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Executive Order 12397 of December 23, 1982

National Commission on Social Security Reform

By the authority vested in me as President by the Constitution and laws of the United States of America, and specifically the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), it is hereby ordered that Section 2(b) of Executive Order No. 12335, establishing the National Commission on Social Security Reform, is hereby amended to provide as follows:

"The Commission shall make its report to the President by January 15, 1983."

THE WHITE HOUSE,
December 23, 1982.

Ronald Reagan
Presidential Documents

Memorandum of December 23, 1982

Renewal of Trade Agreements With the People's Republic of China—Finding and Determination Under Subsection 405(b)(1) of the Trade Act of 1974

Memorandum for the United States Trade Representative

Pursuant to my authority under Section 405 of the Trade Act of 1974 (19 U.S.C. 2435), I find that a satisfactory balance of concessions in trade and services has been maintained during the life of the Agreement on Trade Relations between the United States of America and the People's Republic of China. I further determine that actual or foreseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations have been satisfactorily reciprocated by the People's Republic of China.

This finding and determination shall be published in the Federal Register.

THE WHITE HOUSE,

[FR Doc. 82-35311
Filed 12-27-82; 10:45 am]
Billing code 3195-01-M
SUMMARY: The Office of Personnel Management is correcting minor inaccuracies and incomplete authority citations in its regulations under Title 5 of the Code of Federal Regulations (5 CFR). These amendments make no substantive changes to the regulations, but are issued to improve the technical integrity of 5 CFR by eliminating errors caused through administrative oversight.


FOR FURTHER INFORMATION CONTACT:
Laurel M. Burcham, (202) 254-5966.

SUPPLEMENTARY INFORMATION: In order to correct inaccuracies and omissions in its regulations, the Office of Personnel Management is making the following changes to Title 5 of the Code of Federal Regulations:

(1) In the heading of § 213.3201, the word "possible" is being replaced by the word "practicable." In final regulations published by OPM on April 3, 1982, (46 FR 20140) the word "practicable" appeared correctly in the table of contents but the word "possible" was inadvertently used in the section heading.

(2) In § 351.301, a reference to § 351.203(1) is being changed to § 351.203(h) due to a redesignation of that paragraph published on April 29, 1982 (45 FR 28301).

(3) A final rule correction published on August 21, 1981, (46 FR 42437) amended § 752.401 by revising paragraph (c)(8) rather than redesignating it as (c)(9). The paragraph replaced by the revision is being redesignated as (c)(9).

(4) The authority citations for several parts are being revised to reference the applicable sections of the United States Code or to correct Executive order citations.

Pursuant to section 553 of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking and the 30-day delay in effectiveness. The amendments are being made effective immediately because the changes involved are technical and clarifying in nature, and make no substantive alterations to the regulations. Publication before December 31, 1982, would enable the amendments to be incorporated in the 1983 edition of 5 CFR.

Donald J. Devine,
Director.

Accordingly, OPM is amending Title 5 of the Code of Federal Regulations as follows:

PART 213—EXCEPTED SERVICE

§ 213.3201 [Amended]

1. The heading for § 213.3201 is amended by removing the word "possible" and inserting in its place the word "practicable."

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

2. The authority for § 315.708 is revised to read as follows:

§ 315.708 Conversion based on service as a Presidential Management Intern.

* * * * *

(E.O. 12364, 47 FR 22931, May 24, 1982)

PART 351—REDUCTION IN FORCE

§ 351.301 [Amended]

3. In § 351.301, the reference to section "351.203(h)(1)" is removed and section "351.203(h)" is inserted in its place.

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

4. In Part 551, the authority for Subpart B is revised to read as follows:

Subpart B—Exemptions


PART 734—EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

5. The authority for Part 734 is revised to read as follows:


PART 738—OFFICE OF GOVERNMENT ETHICS

6. The authority for Part 738 is revised to read as follows:

PART 752—ADVERSE ACTIONS

7. In § 752.401(c), subparagraphs (9) through (14) are redesignated as subparagraphs (10) through (15) respectively; and a new subparagraph (9) is added to read as follows:

§ 752.401 Coverage.

(c) * * *

(9) Cancellation of a promotion to a position not classified prior to the promotion;

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

8. The authority citation for Part 950 is revised to read as follows:


DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 24

Organization and Functions; Rules of Procedure of Board of Contract Appeals, Department of Agriculture

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the jurisdiction of the Agriculture Board of Contract Appeals by deleting that provision related to referrals to the Board from the Commodity Credit Corporation and by excluding from the jurisdiction of the Board appeals from decisions of Forest Service officers with respect to disputes arising under grazing and special use permits issued by the Forest Service. Rules of Procedure to be followed in proceedings governed by the Contract Disputes Act are added to the presently published rules governing proceedings under the Board’s nonstatutory jurisdiction. These changes result from the enactment of the Contract Disputes Act, review of existing procedures, and consideration of USDA and public experience since 1974 with current procedures.

EFFECTIVE DATE: January 27, 1983.

FOR FURTHER INFORMATION CONTACT: Administrative Judge Jewel F. Lewis, Chair, USDA Board of Contract Appeals, (202) 447-2066 or (202) 447-7023.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published on pages 36554-36564 of the Federal Register of August 20, 1982, and invited comments for 60 days ending October 19, 1982. No public comments were received.

Only one change has been made to the proposed rules. An exclusion to the Board's nonstatutory jurisdiction has been reinstated at section 24.4(b)(2) to clarify that management and policy decisions reviewable under Forest Service administrative appeal procedures found at 36 CFR 211.19 (proposed to be revised as 36 CFR 211.18) are not within the Board's jurisdiction. The language used is identical to the exclusion presently found at § 24.4(e)(2) and was reinstated to make clear no change is intended in this regard.

This rule will clarify the Agriculture Board of Contract Appeal's jurisdiction and procedures as well as remove confusion about the jurisdictional responsibility within the U.S. Department of Agriculture for review of disputes on grazing and special use permits by placing under 36 CFR 211.18 all aspects of appeals relating to grazing and special use permits which currently would be brought under § 24.4(e).

Regulatory Impact

This action is a delegation of administrative authority and is, therefore, exempt from the requirements of Executive Order 12291.

Small Entity Impact

This rule will not have a significant economic impact on a substantial number of small entities. Therefore, an analysis of impacts on small entities is not required.

Environmental Impact

This rule relates to delegation of authority and the internal administration of the U.S. Department of Agriculture. Therefore, it does not constitute a major federal action affecting the quality of the human environment.

Paperwork Burden

This rule will impose no additional paperwork requirements on individuals or groups who appeal decisions of the Department of Agriculture to the Board of Contract Appeals, Department of Agriculture.

List of Subjects in 7 CFR Part 24

Administrative practice and procedure, Agriculture, Government contracts, Organization and functions [Government agencies].

For the reasons set forth above, Part 24, Subpart A—Organization and Functions, and Subpart B—Rules of Procedure, of Subtitle A of Title 7, Code of Federal Regulations is revised to read as follows:

PART 24—BOARD OF CONTRACT APPEALS, DEPARTMENT OF AGRICULTURE

Subpart A—Organization and Functions

Sec.

24.1 General.

24.2 Composition of the Board.

24.3 Presiding Administrative Judge.

24.4 Jurisdiction.

24.5 Time for filing notice of appeal.

24.6 Board location and address.

24.7 Public information.

24.8 Rules of procedure.

24.9 Definitions.

Subpart B—Rules of Procedure

24.21 Rules of Procedure of Agriculture Board of Contract Appeals—AGBCA.


Subpart A—Organization and Functions

§ 24.1 General.

The Board of Contract Appeals, United States Department of Agriculture (referred to as the “Board”) is an agency of the Department established by the Secretary of Agriculture in accordance with the requirements of the Contract Disputes Act of 1978 (Pub. L. 95–563, 41 U.S.C. 601–613). The provisions of 5 U.S.C. 551–559 (Administrative Procedure Act, 80 Stat. 378, as amended) are not applicable to proceedings before the Board except for the requirements under 5 U.S.C. 552 (81 Stat. 54) respecting public information, agency rules, opinions, orders, and records.

§ 24.2 Composition of the Board.

The Board consists of a Chair, Vice Chair, and other members, all of whom are attorneys at law duly licensed by a state, commonwealth, territory, or the District of Columbia. The Chair shall manage the business and operations of the Board, assign cases to members, and establish panels for cases. Except as provided in Rule 12.2 the Small Claims (Expedited) Procedure, and Rule 12.3 the Accelerated Procedure, § 24.21(b), and in Rule 9, Accelerated Procedure, § 24.21(c), decisions of the Board will be rendered by a panel of three Administrative Judges, and the decision
of the majority of the panel will constitute the decision of the Board. The Vice Chair shall perform the functions of the Chair upon request of the Chair or in the event of absence or inability of the Chair to act. Members are designated Administrative Judges.

§ 24.3 Presiding Administrative Judge.

The Chair acts as Presiding Administrative Judge, or designates a member of the Board to so act, in each proceeding. The Presiding Administrative Judge has power to:

(a) Rule upon motions and requests;
(b) Adjoin the hearing from time to time and change the time and place of hearing;
(c) Administer oaths and affirmations and take affidavits;
(d) Receive evidence;
(e) Order the taking of depositions;
(f) Admit or exclude evidence;
(g) Hear oral argument on facts or law;
(h) Consolidate appeals filed by two or more appellants; and
(i) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

In cases considered by the Board under § 24.4(b) the Chair is hereby delegated authority to request subpoenas pursuant to 5 U.S.C. 304.

§ 24.4 Jurisdiction.

(a) Statutory. Pursuant to the Contract Disputes Act of 1978 (Pub. L. 95-556, 41 U.S.C. 601–613), the Board shall consider and determine appeals from decisions of contracting officers relating to contracts entered into or after March 1, 1979, and, at the contractor’s election, contracts entered into prior to March 1, 1979, with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter. For purposes of this paragraph (a) the term “contracts” shall mean express or implied contracts made by the Department of Agriculture, agencies of the Department and the Commodity Credit Corporation, or by any other executive agency when such agency or the Board decide to hear or appeal certain aspects of such contracts.

(b) Non-statutory. (1) Pursuant to the Disputes Article of contracts, other than timber sale contracts, entered into prior to March 1, 1979, made by the Department of Agriculture, agencies of the Department and the Commodity Credit Corporation, the Board shall consider and determine appeals from decisions of contracting officers arising under such contracts unless election by the contractor brings the appeal under the statutory jurisdiction described in paragraph (a) of this section.

(2) The Board shall have jurisdiction of appeals from decisions of contracting officers of the Forest Service (as defined in § 24.9), in which the issue under appeal arises under the terms or provisions of timber sale contracts, except that:

(i) Appeals subject to Board jurisdiction involving Forest Service decisions under § 24.4(a), (c) or (d) shall be excluded from jurisdiction under this paragraph.
(ii) Appeals subject to administrative review under 36 CFR 212.18 involving management and policy decisions and not involving breach of contract shall be excluded from jurisdiction under this paragraph, and

(iii) No appeal under this paragraph shall lie where the relief sought is reformation of contract, monetary damages or amendment of contract at the discretion of the Forest Service to extend the term of the contract.


(d) Debarment. The Board shall have jurisdiction to hear and determine the issue of debarment and the period thereof, if any, on an appeal by a person debarred:

(1) By an authorized official of the Commodity Credit Corporation under 7 CFR 1400.6(d), or
(2) By an authorized official of the Department of Agriculture, under 41 CFR 4–1.604–1(b), or
(3) By an authorized official of the Farmers Home Administration, under Subpart C of Part 1918, Chapter XVIII of this title.

§ 24.5 Time for filing notice of appeal.

A notice of appeal under § 24.4(a) shall be filed within 90 days from the date of receipt of a contracting officer’s decision. (41 U.S.C. 606), a notice of appeal under § 24.4(b)(1) shall be filed within 30 days from the date of receipt of the decision of the contracting officer or within such different time as may be prescribed in the contract or other applicable regulation of the Department. A notice of appeal under § 24.4(b)(2) shall be filed within 30 days from the date of receipt of the decision of the contracting officer of the Forest Service. The time for filing a notice of appeal shall not be extended by the Board.

§ 24.6 Board location and address.

The Board of Contract Appeals is located in Washington, D.C. All correspondence and all documents to be filed with the Board should be addressed to the Board of Contract Appeals, United States Department of Agriculture, Washington, D.C. 20250. The Board’s telephone number is 202–447–7023.

§ 24.7 Public Information.

(a) The records of the Board are open to the public for inspection and copying at the office of the Board. Decisions and rulings of the Board shall be published from time to time and copies made available to the public upon request at cost of duplication except that the Board shall, in its discretion, have authority to make copies of decisions and rulings available at no charge in accordance with the Record Copying Policy and Procedures of the Department (39 FR 26090). Hearings before the Board shall be open to the public.

(b) Information which is to be made available for public inspection and copying under provisions of 5 U.S.C. 552(a)(2) and 7 CFR 1.2 may be obtained at the office of the Board. The address of the Board is set forth in § 24.6. Except for such information as is generally available to the public, requests should be in writing and submitted in accordance with 7 CFR 1.3 and paragraphs (c) and (d) of this § 24.7.

(c) Facilities for copying are available at the office of the Board.

(d) Facilities for inspection and copying are available during established office hours for the Board, usually 8:30 a.m. to 5:00 p.m., Monday through Friday. The Department of Agriculture has established a schedule of fees for copies of information. The Board charges for copies of records in accordance with the Department fee schedule.

(e) The Vice Chair is authorized to receive requests for records submitted in accordance with 7 CFR 1.3(a), and to make determinations regarding whether to grant or deny requests for records exempt from mandatory disclosure under the provisions of 5 U.S.C. 552(b). This official is authorized to (1) Extend the ten-day administrative deadline for reply pursuant to 7 CFR 1.6, (2) make discretionary releases pursuant to 7 CFR 1.11(b) of records exempt from mandatory disclosure, and (3) make determinations regarding the charging of fees.
(f) Appeals from denials of requests submitted under paragraph (c) of this section shall be submitted in accordance with 7 CFR 1.3(e) to the Chair, Board of Contract Appeals, Department of Agriculture, 12th Street and Independence Avenue, SW, Washington, D.C. 20250. The Chair shall determine whether to grant or deny the appeal and shall also make all necessary determinations relating to an extension of the twenty-day administrative deadline for reply pursuant to 7 CFR 1.8, discretionary release pursuant to 7 CFR 1.11(b) of records exempt from mandatory disclosure under 5 U.S.C. §52(b), and the charging of appropriate fees.

§ 24.8 Rules of procedure.

The Chair of the Board shall prescribe its Rules of Procedure and publish such Rules in Subpart B of this Part 24 and may prescribe and so publish amendments from time to time. The Rules of Procedure and any amendments thereto shall be consistent with this subpart.

§ 24.9 Definitions.

"Board" means the Board of Contract Appeals established under this Subpart.

"Contract" means any agreement entered into by the Department or its agencies or authorized officials with any person having the legal effect of a contract between the Department and such person.

"Contracting officer" means any person who, by appointment in accordance with applicable regulations, has the authority to enter into and administer contracts and make determinations and findings with respect thereto and includes the authorized representative of the contracting officer acting within the limits of his/her authority. For purposes of appeals under § 24.4(b)(2), "contracting officer of the Forest Service" means a Forest Supervisor, Forest and Range Experiment Station Director, Forest Products Laboratory Director, Area Director, Regional Forester, or the Chief, Forest Service, as the case may be, who is the person designated as the contracting officer under the contract, or any officer or employee of the Forest Service who is authorized to act in his/her stead.

"Department" means the United States Department of Agriculture.

"Government attorney" means the attorney of the Department designated to handle a particular appeal on behalf of the contracting officer.

"Person" means any individual, partnership, public or private corporation, association, agency or other legal entity.

Subpart B—Rules of Procedure

§ 24.21 Rules of Procedure of Agriculture Board of Contract Appeals—AGBCA.

(a) Preface to Rules.—(1) Time, computation and extensions. (i) All time limitations specified for various procedural actions are computed as minimums and are not to be fully exhausted if the action described can be accomplished in a lesser period. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time by either party shall be in writing and state good cause for the requested extension. The Board may grant such extensions on good cause shown except that the Board shall not extend the time prescribed under 7 CFR 24.5 for taking an appeal. (ii) Except as otherwise provided by law, in computing any period of time prescribed by these rules or any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day. If mailing is required, the date of the postmark shall be treated as the date action was taken.

(2) Ex parte Communications. No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members not to ex parte communication concerning the Board's administrative functions or procedures.

(b) Rules of Procedure Applicable to Appeals under the Contract Disputes Act of 1978. 41 USC 601 et seq. (7 CFR 24.4(a)).

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RULES

Preliminary Procedures

Rule 1. Appeals, How and When Taken

(a) Notice of Appeal—90 days. Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) Failure to Issue CO Decision—60 days—$50,000 or less. Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in paragraph (a) of this Rule 1, citing the failure of the contracting officer to issue a decision.

(c) Failure to Issue CO Decision—Reasonable Time—more than $50,000. Where the contractor has submitted a claim in excess of $50,000 to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (a) of this Rule 1, citing the failure to issue a decision.
(d) Stay Pending Final CO Decision. Upon docketing of appeals filed pursuant to paragraphs (b) or (c) of this Rule 1, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

Rule 2. Notice of Appeal, Contents of
A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the department and agency or bureau involved in the dispute, the decision from which the appeal is taken, and the amount in dispute if known. The notice of appeal should be signed by the appellant (the contractor making the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in Rule 6, may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

Rule 3. Docketing of Appeals
When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. A notice, and any supporting writing, shall be given to the appellant, with a copy of these rules, and to the contracting officer.

Rule 4. Preparation, Content, Organization, Forwarding, and Status of Appeal File
(a) Duties of Contracting Officer. Within 30 days of receipt of a letter from the Board transmitting the complaint, the contracting officer shall assemble and transmit to the Board through agency channels an appeal file in triplicate consisting of all documents pertinent to the appeal, including:
1. The decision from which the appeal is taken;
2. The contract, including specifications and pertinent amendments, plans, and drawings;
3. All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decisions was issued;
4. Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute, arranged in chronological order;
5. Any additional information considered relevant to the appeal.

(b) Duties of the Appellant. Within 30 days after receipt from the Board of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board in triplicate any documents not contained therein which the appellant considers relevant to the appeal.

(c) Organization of Appeal File. Documents in the appeal file may be original or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, titled, and indexed to identify the contents of the file.

(d) Lengthy Documents. Upon request by either party, the Board may waive the requirement to transmit to the other party through the Board copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to which such a waiver has been granted such party shall notify the other party that the document or a copy is available for inspection in the offices of the Board or of the party filing same.

(e) Status of Documents in Appeal File. Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing, or if there is no hearing, of settling the record. If such objection is made the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence either prior to hearing or prior to closing the record if there is no hearing, in accordance with Rules 13 and 20.

(f) Dispensing with Appeal File requirements. Notwithstanding the foregoing, the filing of the Rule 4(a) and (b) documents may be dispensed with by the Board either upon request of the appellant in the notice of appeal or thereafter upon stipulation of the parties.

Rule 5. Dismissal for Lack of Jurisdiction
Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

Rule 6. Pleadings
(a) Appellant—Complaint. Except as provided in Rule 12.2(b) and Rule 12.3(b), within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a Complaint setting forth simple, concise, and direct statements of each of its claims. The Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim, and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a Complaint, although no particular form is required. Upon receipt of the Complaint, the Board shall serve a copy of it upon the Government. Should the Complaint not be filed within 30 days, appellant's claim and appeal may, if it is the opinion of the Board that the issues before the Board are sufficiently defined, be deemed to be set forth in the Complaint and the Government shall be so notified.

(b) Government—Answer. Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government, shall prepare and file with the Board an original and two copies of an Answer thereto. The Answer shall set forth any appropriate and direct statements of Government's defenses to each claim asserted by appellant, including any affirmative defenses available. Upon receipt of the Answer, the Board shall serve a copy upon appellant. Should the Answer not be filed within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

Rule 7. Amendments of Pleadings or Record
The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the Complaint or Answer, or to reply to an Answer. The Board, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

Rule 8. Hearing Election
After filing of the Government's Answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether it elects to submit its case on the record without a hearing, as prescribed in Rule 11.

Rule 9. Prehearing Briefs
Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. If the Board does not require prehearing briefs either party may, in its discretion, and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

Rule 10. Prehearing or Presubmission Conference
(a) Conference. Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may, upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an Administrative Judge or examiner of the Board for a conference to consider:
1. Simplification, clarification, or severing of the issues;
2. The possibility of obtaining stipulations, admissions, agreements and rulings on
admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate discovery;

(4) Limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(5) The possibility of agreement disposing of any or all of the issues in dispute; and

(6) Such matters as may aid in the disposition of the appeal.

Rule 11. Submission Without a Hearing

Either party may elect to waive a hearing and to submit its case upon the record before the Board, as set forth in Rule 12. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with Rule 23.

Rule 12. Optional SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures

Notwithstanding any other provisions of these Rules of Procedure, the SMALL CLAIMS (EXPEDITED) and ACCELERATED procedures shall be available solely at the election of the appellant.

Rule 12.1 Elections to Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures

(a) SMALL CLAIMS (EXPEDITED)—$10,000 or less. In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election. The details of this procedure appear in Rule 12.2.

(b) ACCELERATED—$50,000 or less. In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election. The details of this procedure appear in Rule 12.3.

(c) Time for Election. The appellant's election of the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made by written notice within 60 days after receipt of notice of docketing the appeal unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board for good cause.

(d) Board Determines Amount in Dispute. In deciding whether the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure is applicable to a given appeal, the Board shall determine the amount in dispute.

Rule 12.2 The SMALL CLAIMS (EXPEDITED) Procedure

(a) Time Periods for Proceedings. In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply:

1. Within ten days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, the appellant's claim letter or letters, if any; remaining documents required under Rule 4 shall be submitted in accordance with times specified in that rule if the Board otherwise directs.

2. Within thirty days after the Board has acknowledged receipt of the appellant's notice of election, the assigned administrative judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) satisfy and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal involved; (iii) determine whether the appellant wants a hearing, and if so, fix a time and place therefor; (iv) require the Government to furnish all the additional documents relevant to the appeal, and (v) establish an expedited schedule for resolution of the appeal.

(b) Decisions—120 days. Pleadings, discovery and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decision within the 180-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 180-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record, and the filing of briefs, if any.

(c) Form of decisions. Written decisions by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chair or a Vice Chair or other designated Administrative Judge, or by a majority among these two and an additional designated member in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the ACCELERATED procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under Rule 28.

(d) No Precedent—Not Appealable. A decision against the Government or the contractor shall have no value as precedent, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

Rule 12.3 The ACCELERATED Procedure

(a) Time Periods for Proceedings. In cases proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules, including Rule 4, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision.

(b) Decisions—180 days. Pleadings, discovery and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decision within the 180-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 180-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record, and the filing of briefs, if any.

(c) Form of decisions. Written decisions by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chair or a Vice Chair or other designated Administrative Judge, or by a majority among these two and an additional designated member in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the ACCELERATED procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under Rule 28.

Rule 12.4 Motions for Reconsideration in Rule 12 cases

Motions for Reconsideration in cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be...
decided within the original 120-day or 180-
day limit, but all such motions shall be
processed and decided rapidly so as to fulfill
the intent of this Rule.

Rule 12. Settling the Record
(a) Components of the Record. The record
upon which the Board's decision will be
rendered consists of the documents furnished
under Rules 4 and 12, to the extent admitted
in evidence, and the following items, if any:
pleadings, prehearing conference memorandum
or orders, prehearing briefs, depositions or
interrogatories received in evidence,
admissions, stipulations, transcripts of
conferences and hearings, hearing exhibits,
posthearing briefs, and documents which the
Board has specifically designated be made a
part of the record. The record will, at all
reasonable times, be available for inspection
by the parties at the office of the Board.
(b) Closing Dates for Inclusion of Material.
Except as the Board may otherwise order in
its discretion, no proof shall be received in
evidence after completion of an oral hearing
or, in cases submitted on the record, after
notification by the Board that the case is
ready for decision.
(c) Weight Given to Evidence. The weight
to be given to any evidence of record will be
rested within the sound discretion of the Board.
The Board may in any case require either
party, with appropriate notice to the other
party, to submit additional evidence on any
matter relevant to the appeal.

Rule 14. Discovery—Depositions
(a) General Policy and Protective Orders.
The parties are encouraged to engage in
voluntary discovery procedures. In
connection with any deposition or other
discovery procedure, the Board may make
any order required to protect a party or
person from annoyance, embarrassment, or
undue burden or expense. Those orders may
include limitations on the scope, method, time
and place for discovery, and provisions for
protecting the secrecy of confidential
information or documents.
(b) When Depositions Permitted. After an
appeal has been docketed and complaint filed,
the parties may mutually agree to, or
the Board may, upon application of either
party, order the taking of testimony of any
person by deposition upon oral examination
or written interrogatories before any officer
authorized to administer oaths at the place of
examination, for use as evidence or for
purpose of discovery. The application for
order shall specify whether the purpose of the
deposition is discovery or for use as
evidence.
(c) Orders on Depositions. The time, place,
and manner of taking depositions shall be as
mutually agreed by the parties, or failing such
agreement, governed by the order of the Board.
(d) Use As Evidence. No testimony taken
by depositions shall be considered as part of
the evidence in the hearing of an appeal until
such testimony is offered and received in
evidence at such hearing. It will not
ordinarily be received in evidence if the
defendant is present and can testify at the
hearing. In such instances, however, the
deposition may be used to contradict or
impeach the testimony of the defendant given
at the hearing. In cases submitted on the
record, the Board may, in its discretion,
receive depositions to supplement the record.
(e) Expenses. Each party shall bear its own
expenses associated with the taking of any
deposition.
(f) Subpoenas. Where appropriate, a party
may request the issuance of a subpoena
under the provisions of Rule 21.

Rule 15. Interrogatories to Parties, Admission of Facts, and Production and Inspection of
Documents
After an appeal has been docketed and
complaint filed with the Board, a party may
serve on the other party: (a) Written
interrogatories to be answered separately in
writing and served on the other party within
30 days after service; the authenticity of any
documents, to be answered or objected to within
30 days after service; the factual statements and the
authenticity of the documents to be deemed
admitted upon failure of a party to respond to
the request; and (c) a request for the
admission of specified facts and the authenticity
of any documents, to be answered or objected to within
30 days after service; the factual statements and the
authenticity of the documents to be deemed
admitted upon failure of a party to respond to
the request and (c) a request for the
production, inspection and copying of any
documents or objects not privileged, which
reasonably may lead to the discovery of
admissible evidence. Any discovery engaged
in under this Rule shall be subject to the
provisions of Rule 14(a) with respect to
general policy and protective orders and of
Rule 33 with respect to sanctions.

Rule 16. Service of Papers other than
Subpoenas
Papers shall be served personally or by
mail, addressed to the party upon whom
service is to be made. Copies of Complaints,
Answers and briefs shall be served directly
with the Board. The party filing any other
paper with the Board shall send a copy
thereof to the opposing party, noting on the
paper filed with the Board that a copy has
been so furnished. Subpoenas shall be served
as provided in Rule 21.

Hearings
Rule 17. Where and When Held
Hearings will be held at such places
set by the Board to best serve the
interests of the parties and the Board.
Hearings will be scheduled at the discretion
of the Board with due consideration to the
regular order of appeals, Rule 12
requirements, and other pertinent factors. On
request or motion by either party and for
good cause, the Board may, in its discretion,
adjourn the date of a hearing.

Rule 18. Notice of Hearings
The parties shall be given at least 15 days' notice of the time and place set for hearings.
In scheduling hearings, the Board will
consider the desires of the parties and the
requirement for just and inexpensive
determination of appeals without
unnecessary delay.

