883	* 23-0232	.9410	24-0026	1.0604	24-0084	1.0736
23-0106	1.0781	23-0165	1.1926	23-0235	.9122	24-0027	1.0167	24-0085	.9966
23-0107	1.0371	23-0167	1.0476	23-0236	1.0200	24-0028	1.0315	24-0086	.9419
23-0108	.9997	23-0168	.9064	23-0237	.9693	24-0029	.9304	24-0087	.9785

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28-0103	1.0067	30-0016	1.0289	31-0044	1.0607	31-0108	1.0690	* 32-0067	.8381
28-0104	.9043	30-0017	.9890	31-0045	1.1604	* 31-0109	1.1564	* 32-0068	.9153
28-0105	1.0910	30-0018	1.0261	31-0046	1.0536	31-0110	.9922	33-0001	1.0839
* 28-0106	.9809	30-0019	.9670	31-0047	1.0947	31-0111	1.0501	33-0002	1.0630
28-0107	.9820	30-0020	.9593	31-0048	1.0281	31-0112	1.0615	33-0003	1.0800
28-0108	.9561	30-0021	.8941	31-0049	1.0408	31-0113	1.0809	33-0004	1.0401
28-0109	1.0018	30-0022	.9701	31-0050	1.0799	31-0114	.9894	33-0005	1.1782
28-0110	1.0363	30-0023	1.1175	31-0051	1.1180	31-0115	1.0038	33-0006	1.1018
28-0111	.9464	30-0024	.9723	31-0052	1.0690	31-0116	1.1095	33-0007	1.0873
* 28-0114	.8427	30-0028	1.0214	31-0053	1.0055	31-0117	1.0598	33-0008	.9910
28-0115	.9839	30-0029	1.0326	31-0054	1.1114	31-0118	.9808	33-0009	.9235
* 28-0116	.8391	30-0033	.9319	31-0056	1.0439	31-0119	.9540	33-0010	1.0152
28-0117	.9423	30-0034	1.0097	31-0057	1.1858	31-0120	.9751	33-0011	1.0335
28-0118	.9345	31-0001	1.0894	31-0058	1.0219	32-0001	1.1245	33-0012	1.0906
* 28-0121	1.1947	31-0002	1.3571	31-0059	.9845	32-0002	1.0249	33-0013	1.1639
29-0001	1.0680	31-0003	1.0207	31-0060	1.0222	32-0003	1.0063	33-0014	1.1011
29-0002	.9078	31-0005	1.0412	31-0061	1.0189	32-0004	.9918	33-0015	.9833
29-0003	1.0514	31-0006	1.0801	31-0062	.9210	32-0005	1.0275	33-0016	1.0021
29-0005	.9118	31-0008	1.1124	31-0063	1.0649	32-0006	.9551	33-0019	1.0207
29-0006	.9338	31-0009	1.0028	31-0064	1.1122	32-0009	1.0666	33-0020	1.0022
29-0007	1.1040	31-0010	1.1202	31-0065	.9777	32-0010	.9464	33-0022	1.0067
29-0008	1.0706	31-0011	1.0869	31-0067	1.0345	32-0011	.9444	33-0023	1.0666
29-0009	.9933	31-0012	1.0886	31-0068	1.0403	32-0012	.9445	33-0024	1.2084
29-0010	.9133	31-0013	.9926	31-0069	.9613	32-0013	1.0636	33-0025	.9377
* 29-0011	.8938	31-0014	1.1295	31-0070	1.0890	32-0014	.9597	33-0027	1.1130
29-0012	.9546	31-0015	1.1186	31-0071	1.0195	32-0016	.9459	33-0028	1.1085
* 29-0013	.9264	31-0016	1.0904	31-0072	.9869	32-0017	1.0463	33-0029	1.0161
29-0014	.9342	31-0017	1.1341	31-0073	1.0630	32-0018	1.0382	33-0030	1.0193
* 29-0015	1.0503	31-0018	.9193	31-0074	1.0718	32-0019	1.0430	33-0032	.9632
* 29-0016	.9864	31-0019	1.0659	31-0075	1.1039	32-0021	1.1565	33-0033	1.0441
* 29-0018	1.1637	31-0020	1.0296	31-0076	1.1096	32-0022	1.0179	33-0034	1.0020
29-0019	1.0251	31-0021	1.0361	31-0077	1.0654	* 32-0023	.8901	33-0036	.9145
* 29-0020	.9313	31-0022	1.0746	31-0078	1.0645	32-0027	.9240	33-0037	1.0547
29-0021	.9986	31-0024	1.0762	31-0080	1.0274	* 32-0028	1.2955	33-0038	.9972
29-0022	1.0531	31-0025	1.0435	31-0081	1.0772	32-0030	1.0122	33-0039	1.0464
29-0024	.8044	31-0026	1.0759	31-0083	1.0632	* 32-0031	.9102	33-0041	1.0442
* 29-0027	1.0450	31-0027	.9997	31-0084	1.0674	32-0032	.8865	33-0043	1.0328
30-0001	1.0706	31-0028	1.0708	31-0085	1.0600	32-0033	.9777	33-0044	1.0977
30-0002	1.0147	31-0029	1.1238	31-0086	1.0885	32-0035	.9564	33-0045	1.1350
30-0003	1.2082	31-0031	1.3030	31-0087	1.0517	32-0036	.9925	33-0046	1.1270
30-0005	.9916	31-0032	1.0405	31-0088	.9607	* 32-0037	.8872	33-0047	.9817
30-0006	.9984	31-0033	1.0555	* 31-0089	1.1298	* 32-0038	.9472	33-0048	1.0162
30-0007	1.0149	31-0034	1.0671	31-0090	.9701	32-0046	.9635	33-0049	.9971
30-0008	1.0593	31-0036	.9961	31-0091	1.0227	* 32-0048	.9308	33-0050	.9750
30-0009	1.0302	31-0037	1.0640	31-0092	1.0905	32-0049	.9694	33-0052	.9422
30-0010	.9305	31-0038	1.0227	31-0093	1.0231	* 32-0051	.9191	33-0053	.9636
30-0011	1.0210	31-0039	1.0249	31-0094	.9903	32-0053	.8848	33-0055	1.1054
30-0012	1.0647	31-0040	1.0313	31-0096	1.1101	* 32-0058	.9302	33-0056	1.0567
30-0013	1.0320	31-0041	1.0449	31-0104	1.0618	32-0063	1.0199	33-0057	1.1662
30-0014	1.0514	31-0042	1.0479	31-0105	.9832	32-0065	1.0712	33-0058	.9755
30-0015	.9508	31-0043	1.0020	31-0106	1.1342	* 32-0066	.9650	33-0059	1.1297

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34-0019	.9866	* 34-0078	1.0138	34-0145	.9399	35-0043	1.0020	36-0039	1.0097
34-0020	1.0146	* 34-0079	1.0003	* 34-0146	1.0770	35-0044	.9115	36-0040	1.0596
34-0021	1.0172	34-0080	.9318	34-0147	1.0437	* 35-0045	.8770	36-0041	1.1539
34-0022	.9238	34-0084	1.0008	34-0148	.8603	35-0047	.9978	36-0042	.9993
34-0023	.9764	34-0085	1.0130	* 34-0150	1.2896	35-0048	.8257	36-0044	.9886
34-0024	1.0505	* 34-0086	.8900	34-0151	.9494	35-0049	.8807	36-0045	1.0920
34-0025	.9995	34-0087	.9862	34-0153	1.2472	35-0050	.9192	36-0046	.9491
34-0026	.9099	34-0088	.9868	34-0155	1.0760	35-0051	.9333	36-0047	.9852
34-0027	1.0209	34-0089	.9156	34-0157	.7531	* 35-0053	.9439	36-0048	1.2355
34-0028	1.0232	34-0090	1.0181	34-0158	.9460	35-0055	.8475	36-0049	1.0223
34-0030	1.1117	34-0091	1.1050	34-0159	.9500	35-0056	.9819	36-0050	.9664
34-0031	.9769	34-0092	1.0593	34-0160	.9382	35-0058	.8846	36-0051	1.1585
34-0032	1.0394	34-0093	.9364	* 34-0162	.9011	35-0060	1.0350	36-0052	1.1788
34-0034	.9832	34-0094	.9631	* 35-0001	.8110	35-0061	.9258	36-0053	1.0813
34-0035	.9253	34-0096	.9799	35-0002	1.0055	36-0001	1.0590	36-0054	1.0576
34-0036	.9875	34-0097	1.0266	35-0003	1.0283	36-0002	1.0044	36-0055	1.0685
34-0037	.9374	34-0098	1.0049	35-0004	1.1511	36-0003	1.1468	36-0056	1.0297
34-0038	.9591	34-0099	.9607	35-0005	1.0634	* 36-0005	1.2805	36-0057	.9561
34-0039	.9747	34-0100	.9107	35-0006	1.0072	36-0006	1.1577	36-0058	1.0159
34-0040	1.0896	* 34-0101	1.0052	35-0007	.9168	36-0007	.9710	36-0059	1.1333
34-0041	1.0607	34-0104	.9838	35-0008	.8802	36-0008	.9685	36-0060	.8856
34-0042	1.0102	34-0105	1.0150	35-0009	.9711	36-0009	1.0637	* 36-0061	.6570
34-0044	.9757	34-0106	.8821	35-0010	.9501	36-0010	1.0100	36-0062	1.1103
* 34-0045	.9517	34-0107	1.0450	35-0011	1.2177	36-0011	1.1115	36-0063	.8768
34-0047	1.2294	34-0109	1.0207	35-0012	1.0158	36-0012	1.7516	36-0064	1.1608
* 34-0048	.9074	34-0111	1.0025	35-0013	.9294	36-0013	.9931	36-0065	.9732
34-0049	.5237	34-0112	1.0164	35-0014	.9627	36-0014	.9132	36-0066	1.0404
34-0050	1.0159	34-0113	1.1720	35-0015	1.0703	36-0015	1.1763	36-0067	.9565
34-0051	1.0113	34-0114	1.0254	35-0016	1.0082	36-0016	1.0844	36-0068	1.1059
34-0052	.9545	34-0115	.9990	35-0017	.8967	36-0017	1.0158	36-0069	.9891
34-0053	.9480	34-0116	1.0949	35-0018	1.0006	36-0018	1.0353	36-0070	1.0816
34-0054	.9182	34-0117	.9331	35-0019	1.1040	36-0019	1.0147	36-0071	.9881
34-0055	.9546	34-0119	1.0709	35-0020	.9549	36-0020	1.0559	36-0072	1.0688
* 34-0056	1.0002	34-0120	.9901	* 35-0021	.8789	36-0021	.9718	36-0074	1.0433
* 34-0057	1.0265	34-0121	.9830	35-0023	.9562	36-0022	1.0195	36-0075	1.1005
34-0058	1.0631	* 34-0122	1.0107	* 35-0024	.8914	36-0023	1.0446	36-0076	.9819
34-0060	.9589	34-0123	1.0179	* 35-0025	.8584	36-0024	1.0543	36-0077	1.1223
34-0061	1.1567	34-0124	.9368	* 35-0027	.8458	36-0025	.9822	36-0078	1.0573
34-0063	.9269	34-0125	1.0710	35-0029	.8631	36-0026	1.0299	36-0079	1.2189
34-0064	.9911	34-0126	1.0360	35-0030	.9154	36-0027	1.1634	36-0080	.9500
34-0065	1.0153	34-0127	1.0228	* 35-0031	.8880	36-0028	1.0797	36-0081	1.0332
34-0067	.9005	34-0128	.9495	35-0032	.9583	36-0029	1.0465	36-0082	1.1139
34-0068	.9539	34-0129	.9527	35-0033	.8865	36-0030	1.0442	36-0083	1.0115
34-0069	1.1403	34-0130	1.0000	35-0034	.9534	36-0031	1.0036	36-0084	1.0984
34-0070	1.0150	34-0131	1.0362	* 35-0035	.9469	36-0032	.9574	36-0085	1.2317
34-0071	.9652	34-0132	.9968	* 35-0036	.9344	36-0033	.9932	36-0086	1.0158
34-0072	.9982	34-0133	.9379	* 35-0037	.9021	36-0034	1.0312	36-0087	1.1082
34-0073	.8894	34-0141	1.0461	35-0038	.8833	36-0035	1.1539	36-0088	.9868
34-0075	.9373	34-0142	1.0303	35-0039	.9222	36-0036	.9424	36-0089	1.0454
34-0076	.9127	34-0143	1.0092	* 35-0041	.9399	36-0037	1.1579	36-0090	1.0246
* 34-0077	.9587	34-0144	1.0381	* 35-0042	.8972	36-0038	.9595	36-0091	1.0621

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36-0092	1.0001	36-0148	1.0042	* 36-0226	1.8281	37-0048	.8780	37-0121	.9711
36-0093	.9323	36-0149	.9511	36-0230	1.0945	37-0049	1.0020	37-0122	.8298
36-0094	.9922	36-0150	1.0703	36-0231	.9461	37-0050	.8690	37-0123	.9431
36-0095	1.0524	36-0151	1.0154	36-0232	1.0845	37-0051	.9758	37-0125	.9566
36-0096	.9781	36-0152	1.0462	36-0234	1.0040	37-0054	1.0510	37-0126	.9254
36-0097	1.0100	36-0153	.9500	36-0236	1.0301	37-0056	1.0782	37-0130	.9029
36-0098	1.1063	36-0154	.9942	* 36-0237	.8680	37-0057	1.0260	* 37-0131	.9682
36-0099	1.0375	36-0155	1.0223	* 36-0238	1.0633	37-0059	.9423	37-0133	.9434
36-0100	1.0263	36-0156	.9316	36-0239	1.0277	37-0060	.9812	37-0136	.9253
36-0101	1.1545	36-0159	1.0320	36-0345	1.0216	37-0061	.9392	37-0138	.8882
36-0102	1.0993	* 36-0160	.9395	37-0001	1.1319	37-0063	.9021	* 37-0139	.9347
36-0103	1.0706	36-0161	1.0330	37-0002	.9301	37-0064	.8809	* 37-0140	.8972
36-0104	.9967	36-0162	1.0181	* 37-0003	.8735	37-0065	.9507	37-0141	1.0392
36-0106	1.1383	36-0163	1.1913	37-0004	1.0206	37-0069	.8760	37-0144	.9976
36-0107	.9200	36-0164	.9092	37-0005	.9887	37-0071	.8879	* 37-0146	.9677
36-0108	.9920	36-0165	1.0405	37-0006	1.0330	37-0072	.9349	37-0148	1.0021
36-0109	.9878	36-0166	.9584	37-0007	1.0923	* 37-0073	.7047	37-0149	1.0565
* 36-0110	.9521	36-0167	.9471	37-0008	1.0820	37-0076	1.0013	37-0153	.9371
36-0112	1.1521	* 36-0168	1.0336	37-0011	.9303	37-0077	1.0827	37-0154	.9104
36-0113	1.0656	36-0169	.9357	37-0012	.8972	37-0078	1.0140	* 37-0155	.8229
36-0114	.9816	36-0170	.9537	37-0013	1.0977	37-0079	.9448	37-0156	.9653
36-0115	1.0353	36-0171	1.0785	37-0014	.9448	37-0080	.9076	37-0157	.9124
36-0116	.9707	36-0172	1.0024	37-0015	.9748	* 37-0082	.9551	37-0158	.9413
36-0118	1.0694	36-0174	.9511	37-0016	1.0308	37-0083	.8897	37-0159	1.0359
36-0119	.9855	36-0175	.9852	37-0017	.9617	37-0084	.8795	37-0161	.8500
36-0120	.9629	36-0176	.9722	37-0018	1.0455	37-0085	.9021	37-0163	.8545
36-0121	.9747	36-0177	1.0325	37-0019	.9459	37-0086	.9529	37-0165	.8952
36-0122	1.0665	36-0178	.8976	37-0020	1.0337	37-0089	.9493	37-0166	.9061
36-0123	.9141	36-0179	1.0747	37-0021	.9526	37-0090	.9806	* 37-0167	1.2308
36-0124	1.0015	36-0180	1.2916	37-0022	.9919	37-0091	1.1209	* 37-0168	.9136
36-0125	.9914	36-0184	1.0128	37-0023	1.0245	37-0092	.9083	37-0169	.9059
36-0126	.9824	36-0185	1.0028	37-0025	1.0326	37-0093	1.1186	37-0176	.9156
36-0127	1.0078	36-0186	.9087	37-0026	1.0551	37-0094	1.0154	* 37-0177	1.0948
36-0128	1.0187	36-0187	1.0564	37-0028	1.1636	37-0095	.9213	37-0178	.9535
36-0129	.9536	36-0188	1.1044	37-0029	.9588	* 37-0096	.9830	37-0179	.8352
* 36-0130	1.0459	36-0189	1.0167	37-0030	.9700	37-0097	1.0053	38-0001	1.1221
36-0131	1.0260	36-0190	1.0818	37-0032	1.0175	37-0098	.8649	38-0002	.9787
36-0132	.9716	36-0192	1.0555	37-0033	.9318	37-0099	.8546	38-0003	1.0944
36-0133	1.0496	36-0193	1.0079	37-0034	.9779	37-0100	.8987	38-0004	1.2293
36-0134	1.1962	36-0194	.9933	37-0035	1.1846	37-0103	.9423	38-0005	.9888
36-0135	.9142	36-0195	.9982	37-0036	.9484	37-0105	1.3905	38-0006	1.0451
36-0136	.9970	36-0197	.9861	37-0037	1.0767	37-0106	.8648	38-0007	1.1264
36-0137	1.1666	36-0200	.9031	37-0038	.8719	37-0107	.9231	38-0008	1.0605
36-0139	1.0351	36-0203	.9686	37-0039	.9658	37-0108	.9496	38-0009	1.3144
* 36-0140	.9988	36-0204	1.0563	37-0040	.9333	* 37-0109	.9200	38-0010	1.0363
36-0141	1.0878	36-0210	.9851	37-0041	.8585	37-0110	.9591	38-0011	1.0350
36-0142	.9616	36-0211	.9379	37-0042	.8287	37-0112	.9326	38-0013	1.0769
36-0143	1.0782	36-0212	1.1060	37-0043	.8529	37-0113	.9505	38-0014	1.0946
36-0144	1.0452	36-0213	1.0754	37-0045	1.0122	37-0114	1.1139	* 38-0016	.9528
36-0145	1.1181	36-0218	1.0333	37-0046	.8739	37-0116	.8953	38-0017	1.1359
36-0147	.9563	* 36-0220	.8840	37-0047	.9323	37-0117	.9565	38-0018	1.1568

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TABLI HOSPITAL CASE MIX INDEXES

PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX	PROVIDER NUMBER	CASE MIX INDEX
38-0019	.9868	38-0079	1.1114	39-0042	1.0240	39-0097	1.0858	39-0154	.9939
38-0020	1.1839	* 38-0081	.9328	39-0043	1.0397	39-0098	1.1580	39-0155	1.0062
38-0021	1.0650	38-0082	1.1136	39-0044	1.1119	39-0099	.9913	39-0156	1.0997
38-0022	1.0937	38-0083	.9788	39-0045	1.1068	39-0100	1.0608	39-0157	1.0365
38-0023	.9157	38-0084	1.0949	39-0046	1.1405	39-0101	1.0671	39-0158	1.0621
38-0024	1.0639	38-0087	.9033	39-0047	1.0928	39-0102	1.1216	39-0159	1.0632
38-0025	1.0607	* 38-0088	1.0018	39-0048	1.0697	39-0103	.9925	39-0160	.9590
38-0026	1.0879	38-0089	1.1308	39-0049	1.0951	39-0104	1.0284	39-0161	1.0732
38-0027	1.0449	38-0090	1.1266	39-0050	1.2507	39-0106	.8933	39-0162	1.0745
38-0029	.9302	38-0091	1.1417	39-0051	1.2185	39-0107	1.1383	39-0163	1.0696
* 38-0030	.9087	38-0093	.8044	39-0052	.9726	39-0108	1.1140	39-0164	1.2770
38-0031	.9144	39-0001	1.1596	39-0054	1.0367	39-0109	.9478	39-0165	1.0299
38-0033	1.1672	39-0002	1.0706	39-0055	1.2044	39-0110	1.0483	39-0166	1.0383
38-0035	1.0396	39-0003	.9722	39-0056	1.0698	39-0111	1.3157	39-0167	1.0913
38-0036	.9531	39-0004	1.0209	39-0057	1.0978	39-0112	1.1224	39-0168	.9974
38-0037	1.0779	39-0005	.9372	39-0058	1.0560	39-0113	.9850	39-0169	1.0585
38-0038	1.0823	39-0006	1.1583	39-0059	1.1523	39-0114	.9575	39-0170	1.1907
38-0039	1.1230	39-0007	1.0401	39-0060	1.0761	39-0115	1.1379	39-0171	1.0114
38-0040	1.0097	39-0008	.9933	39-0061	1.0900	39-0116	1.0026	39-0172	1.0593
38-0041	.9135	39-0009	1.0945	39-0062	.9703	39-0117	.9980	39-0173	1.0142
38-0042	1.0023	39-0010	1.0534	39-0063	1.1051	39-0118	.9262	39-0174	1.1798
38-0043	.9669	39-0011	1.0687	39-0064	1.1118	39-0119	1.0728	39-0176	1.0266
* 38-0044	.9939	39-0012	1.0655	39-0065	1.0541	39-0120	.9745	39-0177	.8956
38-0045	1.0570	39-0013	1.0264	39-0066	1.0202	39-0121	.9932	39-0178	1.1098
38-0047	1.1700	39-0014	.9772	39-0067	1.1272	39-0122	.9732	39-0179	1.0749
38-0048	.9805	39-0015	1.0660	39-0068	1.0157	39-0123	1.1098	39-0180	1.0862
38-0050	1.1182	39-0016	1.0448	39-0069	1.0402	39-0125	1.0355	39-0181	.9786
38-0051	1.1251	39-0017	1.0181	39-0070	1.0236	39-0126	1.1038	39-0183	.9697
38-0052	1.0608	39-0018	1.0312	39-0071	.9950	39-0127	1.0369	39-0184	.9579
* 38-0054	.9572	39-0019	1.0103	39-0072	.9735	39-0128	.9893	39-0185	1.0457
38-0055	1.1162	39-0020	1.0015	39-0073	1.0825	39-0130	.9714	39-0186	1.0795
38-0056	.9960	39-0021	1.0828	39-0074	1.0134	39-0131	1.0863	39-0187	1.0108
* 38-0059	.9415	39-0022	1.0775	39-0075	1.0881	39-0132	.9814	39-0188	1.0610
38-0060	1.1080	39-0023	1.0276	39-0076	1.0311	39-0133	1.1492	39-0189	.9687
38-0061	1.2193	39-0024	.5851	39-0077	1.0573	39-0135	.9974	39-0190	1.0105
* 38-0062	.8488	* 39-0025	.8936	39-0078	.9200	39-0136	1.0413	39-0191	.8974
38-0063	1.1037	39-0026	1.1212	39-0079	1.2657	39-0137	1.0587	39-0192	.9319
38-0064	1.0678	39-0027	1.1807	39-0080	1.0433	39-0138	1.1336	39-0193	.9671
* 38-0065	1.0563	39-0028	1.1836	39-0081	1.0383	39-0139	1.0804	39-0194	1.0062
38-0066	1.1398	39-0029	1.1473	39-0082	1.1113	39-0141	.9978	39-0195	1.2255
* 38-0067	.8818	39-0030	.9771	39-0083	1.0924	39-0142	1.1691	39-0196	1.1883
38-0068	1.0453	39-0031	1.0179	39-0084	.9410	39-0143	.6881	39-0197	.9846
38-0069	.9213	39-0032	1.0607	39-0086	.9983	39-0145	1.0603	39-0198	.9191
38-0070	1.0047	39-0034	.9717	39-0087	.9208	39-0146	.9977	39-0199	1.0033
38-0071	.9584	39-0035	1.1358	39-0088	.9581	39-0147	.9831	39-0200	1.0081
38-0072	.9703	39-0036	1.0053	39-0090	1.1549	39-0148	.9993	39-0201	1.1083
38-0074	1.0036	39-0037	1.0413	39-0091	.9939	39-0149	1.0430	39-0203	1.0790
38-0075	1.0659	39-0038	.9470	39-0092	.9705	39-0150	.9964	39-0204	1.0862
* 38-0076	.9348	39-0039	.9841	39-0093	1.0799	39-0151	1.0661	39-0205	1.0550
38-0077	.9205	39-0040	.9228	39-0095	.9461	39-0152	1.0495	39-0206	1.0212
38-0078	1.1134	39-0041	1.0349	39-0096	1.0819	39-0153	1.1077	39-0209	1.0366

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BILLING CODE 1505-01-C

Medicare and Medicaid Programs; Schedule of Limits on Home Health Agency Costs Per Visit

Correction

In FR Doc. 82-26580 appearing on page 42904, as "Part III" in the issue of Wednesday, September 29, 1982, make the following corrections:

1. On page 42906, column 1, line 16, "limited" should read "limit".

2. On page 42907, column 1, line 14, following the table "were" should read "are"; in line 15 "the" should be deleted, and in line 19 under paragraph 4. *Computing the Adjusted Limit*, "and" should read "we".

3. On page 42909, column 3, in line 13, remove the semicolon following the heading "Example—Calculation of Adjusted Occupational Therapy".

4. On page 42911, column 1, second table, the Headings "Limit [1]" and "Add-on [1]" are incorrectly placed. The table should read as follows:

Limit [1]	Add-on [1]			
	Wage portion	Non-wage portion	Wage portion	Non-wage portion
SN	$33.26	$16.08	$4.38	$2.22
PT	31.12	15.73	4.34	2.19
HHA	25.11	12.75	4.29	2.19

BILLING CODE 1505-01-M

Public Health Service

Alcohol, Drug Abuse, and Mental Health Administration; Statement of Organization, Functions, and Delegation of Authority

Part H, Chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 36163-7, August 19, 1975, as amended by 45 FR 71424, October 28, 1980) is amended to reflect the reorganization of the National Institute on Alcohol Abuse and Alcoholism, ADAMHA, which was necessitated by the legislated transition to block grants and accompanying budgetary reductions. The reorganization accomplishes the following: (1) Abolishes the Office of Extramural Policy and Project Review, the Division of Occupational Alcoholism Programs, the Division of State and Community Assistance, the Division of Prevention, and the Division of Alcoholism Services Development; (2) revises the functional statement and title for the Division of Intramural Research, which is retitled the Division of Intramural Clinical and Biological Research; (3) establishes the Office of Scientific Affairs, the Division of Prevention and Research Dissemination, and the Division of Biometry and Epidemiology; and (4) modifies the rest of the functional statements of the Institute.

Section HM-B, Organization and Functions, is amended as follows:

Under ADAMHA (HM), delete all functional statement for the *National Institute on Alcohol Abuse and Alcoholism (HMC)* and substitute the following:

National Institute on Alcohol Abuse and Alcoholism (HMC)

Provides a national focus for the Federal effort to increase knowledge and promote effective strategies to deal with health problems and issues associated with alcohol abuse and alcoholism. In carrying out these responsibilities the Institute: (1) Conducts and supports research on alcohol-related disorders in its own laboratories and through extramural projects; (2) supports epidemiological studies and national and community surveys to assess the risks for alcohol abuse among various population groups; (3) plans, directs, supports, and evaluates research to identify new and improved alcoholism prevention, intervention, and treatment methods and techniques for application in the Nation's health care system; (4) supports traning and development of scientists for participation in alcohol research programs and activities; (5) collaborates with other research institutes and Federal programs relevant to alcohol abuse and alcoholism, and provides coordination of Federal alcohol abuse and alcoholism research activities; (6) serves as a national resource for the collection, analysis, and dissemination of scientific findings and improved methods of alcoholism prevention and treatment services; (7) maintains continuing relationships with institutions and professional associations and with international, national, State, and local officials, and voluntary agencies and organizations engaged in alcohol related work; (8) conducts policy studies and activities which have broad implications for alcoholism treatment, prevention, and rehabilitation activities; (9) performs data collections, analysis, and provides technical assistance/technology transfer to State and local governments, community and voluntary organizations in the areas of policy development, program assessment, establishment of treatment standards, accreditation, and resource utilization; and (10) supports public education activities to inform the public of the risks and consequences associated with alcohol abuse and alcoholism.

Office of the Director (HMC1). (1) Provides leadership, coordination, and direction in the development and implementation of Institute policies, goals and priorities; (2) plans, directs and provides overall administration of the program and management activities of the Institute; (3) serves as the focal point for the Department's efforts on alcohol abuse and alcoholism; (4) conducts and coordinates interagency, intergovernmental, international and public affairs activities of the Institute; and(5) monitors the conducts of the equal employment opportunity activities of the Institute.

Office of Policy Analysis (HMC12). (1) In conjunction with program offices of the Institute, develops and recommends to the Director, NIAAA, program policies for potential application at the national, State or local level; (2) monitors broad policy issues surrounding the field of alcohol abuse and alcoholism; (3) analyzes current alcoholism programs and policies and conducts special studies and analyses in areas related to alcoholism policies and programs; (4) serves as the Institute focal point for the development and analysis of service financing programs designed to improve and increase the financing of alcoholism services; and (5) conducts legislative analyses and provides legislative services.

Office of Scientific Affairs (HMC16). (1) Provides advice and guidance to the Director regarding the Institute's research programs and other scientific activities; (2) provides a continuing assessment of current Institute research activities in relation to broad research goals and objectives, and recommends changes to basic alcohol research policy where needed; (3) administers the peer and objective review of grant applications and contract proposals (4) coordinates and assures the development of, and adherence to, program policies and rules relating to Institute extramural activities; (5) assists the Director in obtaining expert advice to conduct evaluations of NIAAA research programs and scientists; and (6) administers the committee management function.

Office of Planning and Resource Management (HMC15). (1) Coordinates Institute planning activities and participates in the preparation of Institutewide program plans; (2) analyzes program plans developed

within the divisions, and monitors implementation of the plans; (3) provides administrative management support to the Institute in the areas of (a) financial management, (b) grants and contracts management, and (c) administrative services; (4) develops administrative management policies, procedures and guidelines, and conducts management studies of Institute programs and operations; (5) maintains liaison with the management staff of the Office of the Administrator and implements within the Institute general management policies prescribed by ADAMHA and higher authorities, and (6) provides correspondence control services for the Institute.

Division of Intramural Clinical and Biological Research (HMCB). (1) Plans, develops and conducts a program of basic and applied alcohol research, including metabolic, preclinical and clinical investigations, on the multiple determinants and processes of alcoholism and other alcohol-related problems and in the areas of prevention, diagnosis, treatment and rehabilitation; (2) provides inhouse research scientist training in a variety of disciplines for work in alcohol-related research; (3) collaborates with other agencies, universities, and scientific organizations in the conduct of basis and applied research on alcohol and its effects; and (4) operates a clinical research facility for the purpose of conducting research on alcohol-related illnesses and diseases, and developing improved methods of clinical care.

Division of Biometry and Epidemiology (HMC4). (1) Plans and conducts studies and survey and the incidence and prevalence of alcohol abuse and alcoholism, both nationally and in specific population groups; (2) conducts national surveillance activities to collect and analyze alcohol-related program data through various information systems including the Alcohol Epidemiology Data System, the National Drug and Alcoholism Treatment Utilization Survey, and the State Alcoholism Program Information Systems; (3) develops and maintains information systems to collect and analyze alcohol-related data; (4) collaborates with other organizations engaged in alcohol data collection activities, such as State-based information systems, in order to exchange pertinent data and to utilize existing data systems where appropriate.

Division of Extramural Research (HMCA). (1) Plans, develops and supports programs of basic and applied research on the multiple determinants and processes of alcoholism and other alcohol-related problems, on the prevention of alcohol abuse, and the diagnosis, treatment and rehabilitation of persons who abuse alcohol; (2) develops and supports a clinical research program to assess the efficacy of therapeutic procedures for the treatment of alcoholism and alcohol-related disorders; (3) administers the Institute's National Research Centers program; (4) administers the Institute's extramural research scientists development and training programs; (5) collaborates with other national and international agencies, universities and scientific organizations undertaking studies related to alcoholism and alcohol abuse; (6) provides technical assistance to universities, Federal agencies, State and local governments, and community and voluntary organizations in areas such as program development and assessment; and (7) supports grants and contracts to demonstrate new and more effective alcohol abuse and alcoholism prevention, treatment and rehabilitation programs.

Division of Prevention and Research Dissemination (HMC2). (1) Conducts prevention and public education activities, through alcohol media campaigns and the dissemination of publication and alcohol prevention materials; (2) collects, abstracts, stores and disseminates program and scientific information on alcohol abuse and alcoholism, through the National Clearinghouse for Alcohol Information and other information sources; (3) collects alcohol research findings supported or conducted by the Institute, and incorporates such findings into the body of alcohol-related information available for dissemination; (4) prepares and disseminates the Alcohol and Health Report, and other special reports in response to congressional, departmental, and programmatic needs for information; (5) conducts conferences and workshops for the purpose of conveying up-to-date knowledge on alcoholism prevention, early intervention, treatment and rehabilitation to State and local governments, the private and voluntary sectors and others engaged in alcohol-related work; and (6) develops and publishes monographs which communicate new knowledge of innovative approaches to the alcoholism field, the health community and the public.

Dated: October 26, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-30509 Filed 11-4-82; 8:45 am]

BILLING CODE 4160-20-M

Alcohol, Drug Abuse, and Mental Health Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (39 FR 1654, January 11, 1974, as amended most recently at 45 FR 76517, November 19, 1980) is amended to reflect the reorganization of the Office of the Administrator, ADAMHA, which was necessitated by the legislated transition to block grants and accompanying budgetary reductions. The reorganization accomplishes the following: (1) Abolishes the Office of Special Populations and the Office of Communications and Public Affairs; (2) Abolishes the Division of Science, Division of Treatment, Division of Prevention, and Division of Human Resources Development and Training; (3) retitles the Office of Program Planning and Coordination to be the Office of Planning, Policy Analysis, and Legislation and the Division of General Services to be the Division of Administrative Services; (4) establishes the Division of Planning and Policy Analysis and the Division of Legislation; (5) transfers the legislative services function from the immediate Office of the Administrator to the Office of Planning, Policy Analysis, and Legislation, the statistical data policy coordination function from the Office of Extramural Programs to the Office of Planning, Policy Analysis, and Legislation, the administrative services function from the immediate Office of the Director of the Office of Management to the Division of Administrative Services, the procurement function from the Division of Administrative Services to the Division of Grants and Contracts Management, and the forms management function from the Division of Administrative Services to the Division of Management Policy; and (6) modifies the mission and the functional statements of ADAMHA and the entire Office of the Administrator.

Section HM-A, MISSION, is amended as follows:

Delete the statement for the *MISSION* and substitute the following:

MISSION

The mission of the Alcohol, Drug Abuse, and Mental Health Administration is to provide a national focus for the Federal effort to increase knowledge and promote effective strategies to deal with health problems and issues associated with the use and abuse of alcohol and drugs, and with mental illness and mental health.

To accomplish this mission, the Administration conducts programs of research, training, prevention, information, and education. The Administration provides program expertise and technical assistance in responding to Federal, State, local or private organizations on matters related to their alcohol, drug abuse, and mental health matters.

Section HM–B, Organization and Functions, is amended as follows:

(1) Delete the functional statements for the *Alcohol, Drug Abuse, and Mental Health Administration (HM)* and substitute the following:

Alcohol, Drug Abuse, and Mental Health Administration (HM). Provides a national focus for the Federal effort to increase knowledge and promote effective strategies to deal with health problems and issues associated with the use and abuse of alcohol and drugs, and with mental illness and mental health. In carrying out these responsibilities the Administration: (1) Conducts and supports research on the biological, psychological, behavioral, and epidemiological aspects of alcoholism, drug abuse, and mental health and illness; (2) conducts and supports research on the delivery of alcoholism, drug abuse, and mental health treatment and prevention services; (3) supports the training of scientists to conduct research in the alcoholism, drug abuse,and mental health fields; (4) gathers and analyzes data about the extent of alcohol, drug abuse and mental health problems, and the national response to these needs in terms of planning, establishing, and evaluating alcoholism, drug abuse, and mental health programs; (5) collaborates with, provides assistance to, and encourages other Federal agencies, national, foreign, State and local organizations, hospitals, and voluntary groups to facilitate and expand programs for the prevention and treatment of alcohol, drug abuse, and mental health problems; and (6) provides information on alcoholism, drug abuse, and mental health to the public and to the scientific community.

(2) Delete all functional statements for the *Office of the Administrator (HMA)* and substitute the following:

Office of the Administrator (HMA). (1) Provides leadership in the development of agency policies and programs; (2) coordinates ADAMHA policies and programs among the three Institutes; (3) carries out ADAMHA-wide functions such as coordination of equal employment opportunity activities, international activities and communications and public affairs; and (4) maintains liaison with the Assistant Secretary for Health and the Surgeon General on matters related to program and other activities as may be required.

Office of Planning, Policy Analysis, and Legislation (HMA2). (1) Provides leadership and guidance in the analysis, planning, coordination and evaluation of overall agency and interagency policies and programs; (2) indentifies, coordinates, and performs analyses of key issues relative to policy direction; (3) identifies and highlights the needs, issues, and concerns of unserved, underserved, and other special populations relative to alcohol, drug abuse and mental health and plans, develops, and advocates specific agency strategies and program initiatives for these populations; (4) analyzes legislative issues, develops related policy and position papers, which include appropriate recommendations, and maintains liaison with congressional legislative committee; (5) monitors trends and evaluation of alcohol, drug abuse, and mental health research, treatment, prevention, and human resource developments; and (6) develops policy and coordinates planning and necessary clearances for agency statistical data activities.

Division of Planning and Policy Analysis (HMA25). (1) Coordinates the development of the agency's annual program plan and planning process, working closely with the Office of Management; (2) coordinates and provides expertise and technical advice in the planning, coordination, and evaluation of the agency's policies and programs; (3) coordinates the planning, organization, and general direction of activities pertaining to the eveauation of research and science policy and programs in the agency; (4) identifies, coordinates, and performs short-term and long-term analyses of key issues relative to policy direction and having agency-wide implication; (5) develops new and analyzes existing policy issues relating to the coordination of research, human resources development, prevention and treatment of alcoholism, drug abuse, and mental illness; (6) maintains liaison among Federal, State, and local governments planning staffs around planned activities in the alcohol, drug abuse, and mental health area; and (7) develops briefing materials and conducts briefings for the Administrator and the Associate Administrator for Planning, Policy Analysis, and Legislation.

Division of Legislation (HMA26). (1) Develops, prepares, or provides guidance in preparing agency proposals for new or amended legislation or regulations governing the Federal alcohol, drug abuse, and mental health program; (2) prepares or coordinates analyses, comments, and reports on Federal legislation affecting alcohol, drug abuse, and mental health programs; (3) advises agency staff on the implications of Federal and State legislation as it relates to alcohol, drug abuse, and mental health programs; (4) attends and reports to agency staff on congressional committee hearings affecting alcohol, drug abuse, and mental health programs; and (5) receives and distributes legislative materials.

Office of Management (HMA7). (1) Develops policies, guidelines and procedures concerning overall administrative management; (2) provides executive secretarial services to the agency; (3) provides administrative management and services, including internal coordination, to the agency in such areas as (a) financial management, (b) management policy, (c) grants and contracts management policy, including cost advisory services, (d) computer systems, (e) personnel management, and (f) general services; and (4) advises the Office of the Administrator and the Institutes on administrative policy and management actions, and the administrative implications of program policy, and program operations.

Division of Financial Management (HMA73). (1) Plans and coordinates the agency's financial management activites; (2) provides financial data input for the agency's planning activities; (3) develops the agency's annual budget and participates in budget hearings; (4) develops policies and procedures for and provides appropriate accounting and other fiscal services to the agency; (5) develops financial management reporting systems to meet the needs of agency planning and decisionmaking; and (6) manages the position control system for the agency, including the utilization of full-time equivalent positions.

Division of Management Policy (HMA74). (1) Develops and recommends policies, organizational plans, systems,

and procedures for the general management of agency activities; (2) provides advice and assistance to improve management and coordinates the implementation of policies, plans, systems, and procedures; (3) performs or coordinates studies and surveys of the management of agency activities, including those related to manpower utilization, organization, cost of operations, and effectiveness; (4) insures the integration of program and management planning; (5) negotiates solutions to intra-agency problems of organization, functions, policy, procedures, and coordination; (6) maintains the agency directives issuance system; and (7) provides various management analysis services for the agency.

Division of Administration Services (HMA75). (1) Plans and coordinates the provision of general and administrative services for the agency including materiel management, personal property management and accountability, real property management, telecommunications, space management, transportation management, mail management, facilities acquisition, management of duplicating equipment, construction management liaison, energy conservation, and environmental policy; (2) advises the agency on policy, procedures, and other requirements in connection with these services; (3) establishes arrangements with other agencies to provide supplies, equipment, and services; and (4) provides administrative and general services for those components of the agency located in headquarters offices.

Division of Grants and Contracts Management (HMA76). (1) Develops and issues policies, standards, procedures, forms, and guides for the management of agency grants, cooperative agreements, small purchases, and contracts (negotiated as well as advertised), and monitors their application or use; (2) serves as the focal point for interpreting regulations, policies, and procedures concerning agency grants, cooperative agreements, small purchases, and contracts; (3) provides grants and contracts cost advisory services to the agency; (4) administers the agency's system of informal grantee appeal on adverse actions; (5) coordinates agency actions on audit reports and determines final resolution; and (6) reviews and decides upon proposed contract actions as stipulated in departmental and PHS procurement regulations.

Division of Computer Systems (HMA77). (1) Develops policies, standards, and procedures for agency automatic data processing (ADP) activities including the annual ADP plan; (2) participates in establishing agency requirements for computer-based data processing systems in both program and administrative areas; (3) develops computer systems for the agency, including systems analysis, programming, and related activites; (4) provides mathematical and statistical data processing capability and consultation to the agency; (5) operates ADP equipment; (6) initiates and/or coordinates the acquisition of ADP equipment and outside services for the agency; (7) provides technical assistance and clearance to the agency on grants and contracts where ADP elements are involved; and (8) conducts research on ADP systems and equipment for application to present and future operations.

Division of Personnel Management (HMA78). Provides leadership and direction in developing and administering the personnel management program for the agency, including: (1) Central personnel services in such areas as placement and staffing, position classification, employee-management relations, labor relations, career development and performance appraisals; (2) technical oversight for personnel management at Saint Elizabeths Hospital; (3) advisory service to top management on matters relating to the development and administration of personnel policies and programs designed to obtain, compensate, train and develop, utilize, and retain a qualified, effective and efficient workforce; (4) advisory service to managers and supervisors in such matters as supervisor-employee relations and communications, motivation and recognition, training and development and employee services; (5) agency focal point for advisory services regarding the Commissioned Corps personnel system and assistance in preparation and review of Corps personnel action; and (6) represent the agency in personnel matters with PHS, DHHS and the Office of Personnel Management.

Office of Extramural Programs (HMA8). (1) Provides leadership and advice in the development of extramural program policy and implementation of extramural programs; (2) develops, evaluates, and provides guidance on policies relating to peer review of all discretionary grant and cooperative agreement applications and research contracts; (3) performs centralized grant application receipt and referral; (4) develops procedures for collecting and prepares analyses of extramural program data, including agency-wide reports; and (5) provides advice on and coordinates implementation of committee management policies and procedures.

Dated: October 26, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-30511 Filed 11-4-82; 8:45 am]

BILLING CODE 4160-20-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 October 29.

Public Health Service

Office of the Assistant Secretary for Health
Subject: National Hospital Discharge Survey (0937-0004)—Extension
Respondents: National sample of short-stay non-Federal hospitals
OMB Desk Officer: Richard Eisinger

Food and Drug Administration
Subject: Formaldehyde Clearinghouse Data Form—New
Respondents: Institutions, industries or agencies engaged in research on formaldehyde
OMB Desk Officer: Fay S. Iudicello

Health Resources and Services Administration
Subject: Project Proposal for the Provision of Sanitation Facilities (0915-0018)—Extension
Respondents: Indian tribal governments
OMB Desk Officer: Richard Eisinger

Alcohol, Drug Abuse, and Mental Health Administration
Subject: National Institutes of Mental Health Epidemiologic Catchment Area Program Survey—UCLA Site—New
Respondents: Individuals
OMB Desk Officer: Richard Eisinger

National Institutes of Health
Subject: First Telephone Follow-up in the "Establishment of Populations for Epidemiologic Studies of the Elderly" Survey—New
Respondents: Individuals
OMB Desk Officer: Richard Eisinger

Health Care Financing Administration

Subject: End Stage Renal Disease Medical Information System (HCFA-2744-2746)—Extension/No changes

Respondents: Providers of medical services to treat end stage renal disease
Subject: Accelerated Medicare Repayment Request (HCFA-9042)—New
Respondents: Providers of Medicare services
Subject: Annual Report on Home and Community Based Services (HCFA-371 and 372)—New
Respondents: State Medicaid agencies
Subject: Comprehensive Outpatient Rehabilitation Facility Medicare/Medicaid Eligibility Form and Certification Survey Process (HCFA-359 and R8)—New
Respondents: Comprehensive outpatient rehabilitation facilities
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Application for Search of Census Records for Proof of Age (SSA-1535)—Revision
Respondents: Individuals
OMB Desk Officer: Milo Sunderhauf

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to both the HHS Reports Clearance Officer and the appropriate OMB Desk Officer designated above at the following addresses:

J. J. Strnad, HHS Reports Clearance Officer, Hubert H. Humphrey Building, Room 524-F, Washington, D.C. 20201
OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503; ATTN: (name of OMB Desk Officer)

Dated: October 29, 1982.