Rule 19. Unexcused Absence of a Party
The unexcused absence of a party at the
time and place set for hearing will not be
occasion for delay. In the event of such
absence, the hearing will proceed and the
case will be regarded as submitted by the
absent party as provided in Rule 11.

Rule 20. Hearings: Nature; Examination of
Witnesses
(a) Nature of Hearings. Hearings shall be
as informal as is reasonably and
appropriate under the circumstances.
Appellant and the Government may offer
such evidence as they deem appropriate and
as would be admissible under the Federal
Rules of Evidence or in the sound discretion
of the presiding Administrative Judge or
examiner. Stipulations of fact agreed upon by
the parties may be regarded and used as
evidence at the hearing. The parties may
stipulate the testimony that would be given
by a witness if the witness were present. The
Board may require evidence in addition to
that offered by stipulation.

(b) Examination of Witnesses. Witnesses
before the Board will be examined orally
under oath or affirmation, unless the
presiding Administrative Judge or examiner
shall otherwise order. If the testimony of a
witness is not given under oath, the Board
may advise the witness that his
statements may be subject to the provisions of Title 18,
United States Code, sections 287 and 1001,
and any other provision of law imposing
penalties for knowingly making false
representations in connection with claims
against the United States or in any matter
within the jurisdiction of any department or
agency thereof.

Rule 21. Subpoenas
(a) General. Upon written request of either
party filed with the recorder, or on the
initiative of the Administrative Judge to
whom a case is assigned, or who is otherwise
designated by the Chair, such Administrative
Judge may issue a subpoena requiring:
(1) Testimony at a deposition—the
deposition of a witness in the city or county
where such witness resides or is employed or
transacts business in person, or at another
location convenient for such witness that is
specifically determined by the Board.
(2) Testimony at a hearing—the attendance
of a witness for the purpose of taking

(a) Nature of Hearings. Hearings shall be
as informal as is reasonable and
appropriate under the circumstances.
Appellant and the Government may offer
such evidence as they deem appropriate and
as would be admissible under the Federal
Rules of Evidence or in the sound discretion
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witness is not given under oath, the Board
may advise the witness that his
statements may be subject to the provisions of Title 18,
United States Code, sections 287 and 1001,
and any other provision of law imposing
penalties for knowingly making false
representations in connection with claims
against the United States or in any matter
within the jurisdiction of any department or
agency thereof.
(2) A request for a subpoena shall state the reasonable and specific nature of the testimony and of any books and papers sought.

(d) Requests to Quash or Modify. Upon written request by the person subpoenaed or by a party, made within five days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for any other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) Form; Issuance.

(1) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony and, if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge shall sign the subpoena and may, in the Judge's discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781-1784.

(f) Service.

(1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place.

A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena, upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(g) Contumacy or Refusal to Obey a Subpoena. In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

Rule 22. Copies of Papers

When books, records, papers, or documents have been received in evidence, a true copy thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

Rule 23. Posthearing Briefs

Posthearing Briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding Administrative Judge or examiner at the conclusion of the hearing.

Rule 24. Transcript of Proceedings

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under Rule 12.2. Transcripts or copies of the proceedings shall be made available by the Board to the Government attorney. Appellant may order transcripts of the proceedings from the contract reporter at the hearing at actual cost of duplication (Pub. L. 92-463, October 6, 1972, 86 Stat. 770, 5 U.S.C. App. 1).

Rule 25. Withdrawal of Exhibits

After a decision has become final, the Board may upon request and after notice to the other party, in its discretion and in the discretion of the Board, permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

Rule 26. The Appellant

An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members, or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

Rule 27. The Government

Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney in the form specified by the Board from time to time. Whenever appellant and the Government counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal. However, if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

Miscellaneous

Rule 28. Decisions

Decisions of the Board will be made in writing and authenticated copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board in Washington, D.C. Decisions of the Board will be made solely upon the record, as described in Rule 13.

Rule 29. Motion for Reconsideration

A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

Rule 30. Dismissal Without Prejudice

In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause for suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

Rule 31. Dismissal or Default for Failure To Prosecute or Defend

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 33. If good cause is not shown the Board may take appropriate action.

Rule 32. Remand from Court

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders of the Board or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 33. If good cause is not shown the Board may take appropriate action.

Rule 33. Sanctions

If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

Rule 34. Applicability of These Rules

These Rules of Procedure shall apply to contracts made by agencies described in
It should be signed personally by the appellant (the contractor making the appeal), or by an officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in Rule 4 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint if it otherwise fulfills the requirements of a complaint.

Rule 3. Forwardsing of Appeals

When a notice of appeal in any form has been received by the contracting officer, the date of mailing (or date of receipt, if otherwise conveyed) shall be endorsed thereon by the contracting officer. The contracting officer shall forward the original and one copy of the notice of appeal to the Board within 10 days through agency channels. The agency office receiving such notice of appeal shall forward the original and one copy to the Board of Contract Appeals, United States Department of Agriculture, Washington, D.C. 20250, not later than 15 days from the date of receipt from its contracting officer. Following receipt by the Board of such notice of appeal, the Board will notify the appellant (contractor) and the contracting officer of the docketing of the appeal and will furnish a copy of these rules to the appellant.

Rule 4. Complaint

A complaint shall be filed by appellant with the Board not later than the date prescribed by letter from the Board except where the Board treats the notice of appeal as the complaint. The complaint shall contain simple, concise and direct statements of each claim and the dollar amount claimed, alleging the basis for each claim with appropriate reference to contract provisions. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form or formality is required. If a complaint is not timely filed, the Board may treat the notice of appeal as the complaint if it deems the issues to be sufficiently defined. The Board will notify the Government attorney of any such determination.

Rule 5. Appeal File

(a) Duties of contracting officer. The contracting officer shall assemble and file with the Board, within the time prescribed by letter from the Board, three copies of all documents pertinent to the appeal as an appeal file including as applicable but not necessarily limited to:

The decision and findings of fact from which appeal is taken;
(2) The contract including pertinent specifications, amendments, plans and drawings;
(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which decision was issued;
(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and
(5) Any additional information considered pertinent.

(b) Organization of appeal file. Documents in the appeal file may be originals or legible facsimile or authenticated copies thereof, and shall be arranged in chronological order, where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(c) Board action upon receipt of appeal file. The Board upon receipt of the appeal file from the contracting officer will send a copy thereof to appellant and to the Government attorney. The appellant and the Government attorney may supplement the appeal file by filing with the Board three copies of any additional documents not contained in the appeal file assembled by the contracting officer which appellant or the Government attorney believes are also pertinent to the appeal. Such filings shall be made with the Board within the time prescribed by the Board. The Board upon receipt of any such additional documents will send a copy thereof to the other party.

(d) Status of documents in appeal file. Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision, unless a party objects to the consideration of a particular document in advance of hearing or of closing the record in the event there is no hearing on the appeal. If objection to a document is made, the Board will rule upon its admissibility into the record as evidence.

(e) Lengthy documents. The Board may waive the requirement of including in the copy of the appeal file the additional documents not contained in the record in the event there is no hearing on the appeal. If objection to a document is made, the Board will rule upon its admissibility into the record as evidence.

The Government attorney will be requested by the Board to file an answer on behalf of the contracting officer after the complaint has been filed. The answer shall be filed with the Board within the time prescribed by letter from the Board and shall be in an original and two copies setting forth simple, concise, and direct statements of defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counterclaims as appropriate. The Board will send a copy of the answer to appellant. If a counterclaim is filed, an opportunity will be afforded to appellant to file a response. If an answer is not timely filed, the Board may, in its discretion, enter a general denial and so notify the appellant.

Rule 7. Additional Pleadings and Motions

The presiding officer may permit or require such additional pleadings or amendments thereto and motions to be filed as may be desirable in the interests of justice or to avoid the issues and affording the parties full opportunity to prepare their cases. When issues within the proper scope of the appeal,

A hearing before the Board shall be a matter of right which shall be afforded to appellant. The Government attorney may request a hearing in any case. If the parties waive a hearing the case shall be submitted on the record except where the presiding officer requires a hearing. The Board will ascertain from the parties whether a hearing is requested and ordinarily this will be done after the appeal file and pleadings have been received by the Board.

Rule 9. Accelerated Procedure

(a) Election. Either party may notify the Board of its election to have the appeal handled under this Rule 9. If both parties agree to handling under accelerated procedure, the presiding officer shall determine whether the appeal falls within the dollar limitation prescribed in paragraph (b) of this Rule 9 and whether the case otherwise is appropriate, taking into consideration the nature of the dispute, for handling under accelerated procedure. The determination of the presiding officer to handle or not handle the appeal under accelerated procedure shall be final.

(b) Dollar amount limitation. In order to be eligible for handling under accelerated procedure, the appeal shall involve $25,000 or less consisting of the claim of appellant together with the amount involved in any counterclaim by the Government attorney. If no dollar amount of claim or counterclaim is involved, the presiding officer shall determine whether the appeal can be properly disposed of under this Rule 9.

(c) Elimination of procedures. In cases proceeding under this Rule 9, parties are encouraged to the extent possible consistent with adequate presentation of their factual and legal positions to waive pleadings, discovery and briefs.

(d) Presiding officer as decision maker. The presiding officer in any appeal handled under accelerated procedure shall issue a short written decision as soon as practicable after closing of the record and such decision shall be the final decision of the Board.

Rule 10. Prehearing or Presubmission Procedures

(a) Prehearing orders. The presiding officer may issue an order in cases where a hearing will be held prescribing as to one or more the following that the parties shall:

1. Exchange a list of witnesses giving titles and a brief description of the subject matter of the testimony;

2. Exchange proposed exhibits and prepare an additional set thereof for the presiding officer; and

3. Exchange a list of expert witnesses with a summary of their qualifications and testimony.

(b) Prehearing orders in complex cases. The presiding officer may issue a more comprehensive order in cases where a hearing will be held and it appears that the issues are complex, confused, complex, that the hearing will be unduly long, or where quantum is involved. Such order, in addition to covering one or more of the items under (a) of this rule, may prescribe as to one or more of the following that the parties shall:

1. Submit to the presiding officer a stipulation of all facts not in dispute;

2. Attempt preparation of an agreed statement of factual and legal issues and, failing therein, submit separate statements; and

3. Submit to the other party, where the issue of quantum will be heard, a statement of the monetary claim in detail with accounting schedules and explanations and afford the other party the right to an audit with the audit report to be available to both parties.

(c) Prehearing or presubmission briefs and oral argument. The presiding officer may require or allow the filing of prehearing or presubmission briefs in such manner as prescribed and may also require or allow oral argument in such manner as prescribed prior to hearing or submission on the record.

(d) Prehearing or presubmission conference. The presiding officer may require a prehearing or presubmission conference to consider:

1. The simplification or clarification of the issues;

2. The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record or similar agreements which will avoid unnecessary proof;

3. The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence if the case is to be heard;

4. The possibility of agreement disposing of all or any of the issues in dispute;

5. Such other matters as may aid in the disposition of the appeal.

The results of the conference shall be reduced to writing by the presiding officer and this writing shall constitute part of the record.

Rule 11. Submission Without a Hearing

Either party may elect to waive a hearing and if the other party as well as the Board do not require a hearing, the case shall be submitted upon the record before the Board. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument and briefs.

Rule 12. Discovery procedures

(a) General policy and protective orders. The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and such order may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) When depositions permitted. After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the presiding officer may, upon application of either party and for good cause shown, order the taking of testimony or any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of the deposition, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) Orders on depositions. The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the presiding officer.

(d) Expenses. Each party shall bear its own expenses associated with the taking of any deposition.

(e) Interrogatories to parties. After an appeal has been docketed, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the presiding officer will determine the extent to which the interrogatories will be permitted.

(f) Admission of facts. After an appeal has been docketed, a party may serve on the other party a request for the admission of specified facts. The party served shall answer each such request within 10 days or object thereto within 30 days after service. The presiding officer will rule on any such objections. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond or object to the request for admission.

(g) Production, inspection and copying of documents. After an appeal has been docketed, a party may arrange with the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot agree thereon, the presiding officer shall specify the place of such inspections and the conditions in making the inspection and making copies and photographs. Expenses of making copies and photographs shall be borne by the party seeking to make or cause to be made copies and photographs.
Rule 13. Sanctions
If any party fails or refuses to obey an order issued by the presiding officer, the presiding officer may make such order in regard to the failure deemed necessary to the just and expeditious conduct of the appeal.

Rule 14. Subpoena Power
The Chairman has authority by delegation from the Secretary to request the appropriate United States Attorney to apply to the appropriate United States District Court for the issuance of subpoenas pursuant to 5 U.S.C. 304.

Hearings
Rule 15. Hearings, Notice of
The presiding officer shall give notice of the time and place set for hearing which shall be scheduled as may best serve the interests of the parties and the Board. Such notice shall be sent to the parties in writing not less than 30 days in advance of the date for such hearing unless the parties waive notice.

Rule 18. Unexcused Absence of a Party
The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

Rule 17. Hearings, Open to Public, Verbatim Transcript
Hearings shall be open to the public. Testimony shall be reported verbatim. Transcripts of the proceedings shall be made available by the Board to the Government attorney. Appellant may order transcripts of the proceedings from the contract reporter at the hearing at actual cost of duplication (Pub. L. 92-483, October 6, 1972, 86 Stat. 770, 5 U.S.C. App. I).

Rule 18. Hearings, Conduct of
(a) General. Hearings shall be as informal as may be reasonable and appropriate under the circumstances. The parties may offer such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States and as would be admissible under the rules of evidence of any other jurisdiction. The weight to be accorded evidence which is immaterial, irrelevant or unduly repetitious or which is not of the sort unduly repetitious or which is not of the sort unduly repetitious or which is not of the sort unduly repetitious or which is not of the sort unduly repetitious or which is not of the sort unduly repetitious or which is not of the sort unduly repetitious or which is not of the sort under the generally accepted rules of evidence, may be admitted in the discretion of the presiding officer. The presiding officer shall receive only evidence which is germane to the issues involved and shall exclude, insofar as practicable, evidence which is immaterial, irrelevant or unduly repetitious or which is not of the sort upon which responsible persons are accustomed to rely. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board members in considering the case, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The presiding officer may in any case require evidence in addition to that offered by the parties.
(b) Examination of witnesses. Witnesses shall be examined under oath or affirmation subject to cross-examination and questions from the presiding officer and Board members. If the testimony of a witness is not given under oath, the presiding officer may warn the witness that statements made may be subject to provisions of law imposing penalties for knowingly making false representations (18 U.S.C. 1001, 2071).
(c) Burden of proof and order of proceeding. The burden of proof rests on the appellant asserting the claim or error in the decision except that the burden of proof in case of counter-claims rests on the party asserting them. Unless otherwise permitted by the presiding officer, the appellant shall proceed first at the hearing followed by the presentation of the Government attorney and any rebuttal case permitted by the presiding officer.
(d) Objections. If a party objects to the admission or rejection of any evidence or to a limitation of the scope of any examination or cross-examination, such party shall state briefly the grounds of such objection and the presiding officer shall rule thereon or reserve ruling.
(e) Records and documents. Upon proof of authenticity, papers, books, records or documents shall be admissible in evidence without the production of the person who made or prepared the same except that the person who prepared documents specially for use at the hearing should be available to explain such documents.
(f) Exhibits. All documents offered in evidence at a hearing shall be marked for identification by number or letter as prescribed by the presiding officer. Except where the presiding officer finds that the furnishing of copies is impracticable, a copy of each proposed exhibit shall be made available to the other party when offered and until such testimony is offered and received in evidence. In cases submitted directly, with a notation of the date of receipt of a copy of the Board decision, the parties may be regarded and used as evidence in supplementation of that record. Posthearing or postsubmittal procedures
Rule 19. Posthearing Briefs
The presiding officer shall prescribe the manner of filing any posthearing briefs.

Rule 20. Closing the Record
(a) Contents. The record consists of the appeal file described in Rule 5 and, to the extent the following have been filed, the pleadings, prehearing conference memorandum or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conference and hearings, hearing exhibits, posthearing briefs and documents which the presiding officer has specifically designated to be made part of the record. The record will at all reasonable times be available for inspection by the parties at the office of the Board.
(b) Closing or settling of record. Except as the presiding officer may otherwise order, no proof shall be received in evidence after completion of a hearing or in cases submitted on the record, after the parties have been notified that the case is ready for decision.

Rule 21. Copies of papers
When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be submitted therefor, during or after the hearing.

Rule 22. Withdrawal of exhibits
After a decision has become final the Board may, upon request and after notice to the other party, in its discretion, permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be repaired by the Board in its discretion, under a condition of granting permission for such withdrawal.

Rule 23. Decisions
The Board shall issue written decisions containing findings of fact and conclusions and shall send copies simultaneously to the parties by certified mail or, if delivered directly, with a notation of the date of delivery. Decision of the Board will be made solely upon the record as described in Rule 20.

Rule 24. Reconsideration, Motion for
A motion for reconsideration of a Board decision, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion and shall be filed within 30 days from the date of receipt of a copy of the Board decision by the party filing
the motion. The Board, in its discretion, may deny the motion or permit such additional proceedings as deemed necessary.

Dismissals

Rule 25. Dismissals

(a) Lack of jurisdiction. A motion to dismiss for lack of jurisdiction may be filed by a party at any time. The Board may also raise the question of jurisdiction at any time on its own motion. The presiding officer shall prescribe any necessary proceedings including but not limited to written arguments, briefs or hearing on the issue of jurisdiction. The presiding officer shall issue a Ruling on the issue of jurisdiction unless the Chairman requires a full three member panel or consider the issue of jurisdiction in which event the designated panel shall issue the Ruling on the issue of jurisdiction.

(b) Failure to prosecute. Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the presiding officer, comply with orders of the presiding officer, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the presiding officer may issue an order requiring the offending party to show cause why the appeal should not be either dismissed or granted, as appropriate. If the offending party shall fail to show such cause, the presiding officer may issue an Order of Dismissal for failure to prosecute or take such other action deemed reasonable and proper under the circumstances.

c) Without prejudice. In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue, for an inordinate length of time, the presiding officer, exercising sound discretion, may dismiss such appeals without prejudice to restoration to the docket when the cause of suspension has been removed. Unless either party or the Board acts within 3 years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

d) Settlement or withdrawal. The parties may settle the issues at any state of the proceedings before issuance of a decision of the Board. The appellant may withdraw the appeal at any time. The presiding officer in the event of settlement or withdrawal shall issue an Order of Dismissal.

Miscellaneous


Appellant may appear before the Board in person or be represented by an authorized representative or attorney subject to the limitations prescribed in 7 CFR 1.22 regarding representation before the Department. The Government shall be represented by the Government attorney.

For Subpart A:


John R. Block,
Secretary of Agriculture.

For Subpart B:

Dated: December 8, 1982.

Jewel F. Lewis,
Administrative Judge, Chair, Board of Contract Appeals.

[FR Doc. 82-30334 Filed 12-27-82; 8:15 am]

BILLING CODE 3410-51-M

Food and Nutrition Service

7 CFR Parts 273, 274, 275 and 276

(Amdt. No. 237)

Food Stamp Program; Corrections to Food Stamp Rules

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule; Corrections and clarity revisions.

SUMMARY: This action amends Food Stamp Program regulations in the areas of: (1) State agency liabilities and Federal sanctions; (2) Performance Reporting Systems; (3) State agency reporting and destruction of unusable coupons; and (4) Thrifty Food Plan Amounts. This action corrects errors in paragraph referencing and makes clarity revisions only. The action will not result in any policy changes. This document also corrects similar errors or makes clarity changes in the following individual Federal Register publications: 1980 Amendments to the Food Stamp Act of 1977, Policy Interpretations, and Miscellaneous Technical Amendments (issued April 23, 1982); Promotion of Initial Month Benefits (issued May 14, 1982), Non discretionary Froud, Waste, Abuse and Simplification Provisions (issued August 13, 1982), Household Composition, Income Standards, Adjustments, Deductions, Outreach and Technical Amendments (issued November 19, 1982), Eligibility Criteria and Reduction or Termination of Benefits (issued December 14, 1982).

EFFECTIVE DATE: This action is effective January 27, 1983.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Supervisor, Policy and Regulations Section, Program Standards Branch, Program Development Division, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302, (703) 756-9429.

SUPPLEMENTARY INFORMATION:

Classification This final rule has been reviewed under Executive Order 12291. The rule will not result in annual economic impacts of more than $100 million or major increases in costs or prices nor will it have a significant adverse effect on competition, employment, productivity, investment, or foreign trade. Further, the rule is unrelated to the ability of United States-based enterprises to compete with foreign-based enterprises. Therefore, the rule has been classified as "non-major".

Regulatory Flexibility Act

The rule also has been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 95-354, 94 Stat. 1144, September 19, 1980). The Administrator of the Food and Nutrition Service has certified that this action will not have a significant impact on a substantial number of small entities.

Public Participation

As noted above, the amendments made by this final rule are to correct errors and improve clarity and will result in no change in policy. For these reasons, the Department has determined in accordance with 5 U.S.C. 553(b) that notice of proposed rulemaking and public comment on this rulemaking is unnecessary.

Paperwork Reduction Act

This rulemaking does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget.

7 CFR 273.2[f](1)(ii)(A) is being amended to change the reference to § 273.4(a) (2) through (8) to reference § 273.4 (a) (2) through (a) (8). Rules issued April 23, 1982 (47 FR 17756), added two more alien provisions to § 273.4.

7 CFR 273.10, Appendix B is being removed. Appendix B sets forth the Thrifty Food Plan Amounts (the amounts on which FSP coupon allotments are based) that were applicable for Guam and the Virgin Islands beginning January 1980. We neglected to delete the Appendix B table when Appendix A to 7 CFR 273.10 was revised to set forth the January 1981 Thrifty Food Plan Amounts for all FSP areas of operation.

7 CFR 271.6(b) (i) and (vi) are being amended to reflect that the State of New York is under the jurisdiction of the Food and Nutrition Services' Burlington, Massachusetts Regional Office, not the Robbinsville, New Jersey Regional Office.

7 CFR 274.2 is being amended to remove paragraph (d) from paragraph (h) and add it to paragraph (i) instead. The paragraph was added to (b) based on rules issued December 8, 1981 (46 FR 60160). However, before the December rules were issued, an earlier rule issued October 9, 1981 (46 FR 50277), redesignated paragraph (h) as (i). This redesignation was overlooked when the December 8 rules were issued. Also, the
December 8 rules redesignated paragraph (g) of 7 CFR 273.11 as (h). A reference to § 273.11 (g)(2) appearing in 7 CFR 274.2(h)(1) and 274.5(c)(1) which were overlooked when the redesignation occurred are corrected by the rule to reference § 273.11(h)(2).

7 CFR 274.8(b)(2) is being amended to replace the reference to Form FNS-136 with a reference to form FNS-471. Coupon Account and Destruction Report. Form FNS-471 has officially replaced form FNS-136 and is currently in use.

7 CFR 275.3(b) is being amended to reflect that the review of a State agency's Performance Reporting System consists of one phase, not two phases. The second phase was removed from the CFR by final rules issued January 23, 1981, at 46 FR 7257.

7 CFR 275.11(f) is being amended to delete the last sentence of the section which states that State agencies' eligibility for enhanced funding is dependent on achievement of a 95 percent sample completion rate. Through an agency oversight, the above referenced line was not removed when the Sanction/Incentive System regulations were published on January 23, 1981, (46 FR 7257) which changed this policy. Failure to meet the 95 percent competition rate results in adjustments to a State agency's error rate and does not automatically render a State agency ineligible for enhanced funding.

7 CFR 276.1(a)(1) is being amended to correct an error in paragraph referencing. This action removes the reference to § 276.2(c)(iv) appearing in paragraph (a)(1). This regulatory paragraph does not exist.

Amendments to Individual Federal Register Publications

This action corrects typographical errors or clarifies provisions issued in the individual Federal Register publications of April 23, 1982, May 14, 1982 and August 13, 1982.

At 47 FR 17758 issued April 23, 1982

(a) § 272.2, in the definition of a "Drug addiction or alcoholic treatment and rehabilitation program", appearing in the rule at page 17762, the reference to 278.1 (a), (b) and (d)(1) is being removed. The phrase gives the impression that one must meet the requirements of 7 CFR 278.1 to be granted Program participation. This is not true nor was this the intent of the final rule change in the definition. Only those who also wish to be authorized as a retailer must comply with 7 CFR 278.1. Thus, a correction is necessary to remove the reference and eliminate confusion or misapplication of the provision.

(b) § 273.2, paragraph (l)(1)(ii)(C). appearing on page 17762, is being amended to correct the reference to § 273.7 (a)(4) through (a)(6). The reference should be to § 273.4 (a)(4) through (a)(6). The April 23rd rule added two more alien provisions to § 273.4.

(c) Also in § 273.2, paragraph (l)(1)(ii)(E) appearing on page 17763 is being corrected, to add a reference to section 203(a)(7) of the Immigration and Nationality Act that was unintentionally left out.

(d) In § 273.4, paragraphs (a)(4) and (a)(5) appearing on page 17763, are being amended to correct the cut-off dates appearing in these paragraphs to reflect new dates that were recently prescribed by rules issued by the Immigration and Naturalization Service (INS). Paragraph (f)(1)(ii)(E) under § 273.2 on page 17763 is also being amended to add the April 1, 1980, date to clarify when an INS form-1-94 is valid for FSP purposes.

(e) § 273.8, amending instruction No. 6(a) on page 17764 which requires a revision to the last sentence of paragraph (d) under that section is incorrect. The sentence that should be revised is the next to last sentence in § 273.8(d). This is being corrected.

(f) In § 273.8, paragraph (e)(11)(ix) appearing on page 17764, is being changed to correct a reference to a Public Law. Paragraph (c)(10)(ix) under § 273.9 at page 17765 is also being corrected for a similar Public Law reference error.

(g) Also in § 273.8, paragraph (h)(1)(vi) appearing on page 17764, is being corrected to reflect revised language for this paragraph that was added by a final rule issued August 25, 1981 (46 FR 43020) and was unintentionally excluded in the April 23rd rule.

(h) Again, in § 273.8, paragraph (b)(4)(iii) appearing on page 17764, is being corrected to add a phrase in the first sentence that was unintentionally omitted.

(i) In § 273.18, paragraph (b)(3)(ii) appearing on page 17767 is being corrected to add a phrase that was unintentionally omitted.

At 47 FR 20739 issued May 14, 1982

(a) In § 272.8, paragraph (h) appearing on page 20739 is being corrected because of a typographical error. The word "retrospective" should be "retroactive".

At 47 FR 35166 issued August 13, 1982

(a) In § 272.4 paragraphs (c) and (f) on page 35166 were relettered as (b) through (e). However, these paragraphs contained regulatory references to each other that were not revised to reflect the new designated paragraphs. The references are being corrected.

At 47 FR 52328 issued November 19, 1982

(c) In § 272.4, amending instruction number 6 (appearing in column 1, page 52334) is incorrect. The reference to revise paragraphs (c)(1) and (c)(2) should refer to revisions for paragraphs (b)(1) and (b)(2) as rules issued August 13, 1982 (47 FR 35166) redesignated all of paragraph (c) as (b). The amending instruction and its corresponding regulatory amendment are being corrected.

(b) In § 273.11, in amending instruction number 13 (column 3, page 52337), the portion of that instruction calling for a revision to paragraphs (a)(4)(ii)(C) and (c)(3) and an amendment to paragraph (c)(4) is being removed. Paragraph (a)(4)(ii)(C) was further revised by rules issued on April 23, 1982 (47 FR 17758), and paragraphs (c)(1) and (c)(4) were redesignated and revised by rules issued on October 8, 1982 (47 FR 44992). Respectively, the April 23rd and October 8th language of these paragraphs is the final version intended to be adopted by the Department. Therefore, amending instruction number 13 of the November 19, 1982 rules is being corrected by this final action to remove any instruction to change these three paragraphs.

(c) In the preamble to the November 19, 1982 rule (column 2, page 52333) it was stated that 7 CFR 273.20 was being amended to remove all references to the State of Massachusetts. However, we neglected to provide conforming regulatory language to initiate the deletions. The regulatory text of the November 19 rule is being corrected to add the necessary amending instruction to remove the references.

At 47 FR 55903 issued December 14, 1982

(c) In the preamble of the December 14 interim rule (column 1, page 55904), the Department explained that 1982 Food Stamp Act amendments redefined who constitutes an elderly or disabled member for Food Stamp Program purposes. The interim rule amended 7 CFR 271.2 to reflect the new definition of elderly and disabled persons. However, the Department unintentionally overlooked other sections through the regulations which refer to the old definition of an elderly and disabled household that also needed to be changed. Therefore, this action is correcting the regulatory text of the December 14, 1982 rule to add necessary amending instructions and/or pertinent regulatory language to reflect
the new definition in 7 CFR 273.9(d)(3) and (d)(4), 273.10(e)(2)(i)(A), and 273.21(b)(2)(i)(B) and (b)(2)(ii).

List of Subjects

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.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Grant programs—social programs, Regulations.

Accordingly, as set out below, the Code of Federal Regulations is amended at 7 CFR Parts 273, 274, 275 and 276.

Also, amendments are made to regulations issued on April 23, 1982 (47 FR 17758), May 14, 1982 (47 FR 20739), and August 3, 1982 (47 FR 35166).

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.2 [Corrected]

1. At 47 FR 17762 (column 1), issued on April 23, 1982, the definition of a "Drug addict or alcoholic treatment and rehabilitation program" in § 271.2 is corrected for clarity by removing the words "the requirement of paragraphs (a), (b), and (d) of § 271.1 are met and", appearing in the last sentence.

2. In 7 CFR 271.2, paragraph (b)(1)(i) is amended by removing the reference to the State of "New York" in paragraph (b)(1)(i) and adding a reference to the State of "New York" to paragraph (b)(1)(vi) in alphabetical order.

PART 272—REQUIREMENTS FOR PARTICIPATION STATE AGENCIES

§ 272.8 [Corrected]

3. At 47 FR 20741 (column 3), issued May 14, 1982, in paragraph (h) of § 272.8, the word "retroactive" is corrected to read "retroactive."

§ 272.4 [Corrected]

4. At 47 FR 35168 (column 3), issued August 13, 1982, amendatory instruction number 3 under § 272.4 is corrected by adding a new sentence at the end of the instruction to read as follows:

"Also, regulatory references contained in some of these newly redesignated paragraphs are amended as follows:
(b)(1)—the reference to (c)(2) and (3) is amended to read (b)(2) and (3), (b)(2)(iii)—the reference to (c)(3) is amended to read (b)(3), (b)(4)—the reference to (c)(2) and (3) is amended to read (b)(2) and (3), (b)(5)—the reference to (c)(3) or (4) is amended to read (b)(3) or (4), (c)(2)—the reference to (d)(1) is amended to read (c)(1), (d)(1)(i)—the reference to (e)(1)(iv) is amended to read (d)(1)(iv) and (d)(3)—the reference to (e)(1)(iv) is amended to read (d)(1)(iv)."

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.2 [Amended]

5. In 7 CFR 273.2, paragraph (f)(1)(ii)(A) is amended by replacing the reference to "[a](2) through (6)" with the reference to "[a](2) through (a)(6)."

§ 273.10 [Amended]


§ 273.2 [Corrected]

7. At 47 FR 17762 (column 3), issued April 23, 1982, the reference to § 273.4 (a)(4) through (a)(6) appearing in paragraph (f)(1)(ii)(C) of § 273.2 is corrected to read § 273.4 (a)(4) through (a)(6).

8. At 47 FR 17763 (column 1), issued April 23, 1982, the second sentence in paragraph (f)(1)(ii)(C) of § 273.2 is corrected by adding a new sentence after the second sentence to read as follows:

§ 273.2 Application processing.

(i) Verification.

(1) Mandatory verification.

(ii) Alien status.

(C) * * * However, an INS Form I-94 annotated with section 203(a)(7) of the Immigration and Nationality Act must have been issued prior to April 1, 1980 to be considered as acceptable verification.

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9. At 47 FR 17763 (column 1), issued April 23, 1982, paragraph (f)(1)(ii)(E) of § 273.2 is corrected by adding the reference to "203(a)(7)" in the second sentence, between the reference to "101(a)(20)" and "207."

§ 273.4 [Corrected]

10. At 47 FR 17763 (column 3), issued April 23, 1982, paragraph (a)(4) and (a)(5) of § 273.4 are corrected by replacing the dates of March 17, 1980 and March 18, 1980, with the dates of March 31, 1980 and April 1, 1980, respectively.

§ 273.8 [Corrected]

11. At 47 FR 17764 (column 1), issued April 23, 1982, amendatory instruction number 6(a) under § 273.8 is corrected to read that "The next to the last sentence in paragraph (d) is revised." Therefore, the last sentence of paragraph (d) as codified based on rules issued December 6, 1981 (46 FR 60166) remains unchanged.

12. At 47 FR 17764 (column 2), issued April 23, 1982, the reference to "Public Law 94–433" in paragraph (e)(11)(ix) of § 273.8 is corrected to read "Public Law 95–433."

13. At 47 FR 17764, issued April 23, 1982, paragraph (h)(1)(v) of § 273.8 (column 2) and the first sentence of paragraph (h)(4)(vii) of § 273.8 (column 3) are corrected to read as follows:

§ 273.8 Resource eligibility standards.

* * *

(h) Handling of licensed vehicles

* * *

(i) * * *

(vi) Necessary to transport a physically disabled household member (or ineligible alien or disqualified person whose resources are being considered available to the household) regardless of the purpose of such transportation (limited to one vehicle for physically disabled household member). A vehicle shall be considered necessary for the transportation of a physically disabled household member if the vehicle is specially equipped to meet the specific needs of the disabled person or if the vehicle is a special type of vehicle that makes it possible to transport the disabled person. The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member.

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(iii) Any other vehicle used to transport household members (or an ineligible alien or disqualified household member whose resources are being considered available to household) to and from employment, or to and from training or education which is preparatory to employment, or to seek employment in compliance with the job search criteria.

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§ 273.9 [Corrected]

14. At 47 FR 17765 (column 1), issued April 23, 1982, the reference to "(c)(1)(iii)" appearing in paragraph
PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

19. At 47 FR 52336 (column 3), issued November 19, 1982, the regulatory text is being corrected to add the following new amendingatory instruction and accompanying amendingatory text in numerical order to read as follows: "15. In § 273.20, paragraphs (a), (b) and (c) are amended by removing all references to the State of Massachusetts.”

20. At 47 FR 55909, issued December 14, 1982, the regulatory text is corrected by adding new amendingatory instructions (d) and (e) to amendingatory instruction No. 7 appearing in the middle of column 2. The instructions read as follows: "(d) Paragraph (d)(3) is amended by removing everything in the first sentence after the phrase “incurred by any household member who is” and inserting the phrase “elderly or disabled as defined in § 271.2” at the end of that sentence instead.

21. At 47 FR 55909, issued December 14, 1982, the regulatory text is corrected by adding a new amendingatory instruction (m) to the end of amendingatory instruction No. 8 appearing near the top of column 3. The instruction reads as follows: "[m] Paragraph (e)(2)(i)(A) is amended by removing the phrase “sixty years of age or over, or a member who receives Supplemental Security Income (SSI) benefits under title XVI of the Social Security Act or disability and blindness payments under titles I, II, X, XIV, or XVI of the Social Security Act” and inserting the phrase “elderly or disabled as defined in § 271.2” in its place.”

22. At 47 FR 55910, issued December 14, 1982, the regulatory text is being corrected by adding new amendingatory Instructions No. 10 (a) and (b) just after the last five asterisks appearing at the end of column 2. The instructions read as follows: "10. In § 273.21: (a) Paragraph (b)(2)(i)(A) is amended by removing everything after the phrase “all without earned income and are” and inserting the phrase “elderly or disabled as defined in § 271.2” in its place. (b) Paragraph (b)(2)(ii) is amended by removing everything between the phrase “are all without earned income and are” and the phrase “unless these households file APDC monthly reports” and inserting the phrase “elderly or disabled as defined in § 271.2” between the remaining phrases.”

PART 274—ISSUANCE AND USE OF FOOD COUPONS

23. In 7 CFR 274.2 paragraph (h)(4) is removed and the third sentence of paragraph (b)(1) is amended by replacing the reference to § 273.11(g)(2) with a reference to § 273.11(h)(2).

24. In 7 CFR 274.2, a paragraph (4) is added to paragraph (1) to read as follows:

§ 274.2 Issuance systems.

(1) * * *

(4) Residents of shelters for battered women and children, as such shelters are defined in § 271.2 and which are not authorized by FNS to redeem through wholesalers, may request that all or part of their coupons be of the 1-dollar denomination and State agencies are authorized to grant this request where feasible.

§ 274.3 (Amended)

25. In 7 CFR 274.3, paragraph (c)(1) is amended by replacing the reference of “§ 273.11(g)(2)” with a reference to “§ 273.11(h)(2)”.

§ 274.8 (Amended)

28. In 7 CFR 274.8, paragraph (b)(2) is amended by replacing the reference to “Form FNS-136, Certificate of Destruction of Food Coupons” with a reference to “Form FNS-471, Coupon Account and Destruction Report”.

PART 275—PERFORMANCE REPORTING SYSTEM

27. In 7 CFR 275.3, paragraph (b) is revised to read as follows:

§ 275.3 Federal monitoring.

(b) Reviews of State Agency’s Performance Reporting System. FNS will review each State agency’s performance reporting system on an annual basis (in terms of management evaluation (ME) reviews conducted by the State agency). The review will include but not be limited to a determination of whether or not the State is complying with FNS regulations, an assessment of the State’s methods and procedures for conducting ME reviews including sampling techniques, and an assessment of the data collected by the State in conducting the reviews.
§ 275.11 [Amended]

28. In 7 CFR 275.11, paragraph (f) is amended by removing the last sentence of the paragraph.

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

29. In 7 CFR 276.1, paragraph (a)(1) is amended by replacing the phrase "Except as set forth in § 276.2(c)(iv)," with the phrase "Except as otherwise provided in these regulations."

(Catalog of Federal Domestic Assistance Programs No. 10, 551, Food Stamps)


Robert E. Leard, Associate Administrator.

[FR Doc. 82–3502 Filed 12–27–82; 8:45 am]
BILLING CODE 3410–30–M

NUCLEAR REGULATORY COMMISSION

10 CFR part 50

Filing of Copies of Changes to Emergency Plans and Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to reduce the number of copies of changes to nuclear power plant emergency plans and procedures. The total number of copies to be submitted will be reduced from 13 to 3.

The Commission has determined that 3 copies will be sufficient for processing purposes. These amendments will reduce the regulatory burden on the affected licensees.

DATE: The effective date of this rule will be December 28, 1982.


SUPPLEMENTARY INFORMATION: On August 19, 1980, the Nuclear Regulatory Commission published in the Federal Register (45 FR 55402) amendments to its regulations for the upgrading of emergency planning and preparedness. The effective date for those regulations was November 3, 1980.

In those regulations, § 50.54(q) required licensees to furnish three copies of changes to the emergency plan and emergency plan implementing procedures to NRC Regional Administrators and ten copies to the Director, Office of Nuclear Reactor Regulation. The amendment contained in this notice reduces to 3 the total number of copies the licensee is required to submit (one copy to be sent to the appropriate Regional Administrator and two copies to NRC Headquarters).

Because these amendments relate solely to procedural matters, the Commission has found that good cause exists for omitting notice of proposed rulemaking and public procedure thereon, as unnecessary. Since the amendment relieves licensees from restrictions under regulations currently in effect, it is effective upon publication.

Paperwork Reduction Act Statement

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget; OMB approval No. 3150-0011.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 50 are published as a document subject to codification.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:


For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10(a), (b), and (c), 50.44, 50.48, 50.49, 50.54, and 50.66(e) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10(b) and (c) and 50.54 are issued under sec. 161l, 68 Stat. 949, as amended (42 U.S.C. 2201(l)); and §§ 50.55(e), 50.58(b), 50.67, 50.71, 50.72, and 50.76 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Paragraph (q) of § 50.54 is revised to read as follows:

§ 50.54 Conditions of licenses.

(q) A licensee authorized to possess and/or operate a nuclear power reactor shall follow and maintain in effect emergency plans which meet the standards in § 50.47(b) of this part and the requirements in Appendix E to this Part. A licensee authorized to possess and/or operate a research reactor or a fuel facility shall follow and maintain in effect emergency plans which meet the requirements in Appendix E of this part. The nuclear power reactor licensee may make changes to these plans without Commission approval only if such changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of § 50.47(b) of this part and the requirements of Appendix E of this Part. The research reactor licensee and/or the fuel facility licensee may make changes to these plans without Commission approval only if such changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the requirements of Appendix E of this part. Proposed changes that decrease the effectiveness of the approved emergency plans shall not be implemented without application to and approval by the Commission. The licensee shall furnish one copy of each proposed change for approval to the Administrator of the appropriate NRC Regional Office specified in Appendix D of Part 20 of this chapter and two copies to the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555. If a change is made without approval, the licensee shall furnish one copy to the Administrator of the appropriate NRC Regional Office specified in Appendix D of Part 20 of this chapter and two copies of the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days after the change is made.

3. Part V, "IMPLEMENTING PROCEDURES," of Appendix E is revised to read as follows:

Appendix E—Emergency Planning and Preparedness for Production and Utilization Facilities

* * * * *
V. Implementing Procedures

No less than 30 days prior to the scheduled issuance of an operating license for a nuclear power reactor or a license to possess nuclear material one copy of the applicant’s detailed implementing procedures for its emergency plan shall be submitted to the Administrator of the appropriate NRC Regional Office, specified in Appendix D of Part 21 of this chapter and two copies are to be sent to the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Licensees who are authorized to operate a nuclear power facility shall submit one copy of any changes to the emergency plan or procedures to the Administrator of the appropriate NRC Regional Office, specified in Appendix D. 10 CFR Part 21, and two copies to the Document Control Desk within 30 days of such changes.

Dated at Bethesda, Maryland, this 29th day of November 1982.

For the Nuclear Regulatory Commission.
William J. Dircks,
Executive Director for Operations.

[FR Doc. 83-35065 Filed 12-27-83; 8:45 am
BILTING CODE 7590-11-M]

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 368, 369, 370, 372, 373, 387, and 388

(Docket No. 21213-249)

Revision of Enforcement Provisions of the Export Administration Regulations and Conforming Amendments

AGENCY: International Trade Administration, Commerce.

ACTION: Final rule

SUMMARY: This rule finalizes revisions to the Enforcement provisions of the Export Administration Regulations (Part 387, Title 15, Code of Federal Regulations) which were published in interim form on December 22, 1980 (45 FR 84021) with request for comments. All comments, both written and oral, were considered and portions of the Regulations were changed in response to those comments. This rule incorporates amendments to the Export Administration Act (Pub. L. 89-146), reflects current organizational and administrative procedures within the International Trade Administration, revises and incorporates into Part 387 a provision relating to interrogatories or requests to produce documents, codified prior to October 12, 1979 in § 388.15 of the Regulations, and modifies recordkeeping requirements. This rule also makes technical amendments to Part 388 relating to administrative proceedings. Conforming amendments are also made to Parts 386 through 398; reporting for the antiboycott regulations are clarified; one interpretation in the antiboycott regulations is deleted, and four are redesignated as Supplement Nos. 1, 2, 3, 4, and 5, “Interpretations.”


SUPPLEMENTARY INFORMATION:

I. Substance of the Regulations

This rule makes final the revisions to the Export Administration Regulations to incorporate changes in the Export Administration Act relating to criminal penalties, to conform specific violation provisions to the Export Administration Act, to reflect organizational changes within the International Trade Administration, to establish as distinct violations the failure to comply with reporting requirements and the failure to answer interrogatories or respond to requests for admission or to produce evidence during an investigation conducted under the Export Administration Act of 1979, as amended (the “Act”) and to conform this Part with revised Part 388.

The antiboycott regulations are amended to delete a supplement that has been superseded and renumber the remaining supplements.

In the interest of reducing the regulatory burden on the export community and persons reporting boycott-related requests, this rule permits recordkeeping entities, as defined in § 387.13(b), to request a limited exception to the recordkeeping requirements of Part 387. If granted an exception, the recordkeeping entity is allowed to maintain micrographic reproductions rather than originals of documents during the first year of the retention period. In subsequent years, the Department is also exempting certain types of documents from the recordkeeping requirement.

Part 386 of the Export Administration Regulations details the administrative proceedings that the Office of Anti-Boycott Compliance and the Office of Export Enforcement may initiate to impose sanctions for violations of the Export Administration Act of 1979. The Regulations provide for the settlement of cases prior to the service of a charging letter if a consent agreement and order are approved by the Deputy Assistant Secretary for Commerce for Export Enforcement. This rule provides the Deputy Assistant Secretary with the flexibility to suspend a sanction under any terms or conditions that he may specify in such an order.

The authority of the Office of Export Administration to revise, suspend or revoke licenses or, in the case of bulk licenses described in Part 372, portions of licenses, is clarified.

The paragraph dealing with revocation of export licenses under § 373.7, Service Supply (SL) Procedure, is removed because it is redundant. All export licenses, including bulk licenses, and other authorizations are subject to revision, suspension, or revocation without notice under § 370.3 and § 372.9.

The definitions of “department,” “party,” “presiding official,” and “respondent” in § 388.2 are revised.

II. Recordkeeping Requirements

Office of Export Administration and Office of Antibooycott Compliance information collection requirements contained in this regulation (§ 387.13) 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 numbers 0625-0104 and 0625-0038, respectively.

III. Issues and Public Comments

The Department received five public comments on the interim rule published December 22, 1980. Three comments noted approval revised § 387.13(g) which, upon request, allows companies to maintain records on micrographic systems during the first year of the retention period. One comment suggested that records should be retainable in micrographic systems immediately upon their receipt. Because maintenance of original records for the first year of the retention period facilitates the investigative process, the Department, though sensitive to the reporting burden (as evidenced by its willingness to consider exceptional cases), cannot further reduce that burden without jeopardizing its ability to enforce the Act effectively. Another comment suggested a number of documents that should be exempt from recordkeeping requirements under § 387.13(h). Several of the suggestions have been adopted and included in that section.

The Export Administration Act of 1979 was amended by Pub. L. 97-145 after
Drafting Information

The principal authors of these rules are Pamela P. Breed, Deputy Assistant General Counsel—Enforcement and Litigation, Daniel C. Hurley, Jr., Attorney-Advisor, and Margo E. Jackson, Attorney-Advisor.

List of Subjects

15 CFR Part 386 Imports, Penalties.
15 CFR Part 389 Boycotts, Reporting requirements, Trade practices.
15 CFR Parts 372, 373 Exports.
15 CFR Part 387 Exports, law enforcement, Penalties.

PART 387—ENFORCEMENT

Sec.
387.1 Sanctions.
387.2 Causing, aiding, and abetting a violation.
387.3 Solicitation, attempt, and conspiracy.
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387.11 Trafficking and advertising export control documents.
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387.13 Recordkeeping.
387.14 Where to report violations.


§ 387.1 Sanctions.

(a) Criminal.—(1) Violations of Export Administration Act.—(i) General. Except as provided in paragraph (a)(1)(i) of this section, whoever knowingly violates the Export Administration Act ("the Act") or any regulation, order, or license issued under the Act is punishable for each violation by a fine of not more than five times the value of the exports involved or $50,000, whichever is greater, or by imprisonment for not more than five years, or both.

(ii) Wilful violations. Whoever willfully exports anything contrary to any provision of the Act or any regulation, order, or license issued under the Act, with the knowledge that such exports will be used for the benefit of any country to which exports are restricted for national security or foreign policy purposes except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both.

(c) Civil.—(1) Civil proceedings. For the reasons set forth above, the regulations on enforcement, 15 CFR Part 387, as well as portions of Parts 388 through 395 and 398 are amended as set forth below.
1. 15 CFR Part 387 is revised as set forth below.

PART 387—ENFORCEMENT

Sec.
387.1 Sanctions.
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387.13 Recordkeeping.
387.14 Where to report violations.


§ 387.1 Sanctions.

(a) Criminal.—(1) Violations of Export Administration Act.—(i) General. Except as provided in paragraph (a)(1)(i) of this section, whoever knowingly violates the Export Administration Act ("the Act") or any regulation, order, or license issued under the Act is punishable for each violation by a fine of not more than five times the value of the exports involved or $50,000, whichever is greater, or by imprisonment for not more than five years, or both.
(b) Administrative.—(1) Denial of export privileges. Whoever violates any law, regulation, order, or license relating to export control, restrictive trade practices and boycotts is subject to administrative action which may result in suspension, revocation, or denial of export privileges conferred under the Export Administration Act (see §388.3 et seq.).

(2) Exclusion from practice. Whoever violates any law, regulation, order, or license relating to export controls or restrictive trade practices and boycotts is further subject to administrative action which may result in exclusion from practice before the International Trade Administration (see §390.2(a)).

(3) Civil penalty. A civil penalty may be imposed for each violation of the Export Administration Act or any regulation, order or license issued under the Act either in addition to, or instead of, any other penalty or penalty which may be imposed. The civil penalty may not exceed $10,000 for each violation except that the civil penalty for each violation involving national security controls imposed under §5 of the Act may not exceed $100,000. The payment of such penalty may be deferred or suspended, in whole or in part, for a period of time that may exceed one year. Deferral or suspension shall not operate as a bar in the collection of the penalty in the event that the conditions of the suspension or deferral are not fulfilled. When any person fails to pay a penalty imposed under this §387.1(b)(3), civil action for the recovery of the penalty may be brought in the name of the United States, in which action the court shall determine de novo all issues necessary to establish liability. Once a penalty has been paid; no action for its refund may be maintained in any court.

(4) Seizure. Commodities or technical data which have been, are being, or are intended to be, exported or shipped from or taken out of the United States in violation of the Export Administration Act or of any regulation, order, or license issued under the Act are subject to being seized and detained, as are the vessels, vehicles, and aircraft carrying such commodities or technical data.

Seized commodities or technical data are subject to forfeiture (22 U.S.C. 401) (see §388.8(b)(6)).

§387.2 Causing, aiding, and abetting a violation.

No person may cause, or aid, abet, counsel, command, induce, procure, or permit the doing of any act prohibited, or the omission of any act required, by the Export Administration Act or any regulation, order, or license issued under the Act.

§387.3 Solicitation, attempt, and conspiracy.

(a) Solicitation and attempt. No person may do any act that solicits the commission of, or that constitutes an attempt to bring about, a violation of the Export Administration Act or any regulation, order, or license issued under the Act.

(b) Conspiracy. No person may conspire or act in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the Export Administration Act or any regulation, order, or license issued under the Act.

§387.4 Acting with knowledge of a violation.

No person may order, buy, receive, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any commodity or technical data exported or to be exported from the United States or which is otherwise subject to the Export Administration Regulations, with knowledge or reason to know that a violation of the Export Administration Act or any regulation, order, or license has occurred, is about to occur, or is intended to occur with respect to any transaction.

§387.5 Misrepresentation and concealment of facts.

(a) Misrepresentation and concealment. No person may make any false or misleading representation, statement, or certification, or falsely or conceal any material fact, whether directly to the Office of Export Administration, the Office of Export Enforcement, the Office of Antiboycott Compliance, any customs office, or an official of any other United States agency, or indirectly to any of the foregoing through any other person or foreign government agency or official:

(1) In the course of an investigation or other action instituted under the authority of the Export Administration Act;

(2) In connection with the preparation, submission, issuance, use, or maintenance of any export control document, as defined in §370.2, or restrictive trade practice or boycott request report, as defined in §369.6.

(3) For the purpose of or in connection with effecting an export from the United States, or the reexport, transshipment, or diversion of any such export.

(b) Scope. Paragraph (a) of this section applies to all representations, statements, and certifications made to, and material facts concealed from, the Office of Export Administration, the Office of Export Enforcement, the Office of Antiboycott Compliance, and the U.S. Customs Service, or other agencies with respect to matters within the jurisdiction of these agencies under the statutes, Executive Orders, and regulations relating to export control, restrictive trade practices and boycotts, and orders or licenses issued or established under the Act.

(c) Representations to be continuing in effect; notification. All representations, statements, and certifications made by any person are deemed to be continuing in effect. Every person who has made any representation, statement, or certification must notify, in writing, the Office of Export Administration, the Office of Export Enforcement, or the Office of Antiboycott Compliance, as well as any other cognizant agency(ies), of any change of any material fact or intention from that previously represented, stated, or certified. Such notification shall be made immediately upon receipt of any information which would lead a reasonably prudent person to believe that a change of material fact or intention has occurred or may occur in the future.

§387.6 Export, diversion, reexport, transshipment.

Except as specifically authorized by the Office of Export Administration, in consultation with the Office of Export Enforcement, no person may export, dispose of, divert, direct, mail or otherwise ship, transship, or reexport commodities or technical data to any person or destination or for any use in violation of or contrary to the terms, provisions, or conditions of any export control document, any prior representation, any form of notification of prohibition against such action, or any provision of the Export
§ 387.7 Failure to comply with reporting requirements.

No person may fail or refuse to comply with reporting requirements in violation of the Export Administration Act or of any order, regulation or license issued under the Act. See, for example, §§ 389.8 and 373.4(e)(3).

§ 387.8 Failure to answer interrogatories or respond to requests for admission or to produce documents.

(a) Interrogatories and requests for admission or to produce documents. Whenever the Office of Export Enforcement or the Office of Antidumping Compliance finds it impracticable, during the course of an investigation, other proceeding or action, to subpoena a person, or books, writings, records, or other tangible things bearing upon the matter being investigated, the Office of Export Enforcement or the Office of Antidumping Compliance may serve upon such person interrogatories, requests for admission of facts, requests for the production of books, records and other writings, or requests to produce or make available other tangible things for inspection, including commodities or technical data exported from the United States, as therein specifically set forth. If a person, within 20 days after receiving interrogatories or requests, fails or refuses to (1) furnish responsive answers to such interrogatories or requests for admission, (2) produce the requested books, records and other writings, or (3) produce or make available for inspection other tangible things requested, including commodities or technical data exported from the United States, which are in that person’s possession, custody or control, without good cause being shown, an order may be issued as provided in §383.3(a)(2), denying export privileges to such person. This order shall remain in effect until such person responds to the interrogatories or requests or gives adequate reasons for failure or refusal to so respond.

(b) Service. Interrogatories or requests shall be served in the same manner as provided in §384.4 (b) and (c) for service of a charging letter.

(c) Enforcement procedures. The procedure regarding applications for denial orders under §387.8(a) and motions to vacate or modify such orders shall conform substantially to that provided for temporary denial orders by §386.19 (b) and (c).

§ 387.9 Licensee accountable for use of license.

The person to whom a license is issued becomes the licensee and will be held strictly accountable for use of the license. The licensee may not, without prior written approval of the Office of Export Administration, in consultation with the Office of Export Enforcement, permit any other person to facilitate or effect the export of any commodity or technical data described in the license, except under his direction and responsibility as the true agent in fact. No term of sale or export or other agreement between the licensee or the order party and the purchaser or ultimate consignee of such commodity or technical data may provide otherwise.

§ 387.10 Unauthorized use and alterations of export control documents.