Dale W. Sopper,

Assistant Secretary for Management and Budget.

[FR Doc. 82-30451 Filed 11-4-82; 8:45 am]

BILLING CODE 4150-04-M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Agreement Regarding Ongoing Activities of the Bureau of Land Management, Department of the Interior, in the State of New Mexico; Notice of Execution

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation, the New Mexico State Director of the Bureau of Land Management, and the New Mexico State Historic Preservation Officer have executed a Programmatic Memorandum of Agreement concerning the ongoing activities of the Bureau in the State of New Mexico. This agreement, executed pursuant to 36 CFR 800.8, was the subject of a notice published in the **Federal Register** on June 10, 1982 (47 FR 25172).

FOR FURTHER INFORMATION CONTACT: Dr. Thomas F. King, Director, Office of Cultural Resource Preservation, Advisory Council on Historic Preservation, 1522 K Street, NW, Washington D.C. 20005.

Dated: November 1, 1982

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 82-30363 Filed 11-4-82; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Glenwood Springs Resource Management Plan; Availability of Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Draft Environmental Impact Statement (DEIS).

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of the Interior, Bureau of Land Management, has prepared a draft environmental impact statement (DEIS) on the Glenwood Springs Resource Management Plan.

DATE: Comments must be received by February 2, 1983.

ADDRESS: Comments should be sent to Alfred Wright, Bureau of Land Management, P.O. Box 1009, Glenwood Springs, Colorado 81602.

FOR FURTHER INFORMATION CONTACT: Dave Mensing, Team Leader, Bureau of Land Management, P.O. Box 1009, Glenwood Springs, Colorado 81602 Telephone: (303) 945-2341.

SUPPLEMENTARY INFORMATION: The DEIS analyzes four alternatives for managing approximately 566,000 acres of public land in the BLM Glenwood Springs Resource Area.

Management of livestock grazing, land disposals, wilderness, forests, minerals, wildlife, water, scenery, recreation, off-road vehicles, and utility and communication facilities is discussed in the DEIS. Also discussed is management of cultural and paleontological resources, areas of critical environmental concern, BLM roads, and fire.

The public comment period is for 90 days beginning November 5, 1982. Both written and oral comments will be accepted. Oral comments will be received at the following locations:

Place, Date and Time

Holiday Inn, Glenwood Springs, Colorado—December 7, 1982, 2 p.m. to 4 p.m. and 7 p.m. to 9 p.m.
BLM Grand Junction District Office, Grand Junction, Colorado—December 8, 1982, 2 p.m. to 4 p.m. and 7 p.m. to 9 p.m.
Ramada Foothills, Denver, Colorado—December 14, 1982, 2 p.m. to 4 p.m. and 7 p.m. to 9 p.m.

Oral comments will be limited to 10 minutes and should be accompanied by a written synopsis of the comments.

Copies of the DEIS will be available for review at the following locations:

Bureau of Land Management

Colorado State Office, 1037 20th Street, Denver, Colorado 80202
Grand Junction District Office, 764 Horizon Drive, Grand Junction, Colorado 81501
Glenwood Springs Resource Area Office, 50629 Highway 6 & 24, Glenwood Springs, Colorado 81601

Libraries

Denver Public Library, Conservation Library, 1357 Broadway, Denver, Colorado 80254
Eagle County Public Library, 590 Broadway, Eagle, Colorado 81631
Garfield County Public Library 402 West Main, New Castle, Colorado 81647
Mesa County Library, 530 Grand Avenue, Grand Junction, Colorado 81501
Pitkin County Library, 110 East Main, Aspen, Colorado 81611
Basalt Public Library, 201 West Midland Avenue, Basalt, Colorado 81621
Glenwood Springs Public Library, 806 Cooper, Glenwood Springs, Colorado 81601
Gorden Cooper Library, 433 Main, Carbondale, Colorado 81623
Meeker Public Library, 200 Main Street, Meeker, Colorado 81641
Rifle Public Library 337 East Avenue, Rifle, Colorado 81650.

Dated: October 22, 1982.

Dave Jones,

District Manager, Grand Junction District Office.

[FR Doc. 82-29674 Filed 11-4-82; 8:45 am]

BILLING CODE 4310-84-M

Oregon; Filing of Plat Survey

1. On September 17, 1982, the plat representing the survey of a portion of an unnamed island, a dependent resurvey and an informative traverse in the McKenzie River, was accepted. It

will be officially filed in the Oregon State Office, Portland, Oregon at 9:30 a.m., on December 14, 1982.

Willamette Meridian

T. 17 S., R. 1 W.,
Sec. 24, Lot 11.

The area described contains 45.95 acres in Lane County.

2. The portion of the island described above is located about six miles easterly from the city of Springfield, Oregon. Elevation of the island is approximately 630 feet above sea level. The soil consists of sandy loam from a few inches to several feet in depth covering river-run rock. Vegetation on the island consists of several species of hardwood and conifers.

3. A count of annual growth rings show the standing timber to be from 63 to 120 years old, which indicates the existence of the island prior to Oregon statehood.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208. Copies of the plat are for sale at $2.00 each at the Public Counter, 14th floor, Lloyd Center Tower, 825 NE Multnomah Street, Portland, Oregon 97232.

Dated: October 29, 1982.

Robert J. Rivers,

Chief, Division of Operations.

[FR Doc. 82-30164 Filed 11-4-82; 8:45 am]

BILLING CODE 4310-84-M

Resource Management Planning; Initiation of Wilderness Studies in the Caliente and Bishop Resource Areas, Bakersfield District, California, and the Walker Resource Area, Carson City District, Nevada

October 21, 1982.

In accordance with 43 CFR 1601.3(g), notice is hereby given of resource planning activity now underway.

The proposed action is the preparation of four Management Framework Plan Amendments for 23 Wilderness Study Areas (WSAs) in the Caliente and Bishop Resource Areas, Bakersfield District, and the Walker Resource Area, Carson City District. The plan amendments will involve the South Sierra Foothills, Benton-Owens Valley, Bodie-Coleville, and Pine Nut-Marklesville planning areas. The plans will be incoporated under a single Environmental Impact Statement (EIS), entitled the Benton-Owens Valley/Bodie-Coleville Study Area EIS, and will carry out the requirements of the Federal Land Policy and Management Act (FLPMA) of 1976.

The purpose of these planing amendments is to determine the highest and best use of the subject lands and, through such a determination, the suitability or nonsuitability of the WSAs for wilderness designation. The process will result in recommendations by the Secretary of the Interior to the President as to which areas, or portions or areas, should be designated as wilderness. The final decision as to whether the WSAs should be designated components of the National Wilderness Preservation System will be made by Congress. The plan amendments and the EIS are scheduled for completion by September 30, 1983.

The Wilderness Study Areas are generally located east of the Sierra Nevada and south of Lake Tahoe. The WSAs that will be addressed, along with their size and general location, are:

a. Sacatar Meadows (CA-010-027), 18,175 acres, Tulare/Inyo Counties, Caliente Resource Area.

b. Cerro Gordo (CA-010-055), 16,102 acres, Inyo County, Bishop Resource Area.

c. Southern Inyo (CA-010-056), 36,600 acres, Inyo County, Bishop Resource Area.

d. Independence Creek, (CA-010-057), 9,760 acres, Inyo County, Bishop Resource Area.

e. Wonoga Peak (CA-010-058), 3,530 acres, Inyo County, Bishop Resource Area.

f. Tinemaha (CA-010-059), 3,280 acres, Inyo County, Bishop Resource Area.

g. Crater Mountain (CA-010-062), 7,260 acres,[1] Inyo County, Bishop Resource Area.

h. Symmes Creek (CA-010-064), 8,140 acres,[1] Inyo County, Bishop Resource Area.

i. Rock Creek West (CA-010-070), 414 acres, Mono County, Bishop Resource Area.

j. Chidago Canyon (CA-010-079), 20,246 acres, Mono County, Bishop Resource Area.

k. Fish Slough (CA-010-080), 19,720 acres, Inyo/Mono Counties, Bishop Resource Area.

l. Volcanic Tableland (CA-010-081), 11,840 acres, Inyo/Mono Counties, Bishop Resource Area.

m. Casa Diablo (CA-010-082), 8,647 [1] acres, Mono County, Bishop Resource Area.

n. Excelsior (CA-010-088), 12,400 acres, Mono County, Bishop Resource Area.

o. Granite Mountains (CA-010-090), 56,781 acres,[1] Mono County, Bishop Resource Area.

p. Walford Springs (CA-010-092), 13,200 acres, Mono County, Bishop Resource Area.

q. Mormon Meadows (CA-010-094), 7,280 acres, Mono County, Bishop Resource Area.

r. Mt. Biedeman (CA-010-095), 12,420 acres, Mono County, Bishop Resource Area.

s. Bodie Mountains (CA-010-099), 23,360 acres, Mono County, Bishop Resource Area.

t. Bodie (CA-010-100), 15,455 acres, Mono County, Bishop Resource Area.

u. Masonic Mountains (CA-010-102), 6,600 acres, Mono County, Bishop Resource Area.

v. Slinkard (CA-010-105/NV-030-531),[2] 6,760 acres, Mono/Alpine Counties, Bishop Resource Area (Bakersfield District), and Walker Resource Area (Carson City District).

w. Carson-Iceberg (NV-030-532),[2] 500 acres, Alpine County, Walker Resource Area.

The study process will analyze all resource values and uses within each WSA to determine whether the area, or a portion of the area will be recommended as suitable or nonsuitable for wilderness designation. This process will address such issues as the grazing of livestock, motorized vehicle access, all forms of mineral activity, land tenure, watershed, and recreational uses.

Disciplines to be represented on the Interdisciplinary Study Team are: wildlife biology, range management, wilderness, outdoor recreation planning, minerals management, and visual resources.

The public is invited to participate in the planning process by surfacing issues, commenting on the planning criteria which will be developed to guide the planning effort, providing information to be considered in the planning process, and commenting on the proposals and analysis incorporated in the draft plans and EIS when developed. The availability of the issues and planning criteria will be announced in the **Federal Register**. Public hearing dates, times, and locations will also be announced in the **Federal Register** at least 30 days prior to any hearing date.

For further information, or to be placed on the mailing lists for the

[1] Acreage includes approximate size of adjacent, uninventoried Inyo National Forest administered lands that are being studied in accordance with the February 20, 1981, Forest Service/Bureau of Land Management Cooperative Agreement for joint wilderness studies.

[2] Area under joint wilderness study between Carson City District, Nevada, and Bakersfield District, California, with Bakersfield District the lead agency. The lands administered by the Carson City District Office are entirely within California.

planning efforts, contact Robert D. Rheiner, Jr., District Manager, Bakersfield District, 800 Truxtun Avenue, Room 302, Bakersfield, California 93301, (805) 861–4191.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 82-30156 Filed 11-4-82; 8:45 am]

BILLING CODE 4310-84-M

White River Resource Area Wilderness; Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notification of Release of Draft Environmental Impact Statement for the White River Resource Area Wilderness Planning Amendment, Craig District, Colorado.

SUMMARY: This notice summarizes the present status of the Wilderness Draft Environmental Impact Statement (DEIS) affecting six Wilderness Study Areas (WSAs) totaling 79,351 acres of public lands in the White River Resource Area, Craig District of Colorado.

FOR FURTHER INFORMATION CONTACT: B. Curtis Smith, Bureau of Land Management, White River Resource Area, PO Box 928, Meeker, Colorado 81641, Telephone (303) 878–3601.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) in Colorado has released a Draft Environmental Impact Statement (DEIS) for public review on the wilderness and non-wilderness recommendations for six Wilderness Study Areas (WSAs) totaling 79,351 acres of public lands in the White River Resource Area, Craig District.

The DEIS analyzes the potential impacts resulting from the recommended inclusion of 11,690 acres of public lands in the Craig District of northwestern Colorado in the National Wilderness Preservation System and recommended exclusion of 67,661 acres.

The recommendations made in the Wilderness Draft Environmental Impact Statement are not final decisions. Following the public comment period on the DEIS, a final EIS and recommendations will be prepared for the signature of the Secretary of the Interior, and submitted to Congress for final decision on which areas will be designated in the National Wilderness Preservation System. A mineral survey will be conducted by the U.S. Geological Survey and U.S. Bureau of Mines on those lands preliminarily recommended as suitable for wilderness designation prior to the final recommendation by the BLM.

The six WSAs included in this DEIS are Bull Canyon (12,297 acres), Willow Creek (13,368 acres), Skull Creek (13,740 acres), Black Mountain (9,932 acres), Windy Gulch (12,274 acres) and Oil Spring Mountain (17,740 acres). Two alternatives were studied and analyzed for each WSA. These included designation of the entire study area as wilderness (All Wilderness Alternative) and non-designation of the study areas with management under existing land use plans (No Wilderness—No Action Alternative). A third alternative, the Boundary Adjustment (Partial Wilderness) Alternative, was applied to Bull Canyon to enhance its manageability by allowing the boundary to follow topographic features instead of administrative or legal bounds. Adjustments were considered for the other WSA's but were found to be inappropriate.

The BLM proposes to recommend part (11,690 acres) of Bull Canyon WSA as suitable for wilderness designation and to recommend five WSAs (Willow Creek, Skull Creek, Black Mountain, Windy Gulch and Oil Spring Mountain) as unsuitable for wilderness designation.

Copies of the White River Wilderness DEIS can be obtained from the Project Manager, Bureau of Land Management, White River Resource Area, PO Box 928, 317 East Market, Meeker, Colorado 81641. Copies are also available for inspection at the following locations: Bureau of Land Management, Division of Wilderness and Environmental Areas, Room 5616, 18th and C Streets, NW., Washington, D.C.; Bureau of Land Management, Colorado State Office, Public Affairs Room, 1037 20th Street, Denver, CO 80202; Bureau of Land Management, Utah State Office, University Club Building, 136 East South Temple, Salt Lake City, UT 84111; Bureau of Land Management, Craig District Office, PO Box 248, 455 Emerson Street, Craig, CO 81626; Bureau of Land Management, Grand Junction District Office, 764 Horizon Drive, Grand Junction CO 81501; Bureau of Land Management, and Vernal District Office, 170 S. 500 E., Vernal, UT 84078.

Written comments on the adequacy of the DEIS should be received by February 7, 1983 and submitted to the Area Manager, Bureau of Land Management, White River Resource Area, PO Box 928, Meeker, Colorado 81641.

Oral testimony and written comments will be received at public hearings to be held at the following locations:

Tuesday, December 7 1982.	Meeker, CO	Fairfield Center, 200 Main Street, 7:00 p.m.
Wednesday, December 8, 1982.	Vernal, CO	7th Circuit Court, Uintah County Courthouse, Main Street, 7:00 p.m.
Tuesday, December 14 1982.	Grand Junction, CO	Ramada Inn, 718 Horizon Drive, 7:00 p.m.
Wednesday, December 15, 1982.	Denver, CO	Ramada Inn Foothills, 11595 W. 6th Ave., 2:00 p.m.

All comments will receive equal consideration in the preparation of the final EIS and Wilderness Study Report.

Harold R. Martin,

Acting Colorado State Director.

[FR Doc. 82-30170 Filed 11-4-82; 8:45 am]

BILLING CODE 4310-84-M

Shoshone/Sun Valley Plan Amendment/Wilderness EIS (Draft); Availability and Notice of Public Hearings

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability and notice of public hearings.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the BLM has prepared a draft environmental impact statement (DEIS) for proposed amendments to land-use plans. The amendments address wilderness study areas (WSAs) in the Shoshone and Sun Valley planning areas of the Shoshone District in south-central Idaho. The proposal would recommend 62,868 acres of public land in seven WSAs as nonsuitable for wilderness designation and 23,735 acres in three WSAs as suitable for wilderness designation.

Pursuant to Section 3(d) of the Wilderness Act of 1964, two public hearings will be held to receive comments regarding the draft recommendations on suitability or nonsuitability of the WSAs for inclusion in the National Wilderness Preservation System. Comments regarding the adequacy of the DEIS may also be submitted at these hearings. The hearings will be held at the county courthouses of Blaine and Gooding counties. In addition to the hearings, an open house to answer questions and to receive written comments will be held at the BLM District Office in Shoshone, Idaho.

DATES: Comments on the DEIS must be received in the Shoshone District Office no later than close of business on January 11, 1983.

The open house will be held at the BLM District Office in Shoshone, Idaho, on December 6, 1982, from 8:00 a.m. to 4:00 p.m.

A public hearing will be held in the courtroom of the Blaine County Courthouse in Hailey, Idaho, on December 7, 1982, beginning at 7:00 p.m. Also, a public hearing will be held in the courtroom of the Gooding County Courthouse in Gooding, Idaho, on December 8, 1982, beginning at 7:00 p.m.

ADDRESS: Comments should be sent to the Bureau of Land Management, Shoshone District Office, ATTN: EIS Team Leader, P.O. Box 2 B, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Rob Hellie, EIS Team Leader, at the above address. Telephone: (208) 886–2206 or FTS 554–6576.

SUPPLEMENTARY INFORMATION: Copies of the DEIS are being distributed to interested parties identified on the Shoshone District's mailing list. A limited number of additional copies are available at the above address. Reviewers are encouraged to retain the DEIS for future reference because the final EIS may not repeat all of the information in the DEIS.

Clair M. Whitlock,

State Director, Idaho.

[FR Doc. 82–30171 Filed 11–4–82; 8:45 am]

BILLING CODE 4310–84–M

Minerals Management Service

Information Collection Submitted for Review

The proposals for the collection of information listed below have 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 requirements and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. Jefferson Hill, at 202–395–7340.

Title: Coal Production and Royalty Report.
Bureau Form No.: 9–373a.
Frequency: Monthly, quarterly, or annually.
Description of Respondents: Lessees and operators of Federal and Indian coal leases.
Annual Responses: 2,600.
Annual Burden Hours: 3,500.
Bureau Clearance Officer:

Title: Production and Royalty Report.
Bureau Form No.: 9–368.
Frequency: Monthly or quarterly.
Description of Respondents: Lessees and operators of Federal and Indian solid mineral leases.
Annual Responses: 1,500.
Annual Burden Hours: 875.
Bureau Clearance Officer:

Dated: October 26, 1982.

Eddie R. Wyatt,

Acting Associate Director, Onshore Minerals Operations.

[FR Doc. 82–30458 Filed 11–4–82; 8:45 am]

BILLING CODE 4310–MR–M

Office of the Secretary

[516 DM 6, App. 5]

National Environmental Policy Act; Revised Implementing Procedures

AGENCY: Interior Department.

ACTION: Notice of final revised instructions for the Bureau of Land Management.

SUMMARY: This notice announces revisions to the actions categorically excluded from the NEPA process for the Bureau of Land Management. The proposed revised instructions were published in the **Federal Register** on December 9, 1980 (46 FR 60278).

EFFECTIVE DATE: October 29, 1982.

FOR FURTHER INFORMATION CONTACT: Bruce Blanchard, Director, Office of Environmental Project Review, Office of the Secretary, Department of the Interior, Washington, D.C. 20240, telephone (202) 343–3891. For Bureau of Land Management, contact Alan Stein, telephone (202) 653–8830.

SUPPLEMENTARY INFORMATION: This is a final revision to Section 5.4 of Appendix 5 to Chapter 6, Part 516 of the Departmental Manual (516 DM 6, App. 5.4). It revises and updates categorical exclusions previously published in the **Federal Register** January 23, 1981. The Department's NEPA procedures (516 DM 1–6) were published on April 23, 1980 (45 FR 47941). This revision is based on continued experience with the NEPA process in the Bureau of Land Management.

Response to Comments

We received six comments from industry, three from States, thirteen from interest groups, and fifty-seven from individuals. As a result of these comments and an internal review, changes have been made to improve the list, including minor changes for technical, clarifying and consistency reasons. The numbers cited at the beginning of the response refer to the numbers in the proposed list. The numbers cited at the end of the response refer to the final list as published here. Responses to comments are as follows:

General: Nine commenters supported the proposed list of exclusions and three were opposed. One commenter felt that the exclusions were too specific and too numerous. The commenter felt that BLM should revise the approach and develop a shorter list of more broadly defined categories. We have not adopted this suggestion but have combined some of the proposed exclusions where appropriate. We believe that the more specifically defined categories provide a greater degree of assurance that the exclusions are used properly.

Our exclusions normally do not result in significant impacts; however, we recognize that under extraordinary circumstances, certain of these actions could result in significant impacts. The Departmental Manual (516 DM 2.3A(3)) contains a list of exceptions against which categorical exclusions are screened. We have used this approach for more than a year and have found it to be reliable. We have deleted many of the qualifying phrases from our proposed exclusions because the qualifiers duplicate the screening for exceptions.

One commenter was concerned that categorical exclusions should not apply in wilderness study areas (WSA). We recognize the potential problems with WSA's. One of our exceptions adequately covers the concerns in WSA's by requiring an environmental assessment (EA) for actions which would adversely affect "wilderness areas." The determination of "adversely affect" would include a determination of the effect of an action on the non-impairment criteria for wilderness.

5.4A(6): Two commenters objected to excluding exploratory drilling. While such exploratory drilling takes place on public lands, BLM is not the agency which grants the permit authorizing the action. We have deleted this exclusion.

5.4B(28): Two commenters felt that land transfer actions should take place only after an EA is prepared. If an agency receiving responsibility to manage the land decides to change management practices, that agency is responsible for NEPA compliance. Thus, such a change in management of the land is not being excluded from the NEPA process by BLM. The exclusion has been expanded to cover all Federal agencies—5.4B(28).

5.4B(29)(32): Four commenters objected to excluding the right-of-way actions in proposed B(29) and two objected to those in proposed B(32). Our exceptions provide an adequate safeguard for identifying those

individual actions where additional analysis is needed. The two exclusions were retained and combined because of their similarities—5.4B(29).

5.4B(33): Two commenters objected to excluding the granting of a right-of-way for a buried utility line or pipeline. The exclusion was reworded to clarify that it refers only to utility "distribution" lines—5.4B(31).

5.4B(37): One commenter objected to excluding the temporary placement of pipelines above ground along an existing road. Normally these actions do not result in significant impacts. They are typically small water pipelines. Rights-of-way are issued for a short, specified period of time. We have retained the exclusion—5.4B(32).

5.4B(34): One commenter objected to excluding the designation of existing transportation and utility corridors, particularly in the case of interstate corridors. Section 503 of the Federal Land Policy and Management Act of 1976 (FLPMA) encourages joint use of corridors and specifies that existing transportation and utility corridors may be designated without further review. The exclusion is not intended to cover the designation of new corridors. We have retained it and believe that our exceptions are adequate to identify those cases where designation of an existing corridor may result in significant impacts—5.4B(33).

5.4B(35): Two commenters objected to excluding the grant of a right-of-way within a designated corridor. One of their chief concerns was that the cumulative impacts of several rights-of-way within the same corridor may be significant. We agree with this concern and point out that cumulative impacts are considered in making the decision to designate a corridor. The language "within the intent of the designation" reflects this earlier consideration—5.4B(34).

5.4B(36): One commenter objected to excluding renewals, assignments and conversions of existing right-of-way grants. These actions do not convey additional rights beyond those allowed under the original grant. We have retained this exclusion—5.4B(35).

5.4B(38): One commenter objected to granting temporary use permits for storage sites involving little or no environmental disturbance primarily because of the vagueness of the qualifying phrase "little or no environmental disturbance." Many of these actions are minor and result in little or no environmental disturbance. Where such an action is assoicated with a larger proposed action, the exceptions would apply and it would not be categorically excluded The qualifying phrase was deleted. We have retained this exclusion—5.4B(36).

5.4B(39): This item was broadened to cover more actions of a similar nature—5.4B(37).

5.4D(13): Four commenters objected to excluding the issuance of non-competitive geothermal leases. Our experience over eight years has shown that the existence of a commercially valuable resource in lands open to non-competitive leasing is very speculative and only a small number of non-competitive leases are expected to be developed. Moreover, the lease requires the lessee to submit a plan of development to the Federal Government. Approval of the plan of development is then conditional on the plan being found consistent with applicable statutes, regulations, etc. (including the NEPA process). Language was added to the final exclusion to clarify this point. In addition, all post lease surface distrubance activitites are subject to the approval of both the surface management agency (BLM or the Forest Service) and the Minerals Management Service (formerly part of the U.S. Geological Survey)—5.4D(12).

5.4D(14): One commenter suggested that we clarify this exclusion by specifying that disposal of mineral materials is "by sale." We have not adopted this suggestion because this exclusion was intended to cover free use disposal as well—5.4D(13).

5.4D(15): Five commenters objected to excluding prospecting permits for non-energy, non-competitive minerals. We have deleted this exclusion.

5.4D(16): Five commenters objected to excluding the processing and issuance of preference right leases for non-energy minerals. While these actions do not normally result in significant impacts, environmental assessments have been useful in decisionmaking by helping determine the appropriate terms and conditions for the lease. Consequently, we have deleted this exclusion.

5.4D(17): Three commenters objected to excluding the final issuance of preference right leases for coal. As with preference right leases for non-energy minerals, an environmental assessment is prepared to help determine terms and conditions for the lease. The final issuance of the lease incorporates these terms and conditions for the lease. The final issuance of the lease incorporates these terms and conditions. Therefore, this item was deleted.

5.4D(18): Three commenters objected to excluding the validation of mining claims. The validation of a mining claim is non-discretionary based upon the determination of a valuable discovery. Courts have held that validation of mining claims is not subject to NEPA compliance. Therefore, we have deleted this exclusion.

5.4D(19): Three commenters objected to this exclusion. The exclusion does not cover all competitive oil and gas leases. It is worded to make full use of the tiering concept in the CEQ regulations, the BLM planning process and the cases where oil and gas development is already taking place. We have retained this exclusion and believe our exceptions will be adequate to identify those actions where additional analysis is appropriate—5.4D(14).

5.4E(17): One commenter objected to excluding the issuance of special recreation permits * * * where use is similar to previous permits on which environmental documents have been prepared. The commenter was concerned that competitive vehicle events could result in cumulatively significant impacts over the years. We agree with this point; however, we believe our exceptions will be adequate to identify those permits where cumulatively significant impacts may be expected. In addition, the fact that a permit is granted based on a categorical exclusion does not mean that there would not be any effort to monitor the impacts of such events for future decisionmaking. We have retained the exclusion and do not treat competitive vehicle events differently than other special recreation permits in this category. We have combined this item with proposed E (16) and (25) because they are all special recreation permits—5.4E(16)a–d.

5.4E(18): Two commenters objected to excluding small timber sales for removal of individual trees. We have retained this exclusion because these actions normally do not result in significant impacts—5.4E(17).

5.4E(20): Three commenters objected to excluding precommercial thinning activities using mechanical methods. One commenter felt that presale activities such as precommercial thinning should be analyzed as a part of the land use plan in a general, rather than a specific context. The exclusion was modified to cover only the use of small mechanical devices so that precommercial thinning using vehicles would not be covered by the exclusion—5.4E(19).

5.4E(24): Three commenters objected to exclusing ORV designations which do not increase the level of use or continue unsatisfactory environmental conditions. Two groups and fifty-five individual commenters supported the exclusion. One commenter was concerned that ORV designations which

decrease the level of use may cause impacts to nearby areas. The exclusion was modified to ensure that nearby areas are considered in ORV designations—5.4E(23).

Three new exclusions were added (5.4B (39), (40) and 5.4E(24)). Comments are welcome and will be considered in periodic revisions to the Appendix.

We are deleting one exclusion from the January 23, 1981, list. The exclusion (5.4D(2)) covered actions taken in conjunction with 43 CFR Part 3809 which do not require an EA, pursuant to Section 3809.2–1. This exclusion was placed on the list in error. There is no Federal action associated with this Section of the regulations.

For ease in reference the entire Appendix is republished with the final revisions to Section 5.4 inserted. Minor updating changes have been made in Sections 5.1–5.3.

Dated: October 29, 1982.

William D. Bettenberg,

Deputy Assistant Secretary, Policy, Budget and Administration.

[516 DM 6]

Appendix 5—Bureau of Land Management

5.1 NEPA Responsibility

A. The *Director/Associate Director* are responsible for NEPA compliance for Bureau of Land Management (BLM) activities.

B. The *Deputy Director, Lands and Renewable Resources* is responsible for policy interpretation, program direction, leadership, and line management for BLM environmental policy, coordination, and procedures.

(1) *Office of Planning and Environmental Coordination.* Although this Office reports to the Deputy Director, Lands and Renewable Resources, it has Bureauwide NEPA responsibilities. These include providing program direction for NEPA compliance and ensuring the incorporation and integration of the NEPA process into BLM management systems and decision processes. Information about BLM environmental documents or the NEPA process can be obtained by contacting this Office.

C. The *Deputy Directors, Energy and Minerals, and Management Services,* are responsible for cooperating with the Deputy Director, Lands and Renewable Resources, to ensure that the NEPA process operates as prescribed within their areas of responsibility. This includes managing and ensuring the quality of environmental analyses, assigned environmental documents, and records of decision.

D. *State Directors* are responsible to the Director/Associate Director for overall direction and integration of the NEPA process into their activities and for NEPA compliance in their States. The Planning and Environmental Coordination (P&EC) unit provides major staff support and is the key focal point for NEPA matters at the State level.

(1) *District Managers* are responsible for implementing the NEPA process at the District level. The P&EC unit provides major support and is the key focal point for NEPA matters at the District level.

(2) *Area Managers* are responsible for implementing the NEPA process at the Resource Area level.

E. *Office of Special Projects,* which reports to the Director, Denver Service Center, is responsible for ensuring that the NEPA process operates as prescribed in its area of responsibility. This includes the organization for and preparation of environmental documents for major inter-State, non-BLM initiated development proposals and other major projects in accordance with established procedures or as assigned.

5.2 Guidance To Applicants

A. *General.* (1) Applicants should make initial contact with the line manager (Resource Area Manager, District Manager, or State Director) of the office where the affected public lands are located.

(2) If the application will affect responsibilities of more than one State Director, an applicant may contact any State Director whose jurisdiction is involved. In such cases, the Director may assign responsibility to the Headquarters Office, the Denver Service Center (Office of Special Projects), or to one of the State Offices at his discretion. From that point, the applicant will deal with the designated lead office.

(3) Potential applicants may secure State Directors a list of program regulations or other directives/guidance providing advice or requirements for submission of environmental information. The purpose of making these regulations known to potential applicants, in advance, is to assist them in presenting a detailed, adequate and accurate description of the proposal and alternatives when they file their application and to minimize the need to request additional information. This is a minimum list and additional requirements may be identified after detailed review of the formal submission and drug scoping.

(4) Since much of an applicant's planning may take place outside of BLM's Planning System, it is important for potential applicants to advise BLM of their planning at the earliest possible stage. Early communication is necessary to conduct properly our stewardship role on the public lands and to seek solutions to situations where private development decisions may conflict with public land use decisions. Early contact will also allow the determination of basic data needs concerning environmental amenities and values, potential data gaps that could be filled by the application and a modification of the list of requirements to fit unique local situations. Scheduling of the environmental analysis process can also be discussed, as well as various ways of preparing any environmental documents.

(B) *Regulations.* The following partial list provides guidance to applicants on program regulations which may apply to a particular application. Many other regulations deal with proposals affecting public lands, some of which are specific to BLM, while others are applicable across a broad range of Federal programs (e.g., Protection of Historic and Cultural Programs, 36 CFR Part 800).

(1) Management of Rights-of-Way and Related Facilities on Public Lands and Reimbursement of Costs (43 CFR Part 2800).

(2) Roads and Highways (43 CFR Part 2820).

(3) Rights-of-Way Under the Mineral Leasing Act (43 CFR Part 2880).

(4) Surface Management Requirements (43 CFR Part 3109).

(5) Surface Management Requirements; Special Requirements (43 CFR Part 3204).

(6) Coal Management; Federally-Owned Coal (43 CFR Part 3400).

(7) Leasing of Minerals Other Than Oil and Gas; General (43 CFR Part 3500).

(8) Exploration and Mining; Wilderness Review Program (43 CFR Part 3802).

(9) Surface Management of Public Lands Under the U.S. Mining Laws (43 CFR Part 3809).

5.3 Major Actions Normally Requiring an EIS

A. The following types of BLM proposals will normally require the preparation of an EIS:

(1) Approval of Resource Management Plans.

Note.—BLM land use plans, termed Management Framework Plans (MFP), for which EIS's are not normally prepared, are based on a set of procedures being phased out during the 1979–1983 period. During this same period, land use plans prescribed by the Federal Land Policy and Management Act

(FLPMA), termed Resource Management Plans (RMP), are being phased in.

(2) Approval of major activity plans, within MFP's, for grazing and timber management in accordance with criteria and schedule established in decrees and court orders.

Note.—To the extent practicable, these activity plans will be phased into RMP's in the future and their associated impacts will be included in the EIS's under paragraph (1) above. This should substantially reduce or eliminate the need for separate EIS's for activity plans.

(3) Recommendations of wilderness proposals to the Congress.

(4) Approval of regional coal lease sales schedules in a coal production region.

(5) Approval of applications to BLM for major actions in the following categories:

(a) Sites for major steam-electric powerplants, petroleum refineries, synfuels plants, and industrial facilities.

(b) Rights-of-way for major reservoirs, canals, pipelines, transmission lines, highways and railroads.

(6) Withdrawals from mineral entry under U.S. Mining Laws of 5,000 acres or more of public lands where evidence indicates minerals of more than nominal value are present or serious interest in mineral development has been expressed.

B. If, for any of these actions, it is proposed not to prepare an EIS, an EA will be prepared and handled in accordance with § 1501.4(e)(2).

5.4 Categorical Exclusions

In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, many of which the Bureau also performs, the following BLM actions are designated categorical exclusions unless the action qualifies as an exception under 516 DM 2.3A(3):

A. *General.* (1) Inventory, data and information collection.

(2) Placing of monitoring equpment (e.g., stream gages).

(3) Non-manipulative research.

(4) Minor routine or preventive operation and maintenance activities on BLM facilities, lands and resource developments.

(5) Actions where BLM has concurrence or co-approval with another bureau and the action is a categorical exclusion for that bureau.

B. *Realty.* (1) Withdrawal continuations or extensions which would merely establish a specific time period and where there would be essentially no change in use and continuation would not lead to environmental degradation.

(2) Withdrawal continuations or extensions for administrative sites, location of facilities, other proprietary purposes, and roadside areas and buffer zones for other bureaus and the Forest Service.

(3) Withdrawal continuations or extensions where a report has been prepared which determined that the land contains minerals of no more than nominal value and there has not been serious interest in mineral development expressed, and no new uses would be permitted and existing uses would not lead to environmental degradation under the continuation.

(4) Withdrawal terminations, modifications or revocations if, because of other withdrawals, classifications, management decisions or administrative determinations that will survive the action, the status of the land, insofar as its availability for appropriation under the general land laws, will not be changed.

(5) Withdrawal terminations, modifications or revocations that, because of underlying withdrawals or statutory provisions, involve merely a record clearing procedure.

(6) Withdrawal revocations and opening orders for stock driveways.

(7) Withdrawal terminations, modifications or revocations and classification cancellations and opening orders where the land would be opened to discretionary land laws and where such future discretionary actions would be subject to the NEPA process.

(8) Withdrawal terminations, modifications or revocations and classification cancellations and opening orders where the land would be opened to the operation of the mining laws, if the land does not contain minerals of more than nominal value, as determined in accordance with the established practices and procedures of BLM and there has not been any serious interest in mineral development expressed.

(9) Withdrawal terminations, modifications or revocations and opening orders that the Secretary of the Interior is under a specific statutory directive to execute.

(10) Transfers of land or interest in land to other bureaus or the Secretary of Agriculture pursuant to Sections 205(c) or 206(c) of FLPMA when the land was acquired for that purpose and the acquisition was covered by an environmental document.

(11) All non-discretionary land actions in Alaska pursuant to the Alaska Native Claims Settlement Act (ANCSA), Alaska Statehood Act, and other statutes, including:

(a) ANCSA grants.

(b) Native allotments.

(c) Trade and manufacturing sites.

(d) Homesites.

(e) Headquarters sites.

(f) Homesteads.

(g) State selections.

(12) Administrative conveyances and leases to the State of Alaska to accommodate airports for which property rights existed prior to the enactment of NEPA.

(13) Continuations of Recreation and Public Purpose Act lands, small tract lands or other land disposal classifications where the surface has been patented and the locatable minerals are reserved to the United States.

(14) Actions taken in conveying mineral interests under Section 209(b) of FLPMA where the intended land use by the non-Federal surface owner would be consistent with surrounding land uses or would cause only minimal environmental impact.

(15) Color of Title cases (Class one).

(16) Recordable disclaimers of interest under Section 315 of FLPMA.

(17) Corrections of patents and other conveyance documents under Section 316 of FLPMA and other applicable statutes.

(18) Assignment of land use authorization (to another party) where the assignment conveys no additional rights beyond those granted in the original authorization.

(19) Transfer of use authorization from one agency to another when an action such as a boundary adjustment necessitates changing a right-of-way from one agency to another (e.g., Forest Service Special Land Use Permit to a BLM Title V right-of-way).

(20) Conversion of existing rights-of-way grants to Title V of FLPMA grants where no new facilities or other changes are needed.

(21) Rights-of-way inside another right-of-way or amendments to rights-of-way where minor deviations from or additions to the original right-of-way are involved and where there is an existing environmental document covering the same or similar impacts in the right-of-way area.

(22) Buried power or telephone lines in an existing right-of-way using the split trench method.

(23) Upgrading or adding new lines (power or telephone) to existing pole(s) when there is no change in pole configuration.

(24) Right-of-way for a single-poled power or telephone line to an individual residence, building or well from an existing line where installation of the line will involve no clearance of

vegetation from the right-of-way other than for placement of poles.

(25) Rights-of-way for overhead line (no pole or tower on BLM land) crossing over a corner of public land.

(26) Right-of-way which would add another radio transmitter to an approved communication site.

(27) Minor ancillary rights-of-way actions associated with the action of another bureau or Federal agency, and the action is a categorical exclusion for that bureau/agency, but only if a cooperative arrangement for the related actions provides for mutually acceptable mitigation measures.

(28) Transfer of land or interest in land to or from other bureaus or Federal agencies where current management will continue and future changes in management will be subject to the NEPA process.

(29) Easement acquisition, grants of right-of-way, temporary use permit, or minor modification to existing grants to use existing improvements, facilities or sites for the same or similar purpose.

(30) Grant of a right-of-way for a pipeline or a terminal transportation road, utility line or drop to an individual residence, well, building or facility adjacent thereto.

(31) Grant of a right-of-way for buried utility distribution line.

(32) Temporary placement of a pipeline above ground.

(33) Designation of existing transportation and utility corridors under Section 503 of FLPMA.

(34) Grant of a right-of-way within a designated corridor, within the intent of the designation.

(35) Renewals, assignments and conversions of existing right-of-way grants.

(36) Grant of temporary use permit for storage sites.

(37) Authorization of installation of devices to protect human or animal life; e.g., raptor electrocution prevention devices, grates across mines, etc.

(38) Issuance of land use authorization in Alaska on land which has been selected by and title will vest in State, native village or regional corporation selected land if the selecting entity does not object to or is promoting the action.

(39) Issuance of rights-of-way for ancillary facilities (gathering or feeder pipelines, tank batteries, access roads, power and communication lines and holding facilities) within an established, unitized or developing oil or gas field which has been covered by either a specific or a programmatic environmental document.

(40) Actions taken in connection with Sections 910 and 1431 of the Alaska National Interest Lands Conservation Act.

C. *Transportation.* (1) Placing of existing roads in BLM road net where no new facilities or other changes are needed.

(2) Installation of routine signs, markers or cattleguards on or adjacent to existing roads.

(3) Temporary road closures.

(4) Placement of recreational, special designation or information signs, visitor registers, kiosks and portable sanitation devices.

(5) Road maintenance activities.

D. *Minerals.* (1) Issuance of mineral patents.

(2) Approval of permits for geologic and paleontologic mapping, inventory, reconnaissance and surface collecting.

(3) Issuance of individual non-competitive upland oil and gas leases.

(4) Conversion of an abandoned oil well to a water well if water facilities are established near the well site only.

(5) Establishment of terms and conditions in Notices of Intent to conduct geophysical explorations of oil and gas pursuant to 43 CFR Part 3045.

(6) Approval of Notices of Intent to conduct geothermal resources exploration operations pursuant to 43 CFR Part 3209.

(7) Approval of a plan of operation for geothermal exploration or development when an environmental document has been prepared at the leasing stage.

(8) Approval of a plan for injection of geothermal fluids meeting the standards of GRO-4 (Environmental Protection Requirements).

(9) Approval of a plan for geothermal production when derived from a plan of utilization which has been covered by an environmental document.

(10) Findings of completeness furnished to the Office of Surface Mining for coal mining and operation plans filed under the Surface Mining Control and Reclamation Act.

(11) Mineral lease adjustments and transfers, including assignments and subleases.

(12) Issuance of individual non-competitive geothermal leases where there will be subsequent NEPA compliance prior to development.

(13) Disposal of small amounts of mineral materials as authorized by the Act of July 31, 1947, as amended (30 U.S.C. 601, 602).

(14) Offering and issuance of upland competitive oil and gas leases where the issuance of the lease is consistent with existing land uses and has been covered by an areawide environmental document.

E. *Other.* (1) Cadastral surveys.

(2) Issuance of special use or short-term permits not entailing environmental disturbance.

(3) Small sales of sand and gravel, wood products or other materials from authorized sale areas.

(4) Dispersed non-commercial recreation activities such as rock collection, Christmas tree cutting and pine nut gathering.

(5) Issuance of grazing permits and leases and annual authorizations which are consistent with decisions covered by a grazing management EIS.

(6) Issuance of grazing permits and leases and annual authorizations in areas scheduled for the preparation of a grazing management EIS which do not increase the level of use or continue unsatisfactory environmental conditions.

(7) Land cultivation activities in forest tree nurseries.

(8) Construction of guzzlers, spring developments and other small water harvesting facilities for wildlife water.

(9) Modification of existing fences to provide improved wildlife ingress and egress.

(10) Reintroduction of endemic or native species into their historical habitsts, other than endangered or threatened species.

(11) Construction and maintenance of snow fences for safety purposes or to accumulate snow for small water facilities.

(12) Maintenance of existing water facilities.

(13) Small exclosures constructed for protective purposes, including those to protect reservoirs and springs and those to protect small study areas.

(14) Free use of small quantities of sand and gravel, vegetative products or other materials for non-commercial purposes.

(15) Removal of non-valuable, recent structures and materials (including abandoned automobiles, dumps, fences and buildings) and reclamation of the site.

(16) Issuance of special recreation permits:

(a) To organized groups for search and rescue training, orienteering or similar activities.

(b) For dog trials, endurance horse races and similar events.

(c) Along rivers, trails and other specified areas where use is similar to previous permits for which environmental documents have been prepared, and which would not substantially increase the level of use or continue unsatisfactory environmental conditions.

(d) Where uses are consistent with planning decisions or ORV designations, as applicable, or where there will be no surface disturbance.

(17) Small timber sales for removal of individual trees which are dead, diseased, injured or which constitute a safety hazard, and where the removal requires no more than minor improvement (maintenance) to existing rights-of-way.

(18) Reseeding or reforestation of old timber sale or burn areas where no chemicals are used and there is no conversion of timber type or conversion of nonforested to forested land.

(19) Precommercial thinning activities using small mechanical devices.

(20) Issuance of reindeer grazing permits in Alaska which are consistent with an approved land use plan.

(21) Issuance of authorization for temporary use of small sites for field work camps.

(22) Removal of log jams and debris dams using hand labor or small mechanical devices.

(23) ORV designations which are the result of planning decisions for which there has been NEPA compliance.

(24) Preparation and implementation of Wildlife Management Plans, cooperatively completed with State agencies under authority of the Sikes Act, Title II, Pub. L. 93–452.

[FR Doc. 82–30457 Filed 11–4–82; 8:45 am]

BILLING CODE 4310–84–M

Office of Surface Mining and Enforcement

Abandoned Mine Lands Reclamation Program—Ohio

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

ACTION: Notice of Availability of Findings of No Significant Impact (FONSI) addressing Environmental Assessments (EA's) for the development of two (2) abandoned mine land projects under the State of Ohio Reclamation Plan.

SUMMARY: The Eastern Technical Center, OSM, has prepared two (2) FONSI's based on EA's prepared by the Ohio Department of Natural Resources for two (2) reclamation projects indicated below and included in the grant developed under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1231–1234.

ADDRESS: Copies of the EA's and FONSI's are available for inspection or may be obtained at the following location between the hours of 8:00 a.m. and 4:30 p.m.: Office of Surface Mining Reclamation and Enforcement, Ohio Field Office, 2242 South Hamilton Road, Columbus, Ohio 43227, (614) 866–0578.

FOR FURTHER INFORMATION CONTACT: Nina Rose Hatfield, Director, Ohio Field Office (address above).

Reclamation projects included in FONSI's, location and description:

1. Village of Richmond Project, Jefferson County (reclaim approximately 10 acres of land that is composed of an abandoned strip mine pit, associated spoil banks, and a 50-foot highwall).