Except as otherwise specifically authorized in the Export Administration Regulations or in writing by the Office of Export Administration, in consultation with the Office of Export Enforcement, no licensee or other person may obtain, use, alter, or assist in or permit the use or alteration of, any export control document, for the purpose of or in connection with facilitating or effecting any export or reexport other than that set forth in such document and in accordance with all the terms, provisions, and conditions thereof.

§ 387.11 Trafficking and advertising of export control documents.

(a) Unlawful practices. Without prior written approval of the Office of Export Administration, in consultation with the Office of Export Enforcement, no person may do any of the following with respect to any export or reexport under any export control document:

(1) Transfers or changes of authority. Effect any transfer of, or other change of the authority granted in such document, whether by sale, grant, gift, loan or otherwise, to any person; or permit any person to use the same other than for the true account of and as true agent in fact for the licensee; or, if that person is not the licensee, to receive or accept a transfer or other change of the authority granted in, or otherwise use an export control document except for the true account of and as true agent in fact for the licensee.

(2) Change in named parties. Effect any change of, substitution for, or addition to, the parties named in an export control document; or transfer, obtain, purchase, or create any interest or participation in the transaction described in any export control document.

(3) Unlawful advertising or soliciting. Offer or solicit by advertisement, circular, or other communication any transfer or change of an export control document or any interest therein prohibited by the regulations. Such communication shall be deemed unlawful:

(i) Even though coupled with a condition requiring approval by the Office of Export Administration of a new consignor or consignee or other change in the export license, by way of transfer, amendment or otherwise;

(ii) Where, in offering or soliciting the sale for export of any commodities or technical data, the communication indicates that the proposed seller of such commodities or technical data holds or will furnish a license or other export control document for the export of such commodities or technical data; or

(iii) Where, in offering or soliciting the purchase for export of any commodities or technical data, that communication is addressed by the proposed buyer directly or indirectly to any person on the condition that such person as a seller then holds or will furnish a license or other export control document for the export of those commodities or technical data.

(4) Other unlawful practices. Sections 387.10, 387.11, and 387.12 among other things, make it unlawful:

(i) For a licensee or other person holding an export control document to sell or offer to sell, or for any person to purchase or to offer to purchase, the commodities or technical data described in such document with the understanding that the document may be used by or for the benefit of the purchaser to effect export of those commodities or technical data;

(ii) For any person to effect the export of the commodities referred to in §387.11(a)(4)(i) for the benefit of or “for the account” of any person other than the licensee, regardless of the device, means, or fiction employed;

(iii) For the licensee to act fictitiously as principal or agent of another person who actually is effecting the export, or for such other person to act fictitiously as the licensee’s principal or agent for the same purpose;

(iv) For the named consignee to act “for the account” of a new unlicensed consignee, or

(v) For any person to use a license, originally issued for a specified transaction which was not effected, for any other transaction without the specific written authorization of the Office of Export Administration.

(b) Transfer of dock receipts, bills of lading, or liens. (1) Use of certain export control documents. Section 387.12(a) is
§ 387.12 Transactions with persons subject to denial orders.

(a) Prohibited activities. Without prior disclosure of the facts to and specific authorization of the Office of Export Administration, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity,

(1) Apply for, obtain, or use any license, a bill of lading, or any export control document relating to an export or reexport of commodities or technical data by, for, or on behalf of any person who is subject to an order revoking or denying his export privileges or who is then excluded from practice before the International Trade Administration; or

(2) Dispose of export. A person who is entitled to foreclose on any lien or security interest or interest, or who may exercise any rights as holder of the lien or security title or interest, who contemplates an export under the license by someone other than the licensee or to someone other than the purchaser or ultimate consignee designated in the license, must apply for a new license in accordance with the provisions of Part 262.

(b) Persons subject to this regulation. Any person subject to the jurisdiction of the United States who, including a forwarding agent, participates in any transaction described in § 387.13(a), and any person in the United States or abroad who is required to make and keep records under any provision of the Export Administration Regulations, shall keep all the records described in § 387.13(c), which are made or obtained by that person, and shall produce them in the manner provided in paragraph (f) of this section.

(c) Records to be kept. The records to be kept under this § 387.13 shall include export control documents, as defined in § 387.2, memoranda, notes, correspondence, contracts, invitations to bid, books of account, financial records, restrictive trade practice or boycott documents, and reports, and other written matter pertaining to the transactions described in § 387.13(a), which are made or obtained by a person described in § 387.13(b). In addition to the records required to be kept by this section, other sections of the Regulations require the retention of records, including §§ 366.2, 367.8, 371.9, 371.10, 371.12, 372.11, 372.22, 372.51, 372.62, 372.13, 372.33, 372.43, 373.7, 373.8, 374.7, 374.5, 375.8, 376.10, 376.15, 377.5, 378.5, 378.6, 379.4, 386.3, and 386.6. The revocation or revision of any provision of the Export Administration Regulations which requires the making and keeping of records shall not be retroactive in effect unless specifically provided and shall not affect the original requirement to keep these records for the prescribed period.

(d) Reproduction of records. (1) Definition. "Reproduction" for the purpose of this § 387.13(d) is defined to include any photographic, photostatic, micrographic, miniature photographic or other process which completely, accurately and durably reproduces the original record.

(2) Use of reproductions. Reproductions may not be substituted for original documents with respect to
all categories of records required to be retained under any provision of the Export Administration Regulations or of any order, until all of the following conditions are met:

(i) The original documents have been retained for twelve months after the beginning of the retention period set forth in § 387.13(e) or an exception has been granted under the provisions of § 387.13(g).

(ii) All significant information, marks and/or other characteristics on the original document must be clearly visible and legibly reproduced.

(iii) Appropriate facilities must be provided and maintained for the preservation of the reproduced records during the retention period and for the ready location and inspection of the records, including a projector for viewing films, if needed.

(e) Period of retention. (1) Except for records relating to restrictive trade practice or boycott requests, which must be kept for three years (see § 389.6(b)(6)), records required under this section shall be kept for a period of two years from the latest of the following times:

(ii) The export from the United States; or

(iii) Any known reexport, transshipment, or diversion; or

(iii) Any other termination of the transaction, whether formally in writing or by any other means. It may be advisable to maintain records longer than the mandatory two-year retention period because the statute of limitations for criminal actions brought under the Export Administration Act of 1979 and its predecessor Acts is five years (16 U.S.C. 3282).

(2) If the Department of Commerce or any other Government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the agency concerned.

(f) Producing and inspecting records.

(1) Persons within the United States may be requested to produce records which are required to be kept by any provision of the Export Administration Regulations by any order, and to make them available for inspection and copying by any authorized agent, official or employee of the International Trade Administration, the U.S. Customs Service, or the U.S. Government, without any charge or expense to such agent, official or employee. The Office of Export Enforcement and the Office of Antiboycott Compliance encourage voluntary cooperation with such requests. When voluntary cooperation is not forthcoming the Office of Export Enforcement and the Office of Antiboycott Compliance are authorized to issue subpoenas for books, records, and other writings. In instances where a person does not comply with a subpoena, the Department of Commerce may petition the appropriate district court to have the subpoena enforced.

(2) Every person abroad, required to keep records by any provision of the Export Administration Regulations or by any order, shall produce all records or reproductions of records required to be kept, and make them available for inspection and copying upon request by an authorized agent, official, or employee of the International Trade Administration, the U.S. Customs Service, or a U.S. Foreign Service post, or by any other accredited representative of the U.S. Government, without any charge of expense to such agent, official or employee. Persons located outside the United States who fail to comply with certain requests, including requests to produce documents, may be subject to orders denying export privileges. (See § 387.8.)

(g) Requests for exceptions to recordkeeping requirements. (1) Effect of exception. Recordkeeping entities (as defined in § 387.13(b) wishing to maintain records on micrographic systems prior to the second year of the retention period may request an exception to the recordkeeping requirements. An exception, if granted, permits the recordkeeping entity to substitute micrographic records for original documents for the full retention period.

(i) The system shall provide commercial permanence of all records.

(ii) The system shall provide for frequent quality control inspection to ensure readability of all records.

(iii) Micrographed records must have a degree of legibility and readability, when displayed on a viewer and when reproduced on paper, equal to that of the original records. (See section 5 or IRS Revenue Procedure No. 81-46, 1981-40 C.B. 6 concerning technical standards of micrographed records.)

(iv) A detailed index of all micrographic data shall be maintained, and arranged in such a manner as to permit the immediate location of any particular record, location of all documents relating to a given transaction, and determination of disposition of corresponding original documents.

(ii) Submission of requests for exception.

(i) The recordkeeping entity shall submit requests for exceptions involving general export matters to:

Office of Export Administration, P.O. Box 273, Washington, D.C. 20044

(ii) The recordkeeping entity shall submit requests for exceptions involving antiboycott matters to:

Office of Antiboycott Compliance, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Room 3886, Washington, D.C. 20230

(iii) The requesting firm shall include in the request—

(A) Data on the proposed micrographic system, including specific information as to how the system conforms to requirements set forth in § 387.13(g)(3);

(B) A statement concerning intended disposition of corresponding original documents; and

(C) Samples of records to be kept on the system.

(5) Micrographing records under an exception. Upon receiving written notice that an exception has been granted under this § 387.13(g), the recordkeeping entity may substitute micrographic reproductions for only those records already in the retention period and approved under the exception. Originals of records that have not entered the retention period must be kept until the retention period begins (as set forth in §§ 369.6(b)(6) and 387.13(e)) and micrographed records may then be substituted for the originals.

(6) Disposition of original documents. The recordkeeping entity shall include with micrographed records a signed document indicating final disposition of original documents, and the date of final disposition.

(7) Revocation of exception. The Department of Commerce may revoke an individual exception at any time if it determines that the firm has acted improperly, or for other good cause. A decision to revoke this exception may be appealed under the provisions of Part 389 of these Regulations.

(h) Records exempt from recordkeeping requirements. The
following kinds of records have been
determined to be exempt from
recordkeeping requirements:

- Export Information Page
- Special Export Price List
- Vessel Log from Freight Forwarder
- Inspection Certificate
- Warranty Certificate
- Guarantee Certificate
- Packing Material Certificate
- Goods Quality Certificate
- Notification to Customer of Advance
- Mailings
- Letter of Indemnity
- Financial Release Form
- Financial Hold Form
- Export Parts Shipment Problem Form
- Draft Number Log
- Expense Invoice Mailing Log
- Financial Status Report
- Bank Release of Guarantees
- Cash Sheet
- Monthly Customer Statement
- Sales Run
- Commission Payment Back-up
- Commissions Payable Worksheet
- Commissions Payable Control
- Check Request Form
- Accounts Receivable Correction Form
- Check Request Register
- Commission Payment Printout
- Engineering Fees Invoice
- Foreign Tax Receipt
- Individual Customer Credit Status
- Request for Export Customer Code Forms
- Acknowledgement for Receipt of Funds
- Escalation Development Form
- Summary Quote
- Purchase Order Review Form
- Proposal Extensions
- Financial Proposal to Export Customers
- Sales Summaries

§ 387.14 Where to report violations.

(a) Notification. The Office of Export
Enforcement has the primary
responsibility for enforcing these
Regulations except that the Office of
Antiboycott Compliance has the
responsibility for enforcing the
Restrictive Trade Practices or Boycott
Regulations in particular.

(1) If a person obtains knowledge that
a violation of these Regulations has
occurred or will occur, that person may
notify: Office of Export Enforcement,
P.O. Box 7138, Washington, D.C. 20044,
telephone (202) 377-3461, or Office of
Antiboycott Compliance, U.S.
Department of Commerce, 14th Street
and Constitution Ave. N.W., Room 3886,
Washington, D.C. 20230, telephone (202)
377-2381, as appropriate.

(2) Any federal, state, or local
government agency obtaining
knowledge of a potential violation under
these Regulations should immediately
report such potential violation to: (i)
Office of Export Enforcement, P.O. Box
7138, Washington, D.C. 20044, telephone
(202) 377-4808. Failure to report such
potential violations may result in the
unwarranted issuance of validated
export licenses or unlicensed exports to
the detriment of the national security,
foreign policy or short supply interests
of the United States; (ii) Office of
Antiboycott Compliance, U.S.
Department of Commerce, 14th Street
and Constitution Ave. N.W., Room 3886,
Washington, D.C. 20230, telephone (202)
377-2381.

(b) Reporting requirement
distinguished. The notification
provisions set forth in paragraph (a) of
this section are not "reporting
requirements" within the meaning of
§ 387.7.

PART 368—[AMENDED]

2. Section 368.4(b) is revised to read as follows:

§ 387.4 Penalties and sanctions for
violations.

- * * * * *
  (b) Criminal. The False Statements
  Act makes it a criminal offense to make
  a willfully false statement or conceal a
  material fact, or knowingly use a
document containing a false statement,
in any matter within the jurisdiction of a
U.S. department or agency. Maximum
penalties under this provision are
$10,000 fine or imprisonment for five
years, or both. In addition, a knowing
violation of the Export Administration
Act or any regulation, order, or license
issued under the Act generally is
punishable by a fine of not more than
five times the value of the exports
involved or $50,000, whichever is
greater, or by imprisonment for not more
than 5 years, or both. Willful violations
are punishable by fines or
imprisonment, or both. (See also
§ 387.1(a)).

PART 369—[AMENDED]

3. Section 369.6(b) (5) and (8) are
revised to read as follows:

§ 387.6 Reporting requirements.

- * * * * *
  (b) * * * * *
  (5) At the reporting person’s option,
  reports may be submitted on either a
  single transaction form (Form ITA-621P,
  Report of Restrictive Trade Practice or
  Boycott Request Single Transaction
  (revised 7-79) OMB No. 0625-0036) or on
  a multiple transaction form (Form ITA-
  6051P, Report of Request for Restrictive
  Trade Practice or Boycott Multiple
  Transactions (revised 7-79) OMB No.
  41-R2305). Use of the multiple
  transaction form permits the reporting
  person to provide on one form all
  required information relating to as many
  as 75 reportable requests received
  within any single reporting period.
  * * * * *

(8) Records containing information
relating to a reportable boycott request,
including a copy of any document(s) in
which the request appears, must be
maintained by the recipient for a three-
year period after the receipt of the
request. The Department may require
that these materials be submitted to it or
that it have access to them at any time
within that period. (See § 387.13 for
additional recordkeeping requirements.)

* * * * *

Supplement 1—[Removed]

4. Supplement No. 1 to Part 369 and
the heading above it reading
"Interpretation of Part 369" are removed.

Appendix—[Redesignated as
Supplement 1]

5. The material titled "Appendix—
Interpretations" is redesignated as
Supplement No. 1 to Part 369,
"Interpretations."

Supplement 2—[Amended]

6. A new heading "Interpretations" is
added to Supplement No. 2 to Part 369.

Supplement 3—[Amended]

7. Supplement No. 3 to Part 369,
"Appendix—Interpretations," is
amended by removing "Appendix" from
the heading.

Supplement 4—[Amended]

8. Supplement No. 4 to Part 369 is
amended by removing "Appendix" from
the heading.

Supplement 5—[Amended]

9. Supplement No. 5 to Part 369,
"Appendix—Interpretation," is amended
by removing "Appendix" from heading.

PART 370—[AMENDED]

10. Section 370.2 is amended by
adding the following after the definitions
of "Commodity Control List (CCL)" and
"Net Value", respectively.

§ 387.2 Definitions of terms.

- * * * * *
  Controlled Country. Any country
described in Section 620(f) of the

Office of Export Enforcement.

Pursuant to the Export Administration
Act of 1979 (Pub. L. 96-72), the Office of
Export Enforcement enforces the Export
Administration Act and the Regulations
thereunder and among other things,
directs the investigation of suspected
export control violations and prepares
§ 373.7 (Amended)  
13. Paragraph (m) of § 373.7 is removed.
14. Paragraph (n) of § 373.7 is redesignated as (m).
15. Paragraph (o) of § 373.7 is redesignated as (n).

PART 386—[AMENDED]  
18. Section 386.1, first sentence, is revised to read as follows:

§ 386.1 Purpose and limitations.  
The regulations in this part set forth the procedures for imposing administrative sanctions for violation of the Export Administration Act of 1979, as amended (Pub. L. 97–145, 90 U.S.C. app. 2401, et seq.) or its predecessor statute, the Export Administration Act of 1968, as amended (50 U.S.C. app. 2401, et seq. (1976 & Supp. Ill 1979)) (hereinafter collectively referred to as the "Act," although citations to particular sections of the Act will be to the 1979 Act, or), and of any regulation, order, license or other authorization issued thereunder. *

17. Section 388.2 is revised to read as follows:

§ 388.2 Definitions.  
As used in this part:
Department. The Office of Export Administration, the Office of Export Enforcement or the Office of Antiboycott Compliance, International Trade Administration, U.S. Department of Commerce.

11. The first sentence of paragraph (b) of § 370.3 is revised to read as follows:

§ 370.3 Prohibited exports.  
(1) Revisions. All export licenses and other authorizations to export or reexport are subject to revision, suspension, or revocation, in whole or in part, without notice. *

PART 372—[AMENDED]  
12. Paragraph (d)(4) of § 372.9 is revised to read as follows:

§ 372.9 Issuance of validated licenses.  
(4) Revocation, suspensions, or revisions. Outstanding licenses may be revoked, suspended, or revoked, in whole or in part, or the validity periods thereof may be extended or reduced by appropriate orders or regulations. *

PART 373—[AMENDED]  
§ 373.7 (Amended)  
13. Paragraph (m) of § 373.7 is removed.
14. Paragraph (n) of § 373.7 is redesignated as (m).
15. Paragraph (o) of § 373.7 is redesignated as (n).

PART 386—[AMENDED]  
18. Section 388.1, first sentence, is revised to read as follows:

§ 388.3 Denial of export privileges and imposition of civil penalties.  
(a) Civil penalty. In addition to or instead of any or all of the administrative sanctions described in (a) (1), (2) and (3) of this section, a civil penalty not to exceed $100,000 for each violation may be imposed, except that a civil penalty not to exceed $100,000 may be imposed for each violation involving national security controls imposed under § 5 of the Act.

19. The first sentence of § 388.4(a) is revised to read as follows:

§ 388.4 Institution of administrative proceedings.  
(a) Charging letters. The Director of the Office of Export Enforcement 1 or the Director of the Office of Antiboycott Compliance, as appropriate, may begin administrative proceedings under this Part by issuing a charging letter in the name of the Department. *

20. The first sentence of § 388.6(a) is revised to read as follows:

§ 388.6 Filing and service of papers other than charging letter.  
(a) Filing. All papers to be filed shall be delivered or mailed to "EAR Administrative Proceedings," U.S. Department of Commerce, Room 6710, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, or such other place as the presiding official may designate. *

21. Section 388.17(b) is revised to read as follows:

§ 388.17 Consent proceedings.  
(a) * * *
(b) Cases may also be settled prior to the service of a charging letter. In such event, a proposed charging letter shall be prepared, and a consent agreement and order shall be submitted for approval and signature to the Deputy Assistant Secretary of Commerce for Export Enforcement. The consent proposal shall include a consent agreement and a proposed order. If the Deputy Assistant Secretary does not approve the proposal, he will notify the parties and the case will proceed as though no consent proposal had been made. If the Deputy Assistant Secretary approves the proposal he will issue an order, and no action by the presiding official shall be required. The Deputy Assistant Secretary may order that any administrative sanction imposed shall be suspended in whole or in part upon such terms of probation or other conditions as he deems appropriate. Any such suspension may be modified or revoked by the Deputy Assistant Secretary, or on appeal, by the Assistant Secretary of Commerce for Trade Administration, as provided in § 388.16(c).

§ 388.19 [Amended]  
22. Section 388.19(a)(1) is amended to remove "Office of Export Administration" and insert "Office of Export Enforcement" in the first (and only) sentence.
SEcurities and EXchange COMmission

17 CFR Part 240

[Release No. 34-19336; S7-933]

pro Rata Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission announces the adoption of Revised Rule 14d-8 to govern the acceptance of securities deposited in response to a partial tender offer if a greater number of securities are deposited than the bidder is bound or willing to purchase and rescission of current Rule 14d-8. Pursuant to revised Rule 14d-8, a bidder in an oversubscribed partial tender offer is required to accept securities on a pro rata basis according to the number of securities deposited by each depositor during the period such offer remains open.

DATE: Revised Rule 14d-8 shall be effective with respect to any tender offer subject to Section 14(d) of the Exchange Act that is commenced within the meaning of Rule 14d-2 under that Act after December 28, 1982.


SUPPLEMENTARY INFORMATION: The Commission announces the adoption of revised Rule 14d-8 under Sections 14(e) and 23(a) of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a et seq.). The revised rule requires a bidder in an oversubscribed partial tender offer to accept securities on a pro rata basis according to the number of securities deposited by each security holder during the period such offer remains open.

I. General

After consideration of the comments received on proposed Rule 14d-8, the Commission has determined to adopt revised Rule 14d-8, as proposed, and to rescind current Rule 14d-8 (17 CFR 240.14d-8). The Commission believes that, as stated in the Proposing Release, extension of proration rights throughout the term of the offer is essential to assure security holders the time necessary to consider the merits of an offer and to obtain sufficient information upon which to base their investment decisions and to minimize the potential security holder confusion and misunderstanding generated by changing proration periods and multiple proration pools.

In the Proposing Release, the Commission discussed at length the problems associated with the current ten calendar day proration period and requested comments on its proposal to extend the proration period for the duration of the offer. Concurring in the Commission's assessment that, as used in recent partial tender offers, the minimum ten calendar day proration period denies security holders an adequate opportunity to make informed investment decisions and leads to security holder confusion and misunderstanding, the majority of the commentators supported the Commission's proposal to extend the proration period beyond the current ten calendar day period.

A number of commentators related specific experiences in which they had problems receiving tender offer materials and effecting their investment decisions within the ten calendar day proration period. These experiences included receiving tender offer materials after the expiration of a bidder's proration period or so close to the end of the period that they could not tender before the expiration of the proration period. As a result, these commentators stated that they were foreclosed from participating in the offer and were likely to receive a lesser amount for their securities in a proposed second-step merger. In addition, these commentators highlighted the problems that individual security holders experience trying to understand the varying legal consequences of the deadlines contained in a partial tender offer, appreciating the importance of deciding
before the expiration of the proration period whether to tender, sell or hold their stock, and comprehending the effect of multiple proration pools.

Some commentators, while favoring extension of the ten day proration period, suggested modifications to the Commission’s specific proposal that were designed principally to make the proration period co-extensive with the withdrawal period. These alternatives were proposed as a result of the commentators’ concern that the Commission’s proposal would preclude any “early pay” in partial tender offers, since bidders in such offers no longer would be able to begin purchasing tendered securities upon the expiration of the withdrawal period but would have to wait until the expiration of the offer. These commentators expressed concern that the Commission’s proposal would tip the balance of advantage in favor of any and all offers and would preclude parity between the two types of offers, because bidders in any and all offers generally could still begin purchasing tendered securities upon the expiration of the withdrawal period.

After reviewing these proposed alternatives, the Commission has concluded that such revisions would continue to deny security holders in a partial tender offer the minimum time prescribed under the tender offer regulations for security holders to make their investment decision, which minimum time is, in fact, assured security holders in an any and all offer. Moreover, the commentators’ suggested alternatives fail to eliminate the possibility of multiple proration pools and therefore would permit the current complexity and confusion generated in these partial offers to continue unabated.4

II. Certain Findings

As required by Section 23(a)(2) of the Exchange Act, the Commission has specifically considered the impact that the rule will have on competition. The Commission finds that compliance with the rule will not impose a significant burden on competition which is not necessary and appropriate to achieve the purposes of the Exchange Act.

The Commission for good cause finds, in accordance with the Administrative Procedure Act (5 U.S.C. 553(d)), that, in view of the pressing need to address the problems caused by the current ten calendar day proration period, revised Rule 14d-8 should be effective with respect to any tender offer subject to Section 14(d) of the Exchange Act commenced within the meaning of Rule 14d-2 under that Act after the date of publication of revised Rule 14d-8 in the Federal Register.

List of Subjects in 17 CFR Part 240

Reporting requirements, Securities.

III. Text of Rule

In accordance with the foregoing, Title 17, Chapter 2, of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By revising Rule 14d-8, § 240.14d-8, to read as follows:

§ 240.14d-8 Exemption from statutory pro rata requirements.

Notwithstanding the pro rata provisions of Section 14(d)(6) of the Act, if any person makes a tender offer or request or invitation for tenders, for less than all of the outstanding equity securities of a class, and if a greater number of securities are deposited pursuant thereto than such person is bound or willing to take up and pay for, the securities taken up and paid for shall be taken up and paid for as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each depositor during the period such offer, request or invitation remains open.

Authority: This rule is amended pursuant to Sections 14(e) and 23(a) of the Securities Exchange Act of 1934.

shares equal to the percentage of securities of the class sought. The Commission does not believe that achieving time of payment parity between the two types of offers justifies the additional regulation embodied in the first proposal or the increased complexity that would result in the second proposal (particularly in view of the limited utility of such “early pay” option).


By the Commission (Commissioners Evans, Thomas and Longstreth concurring; Chairman Shad and Commissioner Treadway dissenting).

George A. Fitzsimmons,
Secretary.


Dissent by Chairman Shad:

On December 15th the Commission adopted Rule 14d-8 by a three to two vote. This rule extends the minimum proration period for the life of tender offers—from 10 calendar days to 20 business days (26 to 28 calendar days). It is intended to reduce public shareholders' confusion and afford them more time to consider and act upon tender offers.

I share the majority's concerns for public shareholders, but dissented briefly for the following reasons.

I. Authority

The Commission's legal authority to extend the statutory proration period is not clear. In addition to the reasons cited by Commissioner Treadway in his dissent, when Congress adopted Section 14(d)(6) of the Securities Exchange Act in 1968, it considered and explicitly rejected the proration scheme the new Rule 14d-8 implements.1 The Supreme Court has held that where the provisions of an Act are unambiguous and its directions specific, there is no power to amend it by regulation 2; and that if the passage of time indicates changes are needed in a congressionally established regulatory scheme, an agency must go to Congress, rather than implement changes by regulation.3

II. Merits

The minimum time periods of the old rule (Section 14(d)(6)) and the new Rule 14d-8 are as follows:

<table>
<thead>
<tr>
<th>Minimum business (calendar) days</th>
<th>Proration</th>
<th>Withdrawal</th>
<th>Termination</th>
</tr>
</thead>
<tbody>
<tr>
<td>New rule</td>
<td>23 (29-28)</td>
<td>15 (19-21)</td>
<td>20 (26-28)</td>
</tr>
<tr>
<td>Old rule</td>
<td>9-8 (10)</td>
<td>15 (19-21)</td>
<td>20 (26-28)</td>
</tr>
</tbody>
</table>

Changes in a tender offer and competitive offers may extend certain of the above time periods, which would compound the problems discussed below.

The new rule increases the proration uncertainty (i.e., risk) to all shareholders, bidder and target companies from 10 to 20-28 calendar days.

Under the old rule, after the 10th calendar day shareholders could redeploy the shares not accepted or sell them and reinvest the

proceeds in more attractive securities. Under the new rule, they must wait 23-28 calendar days to learn the proration. Such a 19 to 18 day delay circumscribes shareholders' options.

Under the old rule, the after the 15 business day withdrawal period, the bidder could purchase the shares tendered. Under the new rule, the bidder must wait an additional week, which increases the bidder's exposure to target defensive tactics, "white knights" and competitive bidders.

Under the old rule, shareholders had 9-11 calendar days after learning the proration to decide whether to withdraw all or any portion of their shares in order to: (a) Tender them to a competitive bidder; (b) sell them and reinvest the proceeds in more attractive securities; or (c) avoid an over-subscription. Under the new rule, the withdrawal period expires five business days before shareholders know the proration.