2. Perko Project, Belmont County (reclaim and stabilize an earth slip that jeopardizes a local residence).

Dated: November 1, 1982.

J. Steven Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 82–30516 Filed 11–04–82; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. *Parent corporation and address of principal office.* NERCO Coal Company, 4243 Hunt Road, Cincinnati, OH 45242.

2. *Wholly-Owned subsidiaries which will participate in the operations, and State(s) of incorporation.*

Associated Mining Company, 608 E. Main, Washington, Indiana 47501
Bankhead Mining Company, Inc., P.O. Box 1629, Jasper, Alabama 35501
Cobb Coal Company, Inc., P.O. Box 760, Carbon Hill, Alabama 35549
NERCO Coal Sales Co., 4243 Hunt Road, Cincinnati, Ohio 45242
NERCO Transportation Company, 4900 Shamrock Drive, Evansville, Indiana 47715
P-V Mining Company, Inc., P.O. Box 207, Huntingburg, Indiana 47542
Sand Mountain Minerals, Inc., P.O. Box 170, Pisgah, Alabama 35765
Sequatchie Valley Coal Corporation, Box 30688 Star Route, Dunlap, Tennessee 37327

1. Parent corporation and address of principal office: PepsiCo, Inc., Purchase, NY 10577

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(1) Beverages, Foods & Service Industries, Inc., c/o PepsiCo, Purchase, NY 10577
(2) Conroe Packaging, Inc., 222 Loop 336 East, P.O. Box Y, Conroe, TX 77301
(3) Frito-Lay, Inc., P.O. Box 35034, Dallas, TX 75235
(4) National Beverages, Inc., 1700 Directors Row, Orlando, FL 32809
(5) PBG Beverage Distributors, Inc., c/o PepsiCo, Purchase, NY 10577
(6) Pepsi-Cola Bottling Co. of Los Angeles, Inc., P.O. Box 3338, Torrance, CA 90510
(7) Pepsi-Cola Bottling Company of Puerto Rico, Inc., P.O. Box 1709, Hato Rey, Puerto Rico 00919
(8) Pepsi-Cola Interamericana, S.A., c/o PepsiCo, Purchase, NY 10577
(9) Pepsi-Cola Metropolitan Bottling Company, Inc., c/o PepsiCo, Purchase, NY 10577
(10) Pepsi-Cola Panamericana, S.A., c/o PepsiCo, Purchase, NY 10577
(11) PepsiCo World Trading Company, Inc., c/o PepsiCo, Purchase, NY 10577
(12) Advance Moving & Storage, Inc., 650 North Second Ave., Phoenix, AZ 85003
(13) Agency Media Services, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801
(14) Fleet Insurance Management, Inc., c/o NAVL, Box 988, Fort Wayne, IN 46801
(15) Great Falls North American, Inc., P.O. Box 1414, Great Falls, MT 59401
(16) Lee Way Motor Freight, Inc., P.O. Box 12750, Oklahoma City, OK 73157
(17) Marlew of El Paso, Inc., 8201 Lockhead Drive, El Paso, Tx 79225
(18) Moving Credit, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801
(19) NACAL, Inc. 12842 Valley View, Garden Grove, CA 92645
(20) North American Distribution Systems, Inc., P.O. Box 411, New Haven, IN 46774
(21) North American Forwarding, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801
(22) North American Moving & Storage, Inc., 2122 Bremer Road, Fort Wayne, IN 46803
(23) North American Properties, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801
(24) North American Van Lines, Inc., P.O. Box 988, Fort Wayne, IN 46801
(25) North American Van Lines of Texas, Inc., 811 Central Expressway, Richardson, TX 75080
(26) Tractor Power, Inc., d.b.a. Fleet Service, c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801
(27) Transportation Collections, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801

(28) Triangle Fleet Service, Inc., 801 W. California Road, Fort Wayne, IN 46808
(29) Pizza Hut, Inc., P.O. Box 428, Wichita, KS 67201
(30) Aurora Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(31) Bender Pizza, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(32) Buckeye PH, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(33) Blues Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(34) Chesapeake Bay Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(35) Denver Pizza, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(36) East Moline Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(37) Fiesta Cantina of Ohio, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(38) Franchise Services, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(39) Franchise Services of Kansas, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(40) Indianapolis Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(41) J & G Products, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(42) Lake Michigan Management Co., Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(43) Long's Appleton, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(44) Long's Green Bay #2, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(45) Long's Marshfield, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(46) Long's Neenah, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(47) Long's Wausau #2, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(48) Mountaineer Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(49) Oriole Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(50) Pizza Hut, Inc., of LaCrosse, c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(51) Pizza Hut of America, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(52) Pizza Hut of Boston, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(53) Pizza Hut of Columbia, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(54) Pizza Hut of Gainesville, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(55) Pizza Hut of Georgia, Inc., P.O. Box 428, Wichita, KS 67201
(56) Pizza Hut of Jeffersonville, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(57) Pizza Hut of Kalamazoo, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(58) Pizza Hut of Knoxville Corporation, c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(59) Pizza Huts of Las Vegas, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(60) Pizza Hut of Louisiana, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(61) Pizza Hut of Louisville, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(62) Pizza Hut of Massachusetts, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(63) Pizza Huts of North Carolina, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(64) Pizza Hut of North Haven, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(65) Pizza Hut of Oklahoma, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(66) Pizza Hut of Oregon, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(67) Pizza Hut of Racine, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(68) Pizza Hut of Rochester, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(69) Pizza Hut of San Diego, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(70) Pizza Hut of Santa Fe, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(71) Pizza Hut of Spokane, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(72) Pizza Hut of Utah, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(73) Pizza Hut of Virginia, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(74) Pizza Hut of West Allis, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(75) Pizza Hut of Wichita, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(76) Pizza Hut of Wisconsin, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(77) Pizza Hut of Zion, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(78) Ross Pizza, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(79) Second Concept, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(80) Sioux Falls Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(81) Sun Devil Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(82) Taco Kid of Wichita #2, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201
(83) Taco Bell, 17381 Red Hill Ave., Irvine, CA 92714
(84) Bell Food Services, Inc., c/o Taco Bell, 17381 Red Hill Ave., Irvine, CA 92714
(85) Taco Bell of Ohio, Inc., c/o Taco Bell, 17381 Red Hill Ave., Irvine, CA 92714
(86) Southwest Snack Equipment, Inc., 900 North Loop 12, Irving, TX 75061
(87) Marlew of Lubbock, Inc., 23rd St. at Ave. E., Box 818, Lubbock, TX 79408
(88) Tri-City Moving & Storage, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801
(89) PepsiCo Foods Systems, Inc., P.O. Box 3037, Wichita, KS 67201
(90) Wilson Sporting Goods Co., 2233 West St., River Grove, IL 60171
(91) Sabritas S.A. de C.V., Apartado Postal 15–112, Mexico 15, D.S., Mexico
(92) Pioneer Freight, Inc., P.O. Box 12750, Oklahoma City, OK 73157
(93) Temati, S.A. de C.V., Calle #7, Norte #108, Colonia Industrial, Nva Tijuana, Tijuana, Baja California, Mexico

1. Parent corporation and address of principal office: Pincombe Enterprises, LTD., Box 1480, 406 1st Ave. W., Kindersley, Saskatchewan, Canada S0L 1S0.

2. Wholly-owned subsidiary which will participate in the operation and address of principal office: Sitter's Transport, LTD., Box 1480, 406 1st Ave. W., Kindersley, Saskatchewan, CD S0L 1S0.

1. Parent corporation and address: Pitney Bowes, Wheeler Drive, Stamford, Connecticut 06904.

2. Wholly-owned subsidiaries which will participate in the operation and the States of incorporation: Monarch Marking, Miamisburg, Ohio, Monarch Marking, Industrial Operations Division, Miamisburg, OH, Presto Adhesives, Miamisburg, OH.

1. Parent Corporation: The Stroh Companies, Inc., One Stroh Drive, Detroit, Michigan 48226.

2. Wholly-owned subsidiaries and their State of incorporation:

(i) F. & M. Schaefer Corp., New York
(ii) Jos Schlitz Brewing Co., Wisconsin
(iii) Goebel Brewing Co., Michigan

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-30454 Filed 11-4-82; 8:45 am]

BILLING CODE 7035-01-M

[Administrative Ruling No. 131]

Motor Carrier Rate Bureau Activities

October 28, 1982.

This is an administrative ruling of the Office of Compliance and Consumer Assistance made in response to questions or disagreements that have arisen in the course of the Commission's compliance surveys and its monitoring of rate bureau activities. The ruling indicates what is deemed by the Office to be the correct application and interpretation of the Act and/or regulations and, except where authority for the ruling is cited, is made in the absence of authoritative Commission decisions on the subject.

Question 1

Are all meetings at which rates or rules are to be discussed and/or voted on required to be publicized and open to the public?

Answer

Yes. The legislative history of the Motor Carrier Act of 1980 (MCA) demonstrates strong Congressional concern regarding closed rate bureau proceedings. The opportunity to monitor rate bureau meetings by the public is necessary to protect the public interest and foster the competitive goals of the MCA.

The MCA requires that, "upon request, the organization must divulge to any person the name of the proponent of a rule or rate docketed with it, must admit any person to *any* meeting at which rates or rules will be discussed or voted upon, and must divulge to any person the vote cast by any member carrier on any proposal before the organization." 49 U.S.C. 10706(b)(3)(B)(v).

In Ex Parte No. 297 (Sub-No. 5), 45 FR 86736, December 31, 1980, the Commission required that rate bureaus afford reasonable notice of scheduled meetings in its docket bulletin. In addition to stating the time and place of the meeting, the notice must identify the rates or rules which will be on the agenda; a list or general description of the commodities moving under a rate; the appropriate origin and destination points; the justification for the proposed action; and any other relevant information.

All aspects of ratemaking should be open to all interested parties regardless of whether the issue is addressed in a committee or subcommittee meeting and regardless of whether the item to be discussed has been docketed. To assure that notification requirements are meaningful, discussion of agenda items relating to "any other rate or rule matters brought to the floor" should be limited to the question of whether such items should be included on the agenda for later meetings.

Question 2

May a rate bureau member, which holds authority to participate in the transportation to which a rate proposal applies, vote on a bureau proposal even though it has established and intends to maintain a rate for such transportation in its individually published tariff?

Answer

Yes. The language used in the statute (49 U.S.C. 10706(b)(3)(B)(i)) allows or permits those carriers "to vote which hold authority to participate in transportation to which the rate proposal applies." In Ex Parte No. 297 (Sub-No. 5), the Commission established this as the threshold requirement for voting, but indicated that the membership of individual bureaus may determine whether to require participation in the tariff item as an additional requirement in voting on collective action rates.

Question 3

Is a written affirmation of authority to participate in the transportation to which a rate proposal applies required for every stage of procedure, such as deferral, amendment, etc., which takes place prior to final disposition of the proposal?

Answer

Yes. Ability to vote on a proposal is dependent on the authority to participate in the transportation to which the proposed rate applies. 49 U.S.C. 10706(b)(3)(B)(i). Voting on a motion to amend or defer a proposal, for example, is a vote as contemplated under the statute. It should not be considered a mere ministerial step in the formulation of subject matter of the proposal. Thus only carriers who hold appropriate authority may vote on such motions.

Voting may be accomplished by a showing of hands, by voice, or by written ballot, as the membership chooses. However, the rate bureau is still bound to record and divulge the vote cast by any member carrier on any proposal before the organization upon request. 49 U.S.C. 10706(b)(3)(B)(v). If the rate bureau elects not to use written ballots for such interim votes, it must include the names and positions of members who voted on such issues by a showing of hands or by voice in the minutes of the meeting, or make alternative arrangements to satisfy the sunshine requirement.

Question 4

Finding 14, Ex Parte No. 297, Rate Bureau Investigation, 351 ICC 437, 451 (1976), prohibited rate bureaus from making a disposition of a proposal which, after docketing, was broadened in territorial or commodity scope, until the change is given prior adequate notice. Does the word "broadened" also encompass "diminishing" the territorial or commodity scope of a proposal?

Answer

Yes. The Commission's findings in Ex Parte No. 297 are contained in two printed reports: 349 ICC 811 (1975) and 351 ICC 437 (1976). Those findings were affirmed in *Motor Carriers Tariff Ass'n* v. *United States*, 559 F. 2d 1251 (4th Cir., 1977). When both ICC reports are read together, it is apparent that the Commission intended to answer this question in the affirmative.

Rate Bureau Investigation, 349 ICC 811, 832–33 (1975) states in relevant part:

In some instances, individual rate proposals are changed after docketing and after public notice to either add or delete points of origin, destination, or commodity descriptions. . . . Our major concern is that all affected parties to any rate change proposal be afforded adequate public notice and an opportunity to be heard and to participate.

A shipper group requested reconsideration of this finding, but the Commission declined to modify its earlier holding.

* * * our initial report made no distinction between rate proposals for increases or reductions but spoke of "changed" or "broadened" proposals. However, whether increases or reductions are involved, the issue is the same * * *

We adhere to our prior determination that notice is of such overriding importance that our requirement must stand. Absent such a prohibition, commodity and/or territorial changes could be made in proposals which would affect many other interested parties without their knowledge * * * 351 ICC 437, 452 (1976) (emphasis added)

Question 5

A. Does the open meeting provision of the MCA, discussed in Question 1, require the bureau to divulge the name of an objector to a proposal if such information is requested?

Answer

Yes. The intent of MCA is clear. There are to be no secrets in collective ratemaking. Objections or protests are an important part of the procedures. As

a regular practice, in the absence of objections or protests, proposals automatically become final.

In the major rate bureaus, if there are protests or objections, the proposals are referred to a General Rate Committee (GRC). Therefore, names of objectors should be revealed if sought.

B. May the bureau reveal the identity of joiners to an independent action?

Answer

Not without authorization. The identity of a Joiner to an Independent Action may be revealed only if specifically authorized in writing by the Joiner. Joining an advance notice Independent Action constitutes the taking of a separate and distinct action and may not be publicized without such written authorization.

Question 6

Must there be a quorum in attendance at *all* stages of a motor carrier rate bureau meeting in order to continue validly to conduct business?

Answer

Yes. The Motor Carrier Act of 1980 directed the Commission to determine reasonable quorum standards for rate bureau meetings. 49 U.S.C. 10706(b)(3)(F). The Commission has established the quorum at 30 percent of the membership of the organization, or 30 percent of the committee holding a meeting, as appropriate. *Motor Carrier, Rate Bureaus – Imp. of Pub. L. 98–290,* 364 ICC 923 (1981) Because of this legislative directive, the Commission's rules regarding quorums take precedence over any other rules for the conduct of meetings.

In the absence of a quorum, any business transacted is without immunity from the antitrust laws. The only action that can legally be taken in the absence of a quorum is to fix the time at which to adjourn, recess, or take measures to obtain a quorum.

Question 7

A. Do proposals initially submitted to apply only for the account of the "proponent" and "carriers" desiring to join constitute the taking of Independent Actions by all parties?

Answer

Yes. When the initial intent at the time of submittal is to restrict application of a proposal to the "proponent" and "carriers desiring", such submittal must be construed as an independent action on the part of the initiator as well as carriers joining. Accordingly all prohibitions against discussion, publicity and cancellation must be applied. To hold otherwise would allow circumvention of prohibitions against discussion, advance docketing, and cancellation of IAs merely by applying the term "proposal" to an "announcement."

B. May proposals which are originally submitted for application to all eligible members be amended during the disposition process to apply only for the account of the proponent and carriers desiring to join?

Answer

No. Not unless there is provision for such a procedure in an agreement approved by the Commission. Antitrust immunity does not accrue to any tariff item established under a procedure which has not been given Commission approval or is not specifically authorized by law. *National Bus Traffic Association Agreement,* 278 ICC 147; *Specialized Motor Carriers Association,* 293 ICC 265; *Indiana Motor Rate and Traffic Bureau,* 297 ICC 593.

Question 8

Can rate bureaus rely on blanket letters of instruction to determine if and when independent actions are to be docketed?

Answer

No. Ex Parte No. 297 (Sub-No. 5) requires that: each agreement must provide that, in submitting independent actions, the proponent must indicate in writing exactly whether the item is to be docketed and, when docketing is to occur. If specific instructions are not given, the bureau may not docket the proposal until it has been filed with the Commission.

Each independent action is a conscious act on the part of the carrier. The initiator is required to submit each announcement in writing and each announcement is required to contain specific docketing instructions. It is the carrier's responsibility to give explicit instructions on each action to the bureau regarding docketing.

Question 9

When may a bureau announce or docket independent actions on which no advance notice is to be given?

Answer

Not until an appropriate tariff has been filed with the Commission. The Bureau of Traffic has consistently held that a tariff is considered filed only after it has been received at the Commission's office in Washington, D.C. Accordingly, docketing may not occur until receipt at the Commission. The date of deposit in the mail is not determinative.

Question 10

Does rulemaking pertaining to Section 10706(b)(3)(B)(ii) permit rate bureaus to provide notice to carrier members which have rates established by Independent Action when in receipt of another carrier's Independent Action which establishes a different rate for similar transportation?

Answer

No. Rulemaking pertaining to Section 10706(b)(3)(B)(ii) of the Act permits notification only when a submittal is received which will change or cancel existing Independent Actions. Lawful procedures employed to establish Independent Actions preclude the automatic cancellation or change of a rate established by Independent Action upon receipt of another carrier's IA. Without the written consent of the carriers with established IAs no change or cancellation as to its rates is accomplished.

A previously independently established rate, however, could become inapplicable when a Bureau is in receipt of a proposal (other than general increase/decrease or broad rate restructuring) which, if approved, would apply to all eligible members (including the independent actor) and result in a lower rate than established by IA. In this situation, if the Initiator of the estabished IA failed to "flag out" of such a proposal its IA rate would be automatically inapplicable. (Commission rules require that if two different rates are on file for similar transportation, the lower of the two must be assessed. Thus the rate would change without written consent of the Initiator.)

Accordingly, when in receipt of proposals which, when received or when amended prior to disposition, will result in rates lower than established by IA, bureaus, in the absence of instructions from the Initiator of the independent action, must notify the Independent Actor that its IA rates will not longer have application unless new action is taken.

This, however, should not be construed to authorize notice to the Initiator of the prior Independent Action of another carrier's independent action establishing a different rate for similar transportation.

In the event of disagreement with the ruling, or portions of it, a petition may be filed in accordance with Section 5(d) of the Administrative Procedure Act, 5 U.S.C. 554(e), which permits the

Commission in its discretion to issue declaratory orders to end controversies or remove uncertainties.

J. Warren McFarland,

Director.

[FR Doc. 82-30455 Filed 11-4-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-No. 122)]

Rail Carriers; Burlington Northern Railroad Company—Abandonment—Between Lewistown and Liverpool, IL; Findings

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its 8.93 mile rail line between Lewistown, IL (milepost 0.00) and Liverpool, IL (milepost 8.93) in Fulton County, IL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued, and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Mr. Louis E. Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10 day period.

Information on procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1121.38.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-30452 Filed 11-4-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Bureau of Prisons

Advisory Corrections Council; Meeting

Notice is hereby given that the Advisory Corrections Council in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) will meet on November 15, 1982, at the Department of Justice, Washington, D.C.

The purpose of the meeting is to discuss: Prison/jail overcrowding Issue; Proposal for concurrent jurisdiction at U.S. Penitentiary, Marion, Illinois; Senate Bill 1747 concerning Federal Prisons Industries and other corrections related topics.

Signed at Washington, D.C., this 1st day of November 1982.

Norman A. Carlson,

Director, Bureau of Prisons.

[FR Doc. 82-30437 Filed 11-04-82; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council Committees; Meetings and Agenda

The regular autumn meetings of committees of the Labor Research Advisory Council will be held on November 30, December 1, and 2, in Room N-5437, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members.

The schedule and agenda of the meetings are as follows:

Tuesday, November 30: 9:30 a.m.—Committee on Employment Structure and Analysis

1. Report on thirteenth ILO Conference of Labor Statisticians—ILO definitions of labor force, employment, unemployment, and underemployment
2. Report on study of duration of unemployment
3. Question on union membership in Current Population Survey
4. Status of revision of 790 report series
5. Discussion of source of difference between the official total unemployment rate and the unemployment insurance (UI) rates
6. Report on trends in defense employment

Tuesday, November 30: 1:30 p.m.—Committee on Prices and Living Conditions

1. Status of homeownership change
2. Status of Continuing Expenditure Survey
3. Plans for CPI revision

Wednesday, December 1: 9:45 a.m.—Committee on Occupational Safety and Health Statistics

1. Discussion of the results of the 1981 annual survey
2. Recordkeeping developments
3. Discussion of Federal-State statistical grant program for Fiscal Year 1983
4. Discussion of Work Injury Reports surveys
5. Supplementary Data System update
6. Other business

Wednesday, December 1: 1:30 p.m.—Committee on Wages and Industrial Relations

1. Review of Office of Wages and Industrial Relations work
2. 1982 patterns in collective bargaining
3. Data needs for collective bargaining—open discussion
4. Other business

Thursday, December 2: 9:30 a.m.—Committee on Foreign Labor and Trade

1. Discussion of all phases of thirtenth ILO Conference of Labor Satisticians: Labor force, occupational injuries, occupational wages, international coding of labor statistics
2. Report on status of programs:

(a) Trade monitoring

(b) International comparisons—unemployment, productivity, and labor cost

Thursday, December 2: 1:30 p.m.—Committee on Productivity, Technology and Economic Growth

1. Review of work in progress in the Office of Economic Growth:

(a) Using BLS projections to examine prospective employment growth in high technology industries;

(b) Construction industry employment;

(c) Review of past employment changes in the defense related industries

2. Discussion of the assumptions for the BLS 1995 Projections
3. Current status of the multi-factor productivity measure

The meetings are open. It is suggested that persons planning to attend as observers contact Joseph P. Goldberg, Executive Secretary, Labor Research Advisory Council on (Area Code 202) 272-5239.

Signed at Washington, D.C. this 1st day of November 1982.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc 82-30512 Filed 11-04-82; 8:45 am]

BILLING CODE 4510-24-M

Business Research Advisory Council's Committee on Occupational Safety and Health; Meeting

The BRAC Committee on Occupational Safety and Health will meet on Tuesday, November 30, 1982, at 10:00 a.m., in Room N-3437 of the Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C.

The Business Research Advisory Council and its committee advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry. The agenda for the meeting is as follows:

1. Discussion of the results of the 1981 annual survey;
2. Recordkeeping development;
3. Discussion of Federal-State statistical grant program for fiscal year 1983;
4. Discussion of Work Injury Reports surveys;
5. Supplementary Data System update;
6. Other Business.

This meeting is open to the public. It is suggested that persons planning to attend as observers contact Kenneth G. Van Auken, Executive Secretary, Business Research Advisory Council on Area Code (202) 272–5241.

Signed at Washington, D.C., this 29th day of October 1982.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 82–30513 Filed 11–4–82; 8:45 am]

BILLING CODE 4510–24–M

Mine Safety and Health Administration

[Docket No. M–82–80–C]

Kenellis Energies, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Kenellis Energies, Inc., Route 2—Box 74, Galatia, IL 62935–9620 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Brushy Creek Mine (I.D. No. 11–02636) located in Saline County, Illinois. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure screw caps in place on battery-operated S & S scoops and tractors.

2. Petitioner states that there is an element of danger in having plugs locked together in the event of a fire occurring on the scoop's electrical components, which would result in a diminution of safety for the miners affected.

3. As an alternative method, petitioner proposes that a modified locking device in the form of a threaded bolt, which will prevent loosening of the threaded ring, be used in lieu of a padlock. This device will serve the same purpose as a padlock; it could not fall out of place but could easily be removed in the event of an emergency.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 6, 1982. Copies of the petition are available for inspection at that address.

Dated: November 1, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82–30514 Filed 11–4–82; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–82–72–C]

Hopkins Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Hopkins Creek Coal Company, P.O. Box 739, Elkhorn City, Kentucky 41522 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15–11602) located in Pike County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The coal seam ranges in height from 34 inches to 39 inches, with undualating top and bottom conditions.

3. Petitioner states that the application of the standard would result in a diminution of safety for the miners affected because the canopies have to be installed in a manner to prevent them from striking and weakening the roof support system. Such installation causes an equipment compartment which cramps the operator's position and impairs visibility, which could lead to and contribute to accidents.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 6, 1982. Copies of the petition are available for inspection at that address.

Dated: November 1, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82–30515 Filed 11–4–82; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–82–73–C]

Emerald Mines Corp.; Petition for Modification of Application of Mandatory Safety Standard

Amoco Minerals Company, 7000 South Yosemite Street, P.O. Box 3299, Englewood, Colorado 80155, has filed, on behalf of Emerald Mines Corporation, a petition to modify the application of 30 CFR 75.1707 (escapeways; intake air; separation from belt and trolley haulage entries) to its Emerald Mine No. 1 (I.D. No. 36–05466) located in Greene County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the escapeway required to be ventilated with intake air be separated from the belt and trolley haulage entries of the mine for the entire length of such entries to the beginning of each working section.

2. The mine's longwall development sections (headgate and tailgate) are designed with a four-entry system. Typically, during development, the No. 1 entry is used as a return, the No. 2 entry is used for the development belt-line, the No. 3 entry is the intake escapeway and contains the supply track, while the No. 4 entry is used as a return.

3. As an alternative method, petitioner proposes that during production shifts:

a. The No. 3 entry (escapeway-track entry) will be developed with track and trolley wire;

b. At the entrance to the section, double air-lock doors will be installed so at that point escapeway air can be introduced. A trolley line switch will be installed at a strategic location out by the air-lock doors and will be padlocked in the "out" position. The keys to the padlock will remain in the possession of the general mine foreman, assistant general mine foreman, and the two foremen on each shift. Only these persons may authorize the use of the key to energize the trolley wire;

c. Under normal operating conditions, the trolley wire will not be energized during any shift while miners are producing coal in the affected section;

d. If the trolley wire must be energized during a production shift, production activities will stop at once and all employees at the face will be notified and removed to the section loading point. During normal production shifts, the intake escapeway air will be provided by the escapeway-track entry with the trolley wire de-energized.

e. The trolley wire will not be energized during any shift or between shifts for mantrips. Battery-powered portal buses will be used to transport employees to and from these sections.

4. In addition, petitioner proposes that the trolley wire may be energized to transport section supplies on off-shifts, idle days, or between shifts when no employees other than those involved in transporting and handling supplies will be in the section and those persons making required examinations. The trolley wire will also be energized when necessary to perform work requiring track-mounted DC equipment. At this time, no employees will be in the section except for those persons performing such work and persons making required examinations.

5. A sign will be conspicuously placed at the entrance to the section on the track haulage outby the air-lock doors warning employees of necessary precautions. Employees working on these development sections for the longwall panels of the mine will be informed of the escapeway system on these sections.

6. Petitioner states that the proposed alternative method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 6, 1982. Copies of the petition are available for inspection at that address.

Dated: October 25, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-30088 Filed 11-4-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-91-C]

Pansy Hollow Contractors, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Pansy Hollow Contractors, Inc., R.D. 3, Brookville, Pennsylvania 15825 has filed a petition to modify the application of 30 CFR 77.403 (mobile equipment; falling object protective structures (FOPS) to its Blackhawk Mine (I.D. No. 36-06172) located in Jefferson County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that falling object protective structures (FOPS) be installed on equipment used in surface coal mines to protect the equipment operator.

2. The petitioner is using a garden-type tractor equipped with a brush to sweep the surface of a block of coal prior to loading the coal into trucks. This sweeping operation takes approximately one hour to complete with one tractor compared to three hours of work by four persons using hand-held push brooms. The use of push brooms would expose more miners to the hazard of falling objects over a longer period of time.

3. Petitioner states that the addition of a FOPS device to this tractor would significantly reduce the tractor operator's visibility, impairing the machine's maneuverability, resulting in a diminution of safety.

4. As a precaution, petitioner states that an observer will be used to watch the highwall while the tractor is being operated.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 6, 1982. Copies of the petition are available for inspection at that address.

Dated: October 21, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-30089 Filed 11-4-82; 8:45 am]

BILLING CODE 4510-29-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 82-183; Exemption Application L-3372]

Exemption From the Prohibitions for Certain Transactions Involving the Florida Painters District Council No. 56 Vacation Trust Fund Located in Miami, Florida

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the transfer of certain funds by the Painters District Council No. 56 Vacation Trust Fund (the Vacation Plan) to the Florida Painters and Decorators Health and Hospitalization Fund (the Painters Health Plan) and the Painting, Drywall and Allied Trades Health and Hospitalization Plan (the Allied Health Plan).

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216 (202) 523-8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 6, 1982, notice was published in the **Federal Register** (47 FR 34219) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) for certain transactions described in an application filed by the Vacation Plan. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has complied with the requirements of notice to interested persons as stated in the notice of pendency. No public comments and no requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act. These provisions include any prohibited transaction provisions to which the

exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act.

(2) This exemption does not extend to transactions prohibited under section 406(a), 406(b)(1) and 406(b)(3) of the Act.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Vacation Plan, the Painters Health Plan and the Allied Health Plan and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Vacation Plan, the Painters Health Plan and the Allied Health Plan.

Accordingly, the restrictions of section 406(b)(2) of the Act shall not apply to transfer of the unclaimed reserves from the Vacation Plan to the Painters Health Plan and the Allied Health Plan.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 1st day of November 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-30506 Filed 11-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-182; Exemption Application Nos. D-3338 and D-3339]

Exemption From the Prohibitions for Certain Transactions Involving the Manufacturers Aids Company Profit Sharing Plan and the Manufacturers Aids Company Pension Plan Located in Elk Grove Village, Illinois

AGENCY: Pension and Welfare Benefit Program Office, Labor.

ACTION: Grant of individual exemption

SUMMARY: This exemption will permit the proposed sale of certain stock (the Stock) by the Manufacturers Aids Company Profit Sharing Plan (the Profit Sharing Plan) and the Manufacturers Aids Company Pension Plan (the Pension Plan, together, the Plans) to the Manufacturers Aids Company (the Employer), the sponsor of the Plan.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 6, 1982, notice was published in the **Federal Register** (47 FR 34348) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above described transactions. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has satisfied the notification provisions as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 57713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory of administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interest of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plans of the Stock to the Employer at $12 per share provided that this is at least the fair market value of the Stock at the time of sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 1st day of November, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-30505 Filed 11-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-181; Exemption Application No. D-3165]

Exemption From the Prohibitions for Certain Transactions Involving Woollen Associates, Inc. Profit Sharing Plan Located in Indianapolis, Indiana

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits: (1) The loan (the Loan) of $72,000 by the Woollen Associates, Inc. Profit Sharing Plan (the Plan) to the Majestic Partnership (the Partnership), a party in interest with respect to the Plan; and (2) the guarantee of repayment of the Loan by the partners of the Partnership.

FOR FURTHER INFORMATION CONTACT: Horace C. Green of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 23, 1982, notice was published in the **Federal Register** (47 FR 31996) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the above described transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has complied with the requirements of the notification to interested persons as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the Loan by the Plan to the Partnership, provided that the terms and conditions of the Loan will be and remain at least as favorable to the Plan as an arm's-length transaction would be with an unrelated party; and (2) the guarantee of repayment of the Loan by the partners of the Partnership.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 1st day of November 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administrator, U.S. Department of Labor.

[FR Doc. 82-30504 Filed 11-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-180; Exemption Application No. D-3163]

Exemption From the Prohibitions for Certain Transactions Involving the F-W Industries, Inc. Profit Sharing Plan Located in Lubbock, Texas

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the proposed purchase of a negotiable promissory note executed by an unrelated third party (the Note), by the individual accounts of Mr. L. H. Fox (Mr. Fox) and Mr. C. E. Wood (Mr. Wood) in the F-W Industries, Inc. Profit Sharing Plan (the Plan), from F-W Industries, Inc. (the Employer), the sponsor of the Plan.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine D. Lewis of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-8972. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 3, 1982, notice was published in the **Federal Register** (47 FR 39009) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above-described transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of Mr. Wood and Mr. Fox, as participants and beneficiaries of the Plan; and

(c) It is protective of the rights of Mr. Fox and Mr. Wood, as participants and beneficiaries of the Plan.

Accordingly, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed purchase of the Note from the Employer by the individual accounts of Mr. Wood and Mr. Fox in the Plan, provided that the purchase price of the Note is not greater than the fair market value of the Note on the date of sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C. this 1st day of November 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-30503 Filed 11-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-179; Exemption Application No. D-3094]

Exemption From the Prohibitions for Certain Transactions Involving Texas Home Improvements, Inc. Profit Sharing Plan and Trust Located in San Antonio, Texas

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits: (1) The proposed sale to the Texas Home Improvement, Inc. Profit Sharing Plan and Trust (the Plan) by Texas Home Improvements, Inc. (the Employer), the Plan sponsor, of third party mortgages (the Notes); and (2) the Employer's guarantee and possible repurchase of the Notes.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 6, 1982, notice was published in the **Federal Register** (47 FR 34235) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b) (1) and (2) of the Employment Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the

application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code for the above-described transactions. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice was distributed in accordance with the requirements set forth in the proposed exemption. No public comments and no requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the restrictions of section 406(a), 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The purchase of the Notes by the Plan from the Employer, provided that the terms and conditions of the purchases will be at least as favorable to the Plan as those the Plan could obtain from an unrelated third party; and (2) the guarantee by the Employer to repurchase Notes that are in default and the repurchase by the Employer of such Notes from the Plan.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 1st day of November 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-30502 Filed 11-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-3257]

Proposed Exemption for Certain Transactions Involving the Salaried Employee Stock Ownership Plan of the Goodyear Tire & Rubber Co. and Subsidiaries Located in Akron, Ohio

AGENCY: Pension and Welfare Benefit Programs Office, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt quarterly purchases by the trustee (the Trustee) of the Salaried Employee Stock Ownership Plan of the Goodyear Tire & Rubber Company and Subsidiaries (the SESOP), of common stock (the Common Stock) from the Goodyear Tire & Rubber Company (the Employer), under the Goodyear Dividend Reinvestment and Stock Purchase Plan (the Reinvestment Plan), which is also sponsored by the Employer. The proposed exemption, if granted, would affect the SESOP, the participants and beneficiaries of the SESOP, the Employer and other persons participating in the transactions.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before December 14, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–3257. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Department of Labor, telephone (202) 523–8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of

the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Employer and SESOP Trustee, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Employer is a corporation engaged in the manufacture and sale of tire and rubber products. The Employer maintains its principal executive offices in Akron, Ohio, and it has many offices and subsidiaries located nationwide and worldwide.

2. The Employer administers the SESOP as a tax credit employee stock ownership plan which is qualified under sections 401(a) and 409 A of the Code. The SESOP has been in existence since September 1977. It is maintained pursuant to a trust agreement executed by the Employer and Bankers Trust Company of New York, New York which serves as the Trustee. An administrative committee (the Committee), composed of three individuals who are both officers and employees of the Employer, is responsible for the administrative decisions of the SESOP. The SESOP provides eligible salaried employees and officers of the Employer and its subsidiaries with increased participation in the ownership of the respective entities through investment in no par value, publicly-traded Common Stock of the Employer. As of December 31, 1981, approximately 26,000 employees were eligible to participate in the SESOP. As of July 22, 1982, SESOP assets consisting principally of Employer Common Stock, were valued at nearly $13 million.[1]

[1] There is no limitation under the SESOP on the number of shares of Common Stock which may be purchased by the Trustee or contributed by the Employer.

3. The Trustee is the largest trustee of qualified defined contribution and individial account plans with combined total assets under trusteeship of approximately $15 billion. These assets are attributable to Savings, Thrift, Capital Accumulation, Profit Sharing and Tax Reduction Act Stock Ownership Plans (TRASOPs) which are similar to the SESOP.

The Trustee has maintained a commercial relationship with the Employer for many years. The aggregate average daily balances of the accounts the Employer maintains with the Trustee represent less than .01 percent of the more than $23 billion in total deposits reported by the Trustee in its most current annual report. In addition, the Trustee makes loans from time to time to the Employer and certain of its subsidiaries. As of July 22, 1982, the Trustee and Employer were parties to a credit agrement whereby the Employer may borrow up to $45 million. Currently, $20 million is outstanding under the credit agreement. The Employer also has a standby line of credit with the Trustee. Further, four foreign subsidiaries of the Employer have obtained loans, aggregating approximately $57 million from various branches and affiliates of the Trustee.

The Trustee has a legal lending limit to any single customer of approximately $158 million and its total loans outstanding exceed $19 billion. Thus, the total loans and loan commitments to the Employer and its subsidiaries by the Trustee represent approximately 0.6 percent of the total loans outstanding of the Trustee.

4. The Reinvestment Plan was adopted by the Employer's Board of Directors on June 2, 1981 and became effective as of September 1, 1981. The Reinvestment Plan is administered by Citibank, N.A. The purpose of the Reinvestment Plan is to permit eligible shareholders to invest cash dividends in additional shares of Common Stock without the payment of any brokerage commissions or service charges. Purchases of Common Stock through the Reinvestment Plan are made on each of the Employer's dividend payment dates (the Dividend Payment Dates). The Employer's Dividend Payment Dates are March 15, June 15, September 15 and December 15. The purchase price of Common Stock acquired through the Reinvestment Plan is based on 95 percent of the average of the daily high and low sales prices of Common Stock as reported in *The Wall Street Journal* as New York Stock Exchange (NYSE)—Composite Transactions for the five days immediately preceding each Dividend Payment Date (the Formula). Cash dividends payable on all shares, including fractional shares, of Common Stock which are credited to the accounts of eligible shareholders participants of the Reinvestment Plan, are automatically reinvested in additional shares of Common Stock under the Formula.

5. Section 7 of Article VIII of the SESOP provides that, except as may be otherwise directed by the Committee, all dividends and other earnings of the SESOP shall be used by the Trustee to purchase additional shares of Common Stock. To accomplish this reinvestment objective, the Employer wishes to permit the Trustee to participate in the Reinvestment Plan and purchase Common Stock on the prescribed Dividend Payment Dates using the Formula.

6. A study prepared by the Employer's Shareholders Relations Department sets forth the high, low and closing prices of the Common Stock on the NYSE and NYSE-Composite Transactions for forty Dividend Payment Dates over a ten year period beginning on January 1, 1972. The study also shows purchase prices of Common Stock on the basis of the Formula. According to the exemption application, the study discloses that in no instance did the price that would have been paid pursuant to the Reinvestment Plan exceed the high sale price of Common Stock on the NYSE on the Dividend Payment Date. The price did not exceed the low sales and closing prices of the Common Stock on the NYSE in three instances including two instances when the Formula price exceeded the closing price. In no event did the Formula price exceed the low sales price by more than $.18 per chare or the closing price by more than $.06 per share. The application further states that if future price patterns approximate past patterns, participation by the SESOP would benefit SESOP participants since, in most instances, the Reinvestment Plan price per share of Common Stock would have been at least $1.00 less than the low sales price on the Dividend Payment Date

7. In a memorandum prepared by counsel for the Employer, it is argued that there cannot be any manipulation by the Employer of the price of Common Stock on the five trading days preceding the Dividend Payment Date because the federal securities laws and the rules and regulations governing corporations whose shares are listed on the NYSE expressly prohibit corporations from manipulating the prices of their securities. Moreover, these prohibitions are designed to protect all investors,

including the SESOP, and sufficient policing of these prohibitions exists to insure they will not be violated. Furthermore, the addition of the SESOP as a participant to the Reinvestment Plan would only increase the liability of the employer since it would also be in violation of its fiduciary obligations under the Act if it engaged in price manipulation.

8. The Trustee represents that the proposed transactions are appropriate for the SESOP and in the best interests of its participants and beneficiaries. According to the Trustee, the acquisition price for the Common Stock which is based on the Formula, is a prudent procedure for the following reasons: (a) The procedure mitigates the daily fluctuations that sometimes distort the true value of Common Stock; (b) it is similar to certain TRASOP provisions for stock purchases as mandated by Congress under the Tax Reduction Act of 1974; (c) no brokerage or other expenses are incurred by the SESOP; (d) public acquisition of Common Stock by the SESOP can impact the market resulting in higher prices paid by the SESOP than those obtained through the Reinvestment Plan; (e) participation of the Reinvestment Plan by 12,000 shareholders of the Employer is indicative of shareholder acceptance of the pricing mechanism as fair and adequate; and (f) in only remote instances would the SESOP pay a higher price for the Common Stock than the price available in the open market.

In addition, the Trustee represents that it will monitor the price of shares of Common Stock of the Employer that are purchased periodically by the SESOP under the Dividend Reinvestment Plan to determine that such purchases are made on a favorable basis relative to the price available in the market. If the trustee determines that participation in the Dividend Reinvestment Plan is disadvantageous to the SESOP, it will withdraw from future participation in the Dividend Reinvestment Plan for such period as it deems appropriate.

9. In summary, it is represented that the proposed transactions will satisfy the statutory criteria set forth in section 408(a) of the Act because: (a) It will permit the SESOP to reinvest cash dividends in Common Stock of the Employer on the same basis as other shareholders; (b) no fees or expenses incident to such purchases will be borne by the SESOP; (c) the Trustee will monitor the purchases and has determined the transactions are in the best interests of the SESOP and its participants and beneficiaries; and (d) the Trustee will withdraw the SESOP from the Reinvestment Plan if the trustee determines that continued participation by the SESOP is disadvantageous.

Notice to Interested Persons

Notice of the proposed exemption will be given to all present employees of the Employer who may be eligible to receive benefits under the SESOP and to all retired and former participants of the SESOP in receipt of benefit payments, or who have deferred vested benefits, within 25 days of the publication of the notice of pendency in the **Federal Register.** The notice will contain a copy of the notice of pendency as published in the **Federal Register** and will inform interested persons of their right to comment and/or to request a hearing within the time period set forth in the notice of pendency. Notice will be provided to employees of the Employer by posting the required notice on the Employer's bulletin boards. Retired or terminated vested participants will receive notice by mail.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to quarterly purchases by the SESOP Trustee of Common Stock issued by the Employer under the Reinvestment Plan, as described above.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 1st day of November 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-30507 Filed 11-4-82; 8:45 am]

BILLING CODE 4510-29-M

MERIT SYSTEMS PROTECTION BOARD

Establishment of Fixed Neutral Hearing Sites

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: The Merit Systems Protection Board ("the Board") publishes notice of a general policy to schedule and conduct appellate hearings at certain designated sites nationwide, and at locations other than the premises of the agency which is the respondent party in any particular appeal before the Board.

EFFECTIVE DATE: November 5, 1982.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav (202) 653–8900.

SUPPLEMENTARY INFORMATION: During a recent period which extended for approximately 9 months, the Board experienced a severe restriction of its available operating funds and, in order to curtail travel costs, was required to conduct appellate hearings only at the location of the Board's eleven regional offices. Upon subsequent enactment of the Board's supplemental appropriations for the remainder of Fiscal Year 1982, and looking to the status of operations in forthcoming FY 1983, the Board has been in a position to again authorize expenditure of travel funds by its presiding officials for the purpose of conducting hearings on appeals coming before the Board for adjudication.

However, in connection with its recent severe funding problems, the Board has made a general review of its policy related to the scheduling of hearings. As one primary consideration in this review, the Board has recognized its continuing obligation to utilize its available fundings in the most effective manner possible. As a further consideration, the Board's previous general practice of scheduling hearings on premises of the agency respondents in appeals has been a subject of concern, as to a possible appearance of lack of objectivity in the location selected for the hearing proceedings, by not providing the parties with the environment of a fully neutral hearing site. Accordingly, the Board has adopted a policy that as of November 5, 1982, hearings will be scheduled and conducted at certain designated neutral hearing sites within the Board's eleven regional office areas, as listed below.

The designation of these fixed hearing sites has been derived in part from an analysis of historical data showing concentration of hearing locations during previous years, as well as a selection of sites which will be reasonably convenient in accommodation of the needs of the parties, while at the same time providing for a savings in the Board's necessary expenditure of travel cost funds. The 92 fixed hearing sites now being announced consist of the Board's eleven regional office locations, in addition to 81 other designated sites nationwide. At appropriate times, the Board will review the site selections here announced, and locations may be added or deleted as workload or experience dictates.

In addition, the Board's Regional Directors will have authority to approve travel to locations other than the fixed neutral hearing sites designated below when, if good and sufficient reason is shown, it would be more advantageous to schedule a hearing at another location or at an agency site.

This policy applies only to hearings scheduled within the United States, and does not apply to hearings held at overseas locations. The scheduling sites for hearings conducted at overseas locations will still be arranged by the presiding official as appropriate in each such case.