Extending the proration period five business days beyond the withdrawal period largely nullifies the benefit of the withdrawal period to shareholders. It also locks-in those who do not withdraw their shares by the 15th business day or who tender thereafter. Therefore, sophisticated shareholders will maximize their options by not tendering until the 20th business day, since there is no advantage in tendering earlier. Unsophisticated shareholders who tender earlier will be locked-in upon expiration of the withdrawal period. In addition, a large volume of last minute tenders will further compound the uncertainty for all shareholders, bidder and target companies.

The new rule does not address dilatory tactics by target companies in forwarding tender offer materials to their shareholders, nor so-called "golden parachutes", nor does it target companies. Under the new rule, the withdrawal period expires five business days before shareholders know the proration.

The longer proration period and greater uncertainty also increase the risks to first bidders. All other things being equal, this will result in fewer tender offers, to the detriment of public shareholders. Also, if first bidders raise or extend their offers, they will afford more time for competitive bidders and defensive tactics by target companies.

For the foregoing reasons, the new rule also increases potential bidders incentive to accumulate more shares in the open market, prior to announcement of tender offers at higher prices.

III. Study

At the December 15th meeting, the Commission also unanimously approved a study of the foregoing and other aspects or trends of public shareholders. Such a study should help clarify these complex issues.

Dissent by Commissioner Treadway: I respectively dissent from the adoption of Rule 14d-8 under the Securities Exchange Act of 1934. My dissent is based upon my analysis and belief that, as a matter of sound statutory construction, the Commission lacks the authority to adopt the rule.

Rule 14d-8 would modify Section 14(d)(6) of the Securities Exchange Act, which contains an express, unambiguous 10 day proration period. Section 14(d)(6) does not—expressly or implicitly—authorize the Commission to modify the 10 day period by rulemaking or order. By way of contrast, the immediately preceding subsection, Section 14(d)(5), which deals with withdrawal rights, expressly confers upon the Commission the authority to modify by rule, regulation or order the time period defined in that subsection. In 1988 Congress specifically considered and rejected conferring upon the Commission such authority in Section 14(d)(6). The difference between the two sections demonstrates that Congress is quite capable of clearly granting us authority to modify expressly stated time frames when that is the intent of Congress.

In 1970, subsequent to the original adoption of Section 14(d)(6), the Congress adopted Section 14(e) under the Securities Exchange Act of 1934. That section provides that the Commission "shall for purposes of this subsection (Section 14(e)), by rules and regulations define and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative."

"As a result of having hedge tendered (i.e., tendered all the shares they owned and sold additional shares short in the open market), and lower aggregate price realizations by public shareholders.

The longer proration period and greater uncertainty also increase the risks to first bidders. All other things being equal, this will result in fewer tender offers, to the detriment of public shareholders. Also, if first bidders raise or extend their offers, they will afford more time for competitive bidders and defensive tactics by target companies.

For the foregoing reasons, the new rule also increases potential bidders incentive to accumulate more shares in the open market, prior to announcement of tender offers at higher prices.

On the basis of the foregoing, I dissent from the Commission's adoption of Rule 14d-8.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket No. 82N-0378]

D&C Red No. 6 and D&C Red No. 7

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is “permanently” listing D&C Red No. 6 and D&C Red No. 7 for general use in drugs and cosmetics, except for use in the area of the eye. This action is in response to a petition filed by the Cosmetic, Toiletry and Fragrance Association, Inc. This rule will remove D&C Red No. 6 and D&C Red No. 7 from the provisional list of color additives for use in drugs and cosmetics. Published elsewhere in this issue of the Federal Register is an order extending the closing date for the provisional listing of D&C Red No. 6 and D&C Red No. 7 until March 29, 1983.


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


SUPPLEMENTARY INFORMATION: In the Federal Register of August 6, 1973 (38 FR 21199), FDA announced that a petition (CAP 500400) for the permanent listing of D&C Red No. 6 and D&C Red No. 7 as color additives for use in drugs and cosmetics had been filed by the Cosmetic, Toiletry and Fragrance Association, Inc. (CTFA), 1110 Vermont Ave. NW., Washington, DC 20005.

The petition was filed under section 708 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 378). A later notice in the Federal Register of March 5, 1976 (41 FR 9584), amended the notice of filing of the petition to include the use of D&C Red No. 7 in cosmetics intended for use in the area of the eye.
D&C Red No. 6 is principally the disodium salt of 3-hydroxy-4-(4-methyl-2-sulfophenylazo)-2-naphthalenecarboxylic acid. D&C Red No. 7 is the calcium salt of the same compound.

I. Toxicological Testing of D&C Red No. 6 and D&C Red No. 7

The provisional regulations published in the Federal Register of February 4, 1977 (42 FR 6962) required new chronic toxicity studies of D&C Red No. 6 and D&C Red No. 7 as a condition for their continued provisional listing. FDA placed these requirements on 32 color additives, including D&C Red No. 6 and D&C Red No. 7, because the toxicity studies the petitioners had submitted to support the safe use of these color additives were deficient in several respects. FDA described these deficiencies in the Federal Register of September 23, 1976 (41 FR 41863; Docket No. 76N-0366):

1. Many of the studies were conducted using groups of animals, i.e., control and those fed the color additive, that are too small to permit conclusions to be drawn on the chronic toxicity or carcinogenic potential of the color additive. The small number of animals used does not, in and of itself, cause this result, but when considered together with the other deficiencies in this listing, does do so. By and large, the studies used 25 animals in each group; today FDA recommends using at least 50 animals per group.
2. In a number of the studies, the number of animals surviving to a meaningful age was inadequate to permit conclusions to be drawn today on the chronic toxicity or carcinogenic potential of the color additives tested.
3. In a number of the studies, an insufficient number of animals was reviewed histologically.
4. In a number of the studies, an insufficient number of tissues was examined in those animals selected for pathology.
5. In a number of the studies, lesions or tumors detected under gross examination were not examined microscopically.

FDA postponed the closing date for the provisional listing of the color additives until January 31, 1981, for the completion of required toxicity studies. FDA later extended the closing date for completing these studies and for submitting data. In a proposal published in the Federal Register of November 14, 1980 (45 FR 75226), the agency outlined the reasons for postponing the closing dates for 23 provisionally listed color additives under test, including D&C Red No. 6 and D&C Red No. 7, beyond January 31, 1981.

In the Federal Register of March 27, 1981 (46 FR 10854), the agency established a new closing date of December 31, 1982, for the complete evaluation of D&C Red No. 6 and D&C Red No. 7. When the order set forth below becomes effective, it will remove D&C Red No. 6 and D&C Red No. 7 from the provisional list. Published elsewhere in this issue of the Federal Register is an order extending the closing date for the provisional listing of D&C Red No. 6 and D&C Red No. 7 until March 29, 1983, to provide an opportunity for filing objections to this order.

II. Chemistry Concerns

The provisional regulations of February 4, 1977, also established a closing date of October 31, 1977, for developing the chemistry data and analytical methods necessary for defining chemical specifications for certifying batches of D&C Red No. 6 and D&C Red No. 7. FDA requires chemical specifications, based on appropriate analytical methods, that are sufficiently precise that the agency can certify that batches of each color additive are equivalent to the batches of the color additive used in the animal studies that established the safety of the color additive.

The petitioner has been actively engaged in efforts to provide the chemistry information needed to establish specifications since submitting the petition to the agency. By 1977 experimental data showed that both D&C Red No. 6 and D&C Red No. 7 contained unidentified material, but the agency did not have sufficient information to establish appropriate specifications. FDA expected that the chemical nature and amount of this unidentified material, which is soluble in ether, could be established before October 31, 1977. However, this task proved to be more difficult to complete than expected and could not be completed during the short postponement period. FDA, therefore, extended the closing date to October 31, 1978, under § 81.27(c) (21 CFR 81.27(c)), for the development of the necessary chemical data and analytical methods for the color additives (42 FR 14642; April 7, 1978).

III. Resolution of Concerns Relating to Unidentified Material

FDA has evaluated the scientific data regarding the chemical characterization of D&C Red No. 6 and D&C Red No. 7. Although the petitioner was unable to determine the chemical identity of the material in the ether layer, spectrophotometric analysis provides a means of measuring the total amount of this component that may be present in each batch of these color additives. FDA concludes that samples submitted for certification can be compared spectrophotometrically with samples of the batches tested toxicologically. By this procedure, the agency can assure that certified batches, on average, will not contain a higher percentage of the unknown material than those tested for safety in the chronic toxicity studies. The feeding studies establish that the color additives are safe when the ether-soluble material is present at this level. Therefore, a test specification for ether-soluble matter is included in the regulations. The method for this test is published as an Appendix A to this final rule.

IV. Potential Impurities in D&C Red No. 6 and D&C Red No. 7

The principal starting materials for the manufacture of D&C Red No. 6 and D&C Red No. 7 are p-toluidine m-sulfonic acid (PTMSA) and 3-hydroxy-2-naphthoic acid. PTMSA may contain small amounts of p-toluidine and even smaller amounts of o-toluidine. FDA became concerned about these potential impurities when o-toluidine (Ref. 1) and p-toluidine (Ref. 2) were reported to be animal carcinogens.

FDA and CTFA have concentrated their efforts on finding suitable methods to measure p-toluidine rather than o-toluidine because o-toluidine is present only as a contaminant of p-toluidine. o-Toluidine would thus be present in the color additive at levels that are vanishingly small. In fact, o-toluidine has never been detected in either color additive.

CTFA has submitted to FDA a report containing a method prepared by Shiseido Laboratories (Yokohama, Japan) for determining residual p-toluidine in D&C Red No. 6. The method submitted by Shiseido Laboratories uses high performance liquid chromatography separation with fluorescence detection. The reported limit of detection for this method is 0.2 parts per million (ppm). FDA considers that this method is a valid analytical method for determining residual p-toluidine levels in D&C Red No. 6 at least to 1.5 ppm and probably lower. In addition, FDA has developed a high performance liquid chromatography method for detecting p-toluidine in D&C Red No. 6 and D&C Red No. 7 with a reliable sensitivity of less than 5 ppm. Using the high performance liquid chromatography method, FDA developed. Shiseido Laboratories analyzed the residual p-toluidine in samples of two commercial batches of D&C Red No. 6 and D&C Red No. 7.
these samples appeared to be less than 2 ppm. Based on these analytical results, FDA expects that the average p-toluidine level in certified D&C Red No. 6 and D&C Red No. 7 prepared in accordance with current good manufacturing practice will not exceed 5 ppm.

To ensure that future batches of these color additives are produced in accordance with current good manufacturing practice, FDA is setting a specification of 15 ppm p-toluidine in these regulations. This level of p-toluidine can be readily detected by practical methods and thus will ensure that no batch will contain excessive amounts of p-toluidine. The agency also considers that this specification will provide adequate control for residual o-toluidine because, as a contaminant of p-toluidine, the amount of o-toluidine present is dependent on the amount of p-toluidine present. The agency’s evaluation of the safety of D&C Red No. 6 and D&C Red No. 7 containing p-toluidine impurities is discussed in section V. below.

V. Evaluation of the Safety of D&C Red No. 6 and D&C Red No. 7 for Drug and Cosmetic Use

A. Statutory Safety requirements.

Under section 706(b)(4) of the act (21 U.S.C. 376(b)(4)), the so-called “general safety clause” for color additives, a color additive cannot be listed for a particular use unless the data presented to FDA establish that the color is safe for that use. Although what is meant by “safe” is not explained in the general safety clause, the legislative history makes clear that this word is to have the same meaning for color additives as for food additives. (See H. Rep. No. 1761, “Color Additives Amendments of 1960,” Committee on Interstate and Foreign Commerce, 86th Cong., 2d Sess. 11 (1960).) The Senate report on the Food Additives Amendment of 1958 states:

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


FDA has incorporated this concept of safety into its color additive regulations. Under 21 CFR 70.3(1), a color additive is “safe” if “there is convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive.” Therefore, the general safety clause prohibits approval of a color additive if doubts about the safety of the additive for a particular use are not resolved to an acceptable level in the minds of competent scientists.

The general safety clause is buttressed by the anticancer or Delaney Clause, section 706(b)(5)(B) of the act (21 U.S.C. 376(b)(5)(B)), which provides that a color additive shall be deemed to be unsafe “if the additive is found by the Secretary to induce cancer when ingested by man or animal” (21 U.S.C. 376(b)(5)(B)(i)).

B. Results of toxicology studies.

The agency has completed its evaluation of the color additive petition for D&C Red No. 6 and D&C Red No. 7, including two new chronic toxicity studies on D&C Red No. 7 in rats and mice. These new long-term studies represent current state-of-the-art toxicological testing. The protocols for these studies have benefited from knowledge of deficiencies in previously conducted carcinogenesis bioassays and other chronic toxicity protocols. The use of large numbers of animals of both sexes, pilot studies to determine maximum tolerated dosages, two control groups (thereby effectively doubling the number of controls), and in utero exposure significantly increases the power of these tests to detect dose-related effects. The studies were designed and conducted in full compliance with the agency’s good laboratory practice regulations and were subject to inspections by FDA officials during their course.

The test material in the recent chronic rat and mouse studies was D&C Red No. 6. Because D&C Red No. 6 and D&C Red No. 7 are the disodium and the calcium salts, respectively, of the same compound, the agency considers the two color additives to be toxicologically equivalent. Thus, any safety conclusion drawn from studies of either color additive applies equally to the other. Before 1977, the petitioner had submitted reports on a number of animal toxicity studies with D&C Red No. 7. Among these studies were 2-year feeding studies in rats and dogs, a three-generation reproduction study in rats, a repeated dermal application study in rabbits, a life-time study in mice, teratology studies in rats and rabbits, subacute feeding studies in rats and dogs, and acute oral toxicity studies in rats and dogs. These studies did not produce any evidence that the use of these color additives for the petitioned uses would be unsafe.

However, FDA did note a treatment-related effect in the three-generation reproduction study in which rats received D&C Red No. 7 in the diet at dosage levels of 0.5, 5.0, 15.0, and 50.0 milligrams per kilogram (mg/kg). At the higher dose level, the second generation rats, but not the first or third generation, had decreased fertility. No treatment-related effects were observed at any other dose level. Accordingly, FDA set the no-adverse-effect level in this study at the next lower dose level, which was 15 milligrams D&C Red No. 7 per kilogram body weight per day (15 mg/kg/day).

As discussed above, in 1976, the agency concluded that new chronic toxicity feeding studies would be required to provide data to permit a final determination to be made on the listing of D&C Red No. 6 and D&C Red No. 7 (41 FR 41660; September 23, 1976). These new chronic studies revealed two treatment-related effects from ingestion of D&C Red No. 6.

In one new chronic feeding study, male and female CD-1 mice were fed diets containing D&C Red No. 6 at concentrations of 0.05, 1.0, and 5.0 percent of their diets. The only treatment-related effect in this study was decreased survival of high-dose male mice, compared to controls, during the last 6 months of the study. No carcinogenic effects or other changes that could be ascribed to treatment of mice with D&C Red No. 6 were observed.

In the other new chronic feeding study, which was with male and female Charles River CD rats, parental animals were fed diets containing D&C Red No. 6 at concentrations of 0.05, 0.30, and 2.0 percent continuously from before mating until weaning of their offspring. The offspring were fed diets containing these same concentrations of D&C Red No. 6 for 24 months in males and 31 months in females. The agency noted an increased incidence of kidney disease, listed as chronic nephritis by the testing laboratory, in both male and female rats at the high-dose level. To resolve questions about this kidney disease, FDA requested, by letter dated August 19, 1982, microslides from tissue sections of the kidneys of all rats from the two control groups and the three groups of diet containing D&C Red No. 6.

The examination of slides by FDA pathologists revealed a treatment-related effect on a commonly occurring spontaneous disease of rats known as...
chronic progressive nephrosis. The occurrence of chronic progressive nephrosis as observed in this study was graded by the agency pathologists as being minimal, mild, moderate, or severe. There was no significant difference between the control and treated groups, for both male and female rats. In the incidence of chronic progressive nephrosis that was of minimal to moderate severity. However, there was an increased incidence of moderate to severe chronic progressive nephrosis among the male rats in the mid- and high-dose groups compared to the male rats in the low-dose or control groups. Similarly, the incidence of moderate to severe chronic progressive nephrosis was increased among high-dose group female rats compared to the incidence of this effect among other treated or control group female rats. Agency pathologists concluded that, although there were no carcinogenic renal changes in this study attributable to the administration of D&C Red No. 6, there appeared to be an exacerbation of a spontaneous renal disease of aged rats (chronic progressive nephrosis) in the mid- and high-dose group male rats and in the high-dose group female rats.

C. Computation of acceptable daily intake. FDA calculates the acceptable daily intake for a color additive by using the following process: The agency identifies the highest no-adverse-effect level in each study in which it observes a treatment-related effect. It then compares the no-adverse-effect levels from these studies and uses appropriate safety factors [see 21 CFR 70.40] to calculate the acceptable daily intake for the color additive using the study that leads to the lowest value.

In the chronic feeding study with mice, the mid-dose (1500 mg/kg/day) was the no-adverse-effect level, and in the chronic feeding study with rats, the low dose (25 mg/kg/day) was the no-adverse-effect level.

Of the effects noted in all the studies reviewed by the agency, the three-generation reproduction study in rats establishes the lowest acceptable daily intake for D&C Red No. 6 and D&C Red No. 7. The no-adverse-effect level for this study was 15 mg/kg/day. Reduced by the safety factor of 100, this study establishes an acceptable daily intake of 0.15 mg/kg/day, or 9 mg/day for a 60 kg human.

D. Prior actions by FDA. Even though appropriate testing of D&C Red No. 6 and D&C Red No. 7 did not show them to be carcinogens, the agency still had to consider whether to list these color additives in light of the fact that they contain carcinogenic impurities, p-toluidine and o-toluidine. In the past, FDA has terminated the provisional listings of several color additives that contained or were expected to contain a carcinogenic impurity or constituent. (See the D&C Green No. 5 final rule published in the Federal Register of June 4, 1982 (47 FR 24276, 24280).) However, the agency no longer believes that it must refuse to list a color additive simply because it contains or is expected to contain a carcinogenic impurity.

As explained in the D&C Green No. 6 final rule (47 FR 14138, 14141–2 [April 2, 1982]), the agency has concluded that even if a color additive contains a carcinogenic impurity, the Delaney Clause is not triggered unless the color additive as a whole is found to cause cancer. The agency is confident that it possesses the capacity (through the use of extrapolation procedures) to assess adequately the upper limit of risk presented by the use of a color additive that has not been shown to be a carcinogen but that does contain a carcinogenic impurity. The estimate of the risk may be exaggerated because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to conclude that a substance is safe under specific conditions of use. (FDA has also explained the basis for this approach in the advance notice of proposed rulemaking on its policy for regulating carcinogenic chemicals in food and color additives published in the Federal Register of April 2, 1982 (47 FR 14464).)

Recently, the agency has examined the risk associated with drug and cosmetic uses of D&C Green No. 6 and D&C Green No. 5, which contain minor amounts of p-toluidine. Neither color additive had been shown to be carcinogenic by appropriate bioassays. FDA concluded in both instances that the use of these color additives in drugs and cosmetics is safe. The agency is using the same method of analysis for D&C Red No. 6 and D&C Red No. 7.

E. Use of D&C Red No. 6 and D&C Red No. 7. Between 1970 and 1977, FDA did not certify any D&C Red No. 6 (straight color), but from 1978 through 1982, FDA certified an average of 560 pounds of this color additive per year. The agency did not certify any straight D&C Red No. 7 during the period of 1970 through 1982.

The use of D&C Red No. 6 and D&C Red No. 7 lakes increased during the second half of the 1970's. The average pounds per year certified for the period 1978 through 1982 was 44,000 pounds of D&C Red No. 6 lakes and 107,300 pounds of D&C Red No. 7 lakes. Based on these average yearly certified poundage data and the trend of increasing use of these color additives, FDA expects that the average total certified poundage of D&C Red No. 6, D&C Red No. 6 lakes, and D&C Red No. 7 lakes might increase to roughly 600, 60,000, and 120,000 pounds per year, respectively. Although individual batches of lakes vary widely in content of primary colors, the average primary color content of the lakes of any specific color additive generally does not exceed 40 percent primary color.

Assuming that the average primary color content of lakes is 40 percent, exposure to D&C Red No. 6 and D&C Red No. 7 from both straight color and lake uses would be roughly 72,600 pounds per year.

Many cosmetic manufacturers submit cosmetic product ingredient statements (formulations) to FDA under the voluntary cosmetic regulatory program (21 CFR Part 720). This program provides information on the specific types of cosmetic products in which D&C Red No. 6 and D&C Red No. 7 are used. Additionally, CTFA has provided data on maximum use levels in cosmetics based on a 1981 survey of manufacturers.

As of December 1981, FDA’s voluntary cosmetic regulatory program computer file contained 9 formulations that listed D&C Red No. 6 as an ingredient, 598 formulations that listed D&C Red No. 6 lakes as ingredients, 45 formulations that listed D&C Red No. 7 as an ingredient, and 1,178 formulations that listed D&C Red No. 7 lakes as ingredients. (Apparently, for at least D&C Red No. 7, some companies reported use of the straight color when they used the lake.) The major uses of D&C Red No. 6 and D&C Red No. 7 and their lakes in cosmetics were in make-up preparations (57.6 percent) and in manicuring preparations (41.4 percent). Of the listed make-up preparations, 69 percent were lipsticks. The levels at which these color additives are used in

1This order does not permanently list D&C Red No. 6 and D&C Red No. 7 lakes. FDA published a notice of intent to the Federal Register of April 22, 1979 (44 FR 36411), which discussed the additional information that the agency believes is needed before final regulations can be issued. FDA intends to publish proposed regulations governing the use of color additives in lakes in the Federal Register in the near future and concludes that the listing of color additives for use in lakes can best be implemented by general regulations. D&C Red No. 6 and D&C Red No. 7 lakes will, therefore, continue to be provisionally listed for coloring drugs and cosmetics under Parts 111 and 112 (21 CFR Parts 111 and 112). The discussion of the lakes here is solely for the purpose of establishing the level of exposure to these color additives.
lipsticks range from 0.0013 percent to 6.0 percent (straight color).

In a 1965 Pharmaceutical Manufacturers Association survey, 7 companies reported use of D&C Red No. 6 and D&C Red No. 7 in 19 drug preparations, all for internal administration. The maximum amount of the color additive used by a company was 4.4 milligrams per daily dose of drug, although most companies used much less. There was no reported use of D&C Red No. 6 in drug products.

Although the fraction of D&C Red No. 6 and D&C Red No. 7 used in ingested drugs apparently is minor at this time, use in ingested drugs without a limitation would represent the greatest potential intake for individuals to these color additives, especially over short periods of time. If no limitation were set, use could exceed the acceptable daily intake. FDA has therefore incorporated a limitation of 6 milligrams of D&C Red No. 6 and D&C Red No. 7 per daily dose of drug product under §§ 74.1306 and 74.1307, respectively. This limitation applies both to ingested and externally applied drug products. It will ensure safe use and is consistent with currently known use levels.

The agency has considered several factors in estimating daily intake from the amount of color additives used in drug or cosmetic products. These factors include, for short-term use, the amount of product likely to be used and the amount of product used that would enter the body by, e.g., ingestion of a drug; the fraction of applied lipstick that would be ingested; and the fraction of color additives likely to penetrate skin from external use. These factors vary with the individual product type. For lifetime average intake, the agency has considered the fact that conditions leading to maximum intake on a given day are not likely to exist every day of one’s life. Frequency of use will also vary with individual products. Details of the agency’s assumptions can be found in Reference 3.

Using these factors the agency estimates that short-term intake of D&C Red No. 6 and D&C Red No. 7 in drugs will not exceed 5 mg/day, and short-term intake to these color additives from cosmetic use will not exceed 3 mg/day, resulting in a cumulative dose of 8 mg/day. For lifetime-average use, the agency estimates 1 mg/day from drug use, 1 mg/day from ingested cosmetic use, and 4 mg/day from external cosmetic use (only a small fraction of which will be absorbed), leading to the agency’s estimated lifetime average intake of approximately 2 mg/day. Details of the agency’s estimates and calculations can be found in Reference 3.

F. Application of risk assessment in this rulemaking. Because p-toluidine may be present in D&C Red No. 6 and D&C Red No. 7 in minor amounts, use of these color additives by these regulations will likely result in exposure to very small amounts of p-toluidine. Any residual p-toluidine that might be present does not contribute any color to D&C Red No. 6 or D&C Red No. 7, nor does in impart any color to drugs, cosmetics, or the human body. Consequently, FDA concludes that, although a small amount of p-toluidine may be added to drugs and cosmetics with the addition of D&C Red No. 6 or D&C Red No. 7, this chemical is not a color additive within the meaning of section 201(f) of the act (21 U.S.C. 321(f)). Instead, p-toluidine would be only an impurity in D&C Red No. 6 and D&C Red No. 7. Because D&C Red No. 6 (and hence D&C Red No. 7) has not been shown to be carcinogenic, the agency concludes, as in the D&C Green No. 6 and D&C Green No. 5 rulemaking proceedings, that it can use risk assessment procedures to provide a basis for deciding whether there is a reasonable certainty of no harm from the use of D&C Red No. 6 and D&C Red No. 7 in ingested and externally applied drugs and cosmetics.

The risk evaluation of p-toluidine consists of two parts: (1) Assessment of probable exposure to p-toluidine from the use of D&C Red No. 6 and D&C Red No. 7 in ingested and externally applied drugs and cosmetics, and (2) extrapolation of the risk from p-toluidine observed in the animal biassay to the conditions of probable exposure to humans.

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

Of the two estimates, the total population exposure to p-toluidine can be more accurately calculated because the certified poundage of these color additives is known. If the average annual certification of D&C Red No. 6 and D&C Red No. 7 (assumed to contain 5 ppm of p-toluidine) is 72,600 pounds, then the average lifetime exposure to p-toluidine would be less than 2.0 nanograms (ng) per person per day, or if all of the products containing these color additives were consumed by only 10 percent of the population, 20 ng per person per day.

Although a measure of the total population exposure can be calculated quite simply, the maximum probable individual exposure depends on many factors, including the concentration of p-toluidine in products, the types of products used, the amount of product used per application, and the frequency of the application. In section V.E of this preamble, FDA discussed the principal types of products in which D&C Red No. 6 and D&C Red No. 7 are used. The agency estimates that the combined lifetime-average individual exposure to these color additives from the ingested and external applications permitted by these regulations would not likely exceed 6 milligrams per day (1 milligram per day from drugs and 5 milligrams per day from ingested and externally applied cosmetics (Ref. 3)). This level is higher than the lifetime-average intake value calculated earlier for the color additives because the 6 milligrams per day figure does not correct for limited penetration of these color additives. Thus, in the absence of adequate data regarding skin penetration by p-toluidine, the agency is assuming 100 percent skin penetration of p-toluidine from externally applied drugs and cosmetics containing these color additives. This estimate is clearly exaggerated, but the exaggeration does not affect the conclusions of the analysis. If 5 ppm p-toluidine is present in an average sample of D&C Red No. 6 or D&C Red No. 7, an individual exposed to 6 milligrams per day of these color additives would have a lifetime-average exposure of 30 ng per day p-toluidine.