Approved MSPB Hearing Sites

Atlanta Region
- Atlanta, Georgia
- Macon, Georgia
- Birmingham, Alabama
- Montgomery, Alabama
- Miami, Florida
- Orlando, Florida
- Lexington, Kentucky
- Jackson, Mississippi
- Raleigh, North Carolina
- Columbia, South Carolina
- Charleston, South Carolina
- Knoxville, Tennessee
- Nashville, Tennessee
- Memphis, Tennessee

Boston Region
- Boston, Massachusetts
- Hartford, Connecticut
- New Haven, Connecticut
- Bangor, Maine
- Portland, Maine
- Portsmouth, New Hampshire
- Providence, Rhode Island
- Burlington, Vermont

Chicago Region
- Chicago, Illinois
- Davenport, Iowa/Rock Island, Illinois
- Indianapolis, Indiana
- Detroit, Michigan
- Minneapolis/St. Paul, Minnesota
- Cleveland, Ohio
- Columbus, Ohio
- Cincinnati, Ohio
- Milwaukee, Wisconsin

Dallas Region
- Dallas, Texas
- El Paso, Texas
- Houston, Texas
- Lubbock, Texas
- San Antonio, Texas
- Little Rock, Arkansas
- Oklahoma City, Oklahoma
- Tulsa, Oklahoma
- New Orleans, Louisiana
- Shreveport, Louisiana
- Albuquerque, New Mexico

Denver Region
- Denver, Colorado
- Pueblo, Colorado
- Billings, Montana
- Great Falls, Montana
- Missoula, Montana
- Bismark, North Dakota
- Fargo, North Dakota
- Sioux Falls, South Dakota
- Salt Lake City, Utah
- Casper, Wyoming

New York Region
- New York, New York
- Buffalo, New York
- Syracuse, New York
- Newark, New Jersey

Philadelphia Region
- Philadelphia, Pennsylvania
- Harrisburg, Pennsylvania
- Pittsburg, Pennsylvania
- Dover, Delaware
- Baltimore, Maryland
- Norfolk, Virginia
- Richmond, Virginia
- Roanoke, Virginia
- Charleston, West Virginia
- Clarksburg, West Virginia

Seattle Region
- Seattle, Washington
- Spokane, Washington
- Portland, Oregon
- Pendleton, Oregon
- Boise, Idaho
- Pocatello, Idaho
- Anchorage, Alaska
- Fairbanks, Alaska
- Juneau, Alaska

San Francisco Region
- San Francisco, California
- Los Angles, California
- Sacramento, California
- San Diego, California
- Fresno, California
- Phoenix, Arizona
- Tucson, Arizona
- Las Vegas, Nevada
- Reno, Nevada
- Honolulu, Hawaii

St. Louis Region
- St. Louis, Missouri
- Kansas City, Missouri
- Springfield, Missouri
- Des Moines, Iowa
- Wichita, Kansas
- Omaha, Nebraska

Washington, D.C. Region
- Washington, D.C.

Dated: October 29, 1982.

For the Board.

Herbert E. Ellingwood,

Chairman.

[FR Doc. 82-30608 Filed 11-4-82; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, NW., Washington, D.C. 20506:

1

Date: December 1, 1982.
Time: 9:00 a.m. to 5:30 p.m.
Room: 314.
Program: This meeting will review applications for Summer Stipends in U.S. History II, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1983.

2

Date: December 2, 1982.
Time: 9:00 a.m. to 5:30 p.m.
Room: 314.
Program: This meeting will review applications for Summer Stipends in European History since 1815, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1983.

3

Date: December 3, 1982.
Time: 9:00 a.m. to 5:30 p.m.
Room: 314.
Program: This meeting will review applications for Summer Stipends in English Literature, 17th Century to the Present, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1983.

4

Date: December 3, 1982.
Time: 9:00 a.m. to 5:30 p.m.
Room: 1023.
Program: This meeting will review applications for Summer Stipends in Music and Dance, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1983.

5

Date: December 6, 1982.
Time: 9:00 a.m. to 5:30 p.m.
Room: 314.
Program: This meeting will review applications for Summer Stipends in U.S. History I, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1983.

6

Date: December 7, 1982.
Time: 9:00 a.m. to 5:30 p.m.
Room: 314.
Program: This meeting will review applications for Summer Stipends in Romance Languages and Literatures, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1983.

7

Date: December 7, 1982.
Time: 9:00 a.m. to 5:30 p.m.
Room: 1134.
Program: This meeting will review applications for Summer Stipends in Sociology, Psychology, and Education, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1983.

8

Date: December 8, 1982.
Time: 9:00 a.m. to 5:30 p.m.
Room: 314.
Program: This meeting will review applications for Summer Stipends in Philosophy I, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1983.

9

Date: December 9, 1982.
Time: 9:00 a.m. to 5:30 p.m.
Room: 314.
Program: This meeting will review applications for Summer Stipends in Political Science, Law and Jurisprudence, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1983.

10

Date: December 10, 1982.
Time: 9:00 a.m. to 5:30 p.m.
Room: 314.
Program: This meeting will review applications for Summer Stipends in American Literature, Composition and Rhetoric, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1983.

11

Date: December 10, 1982.
Time: 9:00 a.m. to 5:30 p.m.
Room: 1134.
Program: This meeting will review applications for Summer Stipends in Foreign Languages and Literature; Comparative Literature, and Theater, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1983.

12

Date: December 13, 1982.
Time: 9:00 a.m. to 5:30 p.m.
Room: 314.
Program: This meeting will review applications for Summer Stipends in Literary Theory and Criticism, Linguistics, Speech and Communication, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1983.

13

Date: December 13, 1982.
Time: 9:00 a.m. to 5:30 p.m.
Room: 807.
Program: This meeting will review applications for Summer Stipends in Latin American, Asian, African, and Near Eastern History, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1983.

14

Date: December 15, 1982.
Time: 9:00 a.m. to 5:30 p.m.
Room: 314.
Program: This meeting will review applications for Summer Stipends in Classical Studies; English Literature through Shakespeare, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1983.

15

Date: December 15, 1982.
Time: 9:00 a.m. to 5:30 p.m.
Room: 807.
Program: This meeting will review applications for Summer Stipends in Religion, submitted to the Division of Fellowships and Seminars for projects beginning after May 1, 1983.

16

Date: December 16, 1982.
Time: 9:00 a.m. to 5:30 p.m.
Room: 314.
Program: This meeting will review applications for Summer Stipends in Philosophy II, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1983.

17

Date: December 17, 1982.
Time: 9:00 a.m. to 5:30 p.m.
Room: 314.
Program: This meeting will review applications for Summer Stipends in Modern American Literature and Film, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1983.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information on a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated

January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; or call (202) 724–0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 82-30450 Filed 11-4-82; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Ad Hoc Review Group for Scientific and Engineering Personnel; Cancellation of Meeting

The Ad Hoc Review Group for Scientific and Engineering Personnel of the Advisory Committee for Policy Research and Analysis and Science Resources Studies was scheduled to meet in Washington, D.C. on Friday, November 12, 1982. This meeting has been cancelled.

Notice of the November meeting was published in the **Federal Register** on October 22, 1982, Vol. 47, No. 205, page 47112.

M. Rebecca Winkler,

Committee Management Coordinator.

November 2, 1982.

[FR Doc. 82-30432 Filed 11-4-82; 8:45 am]

BILLING CODE 7555-01-M

National Science Foundation Advisory Council; Postponement of Meeting

The NSF Advisory Council was scheduled to meet in Washington, D.C. on Thursday and Friday, November 4 and 5, 1982. This meeting has been postponed until possibly January 1983. A new Notice of Meeting will be published in the **Federal Register** prior to the meeting.

The Notice of the November meeting was published in the **Federal Register** on October 15, 1982, Vol. 47, No. 200, page 46185.

M. Rebecca Winkler,

Committee Management Coordinator.

November 2, 1982.

[FR Doc. 82-30431 Filed 11-4-82; 8:45 am]

BILLING CODE 7555-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05-0169]

Michigan Tech Capital Corp.; Issuance of a Small Business Investment Company License

On June 2, 1982, a notice was published in the **Federal Register** (47 FR 24009) stating that an application has been filed by Michigan Tech Capital Corp., 1414 College Avenue, Houghton, Michigan 49931, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small bisiness investment companies (13 CFR 107.102 (1982)] for a license as a small business investment company.

Interested parties were given until close of business June 17, 1982, to submit their comments to SBA. No comments were received.

Notice in hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0169 on August 20, 1982, to Michigan Tech Capital Corp. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 29, 1982.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 82-30498 Filed 11-4-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

National Productivity Advisory Committee; Meeting

October 29, 1982.

The Subcommittee on Capital Investment of the National Productivity Advisory Committee will hold a meeting on November 12, 1982 from 10:00 a.m. until 12:00 noon in Room 3424 of the Department of Treasury, 15th St. and Pennsylvania Avenue NW., Washington, D.C.

The purpose of the meeting will be to discuss ways in which changes in government policy can improve national productivity.

Roger B. Porter,

Executive Secretary, National Productivity Advisory Committee.

[FR Doc. 82-30508 Filed 11-4-82; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

During the period October 22 through October 28, 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 entry.

Date submitted: October 25, 1982.

Submitting bureau: Internal Revenue Service.

OMB No. N/A (new submission).

Form No. 8023.

Type of submission: New.

Title: Certification of Election under Section 338(g).

Purpose: Form 8023 is needed to certify an election of the basis/recapture treatment of IRC Section 338. The information is used to verify that the election has been properly made and that both involved corporations compute their tax liability according to the election.

OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date submitted: October 25, 1982.

Submitting bureau: Internal Revenue Service.

OMB No. 1545–0232.

Form No. 6497.

Type of submission: Revision.

Title: Information Return of Energy Grants or Subsidized Energy Financing.

Purpose: The form is to be filed by any governmental agency (Federal, State, or local) or the agency that makes grants or subsidized financing for energy conversation projects. The information is required to be reported under IRC section 6050D. The information is used to be sure that energy credits are not taken for government-financed projects.

OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date submitted: October 25, 1982.

Submitting bureau: Comptroller of the Currency.

OMB No. 1557–0100.

Form No. CC 7610–08, FFIEC 009

Typoe of submission: Extension.

Title: Country Exposure Report.

Purpose: This simi-annual report must be submitted by all national banks with a foreign branch whose transfer risk exposure to foreign borrowers exceeds $20 million. The reports provide statistical data for aggregate exposure of all national banks; the results are published in as interagency release and by the Bank for International Settlements. The reports are also used by examiners and staff to monitor individual banks.

OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Date submitted: October 27, 1982.

Submitting bureau: Internal Revenue Service.

OMB No. 1545–0067.

Form No. 2555.

Type of submission: Revision.

Title: Foreign Earned Income.

Purpose: This form is used by U.S. citizens and resident aliens who quality 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: October 27, 1982.

Submitting bureau: Internal Revenue Service.

OMB No. 1545–0415.

Form No. W–4P.

Type of submission: Revision.

Title: Withholding certificate for Revision or Annuity Payments.

Purpose: Section 3405 of the Code requires that periodic pension or annuity payments have tax withheld as if they were wages. This section does allow a payee to elect to have no tax withheld. The information is used to determine the amount to be withheld from each pension or annuity payment, or if no tax is to be withheld.

OMB Reviewer: Michael Abrahams (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

October 29, 1982.

Joy Tucker,

Departmental Reports Management Officer.

[FR Doc. 82-30426 Filed 11-4-82; 8:45 am]

BILLING CODE 4810-25-M

[No. 170–1]

Secret Service Authority Relating to Electronic Funds Transfer Frauds and Thefts

Pursuant to the authority vested in me by the Secretary of the Treasury, including the authority in 31 U.S.C. 321, it is hereby directed that:

1. As part of the Department's responsibilities for obligations of the United States, and in recognition of the fact that the United States is increasing its reliance upon electronic fund transfers in lieu of paper obligations and securities, the Director, United States Secret Service, is authorized to receive and analyze allegations of, and develop information and conduct investigations concerning, thefts and frauds involving any electronic transfer of funds (a) which belong to the Treasury Department or any subordinate agency; (b) for which the Department or any subordinate agency may be responsible or liable; or (c) with respect to which the Department or any subordinate agency may otherwise have, or have to defend against, a civil claim of any type.

2. The Director, United States Secret Service, and, to the extent that current or former Treasury employees or Treasury systems are involved, the Inspector General should be informed of any report or allegation of thefts or frauds involving any electronic transfer of funds covered by this order.

3. This Order does not supersede or affect, expressly or impliedly, any of the terms of Treasury Department Order No. 256, dated July 18, 1978, its implementing directives, or any agreements and understandings related thereto.

Dated: October 26, 1982.

R. T. McNamar,

Deputy Secretary.

[FR Doc. 82-30427 Filed 11-4-82; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 215
Friday, November 5, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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	Items
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1

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 10 a.m., Wednesday, November 10, 1982.

PLACE: Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED: *Summary Agenda:* Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposals to extend for three years the following reports:

A. Travelers Checks Outstanding (FR 2054);

B. Report on Claims on Selected Foreign Countries by U.S. Branches and Agencies of Foreign Banks (FR 20298); and

C. Receipts and Shipment of United States and Mexican Currency Between United States and Mexico (FR 2465).

2. Proposal to extend, with revisions, the monthly and quarterly Domestic Finance Company Reports of Assets and Liabilities (FR 2248, 2248a, respectively).

Discussion Agenda:

3. Proposed revisions to certain reports to collect information on new ceiling-free money market accounts (FR 2900, FR 2042, FR 2573, and FR 2071).

4. Consideration of continue weekly publication of money supply data.

5. Any items carried froward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: November 3, 1982.

James McAfee,

Associate Secretary of the Board.

[S-1601-82 Filed 11-3-82; 1:02 pm]

BILLING CODE 6210-01-M

2

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: Approximately 11 a.m., Wednesday, November 10, 1982, following a recess at the conclusion of the open meeting.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: November 3, 1982.

James McAfee,

Associate Secretary of the Board.

[S-1602-82 Filed 11-3-82; 1:02 pm]

BILLING CODE 6210-01-M

3

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-82-25]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 47513, October 26, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Tuesday, November 2, 1982.

CHANGE IN MEETING: A majority of the Board determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following item was deleted from the agenda:

3. *Letter* to Kellogg Company regarding Motion to Withdraw Probable Cause, Reconsider, and Investigate Further the Aircraft Accident involving an Avions Marcel Dassault-Brequet Aviation, Falcon 10, N243K, Miegs Field, Chicago, Illinois, January 30, 1980.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, (202) 382-6525.

November 2, 1982.

[S-1600-82 Filed 11-3-82; 11:35 am]

BILLING CODE 4910-58-M

4

NUCLEAR REGULATORY COMMISSION

DATE: Week of November 8, 1982.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C. and Harrisburg, Pennsylvania Area.

STATUS: Open.

MATTERS TO BE DISCUSSED:

Monday, November 8:

10:00 a.m.:
Briefing by Regulatory Reform Task Force—Administrative Proposals (Public Meeting)

2:00 p.m.:
Briefing on Hydrogen Control Program (Public Meeting) (Tentative)

Tuesday, November 9: Harrisburg, Pennsylvania Area

3:00 p.m.:
Oral Presentations on TMI-1 Restart (Public Meeting)

7:30 p.m.:
Public Meeting on TMI-1 Restart (Public Meeting)

Wednesday, November 10:

1:30 p.m.:
Comments from Parties on Phase II Reverification Program for Diablo Canyon (Public Meeting)

3:00 p.m.:
Options Regarding High Level Waste Rule—Technical Criteria (Part 60) (Public Meeting) (*postponed* from November 2, 1982)

Friday, November 12:

9:30 a.m.:
Discussion/Possible Vote on Full Power Operating License for Susquehanna (Public Meeting)

11:00 a.m.:
Affirmation/Discussion and Vote (Public Meeting):
a. Petition of Sunflower Coalition
b. Offshore Power Systems
c. San Onofre Board Certification
Order in Waste Confidence Proceeding (Tentative)

ADDITIONAL INFORMATION: On October 28 the Commission voted 5-0 to hold Affirmation of 10 CFR Part 61--

"Licensing Requirements for Land Disposal of Radioactive Waste" and Revised S–3 Policy Statement, held that day.

Discussion of Management-Organization and Internal Personnel Matters scheduled for November 3 (*cancelled*).

On October 29 the Commission voted 5–0 to hold Discussion of Office of Investigations Policy and Procedures (Closed—Exemption 2), scheduled for November 3.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634–1410.

Walter Magee,

Office of the Secretary.

November 1, 1982.

[S–1599–82 Filed 11–3–82; 10:11 am]

BILLING CODE 7590–01–M

federal register

Friday
November 5, 1982

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General

Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decision being modified and their dates of publication in the **Federal Register** are listed with each State.

Alabama: AL82–1042	Sept. 10, 1982.
California:	
CA82–5118	Aug. 20, 1982.
CA82–5112	July 4, 1982.
CA82–5120	Aug. 27, 1982.
Louisiana:	
LA82–4021	May 7, 1982.
LA82–4022	May 7, 1982.
LA82–4050	Oct. 15, 1982.
Montana: MT82–5101	Feb. 5, 1982.
North Dakota: ND81–5130	July 6, 1981.
Oklahoma:	
OK82–4051	Oct. 22, 1982.
OK82–4035	June 25, 1982.
Pennsylvania:	
PA82–3007	Feb. 26, 1982.
PA81–3091	Dec. 28, 1981.
PA82–3027	Oct. 8, 1982.
PA82–3028	Sept. 10, 1982.
Texas:	
TX82–4025	June 18, 1982.
TX82–4033	June 18, 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.

Colorado: CO81–5148(CO82–5127)	Sept. 4, 1981.
Louisiana: LA82–4020(LA82–4053)	May 7, 1982.
Texas: TX82–4019(TX82–4054)	May 7, 1982.
Wyoming: WY81–5159(WY82–5126)	Oct. 30, 1981.

Signed at Washington, D.C. this 29th day of October 1982.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

DECISION NO.: AL82-1042 - MOD # 1
(47-FR-39967 - September 10, 1982)

Colbert & Lauderdale Counties, Alabama - BUILDING CONSTRUCTION

CHANGE:	Basic Hourly Rates	Fringe Benefits
BOILERMAKERS	$ 16.20	$ 3.015
ELECTRICIANS:		
Electricians	14.10	1.90 + 4%
Cablesplicers	14.35	1.90 + 4%

DECISION NO. CA82-5118 - Mod. #2
(47 FR 36513 - August 20, 1982)
Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura Counties, California

Change:	Basic Hourly Rates	Fringe Benefits
Bricklayers; Stonemasons:		
Area 3	$18.75	$3.52
Area 6	17.97	4.06
Electricians:		
Area 9:		
Electricians	23.11	3%+3.97
Cable Splicers	25.42	3%+3.97
Line Construction:		
Area 8:		
Groundman	17.69	3%+3.97
Lineman; Equipment Operators	23.11	3%+3.97
Cable Splicers	25.42	3%+3.97
Painters:		
Parking Lot Striping Work and/or Highway Markers:		
Traffic Delineating Device Applicator	13.41	b+1.60
Wheel Stop Installer, Traffic Surface Sandblaster; Striper	12.92	b+1.60
Slurry Seal Operation:		
Mixer Operator	12.92	b+1.60
Squeegee Man, Applicator Operator and Shuttleman	11.45	b+1.60
Top Man	9.62	b+1.60
Refrigeration and Air Conditioning:		
Area 2	19.89	7.85
Add:		
Bricklayers; Stonemasons:		
Area 7: Orange County	19.00	2.97

CHANGE:	Basic Hourly Rates	Fringe Benefits
Bricklayers; Stonemasons:		
Area 3: Los Angeles Co.		

DECISION NO. CA82-5112 - Mod. #5
(47 FR 31154 - July 4, 1982)
Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba Counties, California

Change:	Basic Hourly Rates	Fringe Benefits
Carpenters:		
Area 1:		
Carpenters	$18.68	$6.225
Hardwood Floorlayers; Shinglers; Power Saw Operator; Steel Scaffold Erector and Steel Shoring; Saw Filers	18.83	6.225
Millwrights	18.68	7.225
Area 2:		
Carpenters	16.05	6.225
Hardwood Floorlayers; Shinglers; Power Saw Operators; Steel Scaffold Erector and Steel Shoring; Saw Filers	16.20	6.225
Millwrights	16.95	7.225
Electricians:		
Area 14:		
Electricians	24.535	3%+4.84
Cable Splicers	27.60	3%+4.84
Glaziers:		
Area 1	20.42	5.31
Area 2	15.75	6.44
Area 3	15.40	4.98
Area 4	13.58	2.00
Area 5	19.89	5.45
Line Construction:		
Area 13:		
Lineman	24.535	3%+4.84
Cable Splicers	27.60	3%+4.84
Groundmen	20.85	3%+4.84
Painters:		
Area 4:		
Brush	20.08	3.93
Taper	20.88	3.93
Plasterers:		
Area 5	18.44	6.58
Area 6	16.55	6.10
Area 7	17.56	6.11
Area 8	14.30	7.45
Plasterers' Tenders:		
Area 2	$17.41	$4.45
Soft Floor Layers:		
Area 3	17.69	5.69
Laborers:		
Group 1	14.56	5.11
Group 1(a)	14.785	5.11
Group 1(b)	15.06	5.11
Group 1(c)	14.61	5.11
Group 1(d)	14.81	5.11
Group 1(e)	15.11	5.11
Group 1(f)	15.145	5.11
Group 1(g)	14.76	5.11
Group 2	14.41	5.11
Group 3	14.31	5.11
(Gunnite):		
Group 1	15.02	5.11
Group 2	14.43	5.11
Group 3	14.31	5.11
(Tunnel and Shaft Work):		
Group 1	17.46	5.11
Group 2	17.03	5.11
Group 3	16.78	5.11
Group 4	16.62	5.11
(Wrecking Work):		
Group 1	14.56	5.11
Group 2	14.41	5.11
Group 3	14.31	5.11
(Housemoving):		
Group 1	14.56	5.11
Power Equipment Operators:		
Dredging - Schedule I:		
Clamshell and Dipper Dredging (New Construction):		
Group 1:		
Area 1	14.11	8.56
Area 2	15.37	8.56
Area 3	15.75	8.56
Area 4	16.11	8.56
Group 2:		
Area 1	17.01	8.56
Area 2	18.37	8.56
Area 3	18.75	8.56
Area 4	19.14	8.56

Modification Page 3

DECISION NO. CA82-5112 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Group 3:		
Area 1	$17.01	$8.56
Area 2	18.37	8.56
Area 3	18.75	8.56
Area 4	19.14	8.56
Group 4:		
Area 1	18.06	8.56
Area 2	19.43	8.56
Area 3	19.80	8.56
Area 4	20.19	8.56
Group 4-A:		
Area 1	19.68	8.56
Area 2	21.06	8.56
Area 3	21.49	8.56
Area 4	21.88	8.56
Schedule II:		
Hydraulic Suction Dredging and all other Dredging:		
Group A-1:		
Area 1	14.09	8.56
Area 2	15.35	8.56
Area 3	15.71	8.56
Area 4	16.09	8.56
Group A-2:		
Area 1	15.45	8.56
Area 2	16.76	8.56
Area 3	17.16	8.56
Area 4	17.54	8.56
Group A-3:		
Area 1	16.36	8.56
Area 2	17.72	8.56
Area 3	18.12	8.56
Area 4	18.50	8.56
Group A-4:		
Area 1	17.60	8.56
Area 2	18.98	8.56
Area 3	19.35	8.56
Area 4	19.74	8.56

	Basic Hourly Rates	Fringe Benefits
Piledriving:	$14.12	$8.75
Group 1	14.61	8.75
Group 1A	14.90	8.75
Group 1B	14.90	8.75
Group 2A	15.68	8.75
Group 2B	15.98	8.75
Group 2C	16.20	8.75
Group 2D	16.41	8.75
Group 3	17.04	8.75
Group 3A	17.82	8.75
Group 4	18.08	8.75
Group 5	19.71	8.75
Group 6		
Steel Erection:	14.79	8.75
Group 1	15.33	8.75
Group 2	16.81	8.75
Group 3	17.00	8.75
Group 4	17.46	8.75
Group 4A	18.18	8.75
Group 5	18.79	8.75
Group 6	19.23	8.75
Group 7	19.65	8.75
Group 8	21.15	8.75
Group 9		
Power Equipment Operators:		
Group 1:	14.05	8.75
Area 1	16.05	8.75
Area 2		
Group 2:	14.55	8.75
Area 1	16.55	8.75
Area 2		
Group 3:	14.85	8.75
Area 1	16.85	8.75
Area 2		
Group 4:	15.62	8.75
Area 1	17.62	8.75
Area 2		

Modification Page 4

DECISION NO. CA82-5112 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Group 5:		
Area 1	$15.92	$8.75
Area 2	17.92	8.75
Group 6:		
Area 1	16.13	8.75
Area 2	18.13	8.75
Group 7:		
Area 1	16.35	8.75
Area 2	18.35	8.75
Group 8:		
Area 1	16.97	8.75
Area 2	18.97	8.75
Group 9:		
Area 1	17.28	8.75
Area 2	19.28	8.75
Group 10:		
Area 1	17.60	8.75
Area 2	19.60	8.75
Group 10-A:		
Area 1	17.77	8.75
Area 2	19.77	8.75
Group 11:		
Area 1	18.01	8.75
Area 2	20.01	8.75
Group 11-A:		
Area 1	19.65	8.75
Area 2	21.65	8.75
Group 11-B:		
Area 1	20.04	8.75
Area 2	22.04	8.75
Group 11-C:		
Area 1	20.05	8.75
Area 2	22.05	8.75

Area Description for Carpenters-Area 1:	Basic Hourly Rates	Fringe Benefits
Alameda, Contra Costa, Marin, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties		
Add:		
Carpenters:		
Area 3:		
Carpenters	$16.95	$6.225
Hardwood Floorlayers; Shinglers; Power Saw Operators; Steel Scaffold Erector and Steel Shoring; Saw Filers	17.10	6.225
Millwrights	17.85	7.225
Area Description - Area 3: Monterey and Santa Cruz Counties		

AREA DESCRIPTIONS:

Glaziers:

Area 1: Alameda, Contra Costa, Monterey, Napa, San Benito, Santa Clara, and Santa Cruz Counties

Area 2: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Tullumne, Yolo, and Yuba Counties

Area 3: Fresno, Madera, Mariposa, Merced, Kings, and Tulare Counties

Area 4: Del Norte and Humboldt Counties

Area 5: Lake, Marin, Mendocino, San Francisco, San Mateo, and Sonoma Counties

DECISION NO. CA82-5120 - Mod. #2
(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

Change:	Basic Hourly Rates	Fringe Benefits
Carpenters:		
Area 1:		
Carpenters	$18.68	$6.225
Hardwood Floorlayers; Shinglers; Power Saw Operator; Steel Scaffold Erector and Steel Shoring; Saw Filers	18.83	6.225
Millwrights	18.68	7.225
Area 2:		
Carpenters	16.05	6.225
Hardwood Floorlayers; Shinglers; Power Saw Operators; Steel Scaffold Erector and Steel Shoring; Saw Filers	16.20	6.225
Millwrights	16.95	7.225
Electricians:		
Area 12:		
Electricians	24.535	3%+4.84
Cable Splicers	27.60	3%+4.84
Glaziers:		
Area 1	20.42	5.31
Area 2	15.75	6.44
Area 3	15.40	4.98
Area 4	13.58	2.00
Area 5	19.89	5.45
Painters:		
Area 3:		
Brush	20.08	3.93
Tapers	20.88	3.93
Plasterers:		
Area 2	16.55	6.11
Area 3	17.56	6.11
Area 6	14.30	7.45
Area 8	18.44	6.58
Laborers:		
Group 1	14.56	5.11
Group 1(a)	14.785	5.11
Group 1(b)	15.06	5.11
Group 1(c)	14.61	5.11
Group 1(d)	15.11	5.11
Group 1(e)	15.145	5.11
Group 1(f)	14.76	5.11
Group 1(g)	14.41	5.11
Group 2	14.41	5.11
Group 3	14.31	5.11
Laborers (Gunnite):		
Group 1	$15.02	$5.11
Group 2	14.43	5.11
Group 3	14.31	5.11
Soft Floor Layers	17.69	5.69
Power Equipment Operators:		
Group 1:		
Area 1	14.05	8.75
Area 2	16.05	8.75
Group 2:		
Area 1	14.55	8.75
Area 2	16.55	8.75
Group 3:		
Area 1	14.85	8.75
Area 2	16.85	8.75
Group 4:		
Area 1	15.62	8.75
Area 2	17.62	8.75
Group 5:		
Area 1	15.92	8.75
Area 2	17.92	8.75
Group 6:		
Area 1	16.13	8.75
Area 2	18.13	8.75
Group 7:		
Area 1	16.35	8.75
Area 2	18.35	8.75
Group 8:		
Area 1	16.97	8.75
Area 2	18.97	8.75
Group 9:		
Area 1	17.60	8.75
Area 2	19.60	8.75
Group 10:		
Area 1	17.60	8.75
Area 2	19.60	8.75
Group 10-A:		
Area 1	17.77	8.75
Area 2	19.77	8.75
Group 11:		
Area 1	18.01	8.75
Area 2	20.01	8.75
Group 11-A:		
Area 1	19.65	8.75
Area 2	21.65	8.75
Group 11-B:		
Area 1	20.04	8.75
Area 2	22.04	8.75

DECISION NO. CA82-5120 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Group 11-C:		
Area 1	$20.05	$8.75
Area 2	22.05	8.75
Add:		
Carpenters:		
Area 3:		
Carpenters	$16.95	$6.225
Hardwood Floorlayers; Shinglers; Power Saw Operators; Steel Scaffold Erector and Steel Shoring; Saw Filers	17.10	6.225
Millwrights	17.85	7.225

AREA DESCRIPTIONS

Glaziers:
- Area 1: Alameda, Contra Costa, Monterey, Napa, San Benito, Santa Clara, and Santa Cruz Counties
- Area 2: Amador, Calaveras, El Dorado, Nevada, Placer, Sacramento, San Joaquin, Solano, Sutter, Tuolumne, Yolo, and Yuba Counties
- Area 3: Mariposa and Merced Counties
- Area 4: Marin, San Francisco, San Mateo and Sonoma Counties

Carpenters:
- Area 1: Alameda, Contra Costa, Marin, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties
- Area 2: Amador, Calaveras, Del Norte, El Dorado, Mariposa, Merced, Nevada, Placer, Sacramento, San Joaquin, Sutter, Tuolumne, Yolo, and Yuba Counties
- Area 3: Monterey and Santa Cruz Counties

DECISION NO. LA82-4021 - MOD. #4 (47 FR 19877 - 5/7/82) Bossier & Caddo Pars., Louisiana	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bricklayer & stonemason	$13.30	1.70
Carpenters:		
Carpenters & soft floor layers	12.90	1.78
Millwrights	13.65	1.78
Piledrivermen	13.15	1.78
Cement masons	12.10	.85
Ironworkers	14.25	2.36
Laborers - Group 1	8.90	.80
Group 2	9.00	.80
Group 3	9.05	.80
Group 4	9.10	.80
Lathers	13.40	1.78
Marble, tile & terrazzo workers	11.80	.85
Plasterers	12.10	.85
Truck drivers - Group 1	9.87	
Group 2	9.95	
Group 3	10.20	
Group 4	10.35	
Group 5	10.50	
Group 6	10.70	

DECISION NO. LA82-4022 - MOD. #6 (47 FR 19877 - 5/7/82) Calcasieu Par.Louisiana	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos workers	17.255	2.215
Bricklayer & stonemason	15.65	2.12
Carpenters:		
Carpenters,piledrivermen & soft floor layer	14.83	1.60
Millwrights	17.19	.07
Cement masons	14.91	
Electricians:		
Other electricians:		
Electricians	18.20	1.50+ 3-5/10%
Cable splicers	18.70	"
Ironworkers	15.62	1.62

DECISION NO. LA82-4022- MOD. #6 (CONT'D)	Basic Hourly Rates	Fringe Benefits
Laborers - Group 1	$11.11	.94
Group 2	11.21	.94
Group 3	11.26	.94
Group 4	11.36	.94
Group 5	12.07	.94
Group 6	11.63	.94
Group 7	11.47	.94
Group 8	11.16	.94
Marble,terrazzo worker	15.65	2.12
Plasterers	15.78	
Plumbers & pipefitters	17.48	2.00
Roofers	15.06	.20

DECISION NO. LA82-4050 - MOD. #1 (47 FR 46231 - 10/15/82) Jefferson,Orleans,Bossier,Caddo,Calcasieu, Beauregard,Cameron, Jefferson Davis,Allen, Plaquemines,St.Bernard & St.Charles Pars., Louisiana	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bricklayer & stonemason:		
Zones 1, 6, 7 & 8	14.35	1.84
Zone 2	13.30	1.70
Zones 3, 4 & 5	15.65	2.12
Electricians:		
Zones 1, 6, 7 & 8:		
Electricians	16.45	1.35+3%
Cable splicers	16.45	1.35+3%
Zones 3, 4 & 5:		
Electricians	18.20	1.50+ 3-5/10%
Cable splicers	18.70	"
Line construction:		
Zones 1, 6, 7 & 8:		
Group 1	16.45	1.35+3%
Group 2	75%JR	1.35+3%
Group 3	65%JR	1.35+3%
Group 4	45%JR	1.35+3%
Group 5	50%JR	1.35+3%
Zones 3, 4 & 5:		
Group 1	18.20	1.50+ 3-1/10%
Group 2	18.70	"
Group 3	16.20	"
Plumbers & pipefitter:		
Zones 1, 6, 7 & 8	15.80	2.43
Zones 3, 4 & 5	17.48	2.00

DECISION NO. MT82-5101 - Mod.#3
(46 FR 5630 - February 5, 1982)
Statewide, Montana

	Basic Hourly Rates	Fringe Benefits
Change:		
Plumbers:		
Area 2	$16.95	$2.42

DECISION NO. ND81-5130 - Mod. #3(46 FR 35005 - July 6, 1981)
Statewide, North Dakota

	Basic Hourly Rates	Fringe Benefits
Change:		
POWER EQUIPMENT OPRS:		
Group 6	$10.46	$1.65

DECISION #OK82-4051-Mod.#1
47FR47155-October 22, 1982
Oklahoma, Cleveland, Caddo, Logan, Canadian, McClain, Kingfisher, Lincoln, Grady, Seminole & Pottawatomie Counties, Oklahoma

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS - ZONE II		
Carpenters	$13.85	1.64
Millwrights-Piledrivermen	14.35	1.64

ELECTRICIANS-CABLE SPLICERS ZONE I. DEFINITION TO READ:
The area within the twelve mile radius of the Main Post Office located in one of the cities listed as follows - El Reno, Moore, Norman, Midwest City, Tuttle, Tecumseh and Oklahoma City.

ADD:
CEMENT MASONS AREA DEFINITION TO READ "Oklahoma, Cleveland, Caddo, Canadian, Kingfisher, Lincoln, Logan, McClain and Grady Counties, Oklahoma."

CARPENTERS - ZONE II		
Power saw operator	14.35	1.64

DECISION #OK82-4035-Mod.#2
47FR27683-June 25, 1982
Tulsa, Delaware, Creek, Craig, Ottawa, Mayes and Roger Counties, Oklahoma

CHANGE:		
CARPENTERS - AREA I	$14.18	1.62
MILLWRIPHTS-PILEDRIVERMEN - AREA I	14.48	1.62

DECISION NO. PA82-3007
MOD. NO. 6
(47 FR 8529 - February 26, 1982)
Bucks, Chester, Delaware,
Montgomery & Philadelphia Counties, Pennsylvania

ADD:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
DRYWALL FINISHERS:					
Rehabilitation work to include demolition, repair and alteration, on any existing structures of not more than four (4) stories which is intended for predominently residential use	9.50	1.69	.75		.03
All other work	12.03	1.91	1.25	1.00	.03
ELECTRICIANS:					
Rehabilitation work to include demolition, repair & alteration, on any alteration, on any existing structure of not more than four (4) stories which is intended for predominently residential use:					
ZONE 1	14.92	6%	3%+6%		.24
ZONE 2	10.74	.71	3%+.83		.06
ZONE 3	9.75	.46	3%+.58		.15
ELECTRICIANS					
ZONE 1					
Commercial	17.69	1.24	3%+1.06		.18
Residential up to and including 4 stories	16.53	.99	16%		2%
ZONE 2					
Commercial	17.35	5%	9%		1.5%
Residential up to and including 3 stories	10.74	.71	3%+.81		.06
ZONE 3					
Commercial	16.46	6%	3%+13%		1/2 of 1%
Residential up to and including 3 stories	9.85	.59	3%+1.28		1/2 of 1%
ZONE 4					
Commercial	16.00	1.17	1.52		1/4 of 1%
ZONE 5					
Commercial	15.49	.78	3%+.64		.05
ZONE 6					
Commercial	16.00	1.05	3%+1.00		.02
ZONE 7					
Commercial	15.35	.80	3%+1.00		.04
ZONE 8					
Commercial	14.64	7%	3%+.80		.15
ZONE 9					
Commercial	13.35	.60	3%		.03

	Basic Hourly Rates	Fringe Benefits
DECISION NO. PA81-3091		
MOD. NO. 4		
(46 FR 62761 - December 28, 1981)		
Greene, Somerset & Potter Counties, Pennsylvania		
CHANGE:		
Electricians:		
Greene & Somerset Counties	$16.80	2.85+3%
Ironworkers:		
Potter County	14.165	3.435
DECISION NO. PA82-3027		
MOD. NO. 1		
(47 FR 44670 - October 8, 1982)		
Bedford, Cambria, Cameron, Clarion, Clearfield, Jefferson, Crawford & Venango Counties, Pennsylvania		
CHANGE:		
Carpenters & Soft floor layers		
Zone 2	13.23	26½%
Ironworkers		
Zone 5	14.165	3.435
LABORERS:		
ZONE 4		
Class 1	12.50	20%
Class 2	12.58	20%
Class 3	12.89	20%
Class 4	12.97	20%
Class 5	12.76	20%
Class 6	13.07	20%
Class 7	12.76	20%
Class 8	12.97	20%

	Basic Hourly Rates	Fringe Benefits
DECISION NO. PA82-3028		
MOD. NO. 2		
(47 FR 39972 - Sept. 10, 1982)		
Elk, Forest, McKean, Warren Counties, Pennsylvania		
CHANGE:		
Carpenters & Soft Floor Layers:		
McKean County: Townships of Kane & Bradford: Warren County in its entirety	13.23	26½%
Ironworkers:		
Elk & McKean Cos.	14.165	3.435
DECISION NO. TX82-4025 - MOD. #3	Basic Hourly Rates	Fringe Benefits
(47 FR 26550 - 6/18/82)		
Brazos County, Texas		
CHANGE:		
Ironworkers	$15.46	3.50
Sheet metal workers	16.64	2.09+3%
DECISION NO. TX82-4033 - MOD. #6		
(47 FR 26549 - 6/18/82)		
Galveston & Harris Cos., Texas		
CHANGE:		
Ironworker	15.46	3.50
Sheet metal workers	16.64	2.09+3%

SUPERSEDEAS DECISION

STATE: Colorado

COUNTIES: Las Animas, Otero and Pueblo

DECISION NUMBER: CO82-5127

DATE: Date of Publication

Supersedes Decision No. CO81-5148 dated September 4, 1981, in 46 FR 18732

DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$13.27	$2.98
BOILERMAKERS	14.97	2.575
BRICKLAYERS	13.97	2.02
CARPENTERS	12.22	3.20
CEMENT MASONS:		
Cement Masons	13.79	2.32
Working with composition material and color	14.29	2.32
Working on scaffold, swing stage or temporary platform over 25'	14.04	2.32
DRYWALL INSTALLERS	11.72	2.92
ELECTRICIANS:		
Contract over $100,000.00:		
Electricians; Technicians	15.94	2.00+ 4½%
Cable Splicers	17.53	2.00+ 4½%
Contract under $100,000.00:		
Electricians; Technicians	12.00	1.80+ 4½%
ELEVATOR CONSTRUCTORS:		
Mechanics	14.88	2.33+a
Helpers	10.42	2.33+a
Probationary Helpers	7.44	
GLAZIERS	13.80	1.52+b
IRONWORKERS:		
Structural; Ornamental and Reinforcing	14.35	2.71
MARBLE and TILE SETTERS; TERRAZZO WORKERS	15.53	2.79
MILLWRIGHTS	14.66	2.43
PAINTERS:		
Brush and Roller Painters; Tapers and Hand Texture Men:		
Zone 1	11.54	1.69
Zone 2	12.54	1.69
Zone 3	13.29	1.69
PAINTERS: (Cont'd)		
Tapers using Automatic tools, Spray Painters, and Sandblasters:		
Zone 1	$12.29	$1.69
Zone 2	13.29	1.69
Zone 3	14.07	1.69
Paper and Vinyl Hangers; Steel Brush Painters:		
Zone 1	12.04	1.69
Zone 2	13.04	1.69
Zone 3	13.82	1.69
Steel Spray Painters and Sandblasters:		
Zone 1	12.79	1.69
Zone 2	13.79	1.69
Zone 3	14.57	1.69
PLASTERERS	13.44	.01
PLUMBERS:		
Zone 1	16.22	2.60
Zone 2	16.79	2.60
Zone 3	17.22	2.60
Zone 4	18.245	2.60
ROOFERS	12.36	1.24
SHEET METAL WORKERS	14.96	2.54+ 3%
SOFT FLOOR LAYERS	13.14	3.23
SPRINKLER FITTERS	15.31	2.43
TILE, MARBLE and TERRAZZO FINISHERS:		
Finishers	9.55	3.00
Floor Grinders	9.70	3.00
Grinders	10.25	3.00

LABORERS:	Basic Hourly Rates ZONE 1	Basic Hourly Rates ZONE 2
Group 1	$9.40	$9.90
Group 2	9.68	10.18
Group 3	10.20	10.70
FRINGE BENEFITS: $2.09		
POWER EQUIPMENT OPERATORS (Other than for work in Tunnels, Shafts, and Raises):		
Group 1	11.60	11.80
Group 2	11.95	12.70
Group 3	12.30	13.05
Group 4	12.45	13.20
Group 5	12.60	13.35
Group 6	12.75	13.50
(For work in Tunnels, Shafts, and Raises):		
Group 1	11.75	12.50
Group 2	12.10	12.85
Group 3	12.20	12.95
Group 4	12.45	13.20
Group 5	12.60	13.35
Group 6	13.00	13.75
Group 7	12.75	13.50
FRINGE BENEFITS: $2.95		

TRUCK DRIVERS:	Basic Hourly Rates ZONE 1	Basic Hourly Rates ZONE 2
Group 1	$9.36	$9.86
Group 2	9.46	9.96
Group 3	9.56	10.06
Group 4	9.61	10.11
Group 5	9.66	10.16
Group 6	9.71	10.21
Group 7	9.76	10.26
Group 8	9.81	10.31
Group 9	9.91	10.41
Group 10	9.96	10.46
Group 11	10.06	10.56
Group 12	10.21	10.71
Group 13	10.26	10.76
Group 14	10.36	10.86
Group 15	10.46	10.96
Group 16	10.56	11.06
Group 17	10.66	11.16
Group 18	10.86	11.36
FRINGE BENEFITS: $2.04		

WELDERS: Receive rates for craft performing operation to which 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. Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; and Christmas Day
b. 15 days Paid Vacation after 1600 hours

ZONE DESCRIPTIONS

PAINTERS:
Zone 1: 0-20 miles
Zone 2: 20-35 miles
Zone 3: 35 miles and over

PLUMBERS:
Zone 1: 0 to 15 miles from Post Office
Zone 2: 15 to 20 miles from Post Office
Zone 3: 20 to 40 miles from Post Office
Zone 4: 40 miles and over from Post Office

LABORERS:
Zone 1: That area encompassed by 0 to 30 driving miles from the Main Post Office in each of the following Cities:
Pueblo La Junta Trinidad

Zone 2: That area encompassed by 30 or more driving miles from the Main Post Office in the Cities listed in Zone 1

POWER EQUIPMENT OPERATORS and TRUCK DRIVERS:
A. Counties entirely within Zone 1:
Otero Pueblo

B. Portions of Las Animas County which are included within Zone 1, as follows:
All of Las Animas County lying west of the Township Line between R59W and R60W of the 7th Guide Meridian West

C. Portions of Las Animas County which are included within Zone 2, as follows:
All of Las Animas County lying East of the Township Line between R59W and R60W of the 7th Guide Meridian West

LABORERS

Group 1: Building Construction Laborer

Group 2: Laborers - Underpinning and Shoring eight (8) feet or more below working surface. Power Tool Operators of all mechanical, air, gas, and electric tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels. Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters

Group 3: Pipelayers on Building Construction. Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Bellers and Stemmers on Caisson Work; Tender, Mason and Plaster

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Tender to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments; Grade Checker; Compressors, 360 C.F.M. or less

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete Finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, Rotary, Churn, or Cable Tool; Elevating Graders, Equipment Lubricating and Service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; Single unit portable Crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on Truck

POWER EQUIPMENT OPERATORS (Cont'd)

Group 4: Cable operated Crane, truck mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer Mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Piledriver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons, carrier mounted; Derrick, Electric rail type Tower Crane; Hoist 3 drum or more; Quad Nine and similar push unit; Scrapers, single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

Group 7: Mechanic - Welder, heavy duty

TRUCK DRIVERS

Group 1: Pickups; Tenders; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle

TRUCK DRIVERS (Cont'd)

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds; Flat Rack, tandem axle; Battery Men; Mechanics' Tenders; Man Haul Shuttle Truck or Bus

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Specialty and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump Trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 79 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

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: Louisiana
PARISH: Statewide
DECISION NO.: LA82-4053
DATE: Date of Publication
Supersedes Decision No. LA82-4020, dated May 7, 1982, in 47 FR 19880

DESCRIPTION OF WORK: Building projects (does not include single family homes & apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS: ZONE 1	$17.255	2.215
ZONE 2	14.71	2.475
ZONE 3	13.80	2.22
ZONE 4	13.79	1.36
BOILERMAKERS	16.25	2.415
BRICKLAYERS & STONEMASONS:		
ZONE 1	15.65	2.26
ZONE 2	12.74	1.68
ZONE 3	15.65	2.12
ZONE 4	14.35	1.84
ZONE 5	13.75	
ZONE 6	13.30	1.70
ZONE 7	13.10	.30
ZONE 8	14.15	.75
ZONE 9	14.50	
CARPENTERS:		
ZONE 1:		
Carpenters	13.25	.65
Millwrights	13.97	.65
Piledrivermen	14.15	.65
ZONE 2:		
Carpenters, Piledrivermen & Soft Floor Layers	14.83	1.60
Millwrights	17.19	.07
ZONE 3:		
Carpenters	13.15	1.80
Millwrights	13.84	1.80
Piledrivermen	13.55	1.80
ZONE 4:		
Carpenters & Piledrivermen	15.20	1.76
Millwrights	18.025	1%
ZONE 5:		
Carpenters & Soft Floor Layers	14.35	2.16
Millwrights	14.74	2.16
Piledrivermen	14.45	2.16
ZONE 6:		
Carpenters & Soft Floor Layers	14.19	2.16
Millwrights	14.74	2.16
Piledrivermen	14.45	2.16
ZONE 7:		
Carpenters & Soft Floor Layers	12.95	
Millwrights	13.70	
Piledrivermen	13.45	

	Basic Hourly Rates	Fringe Benefits
CARPENTERS (Cont'd):		
ZONE 8:		
Carpenters & Soft Floor Layers	$12.90	1.78
Millwrights	13.65	1.78
Piledrivermen	13.15	1.78
ZONE 9:		
Carpenters & Soft Floor Layers	12.30	1.85
Millwrights	13.20	1.85
Piledrivermen	12.80	1.85
CEMENT MASONS:		
Zone 1	14.09	.05
Zone 2	14.91	
Zone 3	12.65	1.65
Zone 4	14.01	1.58
Zone 5	13.75	
Zone 6	10.00	
Zone 7	12.10	.85
Zone 8	12.65	.75
Zone 9	11.60	.30
ELECTRICIANS:		
Zone 1: Electricians	16.64	13-5/10%
Cable Splicers	16.89	"
Zone 2: Electricians	15.00	.82+3%
Cable Splicers	15.50	.82+3%
Zone 3: Electricians	18.20	1.50+3-5/10%
Cable Splicers	18.70	"
Zone 4: Electricians	17.10	.70+3-2/10%
Cable Splicers	17.35	"
Zone 5: Electricians	16.45	1.35+3%
Cable Splicers	16.45	1.35+3%
Zone 6: Electricians	14.15	1.15+3⅛%
Cable Splicers	14.65	"
Zone 7: Electricians	14.60	2.40+4%
Cable Splicers	15.10	2.40+4%
Zone 8: Electricians	14.58	.80+3⅛%
Cable Splicers	14.83	.80+3⅛%
ELEVATOR CONSTRUCTORS:		
Zone 1: Mechanics	13.43	2.465+a
Helpers	70% JR	2.465+a
Helpers (Prob)	50% JR	
Zone 2: Mechanics	13.66	2.465+a
Helpers	70% JR	2.465+a
Helpers (Prob)	50% JR	

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	Basic Hourly Rates	Fringe Benefits
GLAZIERS:		
Zone 1	$14.65	.02+b
Zone 2	11.75	.01
Zone 3	14.55	.73
Zone 4	9.88	.34
Zone 5	6.80	
Zone 6	10.99	
IRONWORKERS:		
Zone 1	14.70	2.08
Zone 2	15.29	1.99
Zone 3	14.25	2.36
Zone 4	14.55	2.31
Zone 5	11.50	1.59
Zone 6	15.62	1.62
LABORERS:		
Zone 1:		
Group 1	7.20	.30
Group 2	7.40	.30
Group 3	7.45	.30
Zone 2:		
Group 1	8.92	.80
Group 2	9.12	.80
Zone 3:		
Group 1	11.11	.94
Group 2	11.21	.94
Group 3	11.26	.94
Group 4	12.07	.94
Group 5	11.63	.94
Group 6	11.47	.94
Group 7	11.16	.94
Group 8	11.36	.94
Zone 4:		
Group 1	10.37	.85
Group 2	10.47	.85
Group 3	10.52	.85
Zone 5:		
Group 1	9.97	.85
Group 2	10.37	.85
Group 3	10.12	.85
Zone 6:		
Group 1	10.72	.95
Group 2	10.82	.95
Group 3	10.97	.95
Group 4	10.88	.95
Group 5	10.98	.95
Zone 7:		
Group 1	10.40	.95
Group 2	10.55	.95
Group 3	10.60	.95
Zone 8:		
Group 1	8.11	.80
Group 2	8.31	.80
Group 3	8.36	.80
Group 4	8.41	.80
Group 5	8.76	.80

	Basic Hourly Rates	Fringe Benefits
LABORERS (Cont'd)		
Zone 9:		
Group 1	$ 8.90	.80
Group 2	9.00	.80
Group 3	9.05	.80
Group 4	9.10	.80
Zone 10:		
Group 1	8.45	.80
Group 2	8.60	.80
Group 3	8.75	.80
LATHERS:		
Zone 1	12.73	1.00
Zone 2	12.88	1.00
Zone 3	13.28	1.00
Zone 4	13.48	1.00
Zone 5	15.20	1.76
Zone 6	13.25	.65
Zone 7	14.83	1.60
Zone 8	12.90	1.78
Zone 9	12.95	
Zone 10	12.30	1.85
LINE CONSTRUCTION:		
Zone 1:		
Linemen	16.45	1.35+3%
Hole digging equip.; tractor w/winch & derrick; line truck w/winch & derrick working hot lines	75% JR	1.35+3%
Pole truck & trailer or pole hauling & setting truck (not energized lines)	65% JR	1.35+3%
Truck w/o winch	45% JR	1.35+3%
Groundmen	50% JR	1.35+3%
Zone 2:		
Linemen	16.64	13-3/10%
Cable Splicers	16.89	"
Equipment Oprs.	12.48	"
Truck drivers and groundmen	7.49	"
Zone 3:		
Linemen, equipment opr.	18.20	1.50+3-1/10%
Cable Splicers	18.70	"
Groundmen	16.20	"
Zone 4:		
Linemen, equipment opr.	14.60	.70+3%
Cable Splicers	14.85	.70+3%
Groundmen	50% JR	.70+3%
Zone 5:		
Linemen, equipment opr.	15.36	3⅛%
Cable Splicers	15.61	3⅛%
Groundmen	40% JR	3⅛%

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	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (Cont'd):		
Zone 6:		
Linemen, equipment oprs.	$14.15	1.15+ 3½%
Cable Splicers	14.65	"
Groundmen	4.19	"
Zone 7:		
Linemen, Operators	14.60	2.40+ 3-3/4%
Cable Splicers	15.10	"
Groundmen	12.60	"
MARBLE, TILE & TERRAZZO WORKERS & FINISHERS:		
Zone 1:		
Marble Setters	14.35	1.84
Tile & Terrazzo Workers	14.05	.65
Marble, Tile & Terrazzo Finishers	10.10	1.00
Zone 2:		
Marble & Terrazzo Wkrs.	15.65	2.12
Tile Setters	12.07	1.70
Zone 3:		
Marble Setters	14.50	
Terrazzo Workers	11.65	
Zone 4:		
Marble, Tile & Terrazzo Workers	12.85	.75
Zone 5:		
Marble, Tile & Terrazzo Workers	11.80	.85
Zone 6:		
Marble, Tile & Terrazzo Workers	17.25	
Marble, Tile & Terrazzo Finishers	10.10	1.00
Zone 7:		
Tile Setters	13.75	
Tile Finishers	10.10	1.00
PAINTERS:		
Zone 1:		
Group 1	15.395	.40
Group 2	15.605	.40
Group 3	15.76	.40
Group 4	17.275	.40
Zone 2:		
Group 1	11.85	1.33
Group 2	13.42	1.33
Zone 3:		
Group 1	12.055	1.895
Group 2	12.43	1.895
Group 3	14.005	1.895
Zone 4:		
Group 1	10.99	
Group 2	11.43	
Group 3	11.12	
Group 4	12.25	
Group 5	12.59	
Group 6	11.09	
Group 7	11.33	

	Basic Hourly Rates	Fringe Benefits
PAINTERS (Cont'd):		
Zone 5:		
Group 1	10.75	
Group 2	11.60	
Grpup 3	12.10	
Zone 6:		
Painters, tape & float, vinyl & paperhanger	11.40	1.10
Zone 7:		
Group 1	9.05	
Group 2	9.55	
Group 3	10.05	
Zone 8:		
Painters	10.85	.83
Industrial	13.42	1.33
PLASTERERS:		
Zone 1	13.20	
Zone 2	13.00	.01
Zone 3	15.78	
Zone 4	15.20	.01
Zone 5	12.08	1.58
Zone 6	8.00	.01
Zone 7	12.10	.85
Zone 8	14.15	.75
Zone 9	13.10	.30
PLUMBERS & PIPEFITTERS:		
Zone 1	15.80	2.43
Zone 2	16.145	2.305
Zone 3	14.25	2.35
Zone 4	13.94	3.04
Zone 5	17.48	2.00
Zone 6	15.05	1.65
POWER EQUIPMENT OPERATORS:		
Zone 1:		
Group 1	10.32	1.95
Group 2	11.56	1.95
Group 3	11.30	1.95
Group 4	11.67	1.95
Group 5	13.50	1.95
Group 6	12.25	1.95
Zones 2, 3 & 4:		
Group 1	9.80	1.95
Group 2	10.83	1.95
Group 3	10.93	1.95
Group 4	11.40	1.95
Group 5	13.57	1.95
Group 6	12.57	1.95
Zone 5:		
Group 1	10.61	1.95
Group 2	10.29	1.95
Group 3	10.08	1.95
Group 4	10.89	1.95
Group 5	14.01	1.95
Group 6	11.50	1.95
Group 7	12.38	1.95
Group 8	12.38	1.95

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (Cont'd):		
Zone 6:		
Group 1	15.21	2.20
Group 2	15.46	2.20
Group 3	15.71	2.20
Group 4	15.96	2.20
Group 5	16.46	2.20
Group 6	16.21	2.20
Group 7	14.96	2.20
Group 8	12.88	2.20
Group 9	11.31	2.20
Group 10	9.45	2.20
Group 11	10.63	2.20
Zone 7:		
Group 1	14.73	2.20
Group 2	12.24	2.20
Group 3	12.43	2.20
Group 4	15.23	2.20
Group 5	10.69	2.20
Group 6	9.03	2.20
Group 7	14.98	2.20
Group 8	15.23	2.20
Group 9	15.48	2.20
Group 10	15.73	2.20
Group 11	16.23	2.20
Group 12	16.73	2.20
ROOFERS:		
Zone 1	15.06	.20
Zone 2:		
Roofers	10.36	2.90
Preparers remove old roofing, place, stock or move materials, tools or equipment for journeyman	4.90	.55
Zone 3:		
Roofers	11.63	1.79
Preparers remove old roofing, place, stock or move materials,tools or equipment for journeyman	5.00	
Zone 4:		
Roofers	11.00	.30
Kettlemen	9.00	.30
Zone 5:		
Roofers	12.86	.24

	Basic Hourly Rates	Fringe Benefits
SHEET METAL WORKERS:		
Zone 1	14.75	1.74+3%
Zone 2	14.25	2.32+3%
Zone 3	14.12	1.51
Zone 4	13.04	1.62+3%
SPRINKLER FITTERS	14.57	2.83
TRUCK DRIVERS:		
Zone 1:		
Group 1	11.31	.70
Group 2	11.79	.70
Group 3	12.02	.70
Group 4	11.81	.70
Group 5	11.91	.70
Group 6	11.83	.70
Group 7	12.25	.70
Zone 2:		
Group 1	9.05	.60
Group 2	9.30	.60
Group 3	9.85	.60
Group 4	9.70	.60
Group 5	10.15	.60
Group 6	10.25	.60
Group 7	10.55	.60
Group 8	10.70	.60
Zone 3:		
Group 1	9.87	
Group 2	9.95	
Group 3	10.20	
Group 4	10.35	
Group 5	10.50	
Group 6	10.70	
Group 7	11.05	
Zone 4:		
Group 1	11.88	
Group 2	12.18	
Group 3	12.33	
Group 4	12.53	
Group 5	12.68	
Group 6	12.48	
Zone 5:		
Group 1	11.09	.70
Group 2	11.70	.70
Group 3	11.75	.70
Group 4	12.01	.70

FOOTNOTES:

a - 1st 6 mos. - none; 6 mos. to 5 years - 6%; over 5 years - 8% of basic hourly rate and 7 paid holidays, A thru G.

b - 5 days paid vacation and 6 paid holidays, A thru F.

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-The Friday After Thanksgiving Day; and G-Christmas Day

ZONE DEFINITIONS FOR ASBESTOS WORKERS

ZONE 1 - Acadia, Allen, Beauregard, Calcasieu, Cameron, Evangeline, Jefferson Davis, Rapides, Vermilion & Vernon Parishes
ZONE 2 - Bienville, Bossier, Caddo, Caldwell, Claiborne, DeSoto, Grant, Jackson, Lincoln, Natchitoches, Ouachita, Red River, Sabine, Union, Webster & Winn Parishes
ZONE 3 - Ascension, Assumption, Avoyelles, Catahoula, Concordia, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Lafayette, Lafourche, LaSalle, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Washington, West Baton Rouge & West Feliciana Parishes
ZONE 4 - East Carroll, Franklin, Madison, Morehouse, Richland, Tensas & West Carroll Parishes

ZONE DEFINITIONS FOR BRICKLAYERS AND STONEMASONS

ZONE 1 - Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Livingston, St. Helena, Tangipahoa, West Baton Rouge & West Feliciana Parishes
ZONE 2 - Avoyelles, Catahoula, Concordia, Evangeline, Grant, LaSalle, Pointe Coupee, Rapides & St. Landry Parishes
ZONE 3 - Acadia, Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes
ZONE 4 - Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Tammany (extending northward to that part of St. Tammany Par. from Tangipahoa Par. on the west along U.S. Hwy. 190 through the lower limits of Covington, along State Hwy. 58, through the lower limits of Abita Springs & Talisheek & on a line due east from Talisheek to the Mississippi State Line) & Terrebonne Parishes
ZONE 5 - St. Tammany (north half including Covington north of Hwy. 90) & Washington Parishes
ZONE 6 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River & Webster Parishes
ZONE 7 - Natchitoches & Sabine Parishes
ZONE 8 - Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn
ZONE 9 - Iberia, Lafayette, St. Martin, St. Mary & Vermilion Pars.

ZONE DEFINITIONS FOR CARPENTERS:

ZONE 1 - All of Acadia, Evangeline, Lafayette, St. Landry & Vermilion Pars.; Parts of Iberia, St. Martin & St. Mary Pars. (west of the Atchafalaya River)
ZONE 2 - Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes
ZONE 3 - Parts of St. Tammany & Tangipahoa (north of I-12 from the Mississippi State Line to the western boundary of Tangipahoa Par.) & Washington Parishes
ZONE 4 - Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, St. James (north of the Mississippi River), West Baton Rouge & West Feliciana Pars.
ZONE 5 - All of Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles & St. John the Baptist Pars.; Parts of St. Tammany & Tangipahoa (south of I-12 from the Mississippi State Line to the western boundary of Tangipahoa Par.) Parishes
ZONE 6 - Assumption, Iberia (east of the Atchafalaya River), Lafourche, St. James (south of the Miss. River), St. Martin (eastern segment of the Atchafalaya River), St. Mary (east of the Atchafalaya River) & Terrebonne Parishes

ZONE DEFINITIONS FOR CARPENTERS (Cont'd)

ZONE 7 - Avoyelles, Grant, LaSalle, Natchitoches, Rapides & Sabine
ZONE 8 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River & Webster Parishes
ZONE 9 - Caldwell, Catahoula, Concordia, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn Parishes

ZONE DEFINITIONS FOR CEMENT MASONS

ZONE 1 - Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, St. James, Tangipahoa, West Baton Rouge & West Feliciana Parishes
ZONE 2 - Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes
ZONE 3 - Acadia, Iberia, Lafayette, St. Landry, St. Martin, St. Mary & Vermilion Parishes
ZONE 4 - Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany (north to Interstate Hwy. 12) & Terrebonne Parishes
ZONE 5 - St. Tammany (northern half including Covington north of Hwy 190) & Washington Parishes
ZONE 6 - Avoyelles, Catahoula, Concordia, Evangeline, Grant, LaSalle & Rapides Parishes
ZONE 7 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River & Webster Parishes
ZONE 8 - Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn
ZONE 9 - Natchitoches & Sabine Parishes

ZONE DEFINITIONS FOR ELECTRICIANS

ZONE 1 - Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, St. Landry, West Baton Rouge & West Feliciana Parishes
ZONE 2 - St. Tammany, Tangipahoa & Washington Parishes
ZONE 3 - Allen, Beauregard, Calcasieu, Cameron & Jefferson Davis Pars.
ZONE 4 - Acadia, Iberia, Lafayette, St. Martin (northern segment), St. Mary (that portion southwest of the Atchafalaya River) & Vermilion Parishes
ZONE 5 - Assumption, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin (southern segment), St. Mary (that portion northest of the Atchafalaya River) & Terrebonne Parishes
ZONE 6 - Avoyelles, Catahoula, Concordia, Evangeline, Grant, LaSalle, Natchitoches (that portion southwest of the Red River), Rapides, Sabine, Vernon & Winn Parishes
ZONE 7 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Natchitoches (that portion northeast of the Red River), Red River & Webster Pars.
ZONE 8 - Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union & West Carroll Pars.

ZONE DEFINITIONS FOR ELEVATOR CONSTRUCTORS:

ZONE 1 - Acadia, Allen, Ascension, Assumption, Beauregard, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge & West Feliciana Parishes

ZONE DEFINITIONS FOR ELEVATOR CONSTRUCTORS (Cont'd):

ZONE 2 - Avoyelles, Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, DeSoto, East Carroll, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, Tensas, Union, Vernon, Webster, West Carroll & Winn Parishes

ZONE DEFINITIONS FOR GLAZIERS:

ZONE 1 - Allen (except northeast corner), Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes
ZONE 2 - Acadia, Ascension (north of Hwy. 22), Assumption (north of Hwy. 22), East Baton Rouge, East Feliciana, Iberia, Iberville, Lafayette, Livingston (north of Hwy. 22), Pointe Coupee, St. Helena, St. Landry (south half), St. Martin, St. Mary (except Morgan City Area), Tangipahoa (west of Hwy. 51), Vermilion, West Baton Rouge & West Feliciana Parishes
ZONE 3 - Ascension (south of Hwy. 22), Assumption (south of Hwy. 22), Jefferson, Lafourche, Livingston (south of Hwy. 22), Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Mary (Morgan City Area), St. Tammany (southern portion) & Terrebonne Parishes
ZONE 4 - Bienville (western half), Bossier, Caddo, Claiborne, DeSoto, Natchitoches (to city of Natchitoches), Red River, Sabine & Webster
ZONE 5 - Bienville (eastern portion everything east of Rt. 9 inclusive), Caldwell, Concordia, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn (northern half everything north of a line running east & west through Winfield, excluding Winfield) Parishes
ZONE 6 - St. Tammany (northern 2/3 everything north of a straight line running east & west from Pearl River to Mandeville), Tangipahoa (everything east of Rt. 51 & everything north of a straight line running east & west from Madisonville through Ponchatoula) & Washington Parishes

ZONE DEFINITIONS FOR IRONWORKERS:

ZONE 1 - All of Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist & St. Tammany Pars.; Parts of Lafourche, Livingston, St. James, Tangipahoa, Terrebonne & Washington Pars. (west of a straight line drawn from the La.-Miss. border, east of the city limits of Warrenton, southwest through Hammond to the Gulf of Mexico)
ZONE 2 - All of Ascension, Assumption, Avoyelles, East Baton Rouge, East Feliciana, Iberia, Iberville, Pointe Coupee, St. Helena, St. Martin, St. Mary, West Baton Rouge & West Feliciana Pars.; Parts of Acadia, Evangeline, Lafayette, St. Landry & Vermilion Pars. (east of a line drawn from the meeting point of the boundaries of the Pars. of Rapides, Avoyelles & Evangeline, southeast along the western city limits of Abbeville to the Gulf of Mexico); Parts of Lafourche, Livingston, St. James, Tangipahoa, Terrebonne & Washington Pars. (west of a straight line drawn from the La.-Miss. border, west of the city limits of Warrenton, southwest through Hammond to the Gulf of Mexico); Parts of Catahoula, Concordia & LaSalle Pars. (south of a line drawn from Natchez through the city of Cottonport to the Rapides Par. line, then west along the southern border of Rapides Par.)

ZONE DEFINITIONS FOR IRONWORKERS (Cont'd):

ZONE 3 - All of Bossier, Caddo, DeSoto, Red River & Webster Pars.; Parts of Bienville, Claiborne, Natchitoches & Winn Pars. (west of a line drawn directly south from the Ark.-La. border through the cities of Arcadia & Cloutierville); Part of Sabine Par. (north of a line drawn from the Natchitoches Par. boundary west through the city of Peason to the Tex.-La. border)
ZONE 4 - All of Caldwell, East Carroll, Franklin, Grant, Jackson, Lincoln, Morehouse, Ouachita, Rapides, Richland, Tensas, Union & West Carroll Pars.; Parts of Bienville, Claiborne, Natchitoches & Winn Pars. (east of a line drawn directly south from the Ark.-La. border through the cities of Arcadia & Cloutierville); Part of Madison Par. (except the cities of Mound, Delta & adjacent areas); Parts of Catahoula, Concordia & LaSalle Pars. (north of a line drawn from Natchez through the city of Cottonport to the Rapides Par. line)
ZONE 5 - That part of Madison Par. (including the cities of Mound, Delta & adjacent areas)
ZONE 6 - All of Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Pars.; Parts of Acadia, Evangeline, Lafayette, St. Landry & Vermilion Pars. (southwest of Rapides Par. & west of a line south of the western most border between Rapides & Evangeline)

LABORERS - ZONE 1 (CLASSIFICATION DEFINITIONS)

GROUP 1 - Building and labor construction
GROUP 2 - Stone mason tenders, mechanical tool operators, sewermen (bottom men, caulkers, tenders, joint wipers, hot pot, grade carriers, layers & ditchers 4 ft. or over); tender of all crafts; sandblaster (nozzlemen); sandblaster (pot tender); laying non-metallic pipe over 4 ft. deep, including sewer, drain & underground tile; septic tank diggers & installers, over 4 ft. deep; gas & oil pipeline laborers & wrappers
GROUP 3 - Gunite tool operators
LABORERS - ZONE 2
GROUP 1 - Building laborer; rotary drill laborers; foundation drill crewman
GROUP 2 - Mason mixer; plaster mixer; mechanical tool op. (jackhammer, vibrator, tamper, chipping gun, soil tillers); sandblaster; laying concrete, clay, plastic, asbestos cement, casing & corrugated metal pipe, as sewer, drain & underground tile (caulkers, joint wrappers hot pot & pipe layers); gas & oil pipeline laborers wrappers & dopers
LABORERS - ZONE 3
GROUP 1 - Building & general laborer; tenders (carpenter, plaster, cement finisher, mason), tank & vessel cleaners
GROUP 2 - Mechanical tool op. (except jackhammer); interior of closed tanks & vessels power equipped
GROUP 3 - Mortar mixers
GROUP 4 - Blasterers
GROUP 5 - Blaster tenders; concrete cutters behind paving machine & puddlers; form setters & liner asphalt worker
GROUP 6 - Wiping joints, laying pipe & tile from pumpcrete
GROUP 7 - Interior of closed tanks & vessels manually
GROUP 8 - Jackhammer operators

LABORERS (CLASSIFICATION DEFINITIONS)(Cont'd):

LABORERS - ZONES 4 & 5

GROUP 1 - Building and general laborers, carpenter tenders

GROUP 2 - Power tool ops. (hammer men, tamper, vibrator, power buggies, concrete chippers & cutters, chain saw ops., etc.); pipelayers (non-metallic)

GROUP 3 - Mason tenders, plaster tenders, cement mix (wet or dry) tenders, hod carrier tender; mortar mixers & cement mixers (wet or dry)

LABORERS - ZONE 6

GROUP 1 - Laborers

GROUP 2 - Laborers handling pans, stone mason tenders, mechanical tool ops., sewermen, sandblaster; laying non-metallic pipe over 4' deep, including sewer pipe, drain pipe, & underground tile; septic tank diggers & installers over 4' deep; gas & oil pipeline laborers & wrappers; scalers using boatswain's chair, safety belt or power tool; scaler & cleaners

GROUP 3 - Gunite tool operators

GROUP 4 - Bricklayer & mason tender

GROUP 5 - Hod carrier using a prime mover to serve a bricklayer; mortar mixer, either hand or machine

LABORERS - ZONE 7

GROUP 1 - Common laborers

GROUP 2 - Jackhammermen, sewermen, mason tenders, plaster tenders, stone mason tenders, vibratormen

GROUP 3 - Mortar mixers

LABORERS - ZONE 8

GROUP 1 - Common laborers; carpenter tenders; mason tenders (other than cement); plasterers tenders; stone mason tenders; concrete workers; scaffold builders

GROUP 2 - Air tool ops. (jackhammer, vibrator & tamper); sewer pipe joiners & setters; concrete cutters; hod carriers; creosote materials handler; acid worker; mason tenders (cement); Mortar mixer (wet or dry); motorized buggy op.; water proofers (mastic); form setters (steel paving forms)

GROUP 3 - Chain saw operator

GROUP 4 - Asphalt raker, tamper, smoother & shovelers; sewer pipelayers; blaster tenders

GROUP 5 - Powderman

LABORERS - ZONE 9

GROUP 1 - Laborers, Plasterer tenders, asphalt rakers & smoothers

GROUP 2 - Mason tenders

GROUP 3 - Mortar mixers

GROUP 4 - Sewer pipe layers & wipers, burners on demolition, mechanical tool ops. (including but not limited to jackhammer, tamper, vibrator chipping hammer)

LABORERS - ZONE 10

GROUP 1 - Laborers, tenders (brickmasons, stonemasons, cement masons, carpenters, plasterers), stripping & dismantling; concrete form work; loading, unloading, carrying & handling steel & steel mesh; assisting to the setting of cut stone, granite or artificial stone; building scaffolds; shoring

GROUP 2 - Mechanical tool op. (air, electric, motor, engine, etc.); sewer pipelayers; mortar mixers (hand or machine); gunite op., tile, terrazzo & marble setter finishers

GROUP 3 - Pipe dopers & burners

ZONE DEFINITIONS FOR LABORERS:

ZONE 1 - St. Tammany (as far south as Bayou Lacombe & east to the Miss. State Line at Pearlington), Tangipahoa (all but southwestern corner) & Washington Parishes

ZONE 2 - Acadia, Iberia, Lafayette, St. Landry, St. Martin, St. Mary (excluding that part of Par. to the Calumet Locks west) & Vermilion

ZONE 3 - Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes

ZONE 4 - All of Ascension, East Baton Rouge, East Feliciana, Iberville, Pointe Coupee, West Baton Rouge & West Feliciana Pars.; Parts of Assumption, St. James, St. John the Baptist Pars. (north of a line drawn from the southern limits of the town of St. James in St. James Par. to the northern limits of the town of Napoleonville in Assumption Par. & then directly west to the Par. Line, all of St. James Par. except that part which is east of a line drawn from Lutcher to U.S. Hwy. 61 (Airline Hwy.) then west on U.S. 61 to Blind River & on a direct line to Manchac)

ZONE 5 - Livingston, St. Helena & Tangipahoa (south & west of a line running from the western Par. line to a point directly east which touches the northern limits of the town of Independence, then directly south to Lake Pontchartrain) Parishes

ZONE 6 - Jefferson (except Grand Isle), Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist (on the west bank of the Miss. River & the portion of St. John the Baptist on the east bank of the Miss. River as far as the Sycamore Inn at Lutcher & north to Blind River & Manchac) & St. Tammany (north as far as Bayou Lacombe, east to the Miss. State Line at Pearlington) Pars.

ZONE 7 - Assumption (north of Napoleonville), Jefferson (Grand Isle), Lafourche, St. James (on the west bank & including the town of Vacherie), St. Mary (that part of Parish to the Calumet Locks west) & Terrebonne Parishes

ZONE 8 - Avoyelles, Evangeline, Grant, LaSalle, Natchitoches, Rapides & Winn Parishes

ZONE 9 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River, Sabine & Webster Parishes

ZONE 10 - Caldwell, Catahoula, Concordia, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union & West Carroll Parishes

ZONE DEFINITIONS FOR LATHERS:

ZONE 1 - That part of Jefferson, Orleans, Plaquemines, St. Bernard & St. Charles Pars. which are 12.5 miles from center of New Orleans

ZONE 2 - That part of Jefferson, Orleans, Plaquemines, St. Bernard & St. Charles Pars. which are within a 22.5 mile radius of New Orleans Center

ZONE 3 - That part of Jefferson, Lafourche (except that area southeast of Raceland to Bayou Lafourche), Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany & Tangipahoa Pars. which are within a 32.5 mile radius of New Orleans Center

ZONE 4 - That part of Jefferson, Lafourche (including that area southeast of Raceland to Bayou Lafourche), Livingston (westward to Rt. 22 including towns of Maurepas, Killian & Springfield), Plaquemines, St. Bernard, St. James (including towns of Gramercy, Lutcher & Paulina), St. Tammany, Tangipahoa (northward to Rt. 16 including towns of Amite & Holton), Terrebonne (westward to Rts. 24 & 315 including city of Houma) & Washington (only northward to Rt. 10 to southern limits of towns of Boqalusa, Sheridan & Franklinton) Pars. outside 32.5 mile radius of New Orleans Center

ZONE DEFINITIONS FOR LATHERS (Cont'd):

ZONE 5 - Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Livingston (western part), Pointe Coupee, St. Helena, St. James (only towns of Union, Hymel, Convent & Lutcher), St. Martin (only lower separated section), St. Mary (only Morgan City), Tangipahoa (north of Rt. 16 & west of Rt. 51 including Amite, Hammond & Pontchatoula), Washington (only north of Rt. 16 & west of Rt. 25), West Baton Rouge & West Feliciana Parishes

ZONE 6 - Acadia, Evangeline, Iberia, Lafayette, St. Landry, St. Martin (excluding lower separated section), St. Mary (east to Berwick) & Vermilion Parishes

ZONE 7 - Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes

ZONE 8 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River & Webster Parishes

ZONE 9 - Avoyelles, Grant, LaSalle, Natchitoches, Rapides & Sabine Pars.

ZONE 10 - Caldwell, Catahoula, Concordia, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn Parishes

ZONE DEFINITIONS FOR LINE CONSTRUCTION

ZONE 1 - Assumption, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin (southern segment), St. Mary (that portion northeast of the Atchafalaya River) & Terrebonne Parishes

ZONE 2 - Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, St. Landry, West Baton Rouge & West Feliciana Parishes

ZONE 3 - Allen, Beauregard, Calcasieu, Cameron & Jefferson Davis Pars.

ZONE 4 - Acadia, Iberia, Lafayette, St. Martin (northern segment), St. Mary (that portion southwest of the Atchafalaya River) & Vermilion Parishes

ZONE 5 - Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union & West Carroll Pars.

ZONE 6 - Avoyelles, Catahoula, Concordia, Evangeline, Grant, LaSalle, Natchitoches (that portion southwest of the Red River), Rapides, Sabine, Vernon & Winn Parishes

ZONE 7 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Natchitoches (that portion northeast of the Red River), Red River & Webster Pars.

ZONE DEFINITIONS FOR MARBLE, TILE & TERRAZZO WORKERS AND FINISHERS

ZONE 1 - Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Tammany (extending northward to that part of St. Tammany Par. from the Tangipahoa Par. Line on the west along U.S. Hwy. 190 through the lower limits of Covington, along State Hwy. 58 through the lower limits of Covington, along State Hwy. 58 through the lower limits of Abita Springs & Talisheek & on a line due east from Talisheek to the Miss. State Line) & Terrebonne Parishes

ZONE 2 - Acadia, Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes

ZONE 3 - Iberia, Lafayette, St. Martin, St. Mary & Vermilion Pars.

ZONE 4 - Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn

ZONE 5 - Bienville, Bossier, Caddo, Claiborne, De Soto, Red River & Webster Parishes

ZONE 6 - Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Livingston, St. Helena, Tangipahoa, West Baton Rouge & West Feliciana Parishes

ZONE 7 - St. Tammany (northern half including Covington north of Hwy. 190) & Washington Parishes

PAINTERS CLASSIFICATION DEFINITIONS

ZONE 1
- GROUP 1 - Painters brush, roller & buffer
- GROUP 2 - Paperhanging, taping & floating
- GROUP 3 - Spray, sandblasting, hydroblasting, spider op., rubberizing & pyroflexing, steam jennies, taping & floating machine
- GROUP 4 - Water towers, radio & TV towers

ZONE 2
- GROUP 1 - Brush; taping; floating & texture
- GROUP 2 - Sandblasting, industrial & steel

ZONE 3
- GROUP 1 - Painters, paperhangers & sheetrock tapers & floaters
- GROUP 2 - Structural steel painters of new building under construction; the following overall of 30 ft.; tanks, air conditioning, towers, smoke stacks, sprinkler systems, wharves & structural steel in old buildings; spray painters, swing stage painter
- GROUP 3 - Industrial

ZONE 4
- GROUP 1 - Brush
- GROUP 2 - Brush swing stage
- GROUP 3 - Brush industrial
- GROUP 4 - Spray; spray steel, sandblasting
- GROUP 5 - Spray swing stage
- GROUP 6 - Paperhanger
- GROUP 7 - Sheetrock finishers

ZONE 5
- GROUP 1 - Painters, paperhangers, tapers, floaters, commercial steel, such as churches or any commercial building with closed roof deck or walls
- GROUP 2 - Other commercial work brush spray, stage, window jacks flagpoles & steeple work
- GROUP 3 - All industrial work including sandblasting or power tools of any kind

ZONE 7
- GROUP 1 - Painters, paperhangers, tapers & floaters
- GROUP 2 - Stage,window jacks, bosun chairs, structural steel, rollers, equipment painting; sandblasting, spray, stack sign, tank painting, steeple jack
- GROUP 3 - Structural steel brush

PAINTERS ZONE DEFINITIONS

ZONE 1 - Allen (except northeast corner), Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes

ZONE 2 - Ascension (north of Hwy.22), Assumption (north of Hwy. 22), Concordia, East Baton Rouge, East Feliciana, Iberville, Livingston (north of Hwy. 22), Pointe Coupee, St. Helena, Tangipahoa (west of Hwy. 51), West Baton Rouge & West Feliciana Parishes

ZONE 3 - Ascension (south of Hwy. 22), Assumption (south of Hwy. 22), Lafourche, Livingston (south of Hwy. 22), Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Mary (Morgan City Area), St. Tammany (southern portion) & Terrebonne

ZONE 4 - St. Tammany (northern 2/3, everything north of a straight line running east & west from Pearl River to Mandeville), Tangipahoa (everything east of Rt. 51 & everything north of a straight line running east & west from Madisonville through Ponchatoula) & Washington Pars.

ZONE 5 - Allen (northeastern most corner, north of Rt. 10), Avoyelles, Catahoula, Evangeline, Grant, LaSalle, Natchitoches (southern half, everything south of Rt. 6 including City of Natchitoches), Rapides, St. Landry (northern portion) & Winn (southern half from a line running east & west through the intersection of Rts. 84 & 71, including the town of Winnfield at that intersection) Parishes

ZONE 6 - Bienville (western half), Bossier, Caddo, Claiborne, DeSoto, Natchitoches (to City of Natchitoches), Red River, Sabine & Webster

PAINTERS ZONE DEFINITIONS (Cont'd):

ZONE 7 - Bienville (eastern portion, everything east of Rt. 9 inclusive), Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn (northern half, everything north of a line running east & west through Winnfield, excluding Winnfield) Parishes

ZONE 8 - Acadia, Iberia, Lafayette, St. Landry (south half), St. Martin, St. Mary (except Morgan City Area) & Vermilion Parishes

PLASTERERS ZONE DEFINITIONS

ZONE 1 - St. Tammany (northern half including Covington north of Hwy. 190) & Washington Parishes

ZONE 2 - Acadia, Iberia, Lafayette, St. Landry, St. Martin, St. Mary & Vermilion Parishes

ZONE 3 - Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes

ZONE 4 - Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. James, St. Helena, Tangipahoa, West Baton Rouge & West Feliciana Parishes

ZONE 5 - Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany (Par. line on the west along U.S. Hwy. 190 through the lower limits of Covington & Abita Springs along State Hwy. 435 to Talisheek & on a line due east from Talisheek to the Miss. State Line) & Terrebonne Parishes

ZONE 6 - Avoyelles, Catahoula, Concordia, Evangline, Grant, LaSalle & Rapides Parishes

ZONE 7 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River & Webster Parishes

ZONE 8 - Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn

ZONE 9 - Natchitoches & Sabine Parishes

PLUMBERS & PIPEFITTERS ZONE DEFINITIONS

ZONE 1 - Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James (northern 2/3 of Par.), St. John the Baptist, St. Tammany, Tangipahoa, Terrebonne & Washington Parishes

ZONE 2 - Ascension, Assumption, East Baton Rouge, East Feliciana, Iberia (eastern 1/2 of Par.), Iberville, Livingston, Pointe Coupee, St. Helena, St. James (western 1/3 of Par.), St. Martin (southern part of eastern 1/2 of Par.), St. Mary, West Baton Rouge & West Feliciana Parishes

ZONE 3 - Avoyelles, Catahoula, Concordia, Evangeline, Grant, LaSalle, Natchitoches (south of Hwy. 84 & 86 from Winnfield to Natchitoches & southeast from Natchitoches to Anacoco through Bellwood), Rapides, Vernon (northeast of Hwy. 10 & Winn (south of Hwy. 84) Parishes

ZONE 4 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River, Sabine & Webster Pars.; Parts of Natchitoches & Vernon Pars. (northwest from a line drawn from Natchitoches to Anacoco through Bellwood & north of Hwy. 111 between Anacoco & Haddens) Parishes

ZONE 5 - Acadia, Allen, Beauregard, Calcasieu, Cameron, Iberia (western 1/2 of Par.), Jefferson Davis, Lafayette, St. Landry, St. Martin (west of Hwy. 31) & Vermilion Parishes

ZONE 6 - Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, West Carroll & Winn north of Hwy. 84) Parishes

POWER EQUIPMENT OPERATORS - ZONE 1 - CLASSIFICATION DEFINITIONS

GROUP 1 - Oiler

GROUP 2 - Oiler-Driver

GROUP 3 - Scaleman

GROUP 4 - Air compressor, Asphalt plant; Bulldozers, D-4 & equivalent & under; Bullfloats; Concrete spreader; Finishing machines; Concrete mixer (16-s or less); Concrete saw; Distributors (bitum surface); Dowell bar machine; Farm-type tractor (with all attachments except backhoe); Fireman; Fork lifts (other than setting steel, machinery or pipe); Hoist, 1 drum less than 4 stories; Kolum buff machine; Pull cats; Pump (3" & over); Pump, concrete (under 6"); Rollers, except on asphalt or brick; Straddle buggies; Sweepers on streets & roads (motorized); Winch truck, A-frame (other than handling steel or pipe); Front end loader 1-1/2 yd. bucket & below

GROUP 5 - Asphalt spreader; Backhoe; Bulldozer, over D-4 & equivalent; Cableways; Concrete mixer, over 16-s; Cranes; Derricks; Ditching or trenching machines; Dragline; Fork lifts (setting steel, machinery or pipe); Front end loaders over 1-1/2 yd. bucket (except farm-type tractors); Grease serviceman; Hoist, 1 drum, 4 stories or more or 40 ft. (on structures other than buildings); Hoist, 2 drums & over; Hydrolifts; Heavy duty mechanic; Motor patrols; Piledrivers; Pump, concrete (6" & over); Road pavers; Rollers on asphalt or brick; Scoopmobiles; Scrapers; Sideboom cats; Shovels; Tractorvators; Welder, journeyman; Winch cats (hoisting); Winch truck, A-frame (handling steel or pipe); Well point system

GROUP 6 - Unit & well point operator

POWER EQUIPMENT OPERATORS - ZONE 2 - CLASSIFICATION DEFINITIONS

GROUP 1 - Oiler

GROUP 2 - Oiler-Driver

GROUP 3 - Scaleman

GROUP 4 - Air compressor; Asphalt plant op.; Bulldozer, D-4 equivalent & under; Bullfloats; Concrete spreader; Finishing machines; Concrete mixer (16-s or less); Concrete saw; Distributors (bitum surface); Dowell bar machine; Farm-type tractor (with all attachments except backhoe); Fireman; Fork lifts (other than setting steel, machinery or pipe); Hoist, 1 drum less than 4 stories; Kolum buff machine; Pull cats; Pump (3" & over); Pump, concrete (under 6"); Rollers, except on asphalt or brick; Straddle buggies; Sweepers on streets & roads (motorized); Winch truck, A-frame (other than handling steel or pipe)

GROUP 5 - Asphalt spreader, Backhoe, Bulldozer, over D-4 & equivalent; Cableways; Concrete mixer, over 16-s; Cranes, Derricks; Ditching or trenching machines; Draglines; Fork lifts (setting steel, machinery or pipe); Front end loaders (except farm-type tractors); Grease serviceman; Hoist, 1 drum, 4 stories or more or 40 ft. (on structures other than buildings); Hoist, 2 drums & over; Hydrolifts; Heavy duty mechanic; Motor patrols; Piledrivers; Pump, concrete (6" & over); Road pavers; Rollers on asphalt or brick; Scoopmobiles; Scrapers; Sideboom cats; Shovels; Tractorvators; Welder, journeyman; Winch cats (hoisting); Winch truck, A-frame (handling steel or pipe)

GROUP 6 - Well point system & unit operator

POWER EQUIPMENT OPERATORS - ZONE 3 - CLASSIFICATION DEFINITIONS

GROUP 1 - Oiler

GROUP 2 - Oiler-Driver

GROUP 3 - Scaleman

POWER EQUIPMENT OPERATORS - ZONE 3 - CLASSIFICATION DEFINITIONS (Cont'd)

GROUP 4 - Air compressor; Asphalt plant; Bulldozer, D-4 equivalent & under; Bullfloats; Concrete spreader; Finishing machines; Concrete mixer (16-s or less); Concrete saw; Distributors (bitum surface); Dowell bar machine; Farm-type tractor (with all attachments except backhoe); Fireman; Fork lifts (other than setting steel, machinery or pipe); Hoist, 1 drum less than 4 stories; Kolum buff machine; Pull cats; Pump (3" & over); Pump, concrete (under 6"); Rollers, except on asphalt or brick; Straddle buggies; Sweepers on streets & roads (motorized); Winch truck, A-frame (other than handling steel or pipe)

GROUP 5 - Asphalt spreader; Backhoe; Bulldozer, over D-4 & equivalent; Cableways; Concrete mixer, over 16-s; Cranes; Derricks; Ditching or trenching machines; Draglines; Fork lifts (setting steel, machinery or pipe); Front end loaders (except farm-type tractors); Grease serviceman; Hoist, 1 drum, 4 stories or more or 40 ft. (on structures other than buildings); Hoist, 2 drums & over; Hydrolifts; Heavy duty mechanic; Motor patrols; Piledrivers; Pump, concrete (6" & over); Road pavers; Rollers on asphalt or brick; Scoopmobiles; Scrapers; Sideboom cats; Shovels; Tractorvators; Welder, journeyman

GROUP 6 - Well point & unit operator

POWER EQUIPMENT OPERATORS - ZONE 4 - CLASSIFICATION DEFINITIONS

GROUP 1 - Oiler

GROUP 2 - Oiler-Driver

GROUP 3 - Scaleman

GROUP 4 - Air compressor; Asphalt plant; Bulldozer, D-4 & equivalent & under; Bullfloats; Concrete spreader; Finishing machines; Concrete mixer (16-s or less); Concrete saw; Distributors (bitum surface); Dowell bar machine; Farm-type tractor (with all attachments except backhoe); Fireman; Fork lifts (other than setting steel, machinery or pipe); Hoist, 1 drum less than 4 stories; Kolum buff machine; Pull cats; Pump (3" & over); Pump, concrete (under 6"); Rollers, except on asphalt or brick; Straddle buggies; Sweepers on streets & roads (motorized); Winch truck, A-frame (other than handling steel or pipe)

GROUP 5 - Asphalt spreader; Backhoe; Bulldozer, over D-4 & equivalent; Cableways; Concrete mixer, over 16-s; Cranes; Derricks; Ditching or trenching machines; Draglines; Fork lifts (setting steel, machinery or pipe); Front end loaders (except farm-type tractors); Grease serviceman; Hoist, 1 drum, 4 stories or more or 40 ft. (on structures other than buildings); Hoist, 2 drums & over; Hydrolifts; Heavy duty mechanic; Motor patrols; Piledrivers; Pump concrete (6" & over); Road pavers; Rollers on asphalt or brick; Scoopmobiles; Scrapers; Sideboom cats; Shovels; Tractorvators; Welder, journeyman; Winch cats (hoisting); Winch truck, A-frame (handling steel or pipe)

GROUP 6 - Unit operator

POWER EQUIPMENT OPERATORS - ZONE 5 - CLASSIFICATION DEFINITIONS

GROUP 1 - Scale op.; Oiler driver on motor crane; Batch plant

GROUP 2 - Pumps under 3 inch suction

GROUP 3 - Oiler

GROUP 4 - Fireman

GROUP 5 - Combination oiler-compressor; Combination oiler-fireman; Asphalt spreader; Backhoe (all types); Bulldozers; Cableways; Cherry pickers (all types); Concrete mixers (over 1 sack); Cranes; Deck winch (2 drums or over); Derricks; Ditching or trenching machines (riding types); Draglines; Dredges; Fork lifts (other than farm type); Outside warehouses; Foundation drill; Front end loaders (except farm type); Grease serviceman; Hoist-1 drum (4 stories or more on

POWER EQUIPMENT OPERATORS - ZONE 5 - CLASSIFICATION DEFINITIONS (Cont'd):

GROUP 5 (Cont'd)

buildings); Hoist-1 drum (over 40 ft. on structures other than buildings); Hoist (2 drums or over); Locomotives (all types); Mechanic; Mixer plant-central mix; Motor patrols; Piledrivers; Pull cats; Pump crete-6" & over discharge; Push cat; Road pavers; Rollers (plant mix asphalt); Scrapers; Shovels; Sidebooms; Welder, journeyman; Well point system; Whirleys; Winch cats (Cat D-4 & over); Winch truck with A-frame (5 tons & over); Work boats-requiring licensed op.