FDA also recognizes the possibility that individuals will be exposed to minor amounts of p-toluidine impurities as a result of their use of products containing several related color additives. Regulations for four color additives now contain specifications on the amount of p-toluidine permitted in the additive: D&C Green No. 5 (21 CFR 74.1205, 74.2205, and 82.1205)—0.0015 percent p-toluidine; D&C Green No. 6 (21 CFR 74.1206, 74.2206, and 82.1206)—0.1 percent p-toluidine; Ext. D&C Violet No. 2 (21 CFR 74.2602a)—0.1 percent p-toluidine; and D&C Violet No. 2 (21 CFR 74.1602, 74.2602, and 82.1602)—0.2 percent p-toluidine. The latter three color additives are not permitted for use in ingested products. FDA believes that these are the only color additives that contain p-toluidine.

2. Extrapolation of risk. The second part of the evaluation of the risk presented by p-toluidine in D&C Red No. 6 and D&C Red No. 7 is an extrapolation from the actual compound-related incidence (risk) found in animal.
As a result of use of D&C Green No. 6 to be less than 1 in 15 million to 1 in 150 million in a lifetime. Likewise, for D&C Green No. 5, FDA calculated that the upper limit lifetime risk from exposure to p-toluidine as a result of use of this color additive is less than 1 in 30 million to 1 in 300 million in a lifetime.

FDA has calculated that the upper limit lifetime risk from exposure to p-toluidine as a result of the use of these color additives is so low that the exposure to p-toluidine from the use of these color additives is safe. The agency notes, however, that it is extremely unlikely that any one individual would use all these color additives at the same time and at the maximum levels.

VI. References

The following information has been placed on file at the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.


VII. Conclusion

Based upon the evaluation of the results of the two recently submitted chronic toxicity studies, the agency has determined that D&C Red No. 6 (and hence D&C Red No. 7) is not carcinogenic to Charles River Sprague-Dawley CD rats after dietary exposure as high as 2.0 percent or to CD-1 mice after dietary exposure as high as 50 percent under conditions of testing adequate to provide assurance for its safe use. FDA has calculated a combined total acceptable daily intake of 9 milligrams per day of D&C Red No. 6 and D&C Red No. 7 for a 60 kg human on the basis of all the toxicity studies it reviewed. The agency finds that short-term intake (8 milligrams per day) and lifetime-averaged intake (2 milligrams per day) from the listed drugs and cosmetic uses of these color additives will be within this amount.

The agency has also completed its evaluation of other animal studies submitted by the petitioner for the purpose of establishing the safety of D&C Red No. 6 and D&C Red No. 7 for use in externally applied drugs and externally applied cosmetics. The data from these studies indicate that D&C Red No. 7 is nonirritating when applied daily to either intact or abraded skin. Furthermore, D&C Red No. 7 was not found to be carcinogenic upon twice-weekly application to the skin of mice over their lifetimes.

Therefore, FDA finds that it can conclude that no harm will result from the petitioned uses of D&C Red No. 6 and D&C Red No. 7, for general use in drugs and cosmetics excluding use in the area of the eye, and that certification is necessary for the protection of the public health.

The final toxicity study reports, interim reports, and the agency's toxicology evaluations of these studies are on file at the Dockets Management Branch (address above) and may be reviewed there between 9 a.m. and 4 p.m., Monday through Friday.

FDA notified the petitioner by letters dated May 14, 1978, August 15, 1977, and August 4, 1976, of the need for data to support the use of D&C Red No. 7 in cosmetics intended for use in the area of the eye. In the latest letter, dated October 24, 1978, FDA advised the petitioner to consider withdrawing that portion of the petition that sought approval of use of D&C Red No. 7 in cosmetics intended for use in the area of the eye because it appeared that the required data from eye-area studies would not be readily available.

The petitioner has not submitted the data required to support eye-area use of D&C Red No. 7. Therefore, FDA now considers that portion of the petition that was amended by the filing on March 5, 1976 (Docket No. 76C-0044) to include the permanent listing of D&C Red No. 7 for eye-area use to be withdrawn without prejudice in accordance with the provisions of § 71.4 (21 CFR 71.4). Section 71.4 requires that such requested information be submitted within 180 days after filing of the petition, or the petition will be withdrawn without prejudice. Use of
D&C Red No. 7 in the area of the eye has never been covered by a provisional listing. Future consideration by FDA of the permanent listing of D&C Red No. 7 for eye-area use will require the submission of a new color additive petition for that use. The Agency’s listing of a color additive for general use in drugs and cosmetics does not encompass eye-area use (see § 70.5 General restrictions on color additives (21 CFR 70.5)).

The Agency is establishing new chemical specifications that identify the color additives more precisely than those specifications currently in Part 82 (21 CFR Part 82). The Agency concludes that it is necessary to include in the listing regulations for D&C Red No. 6 and D&C Red No. 7 a brief description of their manufacturing processes to ensure the safety of the color additives. The Agency is concerned that the color additives may contain harmful impurities dependent upon the manufacturing processes used to produce the color additives. The Agency is not able at this time to set specifications that would control the presence of these impurities. The Agency has contracted with the National Academy of Sciences/National Research Council (NAS/NRC) to develop appropriate specifications for color additives for use in food as part of the Food Chemicals Codex. Similarly, the appropriate specifications for color additives for use in drugs and cosmetics will be developed following the general guidelines used by the NAS/NRC in its evaluation of color additives used in food. The Agency concludes that specifying, through a general description, the manufacturing process in the regulations for these color additives will provide an adequate assurance of safety until suitable specifications can be developed. Production of the color additives by the specified methods will assure qualitatively similar batches and thus adequately assure the absence of harmful impurities resulting from changes in the manufacturing process.

Also, the chemical names for the two color additives in new listings under 21 CFR Part 74 are different from the names currently listed under 21 CFR Part 82. The Agency is listing the nomenclature designated in the Chemical Abstracts Index Guide (September 1982) because the agency believes that it gives the best description of the color additive. FDA is identifying D&C Red No. 6 as the disodium salt, rather than the monosodium salt, as it is currently described in § 82.1306 (21 CFR 82.1306), because analytical results confirm that hydrogens of the carboxylic and sulfonic acid groups are both replaced by sodium.

FDA is also removing § 81.27(c) from its regulations. The agency is making this editorial change because the color additives listed under § 81.27(c) have now been removed from the provisional list. Ferric ferrocyanide was permanently listed for use in drugs and cosmetics under 21 CFR 73.1299 and 73.2299 by a final rule published in the Federal Register of November 21, 1978 (43 FR 54225). D&C Red No. 30 was permanently listed for use in drugs and cosmetics under 21 CFR 74.1330 and 74.2330 by a final rule published in the Federal Register of May 25, 1982 (47 FR 22509).

The agency has determined under 21 CFR 25.24(b)(12) and (d)(5) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects
21 CFR Part 74
Color additives. Color additives subject to certification, Cosmetics, Drugs.

21 CFR Part 81
Color additives, Color additives provisional list, Cosmetics, Drugs.

21 CFR Part 82
Color additives, Color additive lakes, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 708 (b), (c), and (d), 74 Stat. 299-403 (21 U.S.C. 376 (b), (c), and (d))) and the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 74, 81, and 82 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. Part 74 is amended:
   a. By adding new § 74.1306 to Subpart B, to read as follows:

   § 74.1306 D&C Red No. 6.
   (a) Identity. (1) The color additive D&C Red No. 6 is principally the disodium salt of 3-hydroxy-4-[4-(methyl-2-sulfophenyl)azo]-2- benzenesulfonic acid (CAS Reg. No. 5858-81-1). To manufacture the additive, 2-amino-5- methylbenzenesulfonic acid is diazotized with hydrochloric acid and sodium nitrite. The diazo compound is coupled in alkaline medium with 3-hydroxy-2-naphthalene carboxylic acid. The resulting dye precipitates as the disodium salt.

   (2) Color additive mixtures for drug use made with D&C Red No. 6 may contain only those diluents that are suitable and that are listed in Part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

   (b) Specifications. The color additive D&C Red No. 6 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by current good manufacturing practice:

   Sum of volatile matter (at 135° C) and chlorides and sulfates (calculated as sodium salts), not more than 10 percent.

   Ether-soluble matter, passes test entitled “The Procedure for Determining Ether-Soluble Material in D&C Red Nos. 6 and 7,” which is an Appendix A to Part 74.

   2-Amino-5-methylbenzenesulfonic acid, sodium salt, not more than 0.5 percent.

   3-Hydroxy-2-naphthalene carboxylic acid, sodium salt, not more than 0.4 percent.

   3-Hydroxy-4-[4-(methylphenyl)azo]-2-naphthalene carboxylic acid, sodium salt, not more than 0.5 percent.

   p-Toluenesulfonic acid, not more than 15 parts per million.

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

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

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

   Total color, not less than 90 percent.

   (c) Uses and restrictions. The color additive D&C Red No. 6 may be safely used for coloring drugs such that the combined total of D&C Red No. 6 and D&C Red No. 7 does not exceed 5 milligrams per daily dose of the drug.

   (d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

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

b. By adding new § 74.1307 to Subpart B, to read as follows:

§ 74.1307 D&C Red No. 7.

(a) Identity. (1) The color additive D&C Red No. 7 is principally the calcium salt of 3-hydroxy-4-[4-(methyl-2-sulfophenyl)azo]-2-naphthalene carboxylic acid (CAS Reg. No. 5858-81-1). To manufacture the additive, 2-amino-5-methylbenzenesulfonic acid is diazotized with hydrochloric acid and sodium nitrite. The diazo compound is coupled in alkaline medium with 3-hydroxy-2-naphthalene carboxylic acid. The resulting dye precipitates as the disodium salt.

   (2) Color additive mixtures for drug use made with D&C Red No. 8 may contain only those diluents that are suitable and that are listed in Part 73 of this chapter as safe for use in color additive mixtures for coloring drugs.

   (b) Specifications. The color additive D&C Red No. 7 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by current good manufacturing practice:

   Sum of volatile matter (at 135° C) and chlorides and sulfates (calculated as sodium salts), not more than 10 percent.

   Ether-soluble matter, passes test entitled “The Procedure for Determining Ether-Soluble Material in D&C Red Nos. 6 and 7,” which is an Appendix A to Part 74.

   2-Amino-5-methylbenzenesulfonic acid, sodium salt, not more than 0.5 percent.

   3-Hydroxy-2-naphthalene carboxylic acid, sodium salt, not more than 0.4 percent.

   3-Hydroxy-4-[4-(methylphenyl)azo]-2-naphthalene carboxylic acid, sodium salt, not more than 0.5 percent.

   p-Toluenesulfonic acid, not more than 15 parts per million.

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

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

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

   Total color, not less than 90 percent.

   (c) Uses and restrictions. The color additive D&C Red No. 7 may be safely used for coloring drugs such that the combined total of D&C Red No. 6 and D&C Red No. 7 does not exceed 5 milligrams per daily dose of the drug.

   (d) Labeling. The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 70.25 of this chapter.

   (e) Certification. All batches of D&C Red No. 7 shall be certified in accordance with regulations in Part 80 of this chapter.

b. By adding new § 74.1307 to Subpart B, to read as follows:

§ 74.1307 D&C Red No. 7.

(a) Identity. (1) The color additive D&C Red No. 7 is principally the calcium salt of 3-hydroxy-4-[4-(methyl-2-sulfophenyl)azo]-2-naphthalene carboxylic acid (CAS Reg. No. 5858-81-1). To manufacture the additive, 2-amino-5-methylbenzenesulfonic acid is diazotized with hydrochloric acid and sodium nitrite. The diazo compound is coupled in alkaline medium with 3-hydroxy-2-naphthalene carboxylic acid. The resulting dye precipitates as the disodium salt.
naphthalencarboxylic acid (CAS Reg. No. 3281-04-9). To manufacture the additive, 2-amino-5-
methylenesulfonic acid is diazotized with hydrochloric acid and sodium nitrite. The diazo compound is coupled in alkaline medium with 3-
hydroxy-2-naphthalencarboxylic acid and the resulting dye converted to the
calcium salt with calcium chloride.
(2) Color additive mixtures for drug use made with D&C Red No. 7 may contain only those dilluents that are
suitable and that are listed in Part 73 of this chapter as safe for use in color
additive mixtures for coloring drugs.
(b) Specifications. The color additive D&C Red No. 7 shall be certified in accordance with the
requirements of § 74.1306 (a)(1) and (b).

§ 74.2307 D&C Red No. 7
(a) Identity and specifications. The color additive D&C Red No. 7 shall be certified in accordance with
and specifications to the requirements of § 74.1306 (a)(1) and (b).
(b) Uses and restrictions. The color additive D&C Red No. 6 may be safely used for coloring cosmetics generally in
amounts consistent with current good manufacturing practice.
(c) Labeling requirements. The label of the color additive shall conform to the
requirements of § 70.25 of this chapter.
(d) Certification. All batches of D&C Red No. 6 shall be certified in
accordance with regulations in Part 80 of this chapter.

§ 74.2307 D&C Red No. 7
(a) Identity and specifications. The color additive D&C Red No. 7 shall be certified in accordance with
and specifications to the requirements of § 74.1306 (a)(1) and (b).
(b) Uses and restrictions. The color additive D&C Red No. 7 shall be certified in accordance with
and specifications to the requirements of § 74.1306 (a)(1) and (b).

§ 74.2307 D&C Red No. 7
(a) Identity and specifications. The color additive D&C Red No. 7 shall be certified in accordance with
and specifications to the requirements of § 74.1306 (a)(1) and (b).
(b) Uses and restrictions. The color additive D&C Red No. 7 shall be certified in accordance with
and specifications to the requirements of § 74.1306 (a)(1) and (b).
(c) Labeling requirements. The label of the color additive shall conform to the
requirements of § 70.25 of this chapter.
(d) Certification. All batches of D&C Red No. 7 shall be certified in
accordance with regulations in Part 80 of this chapter.

Appendix A to Part 74—The Procedure for Determining Ether Soluble Material in D&C Red Nos. 6 and 7

The dye is dissolved in glacial acetic acid and 8
hydrochloric acids (1.33:1) and extracted with diethyl ether. Sulfonated moieties, including the color additive, are discarded in
subsequent aqueous extractions of the ether. Carboxylated moieties are removed from the ether by extraction with 2% (w/w) NaOH.
The ether is evaporated to near dryness, ethanol (85%) is added, and the solution is analyzed spectrophotometrically in the
visible range. The absorbance at each wavelength must not exceed 150% of the absorbance similarly obtained for D&C Red No. 6 Lot AA350.

Apparatus
(A) Spectrophotometer (Cary 11B or equivalent).
(B) Separatory funnels—one 1000 mL and
one 500 mL.

Reagents
Note—Use distilled water when water is required.
(A) Glacial Acetic Acid (ACS grade).
(B) Diethyl ether (Anhydrous)—Note and
follow safety precautions on container.
(C) 8 N HCl—Pour 165 mL H2O into a 500
mL graduate. Place the graduate in hood, then
add HCl conc. to bring to volume. Carefully
pour this solution into a 500 mL Erlenmeyer
flask. Stopper and shake. Label the flask.
(D) 2% (w/w) NaOH—Pour ca 190 mL H2O
into a 250 mL mixing graduate. Add 6 g. (5.23
mL) of 50% (w/w) NaOH, bring to 200 mL
volume with water, stopper and mix. Pour
this solution into a glass bottle, label and
stopper with a teflon top.
(E) Ethanol (95%).

Procedure
Weigh a 250 mL beaker to tenths of a mg
and add 100 mg of dye. Record weight to
tenths of a mg.
Note.—The following work must be
performed in the hood.
Add 75 mL of 8 N HCl and 100 mL of
glacial acetic acid to the beaker and stir.
Place the beaker on a hot plate and heat
with stirring, until all of the dye is in solution.
Remove the beaker from the hot plate,
cover with a watch glass and allow to cool
to room temperature (1-2 hrs).
When the dye solution is at room
temperature, transfer the solution to a 1000
mL separatory funnel.
Rinse the beaker three times with 50 mL
portions of H2O, transferring each rinse to the
1000 mL funnel.
Add 150 mL of ether to the funnel, stopper
and shake for 10 seconds, then invert funnel
and open stopcock to remove gas buildup.
Shake the funnel for one minute, opening
the stopcock a few times while the funnel in
inverted to remove gas buildup. (Use this
shake procedure throughout method.)
Allow the funnel to stand until the layers have
separated.
Transfer the bottom (aqueous) layer to a 500
mL separatory funnel, add 100 mL of
ether, stopper and shake for one minute.
When the layers have separated, drain off
the bottom layer into a waste beaker.
Pour the ether layer in the 500 mL
separatory funnel into the 1000 mL separatory
funnel.
Rinse the 500 mL sep. funnel with 100 mL
H2O, then transfer it to the 1000 sep.
funnel, stopper and shake for one minute.
When the layers have separated, drain off
the bottom aqueous layer into the waste
beaker.
Rinse the 500 mL funnel at least three times
(total) and repeat the 100 mL water washes
until no color is present in the aqueous layer.
Discard the bottom aqueous layer to the
waste beaker after each separation.
Shake the ether layer twice more with 100
mL portions of H2O, discarding the bottom
aqueous layer after each separation.
Remove the unsulfonated subsidiary color
from the ether by shaking the ether layer for
one minute with 20 mL of 2% (w/w) NaOH.
Appropriately label a 100 mL beaker.
After the layers separate, drain the aqueous
alkaline layer into the beaker and save for
the determination of 3-hydroxy-4-[(4-
methylphenyl)azo]-2-naphthalencarboxylic
acid, sodium salt.
If there is any color left in the ether, shake
for one minute with another 20 mL portion of
2% (w/w) NaOH. After the layers have
separated, drain off the aqueous alkaline
layer into the 100 mL beaker.
If color remains in the ether layer, repeat
the above step for a total of three washes of
the ether with 2% (w/w) NaOH. Note: Three
washes is usually sufficient to remove the
unsulfonated subsidiary.
With the stopper removed, gently swirl the ether layer in the sep. funnel twice to separate the remaining aqueous base. Drain this into the 100 mL beaker.

 Appropriately label a 250 mL beaker. Pour the ether layer into the beaker. Allow the ether to evaporate to near dryness. Cool to room temperature. Add ca 8 mL ethanol (95%). Swirl beaker to mix contents.

 Quantitatively transfer to a 25 mL graduate using ethanol (95%) rinses. Add ethanol (95%) to bring volume to 12 mL.

 Spectrophotometer Analysis

 Spectrophotometric Parameters:
 Scan Range: 400-700 nm
 Scan 50 nm/in; 5.0 nm/sec.
 Absorbance Range: 0-1 AUFS
 Cell length: 1 cm (Note: Reference and Sample cells)

 (1) Record the visible spectrum of a blank.
 Fill the reference cell with distilled water and the sample cell with ethanol (95%)

 (2) Rinse the sample cell with 2-3 mL of the ether soluble material (in ethanol solution); then fill the cell. Record the visible spectrum of the ether soluble material.

 (3) Compare the spectra obtained to the spectra attached. The attached spectra represents 150% of the absorbance at each wavelength for similarly analyzed D&C Red No. 6 Lot AA5169.

 The spectra of the current sample must not exceed the attached spectra at any wavelength in order to pass test.

 BILLING CODE 4160-01-M
Ether Soluble Material
in
D&C Red No. 6
Lot AA5169
HK 21

Parameters
Spectrophotometer: Cary 118
Scan: 50 nm/in.; 5.0 nm/sec.
Absorbance Range: 0-1 AUFS
Cell lengths: 1.0 cm
Distilled water in ref. cell
95% Ethanol in sample cell
for blank
Spectra is 150% of absorbance
of AA5169 (Drawn over light
using French curve)
Reference: FDA Notebook
No. 81358 p. 22-27
11/9/82 CJBailey
Sample weight: 100.2 mg.
PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

2. Part 81 is amended:

§ 81.1 [Amended]

a. In § 81.1 Provisional lists of color additives in paragraph (b) by removing the entries for "D&C Red No. 6" and "D&C Red No. 7."

§ 81.27 [Amended]

b. In § 81.27 Conditions of provisional listing, by removing and reserving paragraph (c) and in paragraph (d) by removing the entries for "D&C Red No. 6" and "D&C Red No. 7."

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

3. Part 82 is amended:

a. By revising § 82.1308, to read as follows:

§ 82.1308 D&C Red No. 6.

(a) The color additive D&C Red No. 6 shall conform in identity and specifications to the requirements of § 74.1308(a)(1) and (b) of this chapter.

(b) The color additive D&C Red No. 6 may be safely used for coloring drugs such that the combined total of D&C Red No. 6 and D&C Red No. 7 does not exceed 5 milligrams per daily dose of the drug.

b. By revising § 82.1307, to read as follows:

§ 82.1307 D&C Red No. 7.

(a) The color additive D&C Red No. 7 shall conform in identity and specifications to the requirements of § 74.1307(a)(1) and (b) of this chapter.

(b) The color additive D&C Red No. 7 may be safely used for coloring drugs such that the combined total of D&C Red No. 6 and D&C Red No. 7 does not exceed 5 milligrams per daily dose of the drug.

Any person who will be adversely affected by the foregoing regulation may at any time on or before January 27, 1983 file with the Dockets Management Branch (address above) written objections thereto. Objections shall show wherein the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of 21 CFR 7.30. If a hearing is requested, the objections shall state the issues for the hearing and shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Three copies of all documents shall be filed and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective January 28, 1983; except to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the Federal Register.

§ 81.27 Conditions of provisional listing, by removing and reserving paragraph (c) and in paragraph (d) by removing the entries for "D&C Red No. 6" and "D&C Red No. 7."

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of D&C Red No. 6 and D&C Red No. 7; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Red No. 6 and D&C Red No. 7 for use as a color additive in drugs and cosmetics. The new closing date will be March 29, 1983. This brief postponement will provide time for the receipt and evaluation of any objections submitted in response to the final regulation (published elsewhere in this issue of the Federal Register) approving the petition for the listing of D&C Red No. 6 and D&C Red No. 7 for these uses.

DATES: Effective December 28, 1982, the new closing date for D&C Red No. 6 and D&C Red No. 7 will be March 29, 1983.

FOR FURTHER INFORMATION CONTACT: John L. Herrman, Bureau of Foods (HFF-304), Food and Drug Administration, 200 C St. SW., Washington, DC 20204; 202–472-5690.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of December 31, 1982, for the provisional listing of D&C Red No. 6 and D&C Red No. 7 by a rule published in the Federal Register of March 27, 1981 (46 FR 19894).

The agency extended the closing date until December 31, 1982, to provide time for the completion of chronic toxicity studies and the review and evaluation of these studies by FDA.

After reviewing and evaluating the data, the agency has concluded that D&C Red No. 6 and D&C Red No. 7 are safe for use in drugs and cosmetics. Therefore, elsewhere is this issue of the Federal Register, FDA is publishing a regulation that lists D&C Red No. 6 and D&C Red No. 7 for these uses. The regulation set forth below will postpone the December 31, 1982 closing date for the provisional listing of these color additives until March 29, 1983. This postponement will provide sufficient time for receipt and evaluation of comments or objections submitted in response to the regulation that lists D&C Red No. 6 and D&C Red No. 7 for use in drugs and cosmetics.

Because of the shortness of time until the December 31, 1982 closing date, FDA concludes that notice and public procedure on these regulations are impracticable. Moreover, good cause exists for issuing this postponement as a final rule because the agency has concluded that D&C Red No. 6 and D&C Red No. 7 are safe for their intended uses under the Color Additive Amendments of 1960. This regulation will permit the uninterrupted use of this color additive until March 29, 1983. To prevent any interruption in the provisional listing of D&C Red No. 6 and D&C Red No. 7 and in accordance with 5 U.S.C. 553(d) (1) and (3), this regulation is being made effective on December 28, 1982.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 [21 U.S.C. 376 note]) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

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

§ 81.1 [Amended]

1. In § 81.1 Provisional lists of color additives, by revising the closing date for "D&C Red No. 6" and "D&C Red No.
List of Subjects in 21 CFR Part 145

Canned fruit, Food standards, Fruits.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)) and under authority delegated to the Commissioner of Food and Drugs [21 CFR 5.10], notice is given that the effective date for compliance with the standards of identity and quality for canned pears §145.175 Canned Pears [21 CFR 145.175] as amended in the Federal Register of September 21, 1982 (47 FR 41529) is July 1, 1985. Voluntary compliance may have begun November 22, 1982.

Dated: December 20, 1982.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-34944 Filed 12-30-82; 8:45 am]
BILLING CODE 4160-01-M

21 CFR Part 146

[Docket No. 78N-0147]

Grapefruit Juice; Standard of Identity; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date for compliance with the provisions of the amended standard of identity for grapefruit juice to provide for "chunky" style.

DATES: Effective July 1, 1985, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may have begun November 22, 1982.

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

SUPPLEMENTARY INFORMATION: In the Federal Register of September 21, 1982 (47 FR 41529), FDA issued a final regulation amending the standards of identity and quality for canned pears [21 CFR 145.175] to provide for a new optional "chunky" style and to define the styles already provided for in the standard of identity. Any person who would be adversely affected by the regulation could have, at any time on or before October 21, 1982, filed written objections to the final regulation and requested a hearing on the specific provisions to which there were objections. No objections or requests for a hearing were received.


William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-32153 Filed 12-30-82; 8:45 am]
BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 82F-0131]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Tetrakis[Methylene(3,5-di-tert-Butyl-4-Hydroxyhydrocinnamate)]Methane

Correction

In FR Doc. 82-28153 beginning on page 46077 in the issue for Friday, October 15, 1982, on page 46076, the middle column, in the table under § 178.3570(a)(3), the second line under "Substances", the "=" should read "x").

BILLING CODE 1505-01-M

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject To Certification; Nitrofurazole Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) providing revised labeling for use of nitrofurazole solution
for treating female equine genital tract infections and impaired fertility in addition to the existing approval for treating surface bacterial infections in dogs, cats, and horses. The application was filed by Biomed Laboratories.

**EFFECTIVE DATE**: December 28, 1982.

**FOR FURTHER INFORMATION CONTACT**: Sandra K. Woods, Bureau of Veterinary Medicine (HFV-114), Food and Drug Administration, 5800 Fishers Lane, Rockville, MD 20857; 301-443-3420.

**SUPPLEMENTARY INFORMATION**: Biomed Laboratories, 4542 Denver St., Montclair, Calif. 91763, is sponsor for supplemental NADA 128-950 providing revised labeling for use of Pura-Vet (0.2 percent nitrofurazone solution) for treating female equine genital tract infections and impaired fertility. The firm has existing approval for use of the drug for treating surface bacterial infections in dogs, cats, and horses. The existing approval permits over-the-counter marketing of the drug, but addition of the genital tract and impaired fertility claims to a common label requires that the product now be restricted to veterinary prescription use. The nitrofurazone solution regulation provides that since all of the aforementioned conditions of use are NAS/NRC reviewed and found effective, applications for these uses need not include effectiveness data as specified by 21 CFR 514.111. The product is intended for topical use; therefore, the requirement for bioequivalency is waived under 21 CFR 320.22(b). The application is approved, and the regulations are amended accordingly.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) [21 CFR 514.11(e)(2)(ii)], a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5800 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(ii) [proposed December 11, 1979; 44 FR 71742] that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

**List of Subjects in 21 CFR Part 524**

Animal drugs, topical.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 [21 U.S.C. 360b(i)]) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 524 is amended in § 524.1506d by revising paragraph (b), to read as follows:

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

§ 524.1506d Nitrofurazone solution.

* * * * *

(b) Sponsor. See 000857, 015582, 015579, and 051259 in § 510.600(c) of this chapter for use as in paragraph (d) (1) and (2) of this section.

Effective date: December 28, 1982.

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

Dated: December 20, 1982.

Robert A. Baldwin,
Associate Director for Scientific Evaluation.