GROUP 6 - Bush hog; Compressor; Concrete pump-under 6" discharge; Concrete saw; Deck winch (1 drum); Distributors; Ditching or trenching machines (non-riding type); Dowell bar machines; Farm-type tractor (when used to pull discs, grasscutters, etc.); Hoist-1 drum (under 4 stories on buildings); Hoist-1 drum (40 feet or under on structures other than buildings); Kolum buff machines; Mixers (1 sack & under); Motorized street sweepers (self-propelled); Pump (3 inch & over); Test pump-internal combustion engine powered; Water blast pump

GROUP 7 - Asphalt plant; Boom trucks; Bullfloats; Concrete spreader; Farm-type front end loaders; Finishing machines (roadway, riding type); Roller (other than plant mix asphalt); Straddle buggies; Winch truck with A-frame (under 5 tons); Work boats-not requiring licensed operator

GROUP 8 - Unit operator

POWER EQUIPMENT OPERATORS - ZONE 6 - CLASSIFICATION DEFINITIONS

GROUP 1 - Crane op. 60 tons & over; Crane op boom 100 ft. & over but less than 150 ft.; Piledriver op. leads 100 ft. & over but less than 150 ft.

GROUP 2 - Crane op. 100 tons up to 125 tons; Crane op. boom 150 ft. & over but less than 225 ft.; Piledriver op. leads 150 ft. & over but less than 225 ft.

GROUP 3 - Crane op. 125 tons up to 200 tons; Crane op. boom 225 ft. & over but less than 300 ft.; Piledriver op. leads 225 ft. & over but less than 300 ft.

GROUP 4 - Crane op. 200 tons up to 300 tons

GROUP 5 - Crane op. 300 tons

GROUP 6 - Crane op. boom 300 ft. & over;Piledriver Op. 300 ft. & Over

GROUP 7 - Crane; Backhoe; Cableway; Concrete mixer, 16S & up; Derrick; Dragline; Dredge; Hoist-2 drums; Locomotvie crane; Paving mixer; Piledriver; Road paver; Roller on asphalt or brick (5 tons or over); Shovel; Sideboom cat; Bulldozer; Motor patrol; Scraper; Hydrolift crane; Hydrolift truck, yard crane, cherry picker, etc.; Foundation, boring & reaming machine; Cement stabilizer; Trenching machine; Asphalt spreader; Traxcavator & similar front end loading equipment with scoop or bucket of 1 cu. yd. or more capacity; Tug boat op.; Turnapull, euclid, DW-10 & other similar self-loading earth moving equipment; Concrete pump (not pumpcrete);Computer Batch Plant

GROUP 8 - A-frame truck; Crew boat op.; Fireman; Fork lift; Straddle buggy; Traxcavator, scoopmobile & similar front end loading equipment with scoop or bucket under 1 cu. yd. capacity; Locomotive; Well point system; Unit operator; Hoist-1 drum, 4 stories & over

GROUP 9 - Air compressor; Asphalt plant engineer; Blade grader; Distributor (bitum surface); Finishing machine (concrete, paving); Hoist-1 drum, less than 4 stories; Concrete mixer under 16-S; Oiler driver; Pump crete; Street & road sweeper; Roller (except on asphalt or brick); Roller, asphalt or brick (under 5 tons); Post-hole digger; Tractor operator bush hog & similar grass or bush cutting equipment; Batch Plant Op.

GROUP 10 - Oiler

GROUP 11 - Pumps, over 3 inch suction; Snatch cat

POWER EQUIPMENT OPERATORS - ZONE 7 - CLASSIFICATION DEFINITIONS

GROUP 1 - A-Frame truck when working with ironworkers, pipefitters, boilermakers & electricians; Bulldozers & tractors; Cableways; Concrete mixer (over 16S) paving machines, crane, derricks, draglines & clamshells; Concrete pump/boom combinations; Deck winches (2); Economobile model #620B or equivalent or heavier equipment; Gradealls; Hi-Ho & similar type equipment; Hoist, 1 drum, 4 stories & over; Hoist, 2 drums or more; Hydro cranes; Mechanics; Motor patrols; Piledrivers; Rollers on brick & asphalt; Rubber-tired front end loader, with or without blade attachment, 1 cu. yd. capacity or more; Scraper; Shovels, Backhoes (all types); Side boom cats; Stabilizers, 3 drums or more; Traxcavators; Trenching machines; Welder, journeyman; Firemen, when firing more than one boiler mounted on one machine

GROUP 2 - A-frame truck except when working with ironworkers or pipefitters; Air compressor; Asphalt plant engineer; Asphalt finisher, screed men; Blade graders; Small boat op.; Bullfloats; Concrete joining machines; Concrete mixer, 16S & under; Concrete spreader; Crusher op.; Deck winch (1); Distributors, asphalt; "Ditch witch" & similar equipment; Electric elevator (inside); Finishing machine; Firemen; Form graders; Fork lifts; Hoist, 1 drum, under 4 stories; Power subgraders; Pug mill; Pull tractors; Pump; Pump crete; Rollers except on brick & asphalt; Rubber-tired front end loader (with or without attachments) less than 1 cu. yd. capacity; Scale op.; Scoopmobile; Snatch cats; Spray machines; Stabilizers, less than 3 drums; Straddle buggy; Track machines & equivalent machine; Outside Electric Elevator Operator

GROUP 3 - Unit and well point operator

GROUP 4 - Work Boat requiring license

GROUP 5 - Batch plant operator, oilers(driver)

GROUP 6 - Oiler

GROUP 7 - Crane op. 60 tons & above; Crane op. boom 100 ft. & over but less than 150 ft.; Tower crane op. boom height 100 ft. & over but less than 150 ft.

GROUP 8 - Crane op. 100 tons & up to 125 tons; Crane op. boom 150 ft. & over but less than 225 ft.; Tower crane op. boom height 150 ft. & over but less than 225 ft.

GROUP 9 - Crane op. 125 tons & up to 200 tons

GROUP 10 - Crane op. 200 tons & up to 300 tons; Crane op. boom 225 ft. & over but less than 300 ft.; Tower crane op. boom height 225 ft. & over up to 30 fl ors

GROUP 11 - Crane op. 300 tons & up to 400 tons; Crane op. boom 300 ft. & over but less than 400 ft.; Tower crane over 30 floors

GROUP 12 - Crane op. over 400 tons; Crane op boom 400 ft & over

POWER EQUIPMENT OPERATORS ZONE DEFINITIONS

ZONE 1 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River & Webster Parishes

ZONE 2 - Avoyelles, Evangeline, Grant, LaSalle, Natchitoches, Rapides, Sabine, St. Landry & Winn Parishes

ZONE 3 - All of Acadia, Lafayette & Vermilion Parishes; Parts of Iberia, St. Martin & St. Mary Parishes (west of a line drawn from the City of Berwick to the junction of Iberville-St. Landry Pars. border)

ZONE 4 - Caldwell, Catahoula, Concordia, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union & West Carroll Parishes

ZONE 5 - Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon Parishes

POWER EQUIPMENT OPERATORS ZONE DEFINITIONS (Cont'd):

ZONE 6 - All of Ascension, East Baton Rouge, East Feliciana, Iberville, Pointe Coupee, St. Helena, West Baton Rouge & West Feliciana Pars.; Parts of Assumption & St. James Pars. (northwest of a straight line drawn from the City of Berwick to the City of Lutcher); Parts of Iberia & southern & northern St. Martin Pars. (east & west of a line from the City of Berwick north to the eastern boundary of the City of Krotz Springs); Parts of Livingston, Tangipahoa & Washington Pars. (west of a line drawn north from the City of Lutcher to the east side of the City of Hammond to the Louisiana-Mississippi border)

ZONE 7 - All of Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany & Terrebonne Pars.; Parts of Assumption, Livingston, St. James, St. Martin, St. Mary, Tangipahoa & Washington Pars. (that portion of southeastern Louisiana bounded on the north by the State of Mississippi, on the east by the State of Mississippi & the Mississippi Sound, on the south by the Gulf of Mexico & on the west by a line drawn as follows: beginning at a point on the Louisiana-Mississippi boundary in Washington Par., due north of the town of Hackley, then southwesterly in a straight line to a point on the east bank of the Mississippi River at the southernmost point of Lutcher (including Gramercy in the area), thence in a more southwesterly direction in a straight line to midstream of the Atchafalaya River at Morgan City-Berwick (including Morgan City in this area), thence southerly on a line following midstream of the Atchafalaya River to the Atchafalaya Bay & in a line due south to the Gulf of Mexico

ZONE DEFINITIONS FOR ROOFERS:

ZONE 1 - Allen, Beauregard, Calcasieu, Cameron, Evangeline, Jefferson Davis, Vermilion & Vernon Parishes

ZONE 2 - Assumption, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, South St. Martin, St. Mary, St. Tammany, Terrebonne & Washington Parishes

ZONE 3 - Acadia, Ascension, East Baton Rouge, East Feliciana, Iberia, Iberville, Lafayette, Livingston, Pointe Coupee, St. Helena, St. Landry, North St. Martin, Tangipahoa, West Baton Rouge & West Feliciana Parishes

ZONE 4 - Avoyelles, Caldwell, Catahoula, Concordia, East Carroll, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Ouachita, Rapides, Richland, Tensas, Union, West Carroll & Winn Parishes

ZONE 5 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Natchitoches, Red River, Sabine & Webster Parishes

ZONE DEFINITIONS FOR SHEET METAL WORKERS:

ZONE 1 - Calcasieu Parish

ZONE 2 - Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Tammany, Terrebonne & Washington Parishes

ZONE 3 - Acadia, Allen, Ascension, Assumption, Beauregard, Cameron, East Baton Rouge, East Feliciana, Evangline, Iberia, Iberville, Jefferson Davis, Lafayette, Livingston, Pointe Coupee, St. Helena, St. Landry, St. Martin, St. Mary, Tangipahoa, Vermilion, West Baton Rouge & West Feliciana Parishes

ZONE 4 - Avoyelles, Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, De Soto, East Carroll, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, Tensas, Union, Vernon, Webster, West Carroll & Winn Parishes

ZONE DEFINITIONS FOR TRUCK DRIVERS

ZONE 1 - Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis & Vernon
ZONE 2 - Acadia, Iberia, Lafayette, St. Landry, St. Martin, St. Mary & Vermilion Parishes
ZONE 3 - Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River & Webster
ZONE 4 - Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, St. James, Tangipahoa, Washington, West Baton Rouge & West Feliciana Parishes
ZONE 5 - Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist & St. Tammany Parishes

TRUCK DRIVER CLASSIFICATION DEFINITIONS:

ZONE 1 - GROUP 1 - Teamsters, pick-up drivers
GROUP 2 - Stake bodies (all sizes)
GROUP 3 - Trrucks trailer & dumps over 8 yds.; mixers on trucks over 3 yds.; Miss. wagons & Koehring dumpsters & similar dirt moving equipment (up to & incl. 8 yds.)
GROUP 4 - Mixers on trucks up to & including 3 yds.
GROUP 5 - Winch trucks
GROUP 6 - Trucks, dump
GROUP 7 - Miss. wagons & Koehring dumpsters & similar dirt moving equipment over 8 yds.

ZONE 2 - GROUP 1 - Teamsters, pick-up drivers
GROUP 2 - Stake bodies (all sizes); platform dump
GROUP 3 - Truck & trailer; dump
GROUP 4 - Mixers on trucks up to & including 3 yds.
GROUP 5 - Mixers over 3 yds.
GROUP 6 - Winch trucks
GROUP 7 - Miss. wagons & Koehring dumpster, tandem dumps & similar dirt moving equip, up to & including 8 yds.
GROUP 8 - Miss. wagons, Koehring dumpsters, tandem dumps & similar dirt moving equipment over 8 yds.

ZONE 3 - GROUP 1 - Pick-ups, spotters & dumpers of dirt, gravel, etc.
GROUP 2 - Stake bodies; flat beds (all sizes)
GROUP 3 - Single axle dumps & water trucks; transit mix, up to & including 3 yds.
GROUP 4 - Tandem axle dump, batch & water trucks over 3 tons, pickups with trailer
GROUP 5 - Miss. wagons, floats, tractor trailers; ribber tired tractors & wobble wheels
GROUP 6 - Euclids, lowboys, dempsey dumpster, Koehring dumps, 5 axle trucks, transit mix over 3 yds.
GROUP 7 - Fork lift

ZONE 4 - GROUP 1 - Pick-ups
GROUP 2 - Over 1 ton up to but not including 3 tons
GROUP 3 - 3 tons up to but not including 5 tons
GROUP 4 - 5 tons & over including but not limited to: winch, dempsey dumpster, lowboy, semi-trailer, euclid, tournapull & similar equipment when used for transporting material
GROUP 5 - Larger trucks, carrying capacity rear axles 50,000 lbs. & over
GROUP 6 - Winch truck with A-frame when used for transporting

ZONE 5 - GROUP 1 - Up to but not including 1-1/2 tons
GROUP 2 - 1-1/2 tons up to but not including 3 tons
GROUP 3 - 3 tons up to but not including 5 tons
GROUP 4 - 5 tons & over

WELDERS: Receive rate prescribed for craft performing operation to which welding in incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Texas
COUNTIES: Collin,Dallas,Denton,Ellis,Grayson,Hood,Hunt,Johnson,Kaufman,Palo Pinto,Rockwall,Tarrant & Wise
DECISION NO.: TX82-4054 DATE: Date of Publication
Supersedes Decision No. TX82-4019, dated 5/7/82, in 47 FR 19935.
DESCRIPTION OF WORK: Building Projects(does not include single family homes & apartments up to & including 4 stories).(Use current heavy & highway general wage determination for Paving Incidental to Building Const. in Tarrant Co. & for Paving & Utilities Incidental to Building Const. in remaining Cos.).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$14.71	2.475
BOILERMAKERS	16.25	2.415
BRICKLAYERS & STONEMASONS:		
ZONE 1 - Collin,Dallas, Ellis,Grayson,Hunt,Kaufman & Rockwall Cos.	16.65	1.74
ZONE 2 - Denton,Hood,Johnson,Palo Pinto, Tarrant & Wise Cos.	16.64	1.71
CARPENTERS:		
ZONE 1 - Grayson Co.:		
Carpenters	14.61	1.705
Millwrights	15.01	1.705
Piledrivermen	15.11	1.705
ZONE 2 - Collin,Dallas, Denton,Ellis,Hood,Hunt, Johnson,Kaufman,Palo Pinto,Rockwall,Tarrant & Wise Cos.:		
Carpenters & piledrivermen	16.21	1.83
Millwrights	15.75	2.98
CEMENT MASONS:		
ZONE 1 - Denton,Hood,Johnson,Palo Pinto,Tarrant & Wise Cos.	16.20	1.50
ZONE 2 - Collin,Dallas, Ellis,Hunt,Kaufman & Rockwall Cos.	14.45	1.42
ELECTRICIANS:		
ZONE 1 - Denton,Hood, Johnson,Palo Pinto,Tarrant & Wise Cos.:		
Electricians	15.15	.80+8%
Cable splicers	15.40	.80+8%
ZONE 2 - Collin,Dallas, Ellis,Grayson,Hunt,Kaufman & Rockwall Cos.:		
Electricians	16.15	.80+9%
Cable splicers	17.77	.80+9%
ELEVATOR CONSTRUCTORS:		
Mechanics	14.99	2.465+a
Helpers	70%JR	2.465+a
Helpers (Prob.)	50%JR	
GLAZIERS (excluding Grayson Co.)	$15.85	1.30
IRONWORKERS:		
ZONE 1 - Collin,Dallas, Denton,Ellis,Grayson, Hood,Hunt,Johnson,Kaufman,Palo Pinto(excluding northwest corner),Rockwall,Tarrant & Wise(excluding northwest 1/2)	15.20	2.87
ZONE 2 - Palo Pinto(northwest corner) & Wise (northwest 1/2)	12.625	2.95
LABORERS:		
ZONE 1 - Grayson Co.:		
GROUP 1 - Unskilled	9.675	.775
GROUP 2 - Air tool op. (jackhammer,vibrator), mason tenders & mortar mixers,pipelayers	9.925	.775
ZONE 2 - Collin,Dallas, Denton,Ellis,Hood Hunt, Johnson,Kaufman,Palo Pinto,Rockwall,Tarrant & Wise Cos.:		
GROUP 1	10.19	.95
GROUP 2	10.34	.95
GROUP 3	10.44	.95
GROUP 4	10.59	.95
LATHERS	16.42	1.54
LINE CONSTRUCTION:		
Linemen	16.15	.60+8⅓%
Cable splicers	17.77	.60+8⅓%
Operators	16.96	.60+8⅓%
Groundmen	11.31	.60+8⅓%
MARBLE, TILE & TERRAZZO WORKERS (excluding Ellis Co.)	14.82	1.07
MARBLE & TILE FINISHERS (excluding Ellis Co.)	8.99	

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
ZONE 1 - Collin,Dallas, Denton,Ellis,Grayson, Hunt,Kaufman & Rockwall:		
GROUP 1 - Brush	$14.31	1.62
GROUP 2 - All wall covering work:paper, fabric,sheeting,flex-wood,etc.	14.56	1.62
GROUP 3 - Ames tool op.	14.435	1.62
GROUP 4 - Structural steel,stage work,bosun chair,spray gun,sand-blasting & window jack & fire escapes	14.685	1.62
ZONE 2 - Hood,Johnson, Palo Pinto,Tarrant & Wise:		
GROUP 1 - Brush	14.91	1.02
GROUP 2 - Wallcovering; pressure roller;sand-blasting;structural steel;bosun chair,win-dow jack & window sill; stage,fireescape;steel storage tank;stilts; mittens;ames tools, drywall finishing	15.16	1.02
GROUP 3 - Steeple jack (radio & TV towers, smoke stacks,chimneys & water towers & similar facilities & flagpole atop bldgs. located closer to the edge of bldg. than the height of the pole);toxic material(creosote,coal tar products or similar materials injurious to the skin	16.16	1.02
GROUP 4 - Spray	15.285	1.02
PLASTERERS:		
ZONE 1 - Collin,Dallas, Ellis,Hunt,Kaufman & Rockwall Cos.	14.92	3.04
ZONE 2 - Denton,Hood,John-son,Palo Pinto,Tarrant & Wise Cos.	17.95	.01

	Basic Hourly Rates	Fringe Benefits
PLUMBERS & PIPEPITTERS:		
ZONE 1 - Collin,Dallas, Ellis,Grayson,Hood, Hunt,Kaufman & Rockwall	$15.77	1.81
ZONE 2 - Denton,Johnson, Palo Pinto,Tarrant & Wise Cos	14.92	1.76
ROOFERS:		
GROUP 1 - Slate & tile	12.96	.35
GROUP 2 - Composition & built-up,dampproofing & bituminious water-proofing	12.81	.35
SHEET METAL WORKERS:		
ZONE 1 - Collin,Dallas, Denton,Ellis,Grayson, Hood,Hunt,Johnson,Kauf-man,Rockwall,Tarrant & Wise Cos.	12.645	1.68
ZONE 2 - Palo Pinto Co.	12.84	.09
SOFT FLOOR LAYERS	15.32	1.16
SOUND INSTALLERS - repair, service & install inter-communication telephone interconnect sound & public address equip., electronic systems,music & TV distributing system for commercial bldgs. & shall include the pulling of all wires in conduit or raceways or surface wiring,the running of open wires,the running of conduit & raceways not to exceed 10 ft. in length & the wiring of all electrical communica-tion devises of 100 volts or less controlling the equip. described above	11.36	.54+3% +b
SPRINKLER FITTERS	16.17	2.83
POWER EQUIPMENT OPERATORS:		
ZONE 1 - Dallas County:		
GROUP 1	14.13	2.35
GROUP 2	14.53	2.35
ZONE 2 - Remaining Cos.:		
GROUP 1	7.265	2.30
GROUP 2	14.18	2.30
GROUP 3	14.58	2.30

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

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

FOOTNOTES:

a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 6%; over 5 yrs. - 8% of basic hourly rate. Also 7 Paid Holidays A thru G

b - Sick or Injury Pay:
1st day out - no pay
2nd day out - 1/2 pay
3rd day out & thereafter - full pay for a maximum of 10 days pay per year
Employees who receive pay for less than 5 sick days per year shall receive on 8/31 of each year incentive pay equal in amount to a day's pay for each day that such days were less than 5

Employees who are members of a reserve component of the Armed Services & are ordered to annual active duty for training as a normal part of their reserve obligation shall be eligible for & shall receive differential pay equal to the difference between their computed daily base rate (excluding overtime compensation) & their daily military base pay (excluding quarters & subsistence allowances) for each day of military leave where the employee would normally have performed work up to a maximum of 10 work days per year

Employees absent from work while serving as jurors shall be paid at their hourly rate excluding overtime for the hours actually lost from work less any amount received by the employee as juror's fee

Up to 3 days leave for death of immediate family member (spouse,child,parent, brother,sister,mother-in-law,father-in-law,grandparents & grandchildren)

Paid Vacation:
after 1 year service - 1 week vacation
after 2 years service - 2 weeks vacation
after 5 years service - 2 weeks & 1 day vacation
after 6 years service - 2 years & 2 days vacation
after 7 years service - 2 years & 3 days vacation
after 8 years service - 2 years & 4 days vacation
after 9 years service - 3 weeks vacation

Paid Holidays - A thru G plus the last working day preceding Christmas Day & another day designated by the Company

LABORERS (ZONE 2) CLASSIFICATION DEFINITIONS

GROUP 1 - All hand digging dirt work & backfilling;firing of salamanders,loading & unloading of materials to & from hoist or cages;loading & unloading of tools & equip,;wheeling,placing & pouring of concrete;all excavation;handling of lumber, steel,cement;distribution of all materials;miscellaneous job clean-up;wrecking & razing of bldgs. & all structures;cleaning & clearing of all debris;handling of broken concrete or other damanaged or undamanged materials;removing,moving, handling & greasing of forms,wrecking forms;storing materials to storage place; slip form jacks,scaffold builders, checking materials & tools in & out of receiving lots & sheds; tool housemen;landscaper;asphalt ironer & raker;water-proofing tender;dumper;spotter;concrete pumpcrete pipe(handling & laying); carpenter tender

GROUP 2 - All power tool & equip, ops.(gas,electric or air);cutting torch man; concrete grademan;power buggy op.;wagon drill op.,well driller,drilling rig tender;cement finisher tender;metal pan & steel form men;handling creosoted materials;liquid acids or like materials injurious to health,eyes,skin or clothes; all newly developed equip. which replaces wheelbarrows or buggies previously used by laborers;scale men on batch plants

LABORERS (ZONE 2) (CONT'D)
GROUP 3 - Concrete & clay pipe(handling & laying);mason handler;scaffold bldr.; mason tender;hod carrier mortar mixers;lather tenders,plaster tenders;water pump ops. up to 4"; cement masons tenders;mortar mixers;hod carriers;dry mixers; tank cleaning;all pipe doping,treating & wrapping,including all men working with dope,mortar & plaster mixing machines;grout machines,pumpcrete machines,gunite mixing machine,including placing & cleaning of pipe & conduits used in placing of concrete,handling & placing of gunite materials from stockpile;screening sand,running sand dryer & loading & operating sand blaster,except nozzle, conveying,stocking & handling of all materials for brickmasons,lathers,cement finisher,plasterers;ditch work over 6 ft. & cleaning out drill piers
GROUP 4 - Sand blaster,blaster powderman;gunite worker;gunite nozzleman & terrazzo grinder

POWER EQUIPMENT OPERATORS (ZONE 1) CLASSIFICATION DEFINITIONS
GROUP 1 - Air compressor,water pumps,welding machines(2 to 6 machines) & generators;Blade grader,towed;Flex plane;Form grader;Concrete mixer,less than 14 cu. ft.;Pulsometer;Wagon drill op.;Conveyor;Hoist,single drum;Scraper, 3 cu. yd. or less;Bob cat with loader
GROUP 2 - Heavy duty mechanic;Asphalt mixer op. on job;Blade grader,self-propelled;Bull clam;Backfiller;Bulldozer & all cat type tractors;Backhoe;Concrete mixers over 14 cu. ft.;Crusher on job;Concrete batch plant;Clamshell;Cranes (all types);Truck mounted or crawler requires oiler including groves(hydraulic) or similar type over 12½ ton cap.;Escalated rate on crane & derrick booms: .01¢ per hr., per ft. over 90 ft. including jib;Draglines;Derricks,power operated (all types);DW-10 caterpillar,S-8 Euclid & similar tractors;Elevating grader,self-propelled;Foundation drilling machines(all);Forklifts used in handling machinery on const.;Gradeall;Hoist,motor driven,2 drums or more; Locomotive crane;Mixmobile;Paving mixers(all types);Piledriver;Pumpcrete machines;Pneumatic roller,self-propelled;Shovels,power operated;Scrapers, over 3 cu. yds.;Scoopmobile;Trenching machines,all types;Winch trucks,when pole & winch is used;Water well drilling machines,used on construction;Well point pump:Welding machines(7 to 13 machines)

POWER EQUIPMENT OPERATORS (ZONE 2) CLASSIFICATION DEFINITIONS
GROUP 1 - Oiler-Fireman
GROUP 2 - Air compressors,Pumps,Welding Machines,Throttle Valves,Light Plants; Conveyor;Wagon drill;Elevators Building;Form Graders,Hoist,Single drum;Ford Tractor including blade & mower on rear;Mixers less than 14 cu. ft.;Screening Plants;Crushing Plants;Forklifts(short under 25 ft.);Concrete Pumps(all types);Bobcat type equip.
GROUP 3 - Ford Tractor or like with any attachments(except blade & mower on rear);Drilling Machines(all types);Scoopmobiles;Hoist,2 drums or more;Forklifts (over 25 ft.);Winch Truck, 6 wheel truck,when used continuously for 5 days;Mixermobile;Locomotives;Mixers,14 cu. ft. or over;Blade Graders,self-propelled;Cableways;Cranes-power operated to 100 ft.;Derricks,power operated (all types);Gradall;Hy-Ho;Hop-To;Paving Mixers (all types);Piledrivers; Mobile Concrete Mixers over 14 cu. ft.;Bulldozers,Loaders,Tractorvators: Scrapers & Pulls;Welding;Trenching Machines;Roller, 10 tons or over; Air Compressor & Air Tugger;Boilers,2 or more fired by 1 man;Heavy Duty Mechanic

SUPERSEDEAS DECISION

STATE: Wyoming COUNTIES: Statewide
DECISION NUMBER: WY82-5126 DATE: Date of Publication
Supersedes Decision No. WY81-5159 dated October 30, 1981, in 46 FR 53953
DESCRIPTION OF WORK: Highway Projects (excluding tunnels, building structures in rest area projects and railroad construction; bascule, supension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$10.71	
CEMENT MASONS	10.65	
IRONWORKERS:		
Structural	12.56	
Reinforcing	9.07	
PAINTERS:		
Brush and Spray	10.17	
LINE CONSTRUCTION:		
All work over 34.5 KV, all work on steel towers and/or multiple wood structures, all cross country underground communications work and all motor traffic controlling, street,and highway lighting:		
Linemen/Technicians	16.00	3½%+.95
Equipment Operators	14.39	3½%+.95
Groundmen/Truck Drivers	10.60	3½%+.95
All work 34.5 KV and under:		
Lineman/Technicians	16.00	3½%+.95
Line Equipment Operators	13.74	3½%+.95
Groundman/Truck Drivers	10.60	3½%+.95
LABORERS:		
Group 1	8.06	
Group 2	8.16	
Group 3	8.31	
Group 4	8.58	
Group 5:		
(a)	8.54	
(b)	8.38	
(c)	8.81	
(d)	8.65	

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Group 1	$10.29	
Group 2	10.34	
Group 3	10.39	
Group 4	10.43	
Group 5	10.46	
Group 6	10.51	
Group 7	10.55	
Group 8	10.57	
Group 9	10.68	
Group 10	10.74	
Group 11	10.76	
Group 12	10.94	
Group 13	10.98	
Group 14	11.05	
Group 15	11.11	
Group 16	11.28	
Group 17	11.62	
TRUCK DRIVERS:		
Pickup Truck Drivers (when used for hauling)	8.50	
Dump Truck Drivers (water level capacity box):		
7 cu. yds. and less	8.55	
over 7 cu. yds. to and including 10 cu. yds.	8.70	
over 10 cu. yds. to and including 13 cu. yds.	8.80	
over 13 cu. yds. to and including 20 cu. yds.	9.30	
over 20 cu. yds. to and including 25 cu. yds.	9.30	
over 25 cu. yds. to and including 30 cu. yds.	9.40	
over 30 cu. yds. to and including 35 cu. yds.	9.45	
over 35 cu. yds. to and including 40 cu. yds.	9.50	
over 40 cu. yds. to and including 45 cu. yds.	9.55	
over 45 cu. yds. (to be negotiated prior to use)		

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS: (Cont'd)		
Snow Plow Truck Drivers (the cu. yd. rate of the truck driver classification)		
Pilot Car Drivers	$8.50	
Gravel Spreader	8.55	
Flat Rack Material Truck Drivers:		
Less than 2 tons	8.55	
2 tons to 5 tons	8.70	
Over 5 tons	8.80	
Low Boy and Tandem Axle Float Drivers	9.30	
Gang Truck Drivers	8.55	
Stringing Truck Driver:		
Single axle type truck	8.55	
Multiple axle type truck semi	9.30	
Winch Trailer Truck Drivers (cable and hoist)	8.80	
Utility Winch Truck Drivers	8.80	
"A" Frame Truck Drivers	8.80	
Transit Mix or Wet Mix Truck Drivers:		
Less than 5 cu. yds.; single axle	8.80	
Over 5 cu. yds. to and including 10 cu. yds.; Tandem axle	8.90	
over 10 cu. yds.	9.00	

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS: (Cont'd)		
Power Broom Drivers and/or Operators	$8.70	
Water Truck Drivers:		
2500 gallons or less (straight truck)	8.55	
2500 gallons or less (semi truck)	8.70	
over 2500 gallons to and including 3600 gallons	8.80	
over 3600 gallons (straight truck)	8.90	
over 3600 gallons (semi truck)	9.00	
Heavy Duty (Euclids, electric or similar type)	9.30	
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental		

LABORERS

Group 1: Axeman and Hand Faller; Concrete Worker (wet or dry); Concrete Worker (curing and drying); Dumpman; Erector and Installer (includes the installation and erection of fences, snow fences, guard rails, median rails, median posts, signs and right-of way marker); Form Stripper; General Labor; Heater Tender; Material Handler (lumber, rods, cement, concrete); Nozzleman, air and water; Pre-watering, pre-wetting and pre-irrigation (all work); Riprap Man; Sandblaster Pot Tender; Signal Men; Grade Concrete, etc.; Scissor Man or Hopper Man; Stake Jumper for equipment; Tar and Asphalt Pot Tender; Wrecking and demolition crews

Group 2: Asphalt Raker and Tamper; Bin Wall Installer; Bituminous Curb Builder; Cement Mason or Finisher and Tender; Chuck Tender; Form Setter (paving); Hand operated Vibratory Roller; Landscaper; Mortar Man on Stone Riprap; Operator of pneumatic, electric, gas tamper and similar mechanical tools; Pipe Setter (corrugated culvert pipe sectional, multiplate and similar type); Pipe Setter; Pipelayer (non-metallic); Pipe Wrapper; Power type concrete buggy (push or ride); Power Saw Operator (clearing); Vibrator - concrete

Group 3: Concrete Saw; Gunite Nozzleman; High Scaler (using air tools from Bos'n Chair, Swing Stage, Lift Belt or Block and Tackle, shall receive $.20 per hour more than the classified rate); Jackhammer and Pavement Breaker; Sandblaster Nozzleman; Sewer Pipe Installer (non-metallic), clay, concrete, etc. (Caulker, Collarman, Jointer, Mortarman, Rigger, Jacker)

Group 4: Powderman and Blaster; Wagon Drill, Air-trac, Diamond and other drills for blasting powder or grouting

Group 5: Tunnel and Underground Work:
(a) Brakeman; Swamper; Vibrator Man
(b) Bull Gang; Dumpman; Mucker; Trackman
(c) Miners (Drillers); Machine Men; Timbermen; Steelmen; Drill Doctor Form Setter and Mover; Spader; Tuggers spilling and/or Caisson Workers; Powderman; Jackhammermen Finishers
(d) Nipper; Chucktender; Topman; Toploader

POWER EQUIPMENT OPERATORS

Group 1: Auger Machine Operator (post holes, etc.); Batch Bin Weighman, Scissorman or Hopperman; Brakeman; Crusher Oiler; Oiler Utility; Screed Operator; Tractor Operators (Farm, Crawler or wheel type, 60 HSP - drawbar) or less with or without use of power attachments, except for use of Backhoe or Bucket

Group 2: Broom Operators, self-propelled; Cableway Signalman (Bellboy); Concrete Saw (self-propelled); Fireman; Power Loader, belt and bucket type

Group 3: Air Compressor over 315 cu. ft. capacity; Chip Spreader Operator; Form Grader Operator; Joint Machine Operator; Longitudinal Float Operator; Mixer Operator Concrete (under one yard); Roller Operators (self-propelled pneumatic, rubber tired, sheep foot vibratory or combination type); Tire Repairman

Group 4: Pump Operator (all others)

Group 5: Conveyor Belt Operator; Fork Lift and Lumber Stacker; Screening Plant Operator

Group 6: A-Frame Truck; Tractor Operators (farm, crawler or wheel type, over 60 HSP - drawbar) without use of power attachments)

Group 7: Oiler, Lead Utility

Group 8: Gunnite and Grout Machine Operator; Mulching Machine Operator; Oil Distributor

Group 9: Front End Loader (up to and including 1½ cu. yds.); Pavement Breakers, Hydro-tamper and similar type machines; Pumps, Well Points

Group 10: Hoist Operator (one drum)

Group 11: Haulage Motorman and Industrial type Motorman; Motor Patrol Operator (all others); Pump Operator (in tunnels, shafts, raises); Hydro type Cranes (up to 15 tons)

[FR Doc. 82-30201 Filed 11-4-82: 8:45 am]
BILLING CODE 4510-27-C

POWER EQUIPMENT OPERATORS (Cont'd)

Group 12: Air Compressor, two or more machines or tunnels, shafts, raises or Plant Operators; Asphalt Plant Operator; Bituminous Laydown Machine Operator; CMI Machine or similar; Concrete Batch Plant; Concrete Finish Machine Operator; Concrete Multi Blade Span Saw (Hunt process or similar); Concrete Spreader and Paver Operator; Crusher Operator; Drilling Machine, integrated (Core, Rotary, Caisson, Diamond); Elevating Grader; Front End Loader (over 1½ cu. yds.); Jumbo Form Operator; Mixer Operator, base course pug mill type; Mixer Bituminous Operator (travel plant); Mixer Operator Concrete (over one yard); Motor Patrol Operator (finish); Mucking Machine Operator (all types); Pneumatic Guns; Pumpcrete Operator; Roller Operator (Tandem steel wheel, three axle or three wheel); Scraper Equipment (all types); Shovels, Draglines, Cranes, Piledrivers, all truck mounted cranes (manufacturers' rating) up to 3½ yds., all attachments; Hydro type cranes (15 tons and over); Shuttle Car Operator; Subgrade Machine Operator (power); Tractor Operator, all with use of power attachments and including Pushcat, Dozer, Tournadozer, etc. (The use of power attachments shall not include disking, pulling of rollers, or similar unskilled actions); Trenching Machine Operator; Wash Plant Operator

Group 13: Welder, Machine Doctor

Group 14: Hoist Operator (two or more drums of shafts or raises); Repairman; Mechanics; Machine Doctors, Welders; Heavy Duty Mechanic, Machine Doctor

Group 15: Cableway Operators; Mixer Dual Drum; Cranes, (Whirley, Gantry, Stiffleg, Overhead traveling)

Group 16: Shovels, Draglines, Cranes, Piledrivers, all truck mounted cranes (manufacturer's rating) 3½ yds. to 7 cu. yds.; all attachments; Wheel Excavator Operator

Group 17: Shovels, Draglines, Cranes, Piledrivers, all truck mounted Cranes, (manufacturer's rating) 7 cu. yds. and over, all attachments

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))

federal register

Friday
November 5, 1982

Part III

Department of Health and Human Services

Health Resources and Services Administration

Population Groups With Health Manpower Shortages; Guidelines on Designation

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Guidelines on Designation of Population Groups With Health Manpower Shortages

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Guidelines.

SUMMARY: This notice sets forth guidelines for the preparation of requests for designation of population groups as having health manpower shortages.

DATE: These guidelines are effective November 5, 1982.

FOR FURTHER INFORMATION CONTACT: Richard C. Lee, Chief, Distribution and Shortage Analysis Branch, Office of Data Analysis and Management, Bureau of Health Professions, HRSA, 3700 East-West Highway, Room 4–50, Hyattsville, Maryland 20782 (301–436–6750)

SUPPLEMENTARY INFORMATION: Section 332 of the Public Health Service Act, as amended by Pub. L. 94–484, the Health Professions Educational Assistance Act of 1976, required that the Secretary establish, by regulation, criteria for designation of health manpower shortage areas. Those criteria were published as Final Regulations (42 CFR Part 5) in the **Federal Register** on November 17, 1980 (Vol. 45, p. 75996). The regulations include criteria for the designation of seven types of health manpower shortage areas: primary medical, dental, psychiatric, vision, podiatric, pharmacy, and veterinary care. For all seven of these types, criteria for the designation of geographic areas are included; in addition, the regulations contain criteria for the designation of population groups having shortages of primary medical, dental, or psychiatric manpower, as well as criteria for the designation of facilities which have such shortages or which serve an area or population group having such shortages.

The published criteria for designation of population groups allow for designation of those groups prevented by access barriers from utilizing some or all of the health care providers within geographic areas where the rest of the population appears to be well-served. The access barriers involved may be economic, linguistic, cultural, or architectural. (In addition, automatic designation is provided for those Indian tribes covered by the definition in Section 4(d) of Pub. L. 94–437, The Indian Health Care Improvement Act of 1976.)

At the time the regulations were published in final form, more specific criteria for designation of certain particular population groups were under consideration by the Department, and it was indicated that these more specific criteria would be published in a future Notice of Proposed Rulemaking. However, more specific population group criteria have not yet been adopted. Furthermore, pending the results of an evaluation of the shortage area criteria called for by the Omnibus Budget Reconciliation Act of 1981 and now in progress, which may result in recommendations for revisions to the criteria, immediate changes are unlikely. Consequently, in order to expedite designation of population groups currently experiencing health manpower shortages within the provisions of the existing regulations, guidelines are being published. These guidelines are intended to assist individuals and organizations in preparing submissions in support of such designation requests that will facilitate their evaluation by the Health Resources and Services Administration.

The following guidelines indicate the information which should be included in any request for designation of a low-income population group or other population group experiencing access problems. Such information is needed in order to determine whether the requirements of the regulations are met.

Dated: October 22, 1982.

Robert Graham,

Administrator, Assistant Surgeon General.

A. Guidelines for designation of Population Groups With Shortages of Primary Care Health Manpower

Criteria for designation of population groups as having a shortage of primary medical care manpower are set forth in Appendix A, Part II of 42 CFR Part 5, the regulations for designation of Health Manpower Shortage Areas. The following guidelines are provided to indicate the information which should be included in any request for designation of a low-income population group or other population group experiencing access problems. Such information is needed by the Health Resources and Services Administration in order to determine whether the requirements of the regulations are met.

The request should clearly define the specific population group for which designation is requested, with reference to the geographic area within which the population group resides. The population group may be defined in terms of one or more of the following categories:

1. Population with incomes below the poverty level
2. Medicaid eligibles
3. "Medically indigent population"—defined as that portion of the population with incomes below the poverty level which is ineligible for Medicaid
4. Migrant workers and their families
5. Native Americans (Indians or Alaskan natives) not automatically designated
6. Other populations isolated from access by means of language or cultual barriers (specify the language and/or culture involved) or by handicaps

Under Part II A(1)(a) of the criteria in Appendix A, the geographic area within which the population group resides should be defined in terms of counties, civil divisions or census tracts, in accordance with the same rational service area criteria stated in part I B(1) for designation of geographic areas. (For example, a request for designation of the poverty population of an entire State would be inappropriate since the State as a whole would not constitute a rational service area.)

Under Part II A(1)(b) of Appendix A, the request should contain a description of the barriers to access experienced by the population group and should contain appropriate supporting data. This description should address the following points:

1. Whether the barriers to access for the population group are primarily economic in nature, or primarily due to non-economic factors such as minority status, language differences, or cultural differences. If significant numbers of providers refuse to accept patients on the basis of non-economic factors, this problem and its extent should be discussed. If an access barrier appears to exist because of demographic or other differences between the population group and available providers, this should also be discussed and evidence of it should be presented.

2. With respect to economic barriers, whether the major difficulty is lack of access for Medicaid-eligibles, lack of access for other low-income persons who do not qualify for Medicaid, or both. The applicant should also provide estimates of the number of persons in each of these categories.

3. Whether primary care physicians in the area accept Medicaid reimbursement. If some, but not all, accept Medicaid, the request should state the number which do accept Medicaid and the approximate percentage of their practices devoted to Medicaid-eligibles.

4. Whether there are providers, health centers or hospitals in the area which accept patients for primary care on an ability-to-pay or sliding-fee-scale basis.[1] If there are, the applicant should list the facilities and locations involved and estimate the number of full-time-equivalent practitioners available to the low-income population in each such setting.

5. An estimate of the amount of practice time which private practice primary care physicians in the area already devote to serving the affected populations, with the source of the estimate.

In order to make possible the calculation of the appropriate population-to-primary care physician ratio (R) under Part II(A)(1)(c) of Appendix A, the request should clearly state the total number of persons in the population group for which designation is requested and the total number of full-time equivalent (FTE) primary care physicians in the defined area that are serving that population, using the data and estimates described above. (By full-time-equivalent physicians is meant the number of physicians involved, adjusted by the percentage of their time in patient care in the area, further adjusted by the estimated percentage of that time devoted to serving the population group in question.)

The appropriate ratio (R) will then be computed as follows:

1. *Poverty populations*

N=population with incomes below poverty level
D=(FTE non-Federal primary care physicians accepting Medicaid)
+(FTE other non-Federal primary care physicians available in settings offering primary care on an ability-to-pay or sliding-fee-scale basis)
+(estimated % of the time private practice primary care physicians in area devote to serving Medicaid-ineligible indigent populations) × (number of FTE private practice primary care physicians in area)
R=N/D

2. *Medicaid-eligible populations.*

N=population eligible for Medicaid under applicable State's medical assistance program
D=FTE non-Federal primary care physicians accepting Medicaid
R=N/D

3. *Medically indigent populations.*

N=(population with incomes below poverty level)
−(population eligible for Medicaid)
D=(FTE non-Federal primary care physicians available in settings offering care on an ability-to-pay or sliding-fee-scale basis)
+(estimated % of time private practice primary care physicians in area devote to serving Medicaid-ineligible indigent populations) × (number of FTE private practice primary care physicians in area)
R=N/D

4. *Migrant workers and their families.*

N=(average daily number of migrant workers and dependents present in the area during portion of year that migrants are present) × (fraction of year migrants are present)
D=number of FTE non-Federal primary care physicians serving migrants
R=N/D

5. *Indians or Alaskan natives.*

N=number of Indians or Alaskan natives
D=number of FTE non-Federal primary care physicians serving Indians or Alaskan natives
R=N/D

6. *Other publications isolated by linguistic or cultural barriers or by handicaps.*

N=number of people in language or cultural or handicapped group involved
D=number of FTE non-Federal primary care physicians speaking language involved (or using interpreters), or familiar with culture involved, or serving handicapped group
R=N/D

The material provided by the applicant will be reviewed and compared with the established criteria for designation of population groups with primary care manpower shortages. As indicated in the criteria, barriers to access for the population group involved must be demonstrated, and the ratio (R) of the number of persons in the population group described to the number of FTE primary care physicians serving that population group must be at least 3000:1 for designation.