BILLING CODE 4160-01-M

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

21 CFR Part 1308

**Schedules of Controlled Substances; Placement of Triazolam Into Schedule IV**

**AGENCY**: Drug Enforcement Administration, Justice.

**ACTION**: Final rule.

**SUMMARY**: This final rule is issued by the Acting Administrator of the Drug Enforcement Administration (DEA) to place the substance, triazolam, into Schedule IV of the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.). This action is based on a finding that triazolam fits the statutory criteria for inclusion in Schedule IV of the CSA.

As a result of this rule, the regulatory controls and criminal sanctions of Schedule IV of the CSA will be applicable to the manufacturing, distribution, importation, and exportation of triazolam.

**EFFECTIVE DATE**: December 28, 1982.

**FOR FURTHER INFORMATION CONTACT**: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, D.C. 20537; telephone (202) 653-1368.

**SUPPLEMENTARY INFORMATION**: A proposed rule was published in the Federal Register on Wednesday, April 29, 1981, (46 FR 23953–4), proposing that triazolam be placed into Schedule IV of the CSA if and when NADA 126-950, Triazolam New Drug Application (NDA) receives final approval from the Food and Drug Administration (FDA). All persons were given until June 29, 1981, to submit any comments or objections in writing regarding this proposal. One comment was received from the American Society for Hospital Pharmacists (ASHP), which supported the placement of triazolam into Schedule IV. No other comments or objections were received in response to this proposal nor were there any requests for a hearing.

By letter dated November 22, 1982, the FDA notified DEA of the final NDA approval for triazolam contingent upon the announcement of a final scheduling decision in the Federal Register. This final rule fulfills that scheduling condition for triazolam.

Triazolam is a member of the benzodiazepine class of drugs. It is a central nervous system depressant and has been clinically evaluated as a hypnotic.

Relying on the scientific and medical evaluation and recommendation of the Acting Assistant Secretary for Health and based on his independent evaluation in accordance with the provisions of 21 U.S.C. 811(c), the Acting Administrator of the Drug Enforcement Administration, pursuant to the provisions of 21 U.S.C. 811(a) and 811(b), finds that:

(1) Based on information now available, triazolam has a low potential for abuse relative to the drugs or other substances listed in Schedule III;

(2) Triazolam has a currently acceptable medical use in treatment in the United States; and

(3) Abuse of triazolam may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.

The above findings are consistent with the placement of triazolam into Schedule IV of the Controlled Substances Act. In order to avoid delays in the initial marketing of triazolam, the control of triazolam in Schedule IV will be effective on December 28, 1982. In the event this imposes special hardships on any registrant, the Drug Enforcement Administration will entertain any justified request for an extension of time to comply with the Schedule IV regulations. The applicable regulations are as follows:
1. **Registration.** Any person who manufactures, distributes, delivers, imports or exports triazolam, or who engages in research or conducts instructional activities with respect to this substance, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. **Security.** Triazolam must be manufactured, distributed, and stored in accordance with §§ 1301.71-1301.76 of Title 21 of the Code of Federal Regulations.

3. **Labeling and Packaging.** All labels and labeling for commercial containers of triazolam must comply with the requirements of §§ 1302.03-1302.05 and 1302.08 of Title 21 of the Code of Federal Regulations.

4. **Inventory.** Every registrant required to keep records who possesses any quantity of triazolam shall take inventories, pursuant to §§ 1304.11-1304.19 of Title 21 of the Code of Federal Regulations, of all stocks of triazolam on hand.

5. **Records.** All registrants required to keep records pursuant to §§ 1304.21-1304.27 of Title 21 of the Code of Federal Regulations shall do so regarding triazolam.

6. **Prescriptions.** All prescriptions for products containing triazolam shall contain the requirements of §§ 1306.01-1306.06 and §§ 1306.21-1306.25 of Title 21 of the Code of Federal Regulations.

7. **Importation and Exportation.** All importation and exportation of triazolam shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

8. **Criminal Liability.** The Acting Administrator, Drug Enforcement Administration, hereby orders that any activity with respect to triazolam not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act shall be unlawful.

Pursuant to 5 U.S.C. 605(b), the Acting Administrator certifies that the placement of triazolam into Schedule IV of the Controlled Substances Act will not have a significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354). This action involves the initial control of a substance not previously approved for marketing in the United States.

In accordance with the provisions of 21 U.S.C. 811(a), this placement of triazolam into Schedule IV of the CSA is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557, and as such, have been exempted from the consultation requirements of Executive Order 12291 (45 FR 13193, Feb. 19, 1981).

**List of Subjects in 21 CFR Part 1308**

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

**PART 1308—[AMENDED]**

Under the authority vested in the Attorney General by Section 201(a) of the CSA (21 U.S.C. 811(a)) and delegated to the Acting Administrator of the Drug Enforcement Administration by the Department of Justice regulations (28 CFR 0.100), the Acting Administrator hereby orders that § 1308.14(c) of Title 21 of the Code of Federal Regulations be amended by adding (c)(24) to read as follows:

§ 1308.14 Schedule IV.

(24) * * * * *

(24) Triazolam ........................................... 2867

* * * * *

Dated: December 20, 1982.

Francis M. Mullen, Jr.,
Acting Administrator, Drug Enforcement Administration.

**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**27 CFR Part 9**

**T.D. ATF—121; Ref: Notice No. 371**

**California Shenandoah Valley Viticultural Area**

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

**ACTION:** Final rule, Treasury decision.

**SUMMARY:** This final rule establishes a viticultural area in portions of Amador and El Dorado Counties in California to be known as "Shenandoah Valley," qualified by the word "California." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes establishment of the California Shenandoah Valley as a viticultural area and its subsequent use as an appellation of origin on wine labels and in wine advertisements will help consumers better identify the wines they may purchase.

**EFFECTIVE DATE:** January 27, 1983.

**FOR FURTHER INFORMATION CONTACT:** James A. Hunt, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202-566-7626).

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 23, 1979, ATF published Treasury Decision ATF—53 (43 FR 37672, 54924) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

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

**Petition**

ATF received a petition from the Amador County Wine Grape Growers Association proposing an area in Amador County, California, as a viticultural area to be known as "Shenandoah Valley." The area consists of approximately 10,000 acres of which about 1,200 acres are vineyards. The petitioner asked for the Shenandoah Valley viticultural area to be situated to the north and west of Fiddletown, California, and to the north and east of Plymouth, California.

In response to the petition, ATF published a notice of proposed rulemaking, Notice No. 371, in the Federal Register on April 13, 1981. (46 FR 21823) with a 60 day comment period. This comment period was then extended for an additional 30 days. Several requests were received for public hearings by interested persons in California and Virginia. Hearings were held in California on December 7 and 8, 1981, and in Virginia on January 12 and 13, 1982.

**Evidence Relating To The Name**

Testimony at the hearings established that the area derived its name from settlers from Virginia drawn to the area during the gold rush. The petition states and witnesses testified, among other things, that:

- Shenandoah Valley is known for the production of gold during the gold rush.
- Shenandoah Valley was named after the Shenandoah Valley in Virginia.
- Shenandoah Valley was known for its scenic beauty and was a popular destination for tourists.
- Shenandoah Valley was known for its wine and grape growing.

**Summary of Evidence**

The evidence presented at the hearings established that Shenandoah Valley is known for its wine and grape growing. The area is known for its scenic beauty and was a popular destination for tourists during the gold rush. The area was named after the Shenandoah Valley in Virginia.

**Proposed Rule**

The proposed rule would establish Shenandoah Valley as a viticultural area in portions of Amador and El Dorado Counties in California. The area would be known as "Shenandoah Valley, California." The rule would allow the use of the name Shenandoah Valley as an appellation of origin on wine labels and in wine advertisements.

**Significance**

The significance of this rule is to establish a viticultural area that will help consumers better identify the wines they may purchase. The rule will also help protect the reputation of the Shenandoah Valley as a wine growing region.

**Decision**

The Acting Administrator of the Drug Enforcement Administration has determine that this rule is necessary to protect the public health and safety. The rule is consistent with the Controlled Substances Act and the regulations of the Drug Enforcement Administration.

**Final Rule**

This final rule establishes Shenandoah Valley as a viticultural area in portions of Amador and El Dorado Counties in California. The area will be known as "Shenandoah Valley, California." The rule will allow the use of the name Shenandoah Valley as an appellation of origin on wine labels and in wine advertisements.

**Federal Register**

This final rule was published in the Federal Register on December 20, 1982. (50 FR 2867)
(a) In 1881, J. D. Mason, in his
"History of Amador County," mentions
choice grapes being grown in the
Shenandoah Valley;
(b) A 1927 book, "Amador County
History" refers to this area as
Shenandoah Valley
(c) Soil survey maps of Amador
County, California, prepared by the U.S.
Department of Agriculture Soil
Conservation Service and dated Series
1961, identify the area as the
Shenandoah Valley;
(d) U.S.G.S. 7.5 minute quadrangle
map, (topographic) titled Fiddletown
Quadrangle California and dated 1948,
identifies the area as the Shenandoah
Valley;
(e) An area school, cemetery and road
has "Shenandoah" included in their
names; and
(f) Numerous articles, books and other
materials dealing with wine refer to the
Shenandoah Valley in California as a
specific grape-growing area.

The major issue in most of the 300
written comments and in the testimony
of over 80 persons at two public
hearings was use of the name
"Shenandoah Valley" for a viticultural
area. About half of the commenters said
that the Shenandoah Valley name is
historically and geographically best
known for a valley in Virginia and West
Virginia. They claim the use of
Shenandoah Valley on California wine
labels would be confusing for consumers
and would allow the California wine
industry use of a name which has
significance for the Virginia wine
industry. The other half of the
commenters stated that the Shenandoah
Valley name in California has existed for
over 100 years as have commercial
vineyards and wine production in this
area. They contend use of Shenandoah
Valley on these wine labels would not
confuse the consumer because such
wines are nationally well known and
distinctly different from wine produced
from grapes grown in the Shenandoah
Valley of Virginia and West Virginia.

After a careful review of the name
issue, ATF has decided that the
evidence shows that the name of the
proposed viticultural area, "Shenandoah
Valley," is locally known as referring to
a specific area in California and this
area is nationally known as a specific
grape growing area. However, two
graphic areas share the same name,
one in California and one in Virginia
and West Virginia and both grow grapes
used in wine production. The record
established that the Shenandoah Valley
in Virginia and West Virginia is
nationally well known, whereas the
Shenandoah Valley in California is less
well known. ATF believes there would
be a potential for consumer confusion if
the name "Shenandoah Valley" without
qualification were displayed on a
California wine label. Because the
Shenandoah Valley in Virginia and
West Virginia is so well known, ATF
believes the consumer would consider a
wine labeled with an unqualified
Shenandoah Valley viticultural area as
originating from grapes grown in this
area. ATF further believes that the use
of the name "Shenandoah Valley" in
direct conjunction with the name of
the State of California would eliminate the
potential for consumer confusion and
allows consumers to readily identify
where the wine comes from. Therefore,
this final rule allows the name
Shenandoah Valley as a viticultural
area in California provided that the
name California appears in direct
conjunction with the name Shenandoah
Valley on the wine label.

Geographical Evidence
In accordance with 27 CFR 4.25a(e)(2),
a viticultural area should possess
geographical features which distinguish
it from surrounding areas. The petition
states and witnesses testified, among
other things that the principal grape
producing soil in the California
Shenandoah Valley is the Sierra series.
This series consists of well-drained deep
and moderately deep soils formed of
material from granitic rock. These soils
are gently sloping to very steep. The
surface soil primarily consists of various
loams, particularly coarse sandy loam.
The subsoil primarily consists of heavy
loam or clay loam. The depth to
weathered bedrock ranges from 20
inches to more than 60 inches.
Witnesses stated that to the west of the
area the soil is the Auburn-Exchaquer
series which is rocky and shallow, to the
east the soil is the Supan-Iron Mountain
series which is a volcanic type rock, and
to the south the soil is shallower range
land.

Boundaries
Another issue with the proposed
California Shenandoah Valley
viticultural area was a petition from
Twin Rivers Vineyards to extend the
northern boundary of the Amador
County Wine Grape Growers
Association's petition to include 170
acres of grapes in El Dorado County. A
number of commenters gave their
opinion and belief that the Shenandoah
Valley stopped at the Amador and El
Dorado County line. However, there
was evidence that while the proposed
extension lay fallow for several years
until recently, the early settlers living on
the property were regarded as
Shenandoah Valley residents. Other
commenters gave economic reasons for
limiting the Shenandoah Valley
viticultural area to Amador County.

A viticultural area is defined as a
delimited grape growing region
distinguishable by geographical
features. The similarity of
environmental factors influencing the
grapes in a region is far more important
than real or imagined boundary lines or
economic factors. The one geographical
feature which separates the two
Counties is a 400 foot wide river canyon.
However, grapes are not planted in this
river canyon. The evidence shows that
the topography, soil type and
microclimate on both sides of the river
canyon are similar. Further, testimony at
the hearing showed that north of the
proposed extension the land was no
longer Sierra soil series, and was
implantable, steep, treed and rocky.

Based on the evidence, ATF believes
that the environmental factors
influencing the grapes in the petitioned-
for Shenandoah Valley viticultural area
in Amador County are the same as for
the adjacent 170 acre-vineyard located
in El Dorado County. Further, based on
the evidence, ATF believes the proposed
area, as extended, is not geographically
distinguishable from the surrounding
areas. Therefore, the northern boundary
of the Amador County Wine Grape
Growers Association's petition was
extended to include Twin Rivers
Vineyards.

Other than the addition of the Twin
Rivers Vineyard's property, ATF is
approving the boundaries of the
California Shenandoah Valley as
proposed. This decision is based on the
petition, the testimony presented at the
hearing, and comments received.

Miscellaneous

Subsequent to the notice of proposed
rulemaking on the California
Shenandoah Valley petition, ATF
received a petition from Shenandoah
Vineyards in Edinburg, Virginia, proposing a viticultural area in Virginia
and West Virginia to be known as
Shenandoah Valley. A notice of
proposed rulemaking concerning that
petition was published in the Federal
Register and most of the 80 comments
received favored establishing a
Shenandoah Valley viticultural area in
Virginia and West Virginia.

Approval of the California
Shenandoah Valley as a viticultural
area does not preclude establishment of
a Shenandoah Valley in Virginia and
West Virginia as a viticultural area.

Regulations do not preclude the use
of the same name for two viticultural areas
if both areas meet the established
guidelines and it is clear to consumers where the areas are located.

ATF is approving this area as being viticulturally distinct from surrounding areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only be substantiated by consumer acceptance of California Shenandoah Valley wines.

Regulatory Flexibility Act

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

Accordingly, it is hereby certified under the provisions of Section 9 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this final regulation is not a “major rule” within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

Drafting Information

The principal author of this document is James A. Hunt, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance: Accordingly, under the authority contained in Section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Section 9.37 California Shenandoah Valley.

(a) Name. The name of the viticultural area described in this section is “Shenandoah Valley” qualified by the word “California” in direct conjunction with the name “Shenandoah Valley.”

(b) Approved maps. The appropriate map for determining the boundaries of the California Shenandoah Valley viticultural area are two 1962 U.S.G.S. maps. The maps are titled “Fiddletown Quadrangle California” 7.5 minute series, and “Amador City Quadrangle California-Amador Co.” 7.5 minute series.

(c) Boundaries. The Shenandoah Valley viticultural area is located in portions of Amador and El Dorado Counties of California. The boundaries are as follows:

The line starts at the point where the Consumnes River meets Big Indian Creek. The line then proceeds south, following Big Indian Creek, until Big Indian Creek meets the boundary between Sections 1 and 2 of Township 8 North Range 11 East. The line then continues south until it meets the Oleta (Fiddletown) Road. The line then follows the Oleta Road east until it meets the boundary between Sections 6 and 5 of Township 8 North Range 11 East. The line then follows Big Indian Creek in a northeasterly direction until Big Indian Creek meets the boundary between Sections 28 and 27 of Township 8 North Range 11 East. The line then proceeds north until it reaches the southeast corner of Section 21 of Township 8 North Range 11 East. The line then continues north along the boundary of the western half of Section 22 of Township 8 North Range 11 East to the intersection of Sections 15, 21, and 22. The line then proceeds north along the boundary between Sections 15 and 16 of Township 8 North Range 11 East and continues north along the boundary of Sections 9 and 10 of Township 8 North Range 11 East to the intersection of Sections 9, 10, 3 and 4 of Township 8 North Range 11 East. The line then proceeds west along the boundary of Sections 9 and 10. The line then proceeds west along the boundary of Sections 5 and 6 of Township 8 North Range 11 East to the Consumnes River. The line then proceeds west along the Consumnes River to the point of beginning.


Stephen E. Higgins,
Acting Director.

Approved: December 17, 1982.

David Q. Bates,
Deputy Assistant Secretary (Operations).

27 CFR Part 9

[T.D. ATF—129; Ref: Notice No. 419]

Shenandoah Valley Viticultural Area in Virginia and West Virginia

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

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in Virginia and West Virginia to be known as “Shenandoah Valley.” The Bureau of Alcohol, Tobacco and Firearms (ATF) believes establishment of the Shenandoah Valley in Virginia and West Virginia as a viticultural area and its subsequent use as an appellation of origin on wine labels and in wine advertisements will help consumers better identify the wines they may purchase.

EFFECTIVE DATE: January 27, 1983.


SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF—53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. These regulations also allow the use of an appellation of origin on wine labels and in wine advertisements. Section 4.52a(e)(1). Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area.
viticultural area. Any interested person may petition ATF to establish a grape growing region as a viticultural area. ATF received a petition from Amador County Wine Grape Growers Association in September 1980 proposing a viticultural area in California to be known as "Shenandoah Valley." A notice of proposed rulemaking was published in the Federal Register and public hearings were held in California and Virginia. The major issue in most of the 300 written comments and in the testimony of over 80 persons at the public hearings was the use of the name "Shenandoah Valley" as a viticultural area. About half of the commenters stated that the Shenandoah Valley name in California has existed for over 100 years and the wine produced in this area is unique and well known. They stated that the use of Shenandoah Valley on California wine labels would be confusing for consumers and would allow the California wine industry to use a name which has significance for the Virginia wine industry. The other half of the commenters said that the Shenandoah Valley name in California has existed for 100 years and the wine produced in this area is unique and well known. They stated that the use of Shenandoah Valley on California wine labels would not confuse consumers because such wines are distinctly different from wine produced in the Shenandoah Valley of Virginia.

Petition

ATF received a petition from Shenandoah Vineyards in Edinburg, Virginia, proposing an area in the countries of Frederick, Clarke, Warren, Shenandoah, Page, Rockingham, Augusta, Rockbridge, Botetourt, and Amherst in Virginia, and the counties of Berkeley and Jefferson in West Virginia, as a viticultural area to be known as "Shenandoah Valley." The petitioner submitted evidence stating the name is locally and nationally known. The area has geographical characteristics which distinguish the viticultural features from those found in surrounding areas. The evidence was presented in a notice of proposed rulemaking published in the Federal Register on August 20, 1982 (47 FR 36445), with a 45 day comment period.

Comments

During the comment period, 80 comments with 323 signatures were received. In addition, Congressman J. Kenneth Robinson, 7th District of Virginia, requested that all hearing testimony at Harrisonburg, Virginia, on January 12 and 13, 1982, pursuant to Notices 371 and 391 (notice of proposed rulemaking for the Shenandoah Valley in California), be considered as part of the comment letter. There were no requests for a public hearing during the comment period.

Most of the comments were in support of the Shenandoah Valley viticultural area in Virginia-West Virginia. Commenters stated that the Shenandoah Valley is known. A few commenters recommended both Virginia and California be allowed use of the name Shenandoah Valley with some way of identifying their respective locations on a label. Except for the comments opposed to the proposal based on the size of the area, comments on the boundaries favored those stated by the petitioner and contained in the notice.

Name Issue

The major issue for the proposal viticultural area in Virginia-West Virginia is use of the name "Shenandoah Valley." Two geographical areas share the same name, one in Virginia-West Virginia and one in California, and both grow grapes used in wine production. The petitions, written comments and testimony at the hearing clearly established that the Shenandoah Valley in Virginia-West Virginia is nationally well known. While not nearly as well known nationally, the Shenandoah Valley located in California is known as a specific area in California and the area is well known, especially to wine consumers, as a specific grape growing area. Because the Virginia-West Virginia Shenandoah Valley is clearly well known, ATF believes the consumer would consider wine labeled with a Shenandoah Valley viticultural area as originating from grapes grown in this area. Therefore, this final rule allows use of the name "Shenandoah Valley" as a viticultural area in Virginia-West Virginia without the need for the qualifying name of a State.

Approval of Shenandoah Valley for Virginia-West Virginia as a viticultural area. Any interested person may petition ATF to establish a grape growing region as a viticultural area. The other half of the commenters stated that the Shenandoah Valley boundary. They stated that approval of the proposed area but no specific recommendations were made on proposing new boundaries. On the surface, it looks as though the entire area does not merit including as an approved viticultural area. However, because vineyards have been planted or are planned in locations throughout the petitioned for viticultural area and the evidence shows the geographical influences are generally similar, ATF is approving the Shenandoah Valley boundaries as stated in the petition and the notices. In addition, approval of this large area does not preclude establishing smaller viticultural areas within the Shenandoah Valley in the future.

Geographical Characteristics

The Shenandoah Valley is geologically well defined by the Blue Ridge Mountains on the east and by the Allegheny Mountains on the west. On the north it is drained by the Potomac River, into which the Shenandoah River drains. To the south, the Shenandoah Valley is generally known to extend somewhat beyond the headwaters of the Shenandoah River because of the similar topographic features, the same soils, and similar climatic conditions.

The record shows that the Shenandoah Valley is an example of a mountain landscape that has been formed by erosion during a long interval
of geologic time and that has reached a condition of dynamic equilibrium in which the adjustment between the landforms and the rocks beneath is nearly complete. It is an elongate area lying between the Blue Ridge Mountains on the Southeast and the North and Shenandoah Mountains (the beginning of the Allegheny complex) on the northwest.

On the east side of the Valley, the Blue Ridge Mountains are underlain by igneous rocks, the most resistant of which are metabasalts of the Catoctin Formation of Precambrian age. Highlands on the west side of the Valley are underlain by sandstones and quartzites of Silurian to Mississippian age. The main lowland areas of the Shenandoah Valley are underlain by a thick sequence of limestones, dolomites and shales of early Cambrian to late Ordovician age.

The southern boundary is not quite as completely and sharply defined. The evidence indicates that conditions relevant to a viticultural area, such as soil and terrain, as well as the geographical features associated with the closing of the mountains and the cutting by the James River extends the southern boundary to the James River.

The record shows that the Shenandoah Valley viticultural area is distinguished from the surrounding areas geographically as follows:

(a) The surficial deposits consist of residual deposits, colluvium, and alluvium. The residual deposits and colluvium are closely related in origin to the rocks on which they rest. The alluvial deposits are distributed close to or downstream from the rocks that are their source. It is not unusual for residuum to occur in thicknesses of as much as 100 feet, and more on carbonate rocks.

In the mountain areas, covers of thicker residuum are found only on the granitic rocks of the Blue Ridge when protected from erosion by a thin mantle of fresh core stones. On the other side of the Shenandoah Valley, shales interbedded with thin sandstones have a cover of residuum protected by a blanket of sandstone flags. Other areas are characterized by many cliffy slopes and thin rocky soils.

(b) Exclusive of alluvial areas, comprising only about 15 percent of the whole valley, which are relatively flat, the land slopes toward a stream, either steeply or gently. The overall shape or form of the landscape is determined by the networks of stream channels, with a channel being concave to the sky. The local relief is determined by ridges which rise to a more or less even height about the streams.

(c) The General Soil Map of Virginia prepared by the Soil Conservation Service of the U.S. Department of Agriculture shows that the soils suitable for agriculture in the valley can, in fact, be used to delineate the valley lowlands. Except for the Massanutten Mountain uplift, essentially all of the area is overlain by Frederick-Lodi-Rock outcrop. The record shows that this soil does not occur anywhere else in the State.

(d) The climate features, including average temperature and precipitation, are relatively consistent throughout the valley. Data was cited from four weather stations of the U.S. Department of Commerce Weather Bureau, specifically the stations of Lexington and Staunton, Virginia, in the southern end and Winchester and Woodstock, Virginia, in the northern end of the valley. These stations show average temperatures ranging from 53.9°F to 55.7°F, precipitation from 33.8" to 37.7", heating degree days from 4344 to 4866 and cooling degree days from 851 to 1046. That data from the four stations to the east of the valley show average temperatures ranging from 47.8°F to 57°F, precipitation from 38.6" to 48.8", heating degree days from 4026 to 4843 and cooling degree days from 0 to 1283. Further, the record shows that to the west similar variations occur.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605[b]), that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Miscellaneous

ATAF is approving this area as being viticulturally distinct from surrounding areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only be substantiated by consumer acceptance of Shenandoah Valley wines.

Drafting Information

The principal author of this document is James A. Hunt, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority: Accordingly, under the authority in 27 U.S.C. 205 (49 Stat. 981, as amended), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.60 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

9.60 Shenandoah Valley.

Par. 2. Subpart C is amended by adding § 9.60 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.60 Shenandoah Valley.

(a) Name. The name of the viticultural area described in this section is "Shenandoah Valley."

(b) Approved maps. The appropriate maps for determining the boundaries of the Shenandoah Valley viticultural area are four U.S.C.S. Eastern United States 1:250,000 scale maps. The maps are

(c) Boundaries. The Shenandoah Valley viticultural area is located in Frederick, Clarke, Warren, Shenandoah, Page, Rockingham, Augusta, Rockbridge, Botetourt, and Amherst Counties in Virginia, and Berkeley and Jefferson Counties in West Virginia. The boundaries are as follows:

The boundary line starts at the point of the intersection of the Potomac River and the Virginia-West Virginia State line approximately eight miles east of Charlestown, West Virginia. The line then proceeds southwesterly approximately 14.8 miles along the State line, which essentially follows the crest of the Blue Ridge Mountains, to its intersection with the western boundary line of Warren County, Virginia. The line then continues approximately 15 miles along the Warren County line to its intersection with the Skyline Drive. The line continues approximately 71 miles in a southwesterly direction along the Skyline Drive and the Blue Ridge to its intersection with Blue Ridge Parkway. The line continues approximately 53 miles in a southwesterly direction along the Blue Ridge Parkway to its intersection with the James River. The line then proceeds approximately 44 miles along the James River in a west-northwesterly direction to its intersection with the northwest boundary line of the Jefferson National Forest near Eagle Rock. The line then proceeds approximately 10.5 miles in a northerly direction along the Jefferson National Forest line and along the crest of North Mountain to its intersection with the westerly boundary line of Rockbridge County. The line continues approximately 23 miles along the county line in the same northerly direction to its intersection with the Chesapeake and Ohio Railroad. The line continues approximately 23 miles along the railroad between the Great North Mountain and the Little North Mountain to its intersection with the southeastern boundary line of the George Washington National Forest at Buffalo Gap. The line continues approximately 81 miles northeasterly along the George Washington National Forest line to the Vertical Control Station, (elevation 1803), on the crest of Little North Mountain approximately 3 miles west of Van Buren Furnace. The line continues approximately 53 miles northeasterly along the crest of Little North Mountain to its intersection with the Potomac River in Fort Frederick State Park. The line then proceeds approximately 47.4 miles southeasterly along the Potomac River to the beginning point at that river's intersection with the boundary line between West Virginia and Virginia.

DEPARTMENT OF LABOR
Occupational Safety and Health Administration
29 CFR Part 1904
Exemption From Requirements for Recording Occupational Injuries and Illnesses; Final Rule and Amendment
AGENCY: Occupational Safety and Health Administration (OSHA): Labor.
ACTION: Final rule.