In accordance with the criteria, a degree-of-shortage will be assigned to each designated population group on the basis of the computed ration (R) as follows:

Group 1—No primary care physicians, or R>5000
Group 2—5000>R>4000
Group 3—4000>R>3500
Group 4—3500>R>3000

B. Guidelines for Designation of Population Groups With Shortages of Dental Health Manpower

Criteria for designation of specific population groups as having a shortage of dental care manpower are set forth in Appendix B, Part II of 42 CFR Part 5, the regulations for designation of Health Manpower Shortage Areas. The following guidelines are provided to indicate the information which should be included in any request for designation of a low-income population group or other population group experiencing access problems. Such information is needed by the Health Resources and Services Administration in order to determine whether the requirements of the regulations are met.

The request should clearly define the specific population group for which designation is requested, with reference to the geographic area within which the population group resides. The population group may be defined in terms of one or more of the following categories:

1. Population with incomes below the poverty level
2. Medicaid eligibles (in States with a dental component of Medicaid)
3. "Dentally indigent population"—defined as that portion of the population with incomes below the poverty level which is ineligible for dental Medicaid
4. Migrant worker and their families
5. Native Americans (Indians or Alaskan natives) not automatically designated
6. Other populations isolated from access by means of language or cultural barriers (specify the language and/or culture involved) or by handicaps

Under Part II A(1)(a) of the criteria in Appendix B, the geographic area within which the population group resides should be defined in terms of counties, civil divisions or census tracts, in accordance with the same rational service area criteria stated in Part I B(1) for designation of geographic areas. (For example, a request for designation of the poverty population of an entire State would be inappropriate since the State as a whole would not constitute a rational service area.)

Under Part II A(1)(b) of Appendix B, the request should contain a description of the barriers to access experienced by the population group and should contain appropriate supporting data. This description should address the following points:

1. Whether the barriers to access for the population group are primarily economic in nature, or primarily due to non-economic factors such as minority status, language differences, or cultural differences. If significant numbers of providers refuse to accept patients on the basis of non-economic factors, this problem and its extent should be discussed. If an access barrier appears to exist because of demographic or other differences between the population group and available providers, this should also be discussed and evidence of it should be presented.

2. With respect to economic barriers, whether the major difficulty is lack of

[1] For example, a community health center or public health clinic.

access for dental-Medicaid eligibles, lack of access for other low-income persons who do not qualify for dental Medicaid, or both. The applicant should also provide estimates of the number of persons in each of these categories.

3. Whether dentists in the area accept Medicaid reimbursement. If some, but not all, accept Medicaid, the request should state the number which do accept Medicaid and the approximate percentage of their practices devoted to Medicaid eligibles.

4. Whether there are providers or health centers in the area which accept patients for dental care on an ability-to-pay or sliding-fee-scale basis.[2]

If there are, the applicant should list the facilities and locations involved and estimate the number of full-time-equivalent practitioners available to the low-income population in each such setting.

5. An estimate of the amount of practice time which private practice dentists in the area already devote to serving the affected populations, with the source of the estimate.

In order to make possible the calculation of the appropriate population-to-dentist ratio under Part II[A](1)[c]of Appendix B, the request should clearly state the total number of persons in the population group for which designation is requested and the total number of full-time equivalent (FTE) dentists in the defined area that are serving that population, using the data and estimates described above. The calculation of FTE dentists should utilize the appropriate weights based on age and/or auxiliaries as provided for in Tables 1 and 2 of Part I[A][3][b] of Appendix B.

The appropriate ratio (R) will then be computed as follows:

1. *Poverty populations.*

N=population with incomes below poverty level
D=(FTE non-Federal dentists accepting dental Medicaid)
+(FTE other non-Federal dentists available in settings offering dental care on an ability-to-pay or sliding-fee-scale basis)
+(estimated % of time private practice dentist in area devote to serving Medicaid-ineligible indigent populations) × (number of FTE private practice dentists in area)
R=N/D

2. *Medicaid-eligible populations.*

N=population eligible for dental Medicaid under applicable State's medical assistance program
D=FTE non-Federal dentists accepting Medicaid
R=N/D

[2]For example, a community health center or public health clinic.

3. *Dentally indigent populations.*

N=[population with incomes below poverty level]
−[population eligible for dental Medicaid]
D=[FTE non-Federal dentists available in settings offering dental care on an ability-to-pay or sliding-fee-scale basis)
+(estimated % of time private practice dentists in area devote to serving Medicaid-ineligible indigent populations) × [number of FTE private practice dentists in area)
R=N/D

4. *Migrant workers and their families.*

N=(average daily number of migrant workers and dependents present in the area during portion of year that migrants are present)
× (fraction of year migrants are present)
D=number of FTE non-Federal dentists serving migrants
R=N/D

5. *Indians or Alaskan natives.*

N=number of Indians or Alaskan natives
D=number of FTE non-Federal dentists serving Indians or Alaskan natives
R=N/D

6. *Other populations isolated by linguistic or cultural barriers or by handicaps.*

N=number of people in language or cultural or handicapped group involved
D=number of FTE non-Federal dentists speaking language involved (or using interpreters), or familiar with culture involved, or serving handicapped group
R=N/D

The material provided by the applicant will be reviewed and compared with the established criteria for designation of population groups with dental care manpower shortages. As indicated in the criteria, barriers to access for the population group involved must be demonstrated, and the ratio (R) of the number of persons in the population group described to the number of FTE dentists serving that population group must be at least 4000:1 for designation.

In accordance with the criteria, a degree-of-shortage will be assigned to each designated population group on the basis of the computed ratio (R) as follows:

Group 1—No dentists or R >8000
Group 2—8000>P>6000
Group 3—6000>P>5000
Group 4—5000>P >4000

C. Guidelines for Designation of Population Groups With Shortages of Psychiatric Manpower

Criteria for designation of specific population groups as having a shortage of psychiatric manpower are set forth in Appendix C, Part II of 42 CFR Part 5, the regulations for designation of Health Manpower Shortage Areas. The following guidelines are provided to indicate the information which should be included in any request for designation of a low-income population group or other population group experiencing access problems. Such information is needed by the Health Resources and Services Administration in order to determine whether the requirements of the regulations are met.

The request should clearly define the specific population group for which designation is requested, with reference to the geographic area within which the population group resides. The population group may be defined in terms of one or more of the following categories:

1. Population with incomes below the poverty level
2. Medicaid eligibles
3. "Medically indigent population"—defined as that portion of the population with incomes below the poverty level which is ineligible for Medicaid
4. Migrant workers and their families
5. Native Americans [Indians or Alaskan natives]
6. Other populations isolated from access by means of language or cultural barriers (specify the language and/or culture involved) or by handicaps

Under Part II A(1)(a) of the criteria in Appendix C, the geographic area within which the population group resides should be defined in terms of catchment areas, counties, civil divisions or census tracts, in accordance with the same rational service area criteria stated in Part I B(1) for designation of geographic areas. [For example, a request for designation of the poverty population of an entire State would be inappropriate since the State as a whole would not constitute a rational service area.]

Under Part II A[1][b] of Appendix C, the request should contain a description of the barriers to access experienced by the population group and should contain appropriate supporting data. This description should address the following points:

1. Whether the barriers to access for the population group are primarily economic in nature, or primarily due to non-economic factors such as minority status, language differences, or cultural differences. If significant numbers of providers refuse to accept patients on the basis of non-economic factors, this problem and its extent should be discussed. If an access barrier appears to exist because of demographic or other differences between the population group and available providers, this

should also be discussed and evidence of it should be presented.

2. With respect to economic barriers, whether the major difficulty is lack of access for Medicaid eligibles, lack of access for other low-income persons who do not qualify for Medicaid, or both. The applicant should also provide estimates of the number of persons in each of these categories.

3. Whether psychiatrists in the area accept Medicaid reimbursement. If some, but not all, accept Medicaid, the request should state the number which do accept Medicaid and the approximate percentage of their practices devoted to Medicaid eligibles.

4. Whether there are providers, mental health centers or hospitals in the area which accept patients for psychiatric care on an ability-to-pay or sliding-fee-scale basis.[3] If there are, the applicant should list the facilities and locations involved and estimate the number of full-time-equivalent practitioners available to the low-income population in each such setting.

5. An estimate of the amount of practice time which private practice psychiatrists in the area already devote to serving the affected populations, with the source of the estimate.

In order to make possible the calculation of the appropriate population-to-psychiatrist ratio under Part II(A)(1)(c) of Appendix C, the request should clearly state the total number of persons in the population group for which designation is requested and the total number of full-time equivalent (FTE) psychiatrists in the defined area that are serving that population, using the data and estimates described above.

[3] For example, a community mental health center.

The appropriate ratio (R) will then be computed as follows:

1. *Poverty populations.*

N=population with incomes below poverty level
D=(FTE non-Federal psychiatrists accepting Medicaid)
+(FTE other non-Federal psychiatrists available in settings offering care on an ability-to-pay or sliding-fee-scale basis)
+(estimated % of time private practice psychiatrists in area devote to serving Medicaid-ineligible indigent populations) X (number of FTE private practice psychiatrists in area)
R=N/D

2. *Medicaid-eligible populations.*

N=population eligible for Medicaid
D=FTE non-Federal psychiatrists accepting Medicaid
R=N/D

3. *Medically indigent populations.*

N=(population with incomes below poverty level)
−(population eligible for Medicaid)
D=(FTE non-Federal psychiatrists available in settings offering care on an ability-to-pay or sliding-fee-scale basis)
+(estimated % of time private practice psychiatrists in area devote to serving Medicaid-ineligible indigent populations) X (number of FTE private practice psychiatrists in area)
R=N/D

4. *Migrant workers and their families*

N=(average daily number of migrant workers and dependents present in the area during portion of year that migrants are present)
X (fraction of year migrants are present)
D=number of FTE non-Federal psychiatrists serving migrants
R=N/D

5. *Indians or Alaskan natives.*

N=number of Indians or Alaskan natives
D=number of FTE non-Federal psychiatrists serving Indians or Alaskan natives
R=N/D

6. *Other populations isolated by linguistic or cultural barriers or by handicaps.*

N=number of people in language or cultural or handicapped group involved
D=number of FTE non-Federal psychiatrists speaking language involved (or using interpreters), or familiar with culture involved, or serving handicapped group
R=N/D

The material provided by the applicant will be reviewed and compared with the established criteria for designation of population groups with psychiatric care manpower shortages. As indicated in the criteria, barriers to access for the population group involved must be demonstrated, and the ratio (R) of the number of persons in the population group described to the number of FTE psychiatrists serving that population group must be at least 30,000:1 for designation (20,000:1 where unusually high needs for psychiatric services are indicated, as provided for in Part I(B)(4) of Appendix C).

In accordance with the criteria, a degree-of-shortage will be assigned to each designated population group on the basis of the computed ratio (R) as follows:

	High needs not indicated	High needs indicated
Group 1	No psychiatrists	No psychiatrists.
Group 2	R>50,000	R>40,000
Group 3	50,000>R>40,000	40,000>R>30,000
Group 4	40,000>R>30,000	30,000>R>20,000

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federal register

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Part IV

Department of Health and Human Services

Food and Drug Administration

Tamper-Resistant Packaging Requirements; Certain Over-the-Counter Human Drugs and Cosmetic Products; Contact Lens Solutions and Tablets; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 211, 314, and 700

[Docket No. 82N-0330]

Tamper-Resistant Packaging Requirements for Certain Over-the-Counter Human Drug and Cosmetic Products

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing requirements for tamper-resistant packaging for all over-the-counter (OTC) human drug products, except dermatologics, dentifrices, and insulin, and for cosmetic liquid oral hygiene products and vaginal products. These regulations will also require a statement on the labeling of such products to alert consumers to the specific tamper-resistant feature of the package. This action is taken to assure package integrity and product security in light of the recent cases of malicious adulteration of OTC drug products that resulted in seven deaths in the Chicago area and other cases in several geographic areas nationwide.

DATES: Packaging requirements are initially effective February 7, 1983 for all OTC drug products subject to this rule (except oral and vaginal tablets and vaginal and rectal suppositories) and for cosmetic liquid oral hygiene products and liquid vaginal products packaged on or after that date. Labeling requirements for all products and packaging requirements for oral and vaginal tablets and vaginal and rectal suppositories are effective on May 5, 1983. Products packaged prior to May 5, 1983 and held for sale at the retail level must be in compliance with the tamper-resistant packaging requirement, but not the distinctive indicator or barrier to entry or labeling requirements of the regulations by February 6, 1984. Comments by December 6, 1982. For further details see the effective dates information following the text of the regulations.

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

FOR FURTHER INFORMATION CONTACT:

For drugs: Eileen R. Hodkinson, National Center for Drugs and Biologics (HFN-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

For cosmetics: Heinz J. Eiermann, Bureau of Foods (HFF-440), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1530.

SUPPLEMENTARY INFORMATION: FDA is issuing final regulations to require tamper-resistant packaging for certain over-the-counter (OTC) drug and cosmetic products. OTC drug products subject to these regulations include all OTC drug products except dermatologics (i.e., products applied to the skin), dentifrices, and insulin. The OTC drug products that are covered by these regulations include oral (except dentifrices), nasal, otic, ophthalmic, rectal, and vaginal drug products. Cosmetic products covered by these regulations are liquids that are used orally, such as mouthwashes, gargles, breath fresheners, etc., and vaginal cosmetic products. The agency is requiring that the packaging of these products be capable of providing consumers with visible evidence of package tampering. In response to seven recent deaths linked to Extra-Strength Tylenol capsules found to be contaminated with cyanide and to other recent tampering incidents nationwide, this action is being taken to provide safeguards against the future occurrence of such incidents. Further, the agency is requiring a labeling statement on the container to alert the consumer to the specific tamper-resistant feature. In addition, ophthalmic device adjuncts such as contact lens solutions and lubricants are covered by a separate final regulation published elsewhere in this issue of the **Federal Register.**

I. Background

The Chicago Poisonings

On September 30, 1982, FDA was advised that several persons living in the Chicago metropolitan area had died from cyanide poisoning after taking Extra-Strength Tylenol capsules. Capsules taken from bottles of Extra-Strength Tylenol in the possession of the victims were chemically analyzed by local authorities, and some of the capsules in these bottles were found to contain lethal amounts of potassium cyanide. By October 1, several more Chicago area residents had died from cyanide poisoning after ingesting Tylenol Extra-Strength capsules, bringing the total of deaths to seven.

On September 30, government authorities and the manufacturer of Tylenol, McNeil Consumer Products, Fort Washington, PA, began an investigation to determine the manner in which the capsules had become contaminated with cyanide. The capsules involved in the seven deaths were manufactured in two plants, one in Pennsylvania and one in Texas. FDA investigators immediately inspected both plants. Based on the plant inspections, FDA concluded that the contamination had not occurred at either plant, but rather was the result of tampering after the capsules had been shipped to distribution points and, most likely, after they had reached the retail shelves. Further evidence to support this position is described below.

The pattern of contamination revealed during subsequent events was inconsistent with the theory that the cyanide had been introduced either at the source of manufacture or at intermediate points in the chain of distribution. The capsules involved in the Chicago deaths were manufactured at three different times and in two widely separated plants, yet they were apparently purchased within a short period of time in one geographic area. FDA and other agencies have tested 1.7 million Tylenol capsules and investigated about 270 incidents in which death or illness was thought possibly to be connected with the use of Tylenol. To date, no Tylenol capsules outside the Chicago area have been found to contain cyanide, and there has been no other confirmed case in which cyanide poisoning was linked to the ingestion of Tylenol. That the poisoning deaths occurred in only one location during a brief space of time, although the capsules were made in two places at different times, makes it extremely unlikely that the cyanide contamination occurred before the capsules arrived in the Chicago area.

In addition, certain other facts strongly support the position that the tampering occurred after the capsules had been shipped to distribution points and, most likely, after they reached the retail shelves. One of the bottles associated with a death held both Extra-Strength and Regular Strength capsules; only the Extra-Strength capsules contained cyanide. Some of the contaminated capsules showed visible signs of tampering. FDA laboratory testing of capsules containing cyanide revealed that the gelatin capsule begins to deteriorate 6 to 7 days after first exposure to cyanide; samples of capsules collected and analyzed by FDA from a drug store in Schaumberg, IL, and from victims' bottles revealed the beginning stages of such deterioration.

Although conclusive evidence of the exact circumstances of the tampering does not exist, it is believed that one or more persons obtained the Extra-

Strength Tylenol capsules, contaminated them with cyanide, inserted these capsules into the bottles, returned them to the boxes in which they are sold, and surreptitiously placed the boxes on the shelves of the stores from which the victims purchased them. These Extra-Strength Tylenol capsules were packaged in plastic snap-top bottles, with cotton wadding inserted into the neck of the bottle. The bottles were placed inside individual cardboard cartons. Although packaged in compliance with current FDA requirements, neither the bottles nor the cartons were sealed or otherwise fabricated to ensure that access to the product required the destruction or visible disturbance of the package.

Response to the Chicago deaths

The tragic events in Chicago elicited response on several levels. Authorities in Illinois, aided by Federal Government agencies, launched an intensive investigation to identify the person or persons who contaminated the Tylenol. Municipal authorities in the Chicago area took immediate steps to protect their citizens against further poisonings by cautioning against the use of Tylenol capsules and, in the city of Chicago, banning the sale and use of all Tylenol products. FDA conducted a nationwide campaign to sample and analyze Tylenol capsules and other Tylenol products susceptible to contamination, and warned against the use of Extra-Strength and Regular Strength Tylenol capsules. McNeil withdrew Extra-Strength, and then Regular Strength, Tylenol capsules from sale and warned against the use of all Tylenol capsules. State and local jurisdictions throughout the country took a variety of precautionary measures. Police and regulatory authorities investigated dozens of reports of possible related incidents. Poison control centers around the country responded to questions from concerned consumers.

In addition to these actions aimed at the immediate problem, several jurisdictions are considering enacting laws to improve the security of drug product packaging to deter tampering or alert the consumer to its occurrence. Cook County, IL, approved an ordinance on October 4, 1982, requiring all OTC drugs to be sold only in sealed containers. On October 6, the city of Chicago submitted a similar ordinance to the city council.

On the national level, Secretary of Health and Human Services Richard Schweiker requested FDA to begin drafting a regulation to require tamper-resistant packaging for OTC drugs. Several Members of Congress stated their intention to introduce appropriate legislation, and on October 15, the House Subcommittee on Health and the Environment conducted a hearing to explore the packaging security issue.

At the request of FDA, the Proprietary Association, a national trade association representing manufacturers of OTC drugs, announced the formation of a Joint Committee on Product Security to explore ways of reducing the risk of malicious tampering with OTC drugs. A special Expert Technical Committee of industry experts, established to develop specific recommendations for tamper-resistant packaging, met in Washington, DC, and reported its conclusions on October 14, 1982, to the Board of Directors of the Proprietary Association in New York. On October 20, the Board formally transmitted recommendations for action to FDA.

Other Poisonings.

Since the Tylenol poisonings, several cases of serious injuries have been reported resulting from the use of products that have been tampered with. These incidents, although not the initial impetus for these regulations, further demonstrate the need for their prompt implementation.

Need for Federal Regulation To Improve OTC Packaging Security

The poisoning fatalities make plain the gravity of the risk to which the nation's population is exposed from malicious tampering with drug products sold over-the-counter to the consumer. The Tylenol incident occurred in the Chicago area, but is was followed by others elsewhere in the country. Nor is the potential for such tampering confined to one manufacturer's products. Incidents of OTC drug product tampering involving products other than Tylenol have occurred in recent weeks. The combined incidents demonstrate that the need for adequate product security is national in scope and requires an industrywide response.

FDA is the agency designated by Congress to assure the safety of drugs marketed in the United States. It is, therefore, appropriate for FDA, in accordance with Secretary Schweiker's request, to develop and issue regulations to meet the problem of OTC product tampering on a national basis. A Federal requirement will not only help to protect the entire population, it will also obviate the need for State and local laws aimed at accomplishing the same objective for smaller numbers of people. OTC drugs are an important component of the nation's health care system. Conflicting packaging security requirements imposed at the local level would create a strong likelihood that distribution of OTC drugs might be disrupted, thus limiting the available supply of OTC drugs. In addition, unnecessary costs might be imposed on purchasers of OTC drugs as a result of the efforts by manufacturers and distributors to meet differing standards.

An FDA tamper-resistant packaging regulation applicable uniformly to all manufacturers of OTC drug products in all geographic markets will provide the public health protection the country needs and deserves, without unduly burdening the national system of drug distribution and without raising health costs more than necessary to achieve the intended result.

FDA is also responsible for assuring the safety of cosmetic products. Most cosmetic products are applied topically to the skin. Such topical products do not pose the same health threat if tampered with as do products that are ingested, inserted, inhaled, or intended for ophthalmic use. For this reason, neither dermatologic OTC drugs, nor topically applied cosmetics, are subject to the regulations issued in this document.

Because some cosmetics such as liquid cosmetic mouthwashes are used within the oral cavity, they come in contact with sensitive mucous membranes and small but significant amounts are usually ingested. The agency believes, therefore, that these products present the same high degree of risk from tampering that is presented by the drugs covered by this final rule. The agency is aware of a recent incident in which a cosmetic mouthwash was contaminated with acid by a person who tampered with the product before retail sale. Accordingly, FDA is requiring that liquid cosmetics used orally be marketed in tamper-resistant packaging meeting the criteria of this final rule.

Vaginal drug and cosmetic products, most of which are liquid in form, are also highly susceptible to tampering and are capable of causing serious injury if tampered with. Thus, these products are also included in this final rule.

Many OTC drug and cosmetic products are already packaged in tamper-resistant containers that are sealed so that the contents cannot be used without obvious destruction of the packaging seal. (FDA notes, however, that such packaging, without an accompanying label statement, may not be completely effective, as evidenced by several recent incidents involving ophthalmic products.) The agency recognizes that although the technology is currently available to make all packaging of the products mentioned

above tamper-resistant, it will take manufacturers some time to adapt the technology to their particular products. The agency concludes, however, that such packaging is in the interest of the public health and should be required as soon as possible. This final rule will make available to consumers more securely packaged OTC drug and cosmetic products, while allowing manufacturers and packers flexibility by taking into account the availability of the necessary packaging materials and machinery for manufacturers to use, and the time needed to set into place any new requirements. The agency encourages drug and cosmetic manufacturers to make the necessary packaging and labeling changes, if possible, before the effective dates imposed by this final rule and it anticipates that a large segment of the industry will comply fully before the various effective dates discussed later in this document.

II. Concept of Tamper-Resistance

The Proprietary Association/FDA Expert Technical Committee on Tamper-Resistant Packaging met on October 7 and 11 to consider measures that would ensure container integrity and make tampering evident if it occurred. On October 14, the Committee's conclusions were considered by the Board of Directors of the Proprietary Association. On the same day, the Board recommended that FDA adopt a regulation requiring OTC drug packaging to meet a tamper-resistance performance standard. The standard would require OTC drug packages to have an indicator or barrier to entry that would provide the consumer with visible evidence that the package had been tampered with or opened. The Proprietary Association also recommended that packages bear a label statement describing the tamper-resistant mechanism.

Based on the information developed by the Expert Technical Committee, on the Proprietary Association's recommendation, and on the agency's own knowledge and experience, FDA has concluded that adequate public health protection against malicious tampering will be provided by the use of tamper-resistant packaging meeting the criteria discussed below.

The agency defines a tamper-resistant package as one having an indicator or barrier to entry which, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred. Tamper-resistant packaging may involve immediate-container/closure systems or secondary-container/carton systems or any combination thereof intended to provide a visual indication of package integrity when handled in a reasonable manner during manufacture, distribution, and retail display. The visual indication is required to be accompanied by appropriate illustrations or precautionary statements to describe the safeguarding mechanism to the consumer. To reduce the possibility that the security mechanism can be restored after tampering, the agency is also requiring that either the tamper-resistant feature be designed from materials that are generally not readily available (e.g., an aerosol system) or that barriers made from readily obtainable material (e.g., plain tape, paper seals, clear plastic) carry a distinctive design or logo.

The agency stresses that tamper-*proof* packaging is not possible. Although the requirements in this final rule will reduce the potential for tampering, they cannot eliminate it. Neither the agency nor manufacturers can guarantee protection against malicious tampering but can only make tampering more difficult by making product packaging more *resistant* to tampering. For this reason, the agency will consider any labeling statement suggesting that the package is tamper-proof, as contrasted with tamper-resistant, to be false and misleading. Consumers must act to protect themselves from injury by inspecting the condition of the packages they buy, the tablets and capsules they take, and the liquids they drink.

The standards for tamper-resistant packaging established by this final rule will allow manufacturers flexibility in determining which packaging system to use. Several packaging options are available to provide increased assurance of tamper-resistance for a large number of products. Alternative systems that provide comparable margins of assurance will also be acceptable under this final rule because the agency realizes that the state of the art of this technology is evolving. FDA considers the packaging systems listed below, which are currently available, to be examples of those capable of meeting the tamper-resistant requirement of this final rule. It is not the agency's intent to preclude technological innovation that may introduce totally different systems for providing protection to the consumer against tampered products.

1. *Film wrappers.* A transparent film with distinctive design is wrapped securely around a product or product container. The film must be cut or torn to open the container and remove the product.

2. *Blister or strip packs.* Dosage units (for example, capsules or tablets) are individually sealed in clear plastic or foil. The individual compartment must be torn or broken to obtain the product.

3. *Bubble packs.* The product and container are sealed in plastic and mounted in or on a display card. The plastic must be torn or broken to remove the product.

4. *Shrink seals and bands.* Bands or wrappers with distinctive design are shrunk by heat or drying to seal the union of the cap and container. The seal must be cut or torn to open the container and remove the product.

5. *Foil, paper, or plastic pouches.* The product is enclosed in an individual pouch that must be torn or broken to obtain the product.

6. *Bottle seals.* Paper or foil with a distinctive design is sealed to the mouth of a container under the cap. The seal must be torn or broken to open the container and remove the product.

7. *Tape seals.* Paper or foil with a distinctive design is sealed over all carton flaps or a bottle cap. The seal must be torn or broken to open the container and remove the product.

8. *Breakable caps.* The container is sealed by a plastic or metal cap that either breaks away completely when removed from the container or leaves part of the cap attached to the container. The cap must be broken to open the container and remove the product.

9. *Sealed tubes.* The mouth of a tube is sealed and the seal must be punctured to obtain the product.

10. *Sealed carton.* All flaps of a carton are securely sealed and the carton must be visibly damaged when opened to remove the product.

11. *Aerosol containers.* Aerosol containers are inherently tamper resistant.

The agency urges manufacturers and packagers, in designing the tamper-resistant packages, to take into consideration that such packaging should not be so difficult to open that arthritics and others manually impaired cannot open them.

III. Provisions of the Rule

Applicability

FDA is revising its regulations to establish requirements for tamper-resistant packaging for all OTC drug products, except dermatologics, dentifrices, and insulin, and for cosmetic liquid oral hygiene products and vaginal products. FDA's current good manufacturing practice (CGMP) regulations (21 CFR Part 211) are intended to provide assurance that drug

product quality does not fall below that which is feasible and available under contemporary technology. FDA's cosmetic regulations describe circumstances under which cosmetics are adulterated or misbranded, or both.

In addition to establishing a tamper-resistant packaging requirement, the final rule also imposes a requirement that the package label of the products subject to this final rule alert the consumer to the existence of the specific tamper-resistant mechanism. This requirement is needed to assure that the tamper-resistant packaging mechanism achieves its intended purpose. Failure to comply with either requirement will result in the affected product's being considered adulterated under section 501 (a)(2)(B), (b), or (c), or 601 (a) and (c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351 (a)(2)(B), (b), or (c), or 361 (a) and (c)). Failure to comply with the labeling requirement or the addition of labeling suggesting that the packaging is tamper-proof will result in the product's being considered misbranded under section 201(n), 502 (a) or (c), 602 (a) or (c) of the act (21 U.S.C. 321(n), 352 (a) or (c), 362 (a) or (c)). Products that are imported into the United States will be required to meet these requirements as well.

This final rule applies to all nonprescription drug products (other than dermatologics, dentifrices, and insulin), and to cosmetic liquid oral hygiene products and vaginal products. Dermatological OTC drug products (i.e., those applied to the skin), dentifrices, and insulin, and cosmetic products other than liquid oral hygiene products and vaginal products are not covered by this final rule at this time because of the lower probability of tampering or the less severe consequences from tampering with these products than with those products that are ingested, inserted, inhaled, or intended for ophthalmic use.

This final rule requires manufacturers and packers of products subject to this rule to package their products for retail sale in tamper-resistant packages. The agency contends that manufacturers and packers can comply with these regulations through the use of currently available packaging technology, which has been shown to be both feasible and valuable in assuring product quality.

The agency concludes that by specifying a result to be achieved rather than specific kinds of packaging systems for particular products, it is providing manufacturers flexibility to determine for themselves the most cost-effective packaging system that produces a tamper-resistant package for their products. Manufacturers and packers are, of course, free to adopt a packaging technology not listed in this final rule if that technology produces a tamper-resistant package. Conversely, use of one of the identified technologies does not, by itself, constitute compliance with the requirement for the use of a tamper-resistant packaging system if the application of the technology in a particular case does not meet the standard established in this final rule (e.g., if the system is inappropriate to the product or is faulty in design).

In addition to requiring tamper-resistant packaging, this final rule also requires the labeling of the affected products to contain a statement describing the tamper-resistant feature of the package and advising consumers that, if the feature is breached or missing when the product is purchased, tampering may have occurred. Tamper-resistant packaging with an appropriate labeling statement will be more likely to protect consumers because the consumer will be in a better position to detect tampering when he or she has knowledge that a tamper-resistant feature has been incorporated into the package design. For example, ophthalmic products, including both drugs and contact lens solutions (regulated as devices), are now required to be sealed so that the contents cannot be used without destroying the seal (21 CFR 200.50), but a labeling statement drawing the consumer's attention to the seal is not required. The agency is aware of incidents in which products subject to that requirement may have been maliciously adulterated, with subsequent injury to consumers. A label statement describing the purpose of the seal and cautioning against purchase if the seal were broken or missing is now required by this final rule for ophthalmic OTC drug products. In a separate document published elsewhere in this issue of the **Federal Register**, the agency is establishing a requirement for a statement in the labeling of contact lens solutions to alert consumers to the tamper-resistant features of the package.

Although this final rule applies to many OTC drug products and cosmetics, the agency recognizes that existing packaging or marketing practices for some products or classes of products may provide adequate protection for consumers, but not meet the specific requirements of the regulations. Thus, FDA also is establishing in the regulations a procedure for manufacturers and packers to obtain exemptions from the tamper-resistant packaging requirement, the labeling requirement, or both. Although an exemption may be sought through the citizen petition procedures in § 10.30 (21 CFR 10.30), the agency believes instances justifying an exemption will be rare.

Because of the importance of the public health concerns addressed by these regulations, the agency has established an early effective date for them. The effective date provisions are described more fully below. Some manufacturers may have difficulty in meeting the early effective date of the regulations. The equipment needed to implement tamper-resistant packaging is often built on order and therefore may not be readily obtained in a short period of time. Moreover, these regulations will create additional demand for packaging equipment and, therefore, the supply of certain equipment may not be adequate for many months. If manufacturers cannot obtain necessary equipment in time to comply with the effective date provisions, it may be necessary to stay the effective date for particular products to avoid disruption of the market for these products. Stays under the citizen petition procedures in § 10.30 may be requested for any aspect of the regulations, including those relating to the label statement and the use of a distinctive barrier to entry.

The agency will accept petitions for stays of the effective date, but only if manufacturers and packers adequately demonstrate that they have taken all reasonable steps to apply tamper-resistant packaging technology to their products, but cannot comply by the effective date or cannot get new labeling printed by the effective date. The showing must include a description of the tamper-resistant packaging technology the petitioner proposes to use; a description of the facilities and equipment needed to apply that technology; a timetable identifying the date when the technology was chosen, the date when the facilities and equipment will be available for applying the technology to the product, and the date by which the product will be in compliance with the regulations. A lengthy stay will not be granted if the petitioner has selected a technology that will require a substantial period of time to obtain and apply and the petitioner could, without undue expense, adequately comply with the regulation by using another technology.

To assist the agency in handling any petition for a stay of the effective date or for an exemption for a covered product, it is requested that the submission be clearly identified on the envelope as either a "Request for Exemption from Tamper-Resistant Rule" or "Request for Stay of Tamper-Resistant Rule." If a firm submits both a

stay and an exemption for the same product, it is requested that each petition be submitted separately in its own envelope clearly marked as set forth above. Further, if a firm submits comments on the final rule, they should be submitted separately to the agency and not combined with either a request for a stay or request for an exemption.

Effective date. The regulations become effective in three steps. The requirement that a tamper-resistant package be used is effective February 7, 1983 for OTC drug products and cosmetics that are the most vulnerable to tampering. The OTC drug products subject to this effective date are: oral, vaginal, and rectal drugs (other than tablets and suppositories), otic drugs, nasal drugs, ophthalmic drugs. A later effective date of May 5, 1983 is provided for oral and vaginal tablets and vaginal and rectal suppositories. The tablet and suppository dosage forms are considered less susceptible to tampering because known methods of tampering are more difficult to apply to tablets and suppositories without creating visible evidence that tampering has occurred. For all products, the label statement requirement and the requirement that the barrier to entry be distinctive are effective May 5, 1983.

There is a third effective date, 1 year from the initial effective date, February 6, 1984, by which time all stocks held for sale (including stocks in retail stores), no matter when packaged, must be in compliance with the requirements for tamper-resistant packaging. This date also applies to imported products. The effective date provisions assure that those products that are most susceptible to malicious adulteration will be the first required to be packaged in tamper-resistant packaging. FDA believes that longer effective dates for those products for which malicious adulteration is less likely will permit manufacturers to comply more quickly with the requirement applicable to the more susceptible products without undue risk to consumers. The later effective date for the label statement requirement and the requirement for a distinctive barrier to entry recognize that these requirements, although important, are not as urgent as the need to assure that tamper-resistant packaging is used, and that it may take more time to arrange for the labeling and package design changes that must be made to comply with these provisions of the regulations.

The time limits selected by FDA also take into account information provided to the agency by the Proprietary Association concerning the ability of the OTC drug industry to acquire the necessary packaging equipment and integrate it into their production systems. Accordingly, a requirement effective immediately or a requirement effective for all products at the end of a comparatively short period of time, such as 3 months, would impose a serious strain on the packaging machinery industry to produce, and on the OTC drug industry and other affected manufacturers to acquire and put into place, the equipment needed to produce tamper-resistant packaging.

Several consequences could be anticipated were the agency to require an early effective date for all products. First, companies unable to meet the requirement would have to discontinue marketing their products after the effective date. Second, it could force industry to compete for scarce resources as if all products presented identical risks. Either result could disrupt the supply of OTC drugs to the consumer and make it difficult for manufacturers of tamper-susceptible products in particular to meet the deadline. The costs of compliance, and thereby the price of OTC drug products to the consumer, would also be unnecessarily high.

FDA concludes, therefore, that the sequential effective dates established by this regulation are reasonable and necessary. It is appropriate for FDA to assure an adequate supply of OTC products at a reasonable price, and it is therefore appropriate for FDA to phase in the requirements of the regulations set forth in this final rule to assure that the supply of these products is not unnecessarily disrupted and that their prices are not unnecessarily increased. That objective can be achieved by deferring the effective date for products that are less susceptible to tampering or less harmful if tampered with. By providing a deferred effective date for less susceptible products, the agency is providing on a categorical basis the relief it would have been likely to grant on an individual basis.

These regulations apply to all affected products produced in retail packaging on or after the effective dates. Applying the same effective date to products produced earlier than the effective date would require immediate withdrawal from the retail shelves of noncomplying products after the 3- or 6-month effective dates, a result that would be impractical and disruptive to health care. Because of the need for the affected industry to avoid further incidents of tampering and the incentive the industry has to maintain consumer confidence in OTC drug and cosmetic products, the agency anticipates that manufacturers will take prompt action to implement the provisions of these regulations even before the mandatory effective dates. FDA believes that, for this reason, the market will be significantly depleted of products in non-tamper-resistant packaging within a relatively short period of time.

However, in order to assure that at some defined future date all products covered by the rule are contained in tamper-resistant packaging (although without the labeling or distinctive design requirement), even to the retail level, the agency is establishing a retail level effective date of February 6, 1984 after which all products packaged before May 5, 1983 must be in compliance with the requirement that they be packaged in tamper-resistant packaging. (Products packaged after the May 5, 1983 effective date must be in compliance with all aspects of the regulations after that date, without regard to the retail level effective date. Products packaged after the February 7, 1983 effective date must be in compliance with the tamper-resistant packaging requirement after that date, without regard to the retail level effective date.) The agency believes that manufacturers will be encouraged to convert their product packaging to the non-tamper-resistant variety sooner if products meeting that requirement of the regulations that are packaged before May 5, 1983 are not subject to the retail level effective date with respect to the labeling and distinctive design requirements. Accordingly, the retail level effective date will not apply to the labeling and distinctive indicator or barrier to entry requirements of the regulations.

The agency acknowledges that it may prove difficult to meet this effective date. In that event, FDA must consider whether removal of all products that are not in compliance as of that date may have an adverse impact on the availability of some products in the marketplace and consequential disruption of health care. It is also possible that the quantity of noncomplying products remaining on the market by this time will be negligible, in which case a retail level effective date may be unnecessary. Because of the uncertainty involved in attempting to estimate the circumstances that will prevail at the time of the retail level effective date, the agency will review the need for such a date and what the date should be after it has had an opportunity to determine the effects of this regulation on the marketplace. Such review will take place long enough before the retail level effective date occurs for any change in that date to be

taken into account by those who will be required to meet it. In addition, FDA will consider requests for stays in the retail level effective date on a case-by-case basis.

After the retail level effective date, products remaining on retail shelves that were packaged before May 5, 1983 that are not packaged in tamper-resistant packaging will be considered adulterated and misbranded. Given the unique circumstances that have made these regulations necessary, FDA will consider all feasible alternatives to dealing with noncomplying products remaining in trade channels.

IV. Legal Authority

Under the Federal Food, Drug, and Cosmetic Act, FDA is authorized to impose requirements necessary to assure that drugs meet the requirements of the act for identity, strength, quality, and purity. Such requirements may be imposed as current good manufacturing practice (CGMP) (21 U.S.C. 351 (a)(2)(B)) and in aid of other statutory requirements relating to product safety and integrity. See, e.g., 21 U.S.C. 351(b) and (c).

Under its authority to specify CGMP's, FDA already requires drug product containers to protect against "foreseeable external factors in storage and use that can cause deterioration or contamination of the drug product" (21 CFR 211.94(b)). That regulation was intended to deal with contamination originating during storage of drug products throughout the chain of distribution up to the point of use by the consumer, including storage by intermediaries, retail outlets, and the consumer. That regulation was not, however, intended to require the use of tamper-resistant packaging. When that regulation was issued, tampering was not regarded as a sufficiently serious problem to justify the imposition of container security measures aimed at safeguarding drug products against contamination from tampering. The recent events involving Tylenol, combined with other recent tampering incidents, make it clear that tampering is a serious problem to which the affected industry must respond. The requirements set forth in FDA's CGMP regulations for pharmaceutical products represent those measures needed to ensure that drugs purchased by the people of this country meet all statutory requirements at the time of purchase. Such measures must now include provision for container and package design that provides protection against intentional product adulteration by means of tampering.

FDA's authority to issue Federal standards for tamper-resistant drug packaging is also derived from other provisions of the act relating to drug adulteration. Under section 501(b) of the act, drugs are required to meet applicable compendial standards for strength, quality, and purity. Under section 501(c) of the act, drugs not subject to compendial standards are required to possess the strength, quality, and purity they are represented to have. Because contamination of drugs by tampering causes these requirements to be violated, FDA is authorized to impose packaging requirements reasonably designed to prevent such contamination. The existing regulation requiring the use of seals on ophthalmic products was issued under the authority of section 501(c) of the act. See 21 CFR 200.50(a)(3). That regulation was issued in response to contamination of ophthalmic products at the retail level by persons using the products in the store and then returning them to the shelves. Persons who subsequently bought the products were exposed to injury from contamination of the products caused by this kind of tampering.

FDA is also authorized to issue package security requirements for cosmetics. Such authority is found in sections 601 (a) and (c) and 701(a) of the act. Under section 601(a) of the act, a cosmetic is adulterated if it bears or contains any poisonous or deleterious substance which may render it injurious to users. Under section 601(c) of the act, a cosmetic is adulterated if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health. Section 701(a) of the act authorized FDA to issue regulations for the efficient enforcement of the act.

In the past, FDA has issued regulations requiring the labeling of certain cosmetic products to contain warning statements. In some cases, the statements have been required to warn consumers of the danger of intentional misuse. For example, § 740.11(b)(1) (21 CFR 740.11(b)(1)) requires a warning against the intentional inhalation of certain aerosol propellants. The agency required the warning after it became apparent that the dangerous practice of inhaling propellants had become sufficiently frequent to constitute a hazard of widespread public concern. (40 FR 8912; March 3, 1975.) Intentional tampering is an abusive practice that also presents hazards for consumers of the cosmetic products named in the regulation and, therefore, the agency is requiring the same packaging and warning statements for cosmetic liquid oral hygiene products and vaginal products that it is requiring for certain OTC drugs.

The requirement for a label statement alerting the purchaser to the tamper-resistant feature of a product's packaging is authorized under the cited adulteration provisions and under sections 502(c), 602(c), and 201(n) of the act. The label statement is necessary to assure the effectiveness of the tamper-resistant feature and is an integral part of the tamper-resistant package design. The absence of the label statement thus causes the product to be adulterated. In addition, under sections 501(c) and 602(c) of the act, a product is misbranded if a statement required under other authority in the act is omitted from the product's labeling. Finally, under sections 201(n), 502(a), and 602(a) of the act, a product may be misbranded by reason of the omission of a material fact about the product. The agency believes that omission of a statement alerting the consumer to a packaging feature designed to prevent adulteration would constitute the omission of a material fact, in light of representations made elsewhere in the labeling of a product intended to induce purchase through the implicit representation that the product is not adulterated.

FDA concludes that mandatory standards for tamper-resistant packaging are necessary. The affected industry has shown a commendable interest in improving product security by voluntary means. However, in a matter of such serious public health concern, it is appropriate that the agency assure that all necessary steps will be taken by manufacturers through the issuance of a binding regulation.

Nothing in these regulations relieves any person of the responsibility for compliance with other applicable regulations including the drug CGMP regulations. In particular, major changes in packaging to comply with these regulations may affect compliance with the expiration dating requirements of 21 CFR 211.137. Additional stability studies may be necessary under these circumstances.

Preemptive status of these packaging requirements

FDA intends that the regulations issued in this document preempt State and local packaging requirements that are not identical to it in all respects, including those relating to the use of alternative tamper-resistant packaging systems, the coverage of the regulations within the product categories addressed,

the label statement alternating consumers, exemptions, and effective dates.

As previously discussed, FDA is authorized to assure the safety of drugs and cosmetics marketed in interstate commerce in this country. The manufacturing and distribution system for these products is national in scope and the measures adopted by FDA to regulate this national system should be adequate to safeguard the interests of the entire population. While State and local requirements for products may on occasion be appropriate and necessary, such measures should not interfere with FDA's accomplishing those purposes that are within its Congressionally mandated area of responsibility.

The requirements established by these regulations provide for the use of tamper-resistant packaging for most OTC drug products and certain cosmetics. The requirements become effective on a staggered basis aimed at bringing about the use of tamper-resistant packaging more quickly for those affected products that are most susceptible to tampering or most potentially harmful if maliciously adulterated. The effective dates take into account the availability of packaging machinery, and the ability of manufacturers to acquire and begin to use it, such that the need for consumer protection is met without unnecessary disruption of the supply or increase in the cost of affected products. FDA therefore regards this final rule as providing protection against malicious tampering in the manner most advantageous to consumers. FDA acknowledges the interest of State and local jurisdictions in protecting their citizens from criminal acts involving OTC drug products. The agency believes that this interest is given effect by the regulations issued in this final rule.

State and local requirements for OTC product packaging that differ from those established by this final rule would interfere with the accomplishment of FDA's objectives in several ways. These regulations are intended to allow the use of alternative packaging systems to guard against tampering. A State or local requirement that one or several specific packaging systems be used exclusively would have one of several undesirable effects. First, it would exclude from that market products not using the designated systems. Such an exclusion would curtail the supply of OTC drugs and cosmetic products to the residents of the jurisdiction involved. It would also interfere with competition within that market, with an accompanying potential for higher prices. Second, it could, if the State or local market was big enough, force manufacturers to adopt the State or local standard for products marketed anywhere in the country where that standard was consistent with other State or local standards. This result would effectively negate the FDA regulations set forth in this final rule. It would also force manufacturers to use a limited number of packaging systems with no assurance that such systems are the best adapted to providing tamper-resistance or the most cost-effective packaging system that produces a tamper-resistant package. It would, finally, provoke intense competition among manufacturers for a limited range of packaging equipment capable of producing the complying packaging, thus impeding the conversion of all affected OTC drugs and cosmetics to the tamper-resistant variety. Third, affected manufacturers could be forced to adopt different packaging systems meeting the separate requirements of each jurisdiction. If this were done, product costs and prices would be increased by the need to create different manufacturing and distribution systems adapted to the different requirements prevailing throughout the country.

In addition to these undesirable effects on the distribution and cost of affected OTC drugs and cosmetics and on the ability of the affected industry to convert quickly and efficiently its products to tamper-resistant packaging, State and local drug and cosmetic packaging requirements have the potential for interfering with FDA's ability to enforce the agency's own tamper-resistant packaging requirements. For example, because of differences in interpretation, it is possible that a product that met the Federal requirement would be deemed illegal at the State or local level, or vice versa.

Imposition of State or local packaging requirements prior to the effective dates of these regulations would also hinder the orderly attainment of the objectives that these regulations are intended to achieve. The 3- and 6-month effective dates specified in this document have been established in response to information concerning the availability of packaging equipment and the ability of manufacturers to procure it and integrate it into their manufacturing operations. These effective dates will assure that products are produced in tamper-resistant packaging as soon as possible consistent with an adequate supply of products at a reasonable cost. The retail level effective date, February 6, 1984, for products packaged prior to May 5, 1983 balances the infeasibility of converting the packaging of already manufactured products into tamper-resistant packaging against the consumer's need at some point to be certain that all products for retail sale are contained in such packaging. An earlier retail level effective date, or State or local packaging requirements applicable to the retail sale of products in noncomplying packaging, would potentially undermine the ability of manufacturers to implement these regulations by diverting attention from the effort to bring new packaging into compliance with those regulations. An early requirement for retail level compliance would also disrupt the availability of products to the consumer for an indeterminate period of time.

For these reasons, FDA concludes that, as of the date of publication of this final rule, the requirements imposed by this final rule should be the exclusive means of bringing about the use of tamper-resistant OTC drug and cosmetic packaging and associated labeling. See *Jones* v. *Rath Packing Co.*, 430 U.S. 519, *reh. denied*, 431 U.S. 925 (1977); *Cosmetic, Toiletry & Fragrance Ass'n* v. *State of Minnesota*, 440 F. Supp. 1216 (D. Minn. 1977, *aff'd per curiam*. 575 F.2d 1256 (8th Cir. 1978)); *Brookhaven Cable TV, Inc.* v. *Kelly*, 573 F.2d 765 (2d Cir. 1978) *cert. denied*, 441 U.S. 904 (1979).

Good cause to issue a final regulation

The Administrative Procedure Act and FDA regulations provide that a general notice of proposed rulemaking need not be published in the **Federal Register** when the agency for good cause finds that "notice and public procedure * * * are impracticable, unnecessary, or contrary to the public interest." (5 U.S.C. 553(b)(B), 21 CFR 10.40(e)(1).) As discussed above, the problems caused by malicious tampering are multiple and pose significant public health concerns. As reports of each new episode of malicious tampering receive wide exposure in the news media, the likelihood of further similar incidents increases. It is clearly in the public interest to move quickly to establish uniform Federal regulatory standards that will enable manufacturers to implement tamper-resistant packaging and labeling requirements as efficiently and expeditiously as possible. Quick action by the agency is vitally necessary to reduce the likelihood that additional tampering will occur or that other innocent purchasers will be harmed. In addition, a rapid response will enhance agency efforts to educate purchasers by alerting them to the problems and will help restore public confidence in the

integrity of the OTC drug and cosmetic products in the marketplace.

The requirements contained in the regulations set forth in this final rule are based on standards and technology suggested by and discussed with representatives of the OTC drug manufacturing industry. Based in part on those discussions and on discussions with representatives from the cosmetic industry, the agency believes that the requirements are reasonable and that the timetable for compliance is attainable.

Therefore, the agency has concluded that because adequate protection of the public health requires that tamper-resistant packaging be implemented as quickly as possible, there is good cause to issue these regulations as a final rule. See generally *Hercules, Inc.* v. *Environmental Protection Agency*, 598 F.2d 91, 126 (D.C. Cir. 1978).

The agency is providing a 30-day comment period and will review carefully all comments submitted during that period to determine the appropriateness of revisions to this final rule.

V. Economic Considerations

FDA has examined the regulatory impact and regulatory flexibility implications of this final rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act. The agency estimates that this final rule will affect about 2 billion retail packages per year. Some of these OTC products (perhaps 10 to 30 percent) are already packaged in ways defined as acceptable, and will need only labeling statements and distinctive indicators or barriers to entry. Many, probably most, of the remaining products would be converted to tamper-resistant packaging even in the absence of this final rule—to reduce actual risks, to restore or sustain consumer confidence, or, in some cases, to comply with new State or local requirements. Therefore, the cost impacts attributable to this final rule are some fraction of the total costs that will be incurred by manufacturers to improve the integrity of their products' packaging.

The Expert Technical Committee on Tamper-Resistant Packaging estimated unit costs of tamper-resistant packaging to range from a fraction of a cent for some popular packaging systems, such as shrink seals, to several cents per unit for bubble packs and manual seals. If unit costs average 1.0 to 2.0 cents per retail package, aggregate recurring costs for tamper-resistant packaging would be $20 to $40 million per year.

Costs for new packaging equipment are not expected to have a significant impact on the average cost per package. Equipment investment outlays would presumably be spread over several years following the effective date, depending on equipment availability (which varies from several months to 2 years) and manufacturer preferences as to packaging systems. Some manufacturers may temporize with the less expensive equipment, until they have decided upon and taken delivery of the equipment they will use in the long run. The cost of packaging equipment varies widely from less than $100 to over $100,000 per unit. When these investments are depreciated over the life of the equipment and the number of packages handled, the average cost per package appears extremely small regardless of the original cost.

The 3- and 6-month effective dates for tamper-resistant packaging may impose some additional cost penalty on manufacturers. If manufacturers cannot install new packaging equipment before the effective date, they could experience a period of market disruptions or high manual packaging costs. The final rule anticipates some difficulty in obtaining delivery of packaging equipment. The provision for petitions for stays of the effective date should largely eliminate cost impacts in these situations. Similarly, the 6-month effective date for labeling statements may impose added costs. The one-time change in labeling for all affected products is expected to cost $5 to $10 million. The agency does not believe that the industry will experience significant costs for stocks of obsolete packaging at the 6-month effective date.

The 15-month retail level effective date may result in some returns of non-tamper-resistant packages to manufacturers. The agency believes that any such returns will be very small in volume, will not occur at the wholesale level, and will be confined to the smallest retail outlets. The agency's stated intent to reconsider this effective date after it has an opportunity to observe the market effects of the final rule supports the conclusion that the cost of obsolete stock returns will be insignificant.

Thus, the agency believes that the total cost of conversion to tamper-resistant packaging would not be sufficient even in its entirety to warrant designation of the rule as a major rule. Moreover, it is the obvious intention of major industry segments to proceed with tamper-resistant packaging regardless of any regulation. Therefore, the net cost impact attributable to the final rule is far below that which would require a regulatory impact analysis.

Because these regulations are issued as a final rule without being preceded by general notice of proposed rulemaking, a final regulatory analysis under section 604 of the Regulatory Flexibility Act (94 Stat. 1167) is not required. In any event, the rule will not have a significant economic impact on a substantial number of small entities. A comparatively few large firms dominate the OTC drug market with the 20 largest firms accounting for about two-thirds of sales. These large firms will probably utilize the more expensive, high-volume packaging equipment. Moreover, exemptions and petitions for a stay are available to small firms that may have difficulty complying with the provisions of this final rule.

VI. Environmental impact

The agency has determined pursuant to 21 CFR 25.24(d) (12) and (13) (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 statement is required.

List of Subjects

21 CFR Part 211

Drugs—Manufacturing, Labeling, Laboratories, Packaging and containers, Warehouses.

21 CFR Part 314

Administrative practice and procedure, Drugs.

21 CFR Part 700

Cosmetics, Definitions, Prohibited cosmetic ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 501, 502, 505, 506, 507, 601, 602, 701, 52 Stat. 1049–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 321(n), 351, 352, 355, 356, 357, 361, 362, 371)) and under 21 CFR 5.11 as revised (see 47 FR 16010; April 14, 1982), Parts 211, 314, and 700 are amended as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

1. Part 211 is amended by adding new § 211.132 to read as follows:

§ 211.132 Tamper-resistant packaging requirements for over-the-counter human drug products.

(a) *General.* Because most over-the-counter (OTC) human drug products are not now packaged in tamper-resistant retail packages, there is the opportunity

for the malicious adulteration of OTC drug products with health risks to individuals who unknowingly purchase adulterated products and with loss of consumer confidence in the security of OTC drug product packages. The Food and Drug Administration has the authority and responsibility under the Federal Food, Drug, and Cosmetic act (the Act) to establish a uniform national requirement for tamper-resistant packaging of OTC drug products that will improve the security of OTC drug packaging and help assure the safety and effectiveness of OTC drug products. An OTC drug product (except a dermatological, dentifrice, or insulin product) for retail sale that is not packaged in a tamper-resistant package or that is not properly labeled under this section is adulterated under section 501 of the act or misbranded under section 502 of the act, or both.

(b) *Requirement for tamper-resistant package.* Each manufacturer and packer who packages an OTC drug product (except a dermatological, dentifrice, or insulin product) for retail sale, shall package the product in a tamper-resistant package. A tamper-resistant package is one having an indicator or barrier to entry which, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred. To prevent the substitution of the tamper-resistant feature after tampering, the indicator or barrier to entry is required to be distinctive by design (e.g., an aerosol container) or by the use of an identifying characteristic. A tamper-resistant package may involve an immediate-container and closure system or secondary-container or carton system or any combination of systems intended to provide a visual indication of package integrity. The tamper-resistant feature must remain intact when handled in a reasonable manner during manufacture, distribution, and retail display.

(c) *Labeling.* Each retail package of an OTC drug product covered by this section is required to contain a statement that is prominently placed so that consumers are alerted to the specific tamper-resistant feature of the package. The labeling statement is required to be so placed that it will be unaffected if the tamper-resistant feature of the package is breached or missing.

(d) *Requests for exemptions from packaging and labeling requirements.* A manufacturer or packer may request an exemption from the packaging and labeling requirements of this section. A request for an exemption is required to be submitted in the form of a citizen petition under § 10.30 of this chapter and should be clearly identified on the envelope as a "Request for Exemption from Tamper-resistant Rule." The petition is required to contain the following:

(1) The name of the drug product or, if the petition seeks an exemption for a drug class, the name of the drug class, and a list of products within that class.

(2) The reasons that the drug product's compliance with the tamper-resistant packaging or labeling requirements of this section is unnecessary or cannot be achieved.

(3) A description of alternative steps that are available, or that the petitioner has already taken, to reduce the likelihood that the product or drug class will be the subject of malicious adulteration.

(4) Other information justifying an exemption.

This information collection requirement has been approved by the Office of Management and Budget under number 0910–0149.

(e) *OTC drug products subject to approved new drug applications.* Holders of approved new drug applications for OTC drug products are required under § 314.8 (a) (4)(vi), (5)(xi), or (d)(5) of this chapter to provide for changes in packaging, and under § 314.8(a)(5)(xii) to provide for changes in labeling to comply with the requirements of this section.

(f) *Poison Prevention Packaging Act of 1970.* This section does not affect any requirements for "special packaging" as defined under § 310.3(1) of this chapter and required under the Poison Prevention Packaging Act of 1970.

(g) *Effective date.* OTC drug products, except dermatological, dentifrice, and insulin products, are required to comply with the requirements of this section on the dates listed below except to the extent that a product's manufacturer or packer has obtained an exemption from a packaging or labeling requirement.

(1) *Initial effective date for packaging requirements.* (i) The packaging requirement in paragraph (b) of this section is effective on February 7, 1983 for each affected OTC drug product (except oral and vaginal tablets and vaginal and rectal suppositories) packaged on or after that date, except for the requirement in paragraph (b) of this section for a distinctive indicator or barrier to entry.

(ii) The packaging requirement in paragraph (b) of this section is effective on May 5, 1983 for each OTC drug product that is an oral or vaginal tablet or a vaginal or rectal suppository packaged on or after that date.

(2) *Initial effective date for labeling requirements.* The requirement in paragraph (b) of this section that the indicator or barrier to entry be distinctive by design and the requirement in paragraph (c) of this section for a labeling statement are effective on May 5, 1983 for each affected OTC drug product packaged on or after that date.

(3) *Retail level effective date.* The tamper-resistant packaging requirement of paragraph (b) of this section is effective on February 6, 1984 for each affected OTC drug product held for sale on or after that date that was packaged before May 5, 1983. This does not include the requirement in paragraph (b) of this section that the indicator or barrier to entry be distinctive by design. Products packaged after May 5, 1983 must be in compliance with all aspects of the regulations without regard to the retail level effective date.

PART 314—NEW DRUG APPLICATIONS

2. Part 314 is amended in § 314.8 by revising the first sentence in paragraph (a) (4) (vi) and (5) (xi), by revising paragraph (a) (5) (xii), and by revising the first sentence in paragraph (d) (5) to read as follows:

§ 314.8 Supplemental applications.

(a) * * *

(4) * * *

(vi) A change in container to provide for "special packaging" as defined in § 310.3(1) of this chapter pursuant to the requirements of regulations under the Poison Prevention Packaging Act of 1970 or to provide for tamper-resistant packaging under § 211.132 of this chapter. * * *

(5) * * *

(xi) Changes which provide for "special packaging" as defined in § 310.3(1) of this chapter which are in the form of an "overcap" to the existing closure of a container without any other changes in the container/closure system or provide for tamper-resistant packaging under § 211.132 of this chapter. * * *

(xii) Addition to the labeling of such statements as required by the Poison Prevention Act of 1970 or regulations promulgated thereunder or required for tamper-resistant packaging under § 211.132 of this chapter.

* * * * *

(d) * * *

(5) Changes which provide for "special packaging" as defined in § 310.3(1) of this chapter other than the use of an additional closure as provided

for in paragraph (a)(5)(xi) of this section, where the composition of the container, the torque (tightness) of the container, and the composition of the closure component in contact with the drug (cap liner or innerseal) remain the same as provided in the approved new drug application or provide for tamper-resistant packaging under § 211.132 of this chapter.

PART 700—GENERAL

3. Part 700 is amended by adding new § 700.25 to read as follows:

§ 700.25 Tamper-resistant packaging requirements for cosmetic products.

(a) *General.* Because most cosmetic liquid oral hygiene products and vaginal products are not now packaged in tamper-resistant retail packages, there is the opportunity for the malicious adulteration of those cosmetic products with health risks to individuals who unknowingly purchase adulterated products and with loss of consumer confidence in the security of cosmetic product packages. The Food and Drug Administration has the authority and responsiblity under the Federal Food, Drug, and Cosmetic Act (the act) to establish a uniform national requirement for tamper-resistant packaging of cosmetic liquid oral hygiene products or products used vaginally that will improve the packaging security and help assure the safety of those products. Such a cosmetic product for retail sale that is not packaged in a tamper-resistant package or that is not properly labeled under this section is adulterated under section 601 of the act or misbranded under section 602 of the act, or both.

(b) *Requirement for tamper-resistant package.* Each manufacturer and packer who packages a cosmetic liquid oral hygiene product or vaginal product for retail sale shall package the product in a tamper-resistant package. A tamper-resistant package is one having an indicator or barrier to entry which, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred. To prevent substitution of the tamper-resistant feature after tampering the indicator or barrier to entry is required to be distinctive by design (e.g., an aerosol container) or by the use of an identifying characteristic. A tamper-resistant package may involve an immediate-container and closure system or secondary-container or carton system or any combination of systems intended to provide a visual indication of package integrity. The tamper-resistant feature must remain intact when handled in a reasonable manner during manufacture, distribution, and retail display.

(c) *Labeling.* Each retail package of a cosmetic product covered by this section is required to contain a statement that is prominently placed so that consumers are alerted to the specific tamper-resistant feature of the package. The labeling statement is required to be so placed that it will be unaffected if the tamper-resistant feature of the package is breached or missing.

(d) *Requests for exemptions from packaging and labeling requirements.* A manufacturer or packer may request an exemption from the packaging and labeling requirements of this section. A request for an exemption is required to be submitted in the form of a citizen petition under § 10.30 of this chapter and should be clearly identified on the envelope as a "Request for Exemption from Tamper-resistant Rule." The petition is required to contain the following:

(1) The name of the product.

(2) The reasons that the product's compliance with the tamper-resistant packaging or labeling requirements of this section is unnecessary or cannot be achieved.

(3) A description of alternative steps that are available, or that the petitioner has already taken, to reduce the likelihood that the product will be the subject of malicious adulteration.

(4) Other information justifying an exemption.

This information collection requirement has been approved by the Office of Management and Budget under number 0910–0149.

(el) *Effective date.* Cosmetic products covered by this section are required to comply with the requirements of this section on the dates listed below except to the extent that a product's manufacturer or packer has obtained an exemption from a packaging or labeling requirement.

(1) *Initial effective date for packaging requirements.* (i) The packaging requirement of paragraph (b) of this section is effective on Feburary 7, 1983 for each affected cosmetic product (except vaginal tablets) packaged on or after that date, except for the requirement in paragraph (b) of this section for a distinctive indicator or barrier to entry.

(ii) The packaging requirement of paragraph (b) of this section is effective on May 5, 1983 for each cosmetic product that is a vaginal tablet packaged on or after that date.

(2) *Initial effective date for labeling requirements.* The requirement in paragraph (b) of this section that the indicator or barrier to entry be distinctive by design and the requirement in paragraph (c) of this section for a labeling statement are effective on May 5, 1983 for each affected cosmetic product packaged on or after that date.

(3) *Retail level effective date.* The tamper-resistant packaging requirement of paragraph (b) of this section is effective February 6, 1984 for each affected cosmetic product held for sale on or after that date that was packaged before May 5, 1983. This does not include the requirement in paragraph (b) of this section that the indicator or barrier to entry be distinctive by design. Products packaged after May 5, 1983 must be in compliance with all aspects of the regulations without regard to the retail level effective date.

Interested persons may, on or before December 6, 1982, submit to the Dockets Management Branch (address above) written comments regarding this final rule. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above and between 9 a.m. and 4 p.m., Monday through Friday.

Effective dates. These regulations are effective November 5, 1982, with the following exceptions:

(1) Section 211.132(b) and (c).

(2) Section 700.25(b) and (c).

For the effective dates applicable to the specified sections, see §§ 211.132(g) and 700.25(c). Those sections provide that packaging requirements are effective February 7, 1983 for all OTC drug products subject to this rule (except oral and vaginal tablets and vaginal and rectal suppositories) and for cosmetic liquid oral hygiene products and liquid vaginal products packaged on or after that date. Labeling requirements for all products and packaging requirements for oral and vaginal tablets and vaginal and rectal suppositories are effective May 5, 1983. Products packaged prior to May 5, 1983, and held for sale at the retail level must be in compliance with the tamper-resistant packaging requirement, but not the distinctive indicator or barrier to entry or labeling requirements of the regulations by February 6, 1984.

(Secs. 201(n), 501, 502, 505, 506, 507, 601, 602, 701, 52 Stat. 1049–1056 as amended, 55 Stat.

851, 59 Stat. 463 as amended (21 U.S.C. 321(n), 351, 352, 355, 356, 357, 361, 362, 371))

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

Richard S. Schweiker,

Secretary of Health and Human Services.

Dated: November 3, 1982.

[FR Doc. 82-30645 Filed 11-4-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 200 and 800

[Docket No. 82N-0332]

Tamper-Resistant Packaging Requirements for Contact Lens Solutions and Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing additional requirements for tamper-resistant packaging of contact lens solutions and tablets used to make those solutions. These products are regulated as medical devices because they are accessories to medical devices, i.e., contact lenses. Contact lens solutions and tablets used to make these solutions are, like drugs, vulnerable to malicious adulteration. FDA is revising a regulation that now requires sealed packaging for contact lens solutions and is making conforming amendments in the provisions for opthalmic preparations that are regulated as drugs. FDA is adding to current requirements a new requirement for a distinctive indicator or barrier to entry which, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering had occurred. Also required is a statement on the labeling of the products to alert consumers to the tamper-resistant feature. This action is taken because of the recent cases of malicious adulteration of over-the-counter drug products that resulted in seven deaths in the Chicago area and the risk of similar episodes with other over-the-counter products.

DATES: The packaging requirements are initially effctive on February 7, 1983 for each liquid contact lens solution product packaged on or after that date. The distinctive indicator or barrier to entry and the labeling requirements for all contact lens solution products, as well as the packaging requirements for tablets intended to make such solutions, are initially effective on May 5, 1983. Products packaged prior to May 5, 1983 and held for sale at the retail level must be in compliance with the tamper-resistant packaging requirement, but not the distinctive indicator or barrier to entry or labeling requirements of the regulations by February 6, 1984. Comments by December 6, 1982. For further details see the effective dates information following the text of the regulations.

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: Joseph M. Sheehan, National Center for Devices and Radiological Health (HFK-140), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7114.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to require tamper-resistant packaging and related labeling for most over-the-counter (OTC) drug products for human use and for certain cosmetics.

FDA is now adding to the medical device regulations, as new § 800.10 (21 CFR 800.10), a current requirement now codified with the drug regulations (21 CFR 200.50) for sealed packaging of contact lens solutions, which are regulated as medical devices. FDA also is adding, in new § 800.12 (21 CFR 800.12), more specific requirements for tamper-resistant packaging and a new requirement for labeling alerting consumers not to purchase the product if the tamper-resistant feature has been altered. The requirements apply to solutions intended for use in cleaning, disinfecting, wetting, or storing contact lenses and to tablets intended to make such solutions. (Salt tablets not intended for such use would be subject to the regulations for OTC drugs.)

The new requirements are similar to those for OTC drugs. Contact lens solutions and tablets used to make these solutions resemble OTC drugs, may be introduced directly or indirectly into the eye, and are marketed at the retail level in the same way as OTC opthalmic drugs. They are, as a result, similarly vulnerable to malicious adulteration.

FDA recognized the susceptibility of ophthalmic preparations to tampering when it promulgated § 200.50(a)(3), which requires all ophthalmic preparations, including contact lens solutions, to have containers or individual cartons that are so sealed that the contents cannot be used without destroying the seal. This regulation was issued in response to contamination of ophthalmic products at the retail level by individuals using the products in the store and then returning them to the shelves, thus exposing those who later purchased the products to injury from contamination resulting from this kind of tampering. Section 200.50 applies to ophthalmic preparations whether regulated as drugs or as devices. When FDA issued this regulation in the **Federal Register** of October 28, 1972 (37 FR 23105), the agency regulated as drugs solutions used, for example, to clean, disinfect, wet, or store contact lenses and tablets used to make such solutions. Although certain contact lenses ("soft" lenses) were also regulated then as drugs, others ("hard" lenses) were regulated as devices. In 1976, as a part of the Medical Device Amendments (Pub. L. 94-295), Congress both strengthened FDA's authority to ensure that devices are safe and effective and broadened the definition of "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)). Under the broadened definition, all contact lenses and their accessories, including solutions, are treated as devices. Despite the change in statutory treatment of contact lens solutions, however, FDA has inadvertently left unchanged in the drug regulations the regulatory requirements in § 200.50, even though some provisions of this section apply to products now regulated as devices. (At one time, a single set of regulations covered drugs and devices. FDA recodified its regulations to establish Subchapter C on drugs (March 27, 1975; 40 FR 13996) and Subchapter H on medical devices (February 13, 1976; 41 FR 6896).)

Although § 200.50 has continued to apply to all contact lens solutions, this regulation alone is not enough. As is explained in the preamble to the rule on OTC drugs, a packaging requirement should be supplemented with a requirement of a distinctive indicator or barrier to entry which, if breached or missing, indicates tampering, as well as a labeling statement to enable consumers to detect tampering through knowledge that a tamper-resistant feature has been incorporated into the package design. The inadequacy of a packaging requirement alone is demonstrated by recent incidents in which ophthalmic OTC drug products subject to § 200.50 may have been maliciously adulterated, with subsequent injury to consumers. A distinctive indicator or barrier to entry, and a labeling statement describing the purpose of the tamper-resistant feature and cautioning against purchase if the feature were broken or absent, might have provided additional security in these cases.

Accordingly, FDA is now removing from § 200.50 those provisions that

pertain to contact lens solutions and tablets used to make these solutions and is establishing these provisions in new § 800.10. FDA also is publishing new § 800.12 applying to these solutions and tablets the same tamper-resistant packaging and labeling requirements as are being applied to OTC drugs. For brevity and efficiency, FDA is incorporating into this rulemaking proceeding the preamble to, and the administrative record of, the final rule on OTC drugs and certain cosmetics published elsewhere in this issue of the **Federal Register.** FDA also is removing from § 200.50 the original 1972 effective date provisions, which no longer are relevant.

EFFECTIVE DATES: The regulations become effective in three steps. The requirement that a tamper-resistant package be used is effective February 7, 1983 for lens solutions in liquid form, which are more vulnerable to tampering than are tablets used to make these solutions. Because of the requirement in § 200.50 of a sealed package, some of these products already should be packaged in conformity with the new requirement of a tamper-resistant package. An effective date of May 5, 1983 is provided for application of the tamper-resistant package requirement to tablets used to make lens solutions. The tablet dosage form is considered less susceptible to tampering because known methods of tampering are more difficult to apply to tablets without creating visible evidence that tampering has occurred. For all products, the label statement and the requirement of a distinctive indicator or barrier to entry are also effective on May 5, 1983. FDA believes that longer effective dates for those products for which malicious adulteration is less likely will permit manufacturers to comply more quickly with the requirement applicable to the more susceptible products without undue risk to consumers. The later effective date for the label statement and distinctive barrier requirements recognizes that these requirements, although important, are not as urgent as the need for adequate tamper-resistant packaging, and that it may take more time to arrange for the labeling and package design changes that must be made to comply with these provisions of the regulations.

The time limits selected by FDA also take into account information provided to the agency by the Proprietary Association, and relevant to this rule, concerning the capacity of the OTC drug industry to acquire necessary packaging equipment and integrate it into their production systems. As is discussed in further detail in the OTC drug rule published elsewhere in this issue of the **Federal Register,** making all the new requirements effective immediately or at the end of a comparatively short period of time, such as 3 months, would impose a serious strain on the packaging machinery industry to produce, and on affected manufacturers to acquire and put into place, the equipment needed to produce tamper-resistant packaging.

These regulations apply to all affected products produced in retail packaging on or after the effective dates. Applying the same effective date to products produced earlier than the effective date would require immediate withdrawal from the retail shelves or noncomplying products after 3- or 6-month effective dates, a result that would be impractical and disruptive to health care. Because of the need for the affected industry to avoid further incidents of tampering, and the incentive the industry has to maintain consumer confidence in OTC drug and cosmetic products, the agency anticipates that manufacturers will take prompt action to implement the provisions of these regulations even before the mandatory effective dates. FDA believes that, for this reason, the market will be significantly depleted of products in non-tamper-resistant packaging within a relatively short period of time.

However, in order to assure that at some defined future date all products covered by the rule are contained in tamper-resistant packaging (although without the labeling or distinctive design requirement), even to the retail level, the agency is establishing a retail level effective date of February 6, 1984 after which all products packaged before May 5, 1983 must be in compliance with the requirement that they be packaged in tamper-resistant packaging. (Products packaged after the May 5, 1983 effective date must be in compliance with all aspects of the regulations after that date, without regard to the retail level effective date. Products packaged after the February 7, 1983 effective date must be in compliance with the tamper-resistant packaging requirement after that date, without regard to the retail level effective date.) The agency believes that manufacturers will be encouraged to convert their product packaging to the non-tamper-resistant variety sooner if products meeting that requirement of the regulations that are packaged before May 5, 1983 are not subject to the retail level effective date with respect to the labeling and distinctive design requirement. Accordingly, the retail level effective date will not apply to the labeling and distinctive indicator or barrier to entry requirements of the regulations.

The agency acknowledges that it may prove difficult to meet this effective date. In that event, FDA must consider whether removal of all products that are not in compliance as of that date may have an adverse impact on the availability of some products in the marketplace and consequential disruption of health care. It is also possible that the quantity of noncomplying products remaining on the market by that time will be negligible, in which case a retail level effective date may be unnecessary. Because of the uncertainty involved in attempting to estimate the circumstances that will prevail at the time of the retail level effective date, the agency will review the need for such a date and what the date should be after it has had an opportunity to determine the effects of this regulation on the marketplace. Such review will take place long enough before the retail level effective date occurs for any change in that date to be taken into account by those who will be required to meet it. In addition, FDA will consider requests for stays in the retail level effective date on a case-by-case basis.

After the retail level effective date, products remaining on retail shelves that were packaged before May 5, 1983 that are not packaged in tamper-resistant packaging will be considered adulterated and misbranded. Given the unique circumstances that have made these regulations necessary, FDA will consider all feasible alternatives to dealing with noncomplying products remaining in trade channels.

If manufacturers cannot obtain necessary equipment in time to comply with the effective date provisions, it may be necessary to stay the effective date for particular products to avoid disruption of the market for these products. Stays under the citizen petition procedures in § 10.30 (21 CFR 10.30) may be requested for any aspect of the regulations, including those relating to the label statement and the use of a distinctive barrier to entry.

The agency will accept petitions for stays of the effective date, but only if manufacturers and packers adequately demonstrate that they have taken all reasonable steps to apply tamper-resistant packaging technology to their products, but cannot comply by the effective date or cannot get new labeling printed by the effective date. The showing must include a description of the tamper-resistant packaging technology the petitioner proposes to use; a description of the facilities and

equipment needed to apply that technology; a timetable identifying the date when the technology was chosen, the date when the facilities and equipment will be available for applying the technology to the product, and the date by which the product will be in compliance with the regulations. A lengthy stay will not be granted if the petitioner has selected a technology that will require a substantial period of time to obtain and apply and the petitioner could, without undue expense, adequately comply with the regulation by using another technology. To assist the agency in handling any petition for a stay of the effective date or for an exemption for a covered product, it is requested that the submission be clearly identified on the envelope as either a "Request for Exemption from Tamper-Resistant Rule" or "Request for Stay of Tamper-Resistant Rule." If a firm submits both a stay and an exemption for the same product, it is requested that each petition be submitted separately in its own envelope clearly marked as set forth above. Further, if a firm submits comments on the final rule, they should be submitted separately to the agency and not combined with either a request for a stay or request for an exemption.

Legal Authority; Preemption

The new requirements in § 800.12 for contact lens solutions and tablets, like those that are being moved to § 800.10, are issued under section 501(c) of the act (21 U.S.C. 351(c)). This provision requires devices to possess the strength, quality, and purity they are represented to have. See *Dean Rubber Mfg. Co.* v. *United States*, 356 F. 2d 161 (8th Cir. 1966). Because contamination by tampering of contact lens solutions and tablets could cause the requirements to be violated, FDA is authorized to impose packaging standards and related labeling requirements reasonably designed to prevent such contamination.

Other authority for the regulations is found in sections 502(c), 515, and 701(a) of the act (21 U.S.C. 352(c), 360(e), and 371(a)). Section 502(c) of the act deems a device to be misbranded "If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use." Section 515 of the act authorizes the establishment of requirements to provide reasonable assurance of the safety and effectiveness of devices, such as contact lens solutions and tablets, that are classified into class III (premarket approval). Section 701(a) of the act authorizes the promulgation of regulations, such as these, for the efficient enforcement of the foregoing provisions of the act.

State and local requirements applicable to tamper-resistant packaging would be preempted, for the reasons given in the OTC drug document and because of the express preemption provisions for medical device requirements in section 521 of the act (21 U.S.C. 360k).

FDA could also promulgate §§ 800.10 and 800.12 under the authority in section 520(f) of the act (21 U.S.C. 360j(f)) to issue good manufacturing practice regulations. The agency is not relying on section 520(f), however, because it has ample authority under the other provisions cited above. In addition, considering both the need to act promptly to respond to recent tampering incidents and the fact that FDA is merely strengthening a current packaging requirement, the delay that would be entailed in complying with the requirements of section 520(f) of the act of issuing a proposed rule, obtaining advisory committee recommendations, and holding an oral hearing would be unacceptable and unnecessary. Although FDA's current good manufacturing practice regulations (21 CFR Part 820) require device packages to be "designed and constructed to protect the device from adulteration or damage during the customary conditions of processing, storage, handling, and distribution" (21 CFR 820.130), this provision does not specifically address tampering. The current good manufacturing practice regulations are in no way superseded or otherwise affected by this rulemaking.

Good Cause To Issue a Final Regulation

The Administrative Procedure Act and FDA regulations provide that a general notice of proposed rulemaking need not be published in the **Federal Register** when the agency for good cause finds that "notice and public procedure * * * are impracticable, unnecessary, or contrary to the public interest." (5 U.S.C. 553(b)(B), 21 CFR 10.40(e)(1).) As discussed above and in the preamble to the OTC drug rule, the problems caused by malicious tampering are multiple and pose significant public health concerns. As reports of each new incident of malicious tampering receive wide exposure in the news media, the likelihood of further similar incidents increases. It is clearly in the public interest to move quickly to establish uniform regulatory standards that will enable manufacturers to implement tamper-resistant packaging and labeling requirements as efficiently and expeditiously as possible. Only by acting quickly can the agency hope to reduce the likelihood that additional tampering will occur or that other innocent purchasers will be harmed. In addition, a rapid response should enhance agency efforts to educate purchasers by alerting them to the problems and should help restore public confidence in the integrity of health care products in the marketplace.

The new requirements are based on standards and technology suggested by and discussed with representatives of the OTC drug manufacturing industry. Based in part on those discussions, which are technologically relevant to the packaging and labeling of contact lens solutions and tablets, the agency believes that the requirements are reasonable and that the timetable for compliance is attainable.

Therefore, the agency has concluded that because adequate protection of the public health requires that the new tamper-resistant packaging and labeling requirements be implemented as quickly as possible, there is good cause to issue these regulations as a final rule. See generally *Hercules, Inc.* v. *Environmental Protection Agency*, 598 F.2d 91, 126 (D.C. Cir. 1978).

The agency is providing a 30-day comment period and will review carefully all comments submitted during that period to determine the appropriateness of the revisions to the final rule.

Economic Considerations

The agency has carefully considered the economic effects of this rule and has concluded that it is not a major rule under Executive Order 12291 and would not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act. Most manufacturers already must comply with an existing regulation (§ 200.50). Although each such manufacturer will have to examine the more specific new packaging requirements to ensure compliance with them, and some may have to improve existing packaging, the costs expected to be incurred by manufacturers to comply with the packaging requirements are expected to be small. Manufacturers of contact lens solutions and tablets will need to comply with the new requirements of a label statement and a distinctive indicator or barrier to entry. The discussion of economic considerations in the preamble to the

OTC drug regulation, published elsewhere in this issue of the **Federal Register**, is relevant to the economic impact of the new labeling requirements to contact lens solution and tablet manufacturers. Because this provision is issued as a final rule without being preceded by general notice of proposed rulemaking, a final regulatory analysis under section 604 of the Regulatory Flexibility Act (94 Stat. 1167) is not required. In any event, the rule would not have a significant impact on a substantial number of small entities.

FDA has determined under 21 CFR 25.24(d)(13) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 200

Drugs, Prescription drugs.

21 CFR Part 800

Administrative practice and procedure, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 501, 502, 515, 521, 701, 52 Stat. 1049–1051 as amended, 1055–1056 as amended, 90 Stat. 552–559, 574 (21 U.S.C. 351, 352, 360e, 360k, 371)) and under 21 CFR 5.11 as revised (see 47 FR 16010; April 14, 1982), Parts 200 and 800 are amended as follows:

PART 200—GENERAL

1. Part 200 is amended in § 200.50 by revising paragraphs (a) and (c), to read as follows:

§ 200.50 Ophthalmic preparations and dispensers.

(a)(1) Informed medical opinion is in agreement that all preparations offered or intended for ophthalmic use, including preparations for cleansing the eyes, should be sterile. It is further evident that such preparations purport to be of such purity and quality as to be suitable for safe use in the eye.

(2) The Food and Drug Administration concludes that all such preparations, if they are not sterile, fall below their professed standard of purity or quality and may be unsafe. In a statement of policy issued on September 1, 1964, the Food and Drug Administration ruled that liquid preparations offered or intended for ophthalmic use that are not sterile may be regarded as adulterated within the meaning of section 501(c) of the Federal Food, Drug, and Cosmetic Act (the act), and, further, may be deemed misbranded within the meaning of section 502(j) of the act. This ruling is extended to affect all preparations for ophthalmic use. By this regulation, this ruling is applicable to ophthalmic preparations that are regulated as drugs. By the regulation in § 800.10 of this chapter, this ruling is applicable to ophthalmic preparations that are regulated as medical devices.

(3) The containers of ophthalmic preparations shall be sterile at the time of filling and closing, and the container or individual carton shall be so sealed that the contents cannot be used without destroying the seal. The packaging and labeling of ophthalmic preparations that are over-the-counter drugs shall also comply with § 211.132 of this chapter on tamper-resistant packaging requirements.

* * * * *

(c) Eye cups, eye droppers, and other dispensers intended for ophthalmic use should be sterile, and may be regarded as falling below their professed standard of purity or quality if they are not sterile. These articles, which are regulated as drugs if packaged with the drugs with which they are to be used, should be packaged so as to maintain sterility until the package is opened and be labeled, on or within the retail package, so as to afford adequate directions and necessary warnings to minimize the hazard of injury resulting from contamination during use.

PART 800—GENERAL

2. Part 800 is amended by adding new Subpart B, to read as follows:

Subpart B—Requirements for Specific Medical Devices

Sec.

800.10 Contact lens solution; sterility.

800.12 Contact lens solutions and tablets; tamper-resistant packaging.

Authority: Secs. 501, 502, 515, 521, 701, 82 Stat. 1049–1051 as amended, 1055–1056 as amended, 90 Stat. 552–559, 574 (21 U.S.C. 351, 352, 360e, 360k, 371).

Subpart B—Requirements for Specific Medical Devices

§ 800.10 Contact lens solutions; sterility.

(a)(1) Informed medical opinion is in agreement that all preparations offered or intended for ophthalmic use, including contact lens solutions, should be sterile. It is further evident that such preparations purport to be of such purity and quality as to be suitable for safe use in the eye.

(2) The Food and Drug Administration concludes that all such preparations, if they are not sterile, fall below their professed standard of purity or quality and may be unsafe. In a statement of policy issued on September 1, 1964, the Food and Drug Administration ruled that liquid preparations offered or intended for ophthalmic use that are not sterile may be regarded as adulterated within the meaning of section 501(c) of the Federal Food, Drug, and Cosmetic Act (the act), and, further, may be deemed misbranded within the meaning of section 502(j) of the act. By this regulation, this ruling is applicable to all preparations for ophthalmic use that are regulated as medical devices, i.e., contact lens solutions. By the regulation in § 200.50 of this chapter, this ruling is applicable to ophthalmic preparations that are regulated as drugs.

(3) The containers shall be sterile at the time of filling and closing, and the container or individual carton shall be so sealed that the contents cannot be used without destroying the seal. The packaging and labeling of these solutions shall also comply with § 800.12 on tamper-resistant packaging requirements.

(b) Liquid ophthalmic preparations packed in multiple-dose containers should:

(1) Contain one or more suitable and harmless substances that will inhibit the growth of microorganisms; or

(2) Be so packaged as to volume and type of container and so labeled as to duration of use and with such necessary warnings as to afford adequate protection and minimize the hazard of injury resulting from contamination during use.

(c) Eye cups, eye droppers, and other dispensers intended for ophthalmic use should be sterile, and may be regarded as falling below their professed standard of purity or quality if they are not sterile. These articles, which are regulated as medical devices unless packaged with the drugs with which they are to be used, should be packaged so as to maintain sterility until the package is opened and be labeled, on or within the retail package, so as to afford adequate directions and necessary warnings to minimize the hazard of injury resulting from contamination during use.

§ 800.12 Contact lens solutions and tablets; tamper-resistant packaging.

(a) *General.* Unless contact lens solutions used, for example, to clean, disinfect, wet, lubricate, rinse, soak, or store contact lenses and salt tablets to be used to make any such solutions are packaged in tamper-resistant retail packages, there is the opportunity for the malicious adulteration of these

products with risks both to individuals who unknowingly purchase adulterated products and to the public health through the loss of consumer confidence in the security of the packages of over-the-counter (OTC) health care products. The Food and Drug Administration has the authority and responsibility under the Federal Food, Drug, and Cosmetic Act (the act) to establish a uniform national standard for tamper-resistant packaging of those OTC products vulnerable to malicious adulteration that will improve the security of OTC packaging and help assure the safety and effectiveness of the products contained therein. A contact lens solution or tablet for retail sale that is not packaged in a tamper-resistant package and labeled in accordance with this section is adulterated under section 501 of the act or misbranded under section 502 of the act, or both.

(b) *Requirement for tamper-resistant package.* Each manufacturer or packer who packages for retail sale a product regulated as a medical device that is a solution intended for use with contact lenses, e.g., for cleaning, disinfecting, wetting, lubricating, rinsing, soaking, or storing contact lenses or tablets to be used to make any such solution shall package the product in a tamper-resistant package. A tamper-resistant package is one having an indicator or barrier to entry which, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred. The indicator or barrier to entry is required to be distinctive by design or by the use of an identifying characteristic. A tamper-resistant package may involve an immediate-container and closure system or secondary-container or carton system or any combination of systems intended to provide a visual indication of package integrity. The tamper-resistant feature should remain intact when handled in a reasonable manner during manufacture, distribution, and retail display.

(c) *Labeling.* Each retail package of a product subject to paragraph (b) of this section is required to contain a statement that is prominently placed so that consumers are alerted to the tamper-resistant feature of the package. The labeling statement is required to be so placed that it will be unaffected if the tamper-resistant feature of the package is breached or missing.

(d) *Requests for exemptions from packaging and labeling requirements.* A manufacturer or packer may request an exemption from the packaging and labeling requirements of this section. A request for an exemption is required to be submitted in the form of a citizen petition under § 10.30 of this chapter and should be clearly identified on the envelope as a "Request for Exemption from Tamper-resistant Rule." A petition for an exemption from a requirement of this section is required to contain the same kind of information about the product as is specified for OTC drugs in § 211.132(d) of this chapter. This information collection requirement has been approved by the Office of Management and Budget under number 0910–0150.

(e) *Products subject to approved premarket approval applications.* Holders of approved premarket approval applications for products subject to this section are required to submit supplements to provide for changes in packaging to comply with the requirement of paragraph (b) of this section unless these changes do not affect the composition of the container, the torque (tightness) of the container, or the composition of the closure component in contact with the contents (cap liner or innerseal) as these features are described in the approved premarket approval application. Other changes in packaging shall be the subject of a supplemental premarket approval application which is required to include data sufficient to show that these changes do not adversely affect the product.

(f) *Effective date.* Each product subject to this section is required to comply with the requirements of this section on the dates listed below except to the extent that the manufacturer or packer has obtained an exemption from a requirement:

(1) *Initial effective date for packaging requirements.* (i) The packaging requirement in paragraph (b) of this section is effective on February 7, 1983 for each contact lens solution packaged on or after that date, except for the requirement in paragraph (b) of this section for a distinctive indicator or barrier to entry.

(ii) The packaging requirement in paragraph (b) of this section is effective on May 5, 1983 for each tablet that is to be used to make a contact lens solution and that is packaged on or after that date.

(2) *Initial effective date for labeling requirements.* The requirements in paragraph (b) of this section for a distinctive indicator or barrier to entry and in paragraph (c) of this section for a labeling statement are effective on May 5, 1983 for each product subject to this section and packaged on or after that date.

(3) *Retail level effective date.* The tamper-resistant packaging requirement of paragraph (b) of this section is effective on February 6, 1984 for each product subject to this section that is held for sale at retail level on or after that date that was packaged before May 5, 1983. This does not include the requirement in paragraph (b) of this section that the indicator or barrier to entry be distinctive by design. Products packaged after May 5, 1983 must be in compliance with all aspects of the regulations without regard to the retail level effective date.

Interested persons may, on or before December 6, 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.

Effective dates. These regulations are effective November 5, 1982, with the following exceptions:

(1) Section 200.50 (a)(3).

(2) Sections 800.10 (a)(3) and 800.12 (b) and (c).

For the effective dates applicable to the specified sections, see §§ 211.132 (g) (published elsewhere in this issue of the **Federal Register**) and 800.12 (f). Those sections provide that the packaging requirements are initially effective on February 7, 1983 for each liquid contact lens solution product packaged on or after that date. The distinctive indicator or barrier to entry and the labeling requirements for all contact lens solution products, as well as the packaging requirements for tablets intended to make such solutions, are initially effective on May 5, 1983. Products packaged prior to May 5, 1983 and held for sale at the retail level must be in compliance with the tamper-resistent packaging requirement, but not the distinctive indicator or barrier to entry or labeling requirements of the regulations by February 6, 1984.

(Secs. 501, 502, 515, 521, 701, 52 Stat. 1049–1051 as amended, 1055–1056 as amended, 90 Stat. 552–559, 574 (21 U.S.C. 351, 352, 360e, 360k, 371))

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

Richard S. Schweiker,

Secretary of Health and Human Services.

Dated: November 3, 1982.

[FR. Doc. 82-30644 Filed 11-4-82: 8:45 am]

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