SUMMARY: With this notice, OSHA is amending Part 1904 to exempt certain employer establishments from requirements to: (1) Maintain, retain and provide access to the log and summary of occupational injuries and illnesses (1904.2, 1904.6, and 1904.7); (2) maintain, retain and make available for inspection the supplementary record of occupational injuries and illnesses (1904.4, and 1904.6); and (3) post the annual summary of occupational injuries and illnesses for each establishment (1904.5).

The Agency is exempting employer establishments in the following Standard Industrial Classifications (SIC's):

SIC's 52-59 (Retail Trades, except SIC's 52-54);
SIC's 60-67 (Finance, Insurance and Real Estate);
SIC's 70-79 (Services, except SIC's 70, 72, 73, 76, 79).

This action is part of OSHA's continuing effort to reduce the recordkeeping burden on employers. The primary value to OSHA of these records has been to help OSHA safety and health officers to assess workplace safety conditions as part of OSHA's General Schedule (i.e. agency-initiated) inspection of establishments. Since 1977, however, OSHA has not included in its general inspection program those employer establishments that would be exempt under this rule.

Further, because of low incidence rates at affected establishments, and limited OSHA resources, and because needed inspections are made in response to employee complaints about specific hazards, there is little likelihood that these establishments would be included in any future targeting scheme.

For these establishments, the primary agency use of these records no longer exists, and OSHA, therefore, exempts these employer establishments from the requirements to keep these records. The exemption thus relieves a large number of employers of a paperwork burden that is unnecessary from the agency's point of view, without lessening on-the-job safety protection for workers.

EFFECTIVE DATE: This rule becomes effective January 1, 1983.

A. Background

1. History of the Regulation. The regulations concerning OSHA's occupational injury and illness recordkeeping system (29 CFR Part 1904) were adopted in 1971. Their purpose is to:

- Implement section 8(c) (1), (2), (8)(g) (2) and 24 (e) and (c) of the Occupational Safety and Health Act of 1970. These sections provide for recordkeeping and reporting by employers covered by the Act as necessary or appropriate for enforcement of the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation and analysis of occupational safety and health statistics (29 CFR 1904.1).

- On July 29, 1977, OSHA amended these regulations to exempt small employers with 10 or fewer employees from the recordkeeping requirements of Part 1904 (42 FR 38567). OSHA then stated that the amendment would continue the Congressional intent, expressed in previous appropriations acts (Pub. L. 93-517 and Pub. L. 94-206) generally to exempt employers with 10 or fewer employees from the recordkeeping requirements but not from the requirement in § 1904.8 to report accidents resulting in a fatality or multiple hospitalization nor from the requirement in § 1904.21 to participate in the Bureau of Labor Statistics' (BLS) annual statistical survey, if such an employer is selected to participate. OSHA also stated that the small employer exemption would carry out the mandate of section 8(d) of the Act which requires that information obtained under the Act be obtained with a minimum burden on employers (29 U.S.C. 657(d)).

On June 4, 1982, OSHA proposed a comparable exemption for establishments which are classified in
the Office of Management and Budget's Standard Industrial Classification (SIC) Manual as retail trade, finance, insurance, real estate and services—SIC's 52-89 (excluding 52-54, 70, 75, 76, 79 and 80) (47 FR 24346).

The scope of the proposed exemption was confined to establishments in the Major Industry Groups within SIC's 52-89, which met two criteria. The first was that the establishments fall within SIC's not targeted for general schedule inspections. Since 1977 all establishments in SIC's 52-89 have not been targeted for such inspections. The second criterion was that the establishments fall within Major Industry Groups in SIC's whose average lost workday case injury rate (LWCIR), according to BLS data, are expected to have fewer than two injuries per establishment on an annual basis.

The third purpose of these regulations was to ensure the gathering of uniform, reliable safety and health statistics. OSHA did not propose to exempt affected employers participating in the Bureau of Labor Statistics' annual survey of occupational injuries and illnesses. Currently, only a small percentage of these employers are asked to participate. In the future, these selected employers will be notified in advance by BLS of the requirement to participate in the survey and to maintain the OSHA log and make reports for the survey as requested by BLS.

Substantial public interest was generated by the proposal. Trade associations, unions, firms and individuals responded within the comment period which ended on July 6, 1982.

The Final Rule

OSHA is issuing the final rule as proposed. The Agency believes that substantial support for both the general concept of recordkeeping relief and the scope of this exemption was demonstrated by the response to the proposal.

Some commenters expressed objections to either the exclusion from or the inclusion of certain industries in the proposed exemption. OSHA has reviewed its proposed two-fold criteria for exemption and has concluded that these criteria are both rational and workable. In addition no alternative criteria which the Agency considers workable and appropriate were suggested. Additional discussion of these objections is found later in this document.

The Rulemaking

First, many of the comments received in response to the proposal generally supported the concept of an exemption from recordkeeping requirements for the industry groups included in the proposal. For example, the Shoe Corp. of America stated that the "requirement to maintain the OSHA log for each of the stores [in a 700 store chain] at the location is an exercise in costly paperwork. The vast majority go out with all zeros typed in". (2-20; see also the comments of the Society of Independent Gasoline Marketers of America, 2-22; American Bankers Association, 2-23; American Retail Federation (ARF), 2-13A; First Bank Ceredo, 2-6; Arby's Inc., 2-8; RTM, 2-14). Several commenters from the "fast food" industry also wrote in support of their industry's inclusion in the exemption. Arby's stated that the "fast food environment is free from recognizable hazards, due to training and layout," and contended that there is no benefit from the paperwork burden associated with these forms (i.e., recording and posting of accident data). The company also noted it is using alternative recordkeeping systems to capture and store this same data.

The Society of Independent Gasoline Marketers of America (SIGMA) similarly stated that it "would relieve SIGMA members of an unnecessary paperwork burden and would not adversely affect workplace safety for this retail gasoline outlet employees (2-22). Also supporting the proposal was the American Bankers Association which characterized the proposed exemption as "justified and necessary" (2-23)."

The ARF also supported the "concept embodied in the (proposed) rule as "consistent with both Section 6(d) of the Act which requires that information sought under the Act be obtained with a minimum burden on employers (29 U.S.C. 657 (d)) and this Administration's goal of reducing unnecessary paperwork burden on employers without lessening on-the-job safety protection for workers.""

However, objections to the proposed exemptions were raised by several commenters. California's Department of Industrial Relations stated that OSHA has ignored uses of record keeping information in proposing this exemption. The Department argued that the log is a necessary component of any inspection, that the log contains information important to employees and that summary information is important to
OSHA believes these objections overstate the usefulness of the records involved in this exemption. OSHA inspectors depend on many sources of information. Certainly in the case of complaint inspections, complaining employees themselves are sources of available detailed health and safety information as are prompt investigations. Also most workplace injury and illness data are recorded in workers’ compensation and reporting requirements needed to complete the BLS Survey. In addition, no other research needs have been identified which would be affected by this exemption. OSHA does not believe that employees will be deprived of important information. Employees, either individually, or through safety and health committees have access to workers’ compensation first reports of injury, and other records kept by employers in the form best designed for a particular firm’s needs.

Other objections where similar in nature. For example, OSHA agrees with the Michigan Department of Public Health, which stated that the recordkeeping requirements constitute a consistent, uniform way of recording injuries for individual establishments and industry wide (2-26). However, Michigan’s claim that such records are the basis for joint labor-management efforts to improve safety and health, in OSHA’s opinion, a vast overstatement. Certainly for the exempted establishments, the minimal information required on and communicated by the required forms, could only be of peripheral value to such labor-management efforts. The uniformity of the forms, likewise, is irrelevant to joint labor-management efforts in any one firm, and of minimal significance to industry-wide efforts since the categories of recorded information are unambiguous. Michigan was also concerned that the adoption of this exemption could cause confusion in states operating their own health and safety plans pursuant to section 18 of the Act. However, any such confusion can be obviated by the states’ adoption of similar exemptions. In sum, OSHA concludes that most general objections to the proposed exemption were based on theoretical uses for required records, which in fact, are either unproved or of minimal value.

Specific criticism of the proposal centered around OSHA’s choice of industry groups for inclusion in the exemption, and/or the criteria themselves. Some commenters argued that additional industry groups or subgroups should be exempt because they meet OSHA’s criteria in the proposal. For example OSHA was asked to broaden the exemption to include SIC 48, “Communications”, because that industry’s LWCIR has been below the criterion level of 75% of the private sector (AT&T) (2-19). OSHA limited its proposal to certain major groups within the broad industrial divisions of retail trade and services (SIC 52-89) because, by far, most of the hazardous major groups are contained in these divisions. OSHA realizes that other major groups also may have relatively low LWCIR’s, or using other definitions, may be characterized as less hazardous.

Because statistics and concepts defining “hazardous” are changeable, OSHA is hesitant, however, to frame any exemption in the broadest way at this time. Therefore the Agency will continue to examine non-exempt industry groups for possible inclusion in future exemptions, based on the criteria applied here, or on equally rational criteria. It should also be noted that the record is not complete concerning whether other specified major groups, not included in the proposal, such as “Communications” (SIC 48) should also be exempt. For example, although industry comments supported extending the exemption to “Communications,” no comments were received from affected unions, employees and other interested persons on the issue.

Various objections were made to OSHA’s using 2-digit SIC codes to designate exempt industry groups. For instance, the AFL-CIO argued that two digit SIC codes are too broad to use for exemption purposes because they incorporate hazardous SIC’s within them (2-10).

OSHA agrees with the AFL-CIO that using the 2-digit SIC code to designate less hazardous industries may “hide” less safe industries, firms, or in “safe” firms, unsafe operations. This flaw, however, is simply a consequence of the process of aggregation. OSHA does not agree with the AFL-CIO, however, that the 2-digit code is too “broad” for designating less hazardous industries.

As stated above, little purpose would be served to continue to require 3 or 4 digit SIC codes groups or industries to keep records when OSHA is not using general schedule inspections in those industries. OSHA also believes that designating exempt categories down to the 3 or 4 digit level would be confusing to the public and administratively difficult for OSHA.

OSHA also agrees with commenters who stated that any definition which aggregates safety and health records of different firms and/or industries may “hide” high or low performers. In fact, even a firm-by-firm qualification test will aggregate operations with varying safety records with a given firm. Because of this fact, Inco Ltd. recommended that offices within larger establishments should be exempt, because offices are assumed to have very low workplace injury and illness rates. To the extent that office work results in very few recordable illnesses and injuries, the recording of such infrequent incidents would be a very slight additional burden for non-exempt establishments. Further, segregating data on an operation-by-operation basis may be beyond the normal operating procedures of many establishments and may thus create additional paperwork for such establishments. Even for those offices that may be considered separate establishments because the primary activity of their firms does not fall within the exempt SICs, OSHA does not believe that the continued making and keeping of the OSHA log and supplementary record will be unduly burdensome. Many of these offices are responsible for keeping OSHA-mandated records for other divisions of their firms. The additional making and keeping of these records for their own “office establishments” would appear to impose only a slight additional burden.

Other comments requested that OSHA revise its criteria for exemption to include certain SIC’s. For instance, the ARF objected to the proposal’s exclusion of SIC’s 52, 53 and 54 from the recordkeeping exemption, even though it acknowledged that these industries’ LWCIR’s were higher than 75% of the private sector average. The ARF characterized OSHA’s criteria as “irrational and improper”, in part because they allegedly implied a “casual relationship” between recordkeeping and the lost workday case rate. The ARF also accused OSHA of “punishing” SIC’s 52, 53 and 54, because they were not included in this exemption.

OSHA disagrees with this analysis. As stated above, the main reason for proposing these exemptions was OSHA’s belief that in industries with above average safety and health experience little purpose is served by documenting low injury and illness rates on the forms and at the frequencies now required.

In addition, although this exemption is in keeping with OSHA’s practice of
recognition of good performance by employers, OSHA does not expect that this exemption by itself, will provide sufficient change employer behavior to improve workplace health and safety. Neither does OSHA believe, as ARF suggested, that conforming to reporting requirements, by itself, improves workplace safety and health. Certainly, if data existed which supported such a causal relationship, OSHA would be amiss in issuing this exemption. It is because OSHA believes that the requirements affected by this exemption no longer serve their original purposes, that this exemption is being issued.

In conclusion, OSHA believes that its criteria for choosing industrial groups for exemption from certain recordkeeping requirements are both rational and fair. In addition, and just as importantly, OSHA believes that adopting this exemption will help employers, employees and the Agency to concentrate their respective resources on affirmative actions to improve workplace safety and health.

OSHA finds, in accordance with Executive Order 12291 (46 FR 13193), that this is not a "major rule" since its effect will not meet any of the definitional elements in § 1(b) of the Executive Order. As stated above, the effect of this rule will be to reduce many employers' paperwork burden, and accordingly results in lower costs to them. The Secretary also finds that no regulatory flexibility analysis is required under the Regulatory Flexibility Act (Pub. L. 96-354; 94 Stat. 1104) because this action will not have a significant economic impact on a substantial number of small entities, in that no increased reporting requirements are imposed and that competition within affected industries is not altered. A certification to this effect has been made by the Secretary to Chief Counsel for Advocacy of the Small Business Administration.

**Paperwork Reduction Act**

Information collection requirements contained in this regulation are in the process of being submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Once the requirements have been assigned an OMB control number, the public will be notified to that effect.

**Authority**

This document was prepared under the direction and supervision of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health.

Accordingly, pursuant to Section 8(g) of the Occupational Safety and Health Act of 1970 (84 Stat. 1557; U.S.C. 657(g), 1503, 1600), Section 4 of the Administrative Procedures Act (45 U.S.C. 553), and Secretary of Labor's Order 8-76, Part 1904 of Title 29 of the Code of Federal Regulations is hereby amended as set forth below.

**List of Subjects in 29 CFR Part 1904.**

Health records, Health statistics, Occupational safety and health.

Signed at Washington, D.C., this 20th day of December, 1982.

Thorne G. Auchter,
Assistance Secretary of Labor.

**PART 1904—(Amended)**

Part 1904 of Title 29, Code of Federal Regulations is amended as follows:

1. By adding a new paragraph (h) to § 1904.12, to read as follows:

   **§ 1904.12 Definitions.**

   (h) Establishments Classified in Standard Industrial Classification Codes (SIC) 52-89. (1) Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.

   (2) Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

   (3) Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance, and real estate.

   (4) Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, education, social, and cultural; and membership organizations.

   (5) The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of the normal basis for determining the primary activity.

   2. By adding a new § 1904.16 to read as follows:

   **§ 1904.16 Establishments Classified in Standard Industrial Classification Codes (SIC) 52-89, (except 52-54, 70, 75, 76, 79 and 80).**

   An employer whose establishment is classified in SIC's 52-89, (excluding 52-54, 70, 75, 76, 79 and 80) need not comply, for such establishment, with any of the requirements of this part except the following:

   (e) Obligation to report under § 1904.8 concerning fatalities or multiple hospitalization accidents; and (b) obligation to maintain a log of occupational injuries and illnesses under § 1904.21, upon being notified in writing by the Bureau of Labor Statistics that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

   [FR Doc. 85-36388 Filed 12-27-82; 8:45 am]

   BILLING CODE 4510-26-M

**PENSION BENEFIT GUARANTY CORPORATION**

**29 CFR Part 2621**

Limitation on Guaranteed Benefits; Correction

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule; correction.

**SUMMARY:** On December 13, 1982, the Pension Benefit Guaranty Corporation published in the Federal Register at 47 FR 55672, FR Doc. 82-33789, an amendment to its Limitation on Guaranteed Benefits regulation. This document corrects the authority citation for 29 CFR Part 2621 and a typographical error in Appendix A to Part 2621.

**FOR FURTHER INFORMATION CONTACT:** Renae R. Hubbard, Special Counsel, Office of the General Counsel, Code 210, Pension Benefit Guaranty Corporation, 2020 K Street N.W., Washington, D.C. 20006, 202-254-4895. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

The following corrections are made in FR Doc. 82-33789 appearing at page 55672 in the issue of December 13, 1982:

1. On page 55672 in column 3, in the "Authority", "4022(B)" is corrected to...
DEPARTMENT OF DEFENSE
Corps of Engineers; Department of the Army
36 CFR Part 331
Falls of Ohio National Wildlife Conservation Area


ACTION: Interim rule with request for comments.

SUMMARY: The Secretary of the Army, acting through the Chief of Engineers, is issuing an interim rule to govern the protection, use and management of the Falls of the Ohio National Wildlife Conservation Area (WCA). The WCA was authorized by Title II of Pub L. 97–137 and established pursuant to Section 204 of the Act by the Secretary of the Interior concurrent with publication of Notice and the WCA boundaries in the Federal Register of August 12, 1982 at 47 FR 35043. Section 206 of the Act mandates publication of regulations to carry out Title II within one year of enactment or not later than December 29, 1982.

DATE: This interim rule is effective upon publication and comments will be received on or before February 28, 1983.

ADDRESS: Written comments should be sent to: Office of the Chief of Engineers, ATTN: DAEN-CWP-V, Washington, DC 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Leverty, Environmental Resources Branch, telephone number (202) 272-0130.

SUPPLEMENTARY INFORMATION: These interim regulations place certain restrictions, prohibitions and limitations on use of the lands and waters within the Falls of the Ohio National Wildlife Conservation Area (WCA), in order to protect, preserve and provide for the proper management of the significant physical and biological features for which the WCA was designated and to prevent interference with commercial and recreational navigation on the Ohio River.

The WCA was authorized by Title II of Pub. L. 97–137, in order to:

1. Protect wildlife populations and habitats in their natural diversity, including but not limited to, bald eagle, peregrine falcon, Canada goose, mallard, gadwall, blue-winged teal, black duck, American widgeon, and wood duck;

2. Conserve fish populations in their natural diversity including, but not limited to, shad, shiner, crappie, largemouth bass, striped bass, and channel catfish;

3. Ensure to the maximum extent practicable the necessary water quantity within the WCA;

4. Protect the fossilized coral reef; and

5. Provide opportunities for scientific research and interpretive and environmental uses and fish and wildlife oriented recreational uses.

Responsibility for the administration of the WCA and for promulgation of these regulations rests with the Secretary of the Army, acting through the U.S. Army Corps of Engineers. Within the boundary, lands, waters and interests therein will be acquired by the Corps of Engineers as may be necessary to insure that the WCA can be effectively managed for the purpose for which it was established. The authorizing law requires that these regulations include prohibitions on all hunting, vandalism (including the removal of fossils), and the dumping of refuse within the boundaries of the WCA.

These regulations were developed in consultation with appropriate agencies of the Department of the Interior. The Corps of Engineers has determined that it is impractical to publish these rules in draft form because the statutory requirement for their promulgation by December 29, 1982. Regulation Changes: The interim rule amends Title 36 of the Code of Federal Regulations by adding a new part 331 which governs the protection, use and management of the Falls of the Ohio National Wildlife Conservation Area. As noted above, comments will be considered in finalizing these interim rules if received by February 28, 1983.

Impact Analysis: The Department of the Army has determined that this document is not a major rule requiring preparation of a Regulatory Impact Analysis under Executive Order 12291. The Department of the Army has also determined that the interim rule will not have a significant economic impact on a substantial number of small entities and, therefore, does not require a small entity flexibility analysis under Pub. L. 96–354. The interim rule merely sets forth certain restrictions, prohibitions and limitations on use of the Falls of the Ohio National Wildlife Conservation Area in order to properly manage and protect its unique resources and thus to carry out the purposes for which the WCA was authorized and established.

List of Subjects in 36 CFR Part 331

Recreation areas, Waterways, Hunting and fishing, Administrative practice and procedure, Public lands.

John O. Roach, II, Army Liaison Officer with the Federal Register.

Accordingly, 36 CFR is amended by adding a new interim Part 331 to read as set forth below.

PART 331—REGULATIONS GOVERNING THE PROTECTION, USE AND MANAGEMENT OF THE FALLS OF THE OHIO NATIONAL WILDLIFE CONSERVATION AREA

Sec.
331.1 Applicability and scope.
331.2 Policy.
331.3 Hunting and trapping.
331.4 Fishing.
331.5 Explosives and fireworks.
331.6 Public property.
331.7 Sanitation.
331.8 Picnicking.
331.9 Camping.
331.10 Swimming.
331.11 Special events.
331.12 Vehicles.
331.13 Vessels.
331.14 Aircraft.
331.15 Fires.
331.16 Interference with government employees.
331.17 Minerals.
331.18 Restrictions.
331.19 Commercial activities.
331.20 Advertising.
331.21 Unauthorized structures.
331.22 Abandonment of personal property.
331.23 Control of animals.
331.24 Permits.
331.25 Violation of regulations.

Authority: Pub. L. 97–137.

§ 331.1 Applicability and scope.

(a) The regulations contained in this part apply to those lands and waters within the established boundary of the Falls of the Ohio National Wildlife Conservation Area (WCA). Included in this boundary, which was published in the Federal Register of August 12, 1982, are publicly and privately owned lands, waters and improvements. The Federal Government, acting through the Corps of Engineers, will acquire such rights to privately-owned properties in the WCA as are necessary to carry out the purposes of Title II Pub. L. 97–137. The regulations prescribed herein are for the use, management and protection of the resources of the WCA and all persons...
entering, using or visiting within the boundaries of the WCA are subject to these regulations. All other applicable Federal, State and local laws and regulations remain in full force and effect. The District Engineer, US Army Corps of Engineers, exercises non-exclusive jurisdiction over the lands and waters of the WCA and enforces these regulations.

(b) The WCA boundary encompasses an existing hydroelectric generating station and the McAlpine Locks and Dam, operating navigation structures which are part of the authorized Ohio River Navigation System. The continued operation and maintenance of this system take precedence over the purposes of the WCA, except that such operation and maintenance will be consistent with the basic purpose of the WCA as regards prohibition of hunting, vandalism, and dumping of refuse. Management of the WCA to achieve its intended purposes, will, to the extent practicable, be accomplished in a manner consistent and compatible with continued generation of electricity and navigation on the Ohio River, including operation and maintenance of the McAlpine Locks and Dam and the Louisville Repair Station and material storage areas located on Shippingport Island.

§ 331.2 Policy.

(a) It is the policy of the Secretary of the Army, acting through the Chief of Engineers, to manage the natural and cultural resources of the WCA in the public interest, providing the public with safe and healthful recreational opportunities while protecting and enhancing these resources.

(b) Unless otherwise indicated herein, the term "District Engineer" shall include the authorized representatives of the District Engineer.

(c) The WCA shall be available to the public without regard to sex, race, color, creed, or national origin. No lessee, licensee, or concessionaire providing a service to the public shall discriminate against any person because of sex, race, creed, color, or national origin in the conduct of the operations under the lease, license, or concession contract.

§ 331.3 Hunting and trapping.

(a) The hunting, trapping, catching, molesting, killing, or having in possession any wild animal or bird, or taking the eggs of any such bird, is prohibited.

(b) Possession of equipment (including, but not limited to, firearms, ammunition, traps, projectile firing devices including bow and arrow) which could be used for hunting, trapping, or the taking of wildlife, is prohibited.

§ 331.4 Fishing.

Unless otherwise authorized in writing by the District Engineer:

(a) Fishing is only permitted in accordance with the laws and regulations of the State within whose exterior boundaries that portion of the WCA is located, and such laws and regulations which are now or may hereafter be in effect are hereby adopted as part of these regulations.

(b) Fishing by means of the use of drugs, poisons, explosives, bow and arrow or electricity is prohibited.

(c) Commercial fishing and fishing with gill nets, trammel nets, hoop nets, bow and arrow or trot lines is prohibited.

§ 331.5 Explosives and fireworks.

Unless otherwise authorized in writing by the District Engineer:

(a) The possession or use of fireworks is prohibited.

(b) The possession or use of explosives is prohibited.

§ 331.6 Public property.

Unless otherwise authorized in writing by the District Engineer, the destruction, injury, defacement, removal, or any alteration of public property including, but not limited to, natural formations, paleontological features, historical and archeological features and vegetative growth is prohibited. Any such destruction, removal, or alteration of public property shall be in accordance with the conditions of any permission granted.

§ 331.7 Sanitation.

(a) Garbage, trash, rubbish, litter, or any other waste material or waste liquid generated on the WCA shall be removed from the area or deposited in receptacles provided for that purpose. The improper disposal of such wastes on the project is prohibited.

(b) The use of refuse containers for the disposal of refuse not generated on the WCA is prohibited.

(c) It is a violation to bring any material onto the WCA for the purpose of disposal.

(d) The discharge or placing of sewage, garbage, refuse, or pollutants into the WCA waters from any vessel or watercraft is prohibited.

§ 331.8 Picnicking.

(a) Picnicking is permitted only in designated areas.

(b) Picnickers shall remove all personal equipment and clean their sites upon departure.

§ 331.9 Camping.

Camping is not permitted within the WCA.

§ 331.10 Swimming.

Swimming is prohibited unless authorized in writing by the District Engineer.

§ 331.11 Special events.

(a) Special events including, but not limited to, water carnivals, boat races, music festivals, dramatic presentations, or other special recreation programs are prohibited unless written permission has been granted by the District Engineer.

(b) The public shall not be charged any fee by the sponsor of such permitted event unless the District Engineer has approved in writing the proposed schedule of fees. The District Engineer shall have authority to revoke permission and require removal of any equipment upon failure of the sponsor to comply with terms and conditions of the permit/permission. Any violation shall constitute a separate violation for each calendar day in which it occurs.

§ 331.12 Vehicles.

(a) The use of a vehicle off roadways is prohibited except as may be authorized by the District Engineer.

(b) Vehicles shall not be parked in violation of any posted restrictions, or in such a manner as to endanger any Federal property to include natural features. The owner of any vehicle parked in violation of this section shall be presumed to have parked it, and unless rebutted such presumption will be sufficient to sustain a conviction as provided for in § 331.25.

(c) Vehicles shall be operated in accordance with all posted regulations.

(d) Driving or operating any vehicle in a careless, negligent, or reckless manner, heedlessly or in willful disregard for the safety of other persons, or in such manner as to endanger any property or environmental feature, or without due care or at a speed greater than is reasonable and prudent under prevailing conditions with regard to traffic, weather, road, light and surface conditions, is prohibited.

(e) This section pertains to all vehicles, including, but not limited to, automobiles, trucks, motorcycles, minibikes, trail bikes, snowmobiles, dune buggies, all terrain vehicles, bicycles, trailers, campers, or any other such equipment.

(f) Except as authorized by the District Engineer no person shall operate any motorized vehicle without a proper and effective exhaust muffler, or with an
§ 331.13 Vessels.
(a) Vessels or other watercraft may be operated in the WCA waters except in prohibited or restricted areas in accordance with posted regulations and applicable Federal, State, and local laws.
(b) All vessels when not in actual use shall be removed from the WCA unless securely moored at mooring facilities approved by the District Engineer. The placing of floating or stationary mooring facilities to, or interfering with, a buoy, channel marker, or other navigational aid is prohibited.
(c) The operation of vessels or other watercraft in a careless, negligent, or reckless manner so as to endanger any property (including the operator and/or user(s) of the vessel or watercraft) is prohibited.
§ 331.14 Aircraft.
(a) The operation of aircraft on WCA lands and waters is prohibited, unless authorized in writing by the District Engineer.
(b) Except in extreme emergencies threatening human life or serious property loss, the air delivery of any person or thing by parachute, helicopter, or other means onto project lands or property (including the operator and/or user(s) of the vessel or watercraft) is prohibited.
(c) The operation of aircraft on WCA lands and waters is prohibited, unless authorized in writing by the District Engineer.
§ 331.15 Fires.
Open fires are prohibited unless confined to fireplaces, grills, or other facilities designed for this purpose as designated by the District Engineer. Fires shall not be left unattended and must be completely extinguished prior to departure.
§ 331.16 Interference with government employees.
Interference with any Government employee in the conduct of his or her official duties pertaining to the administration of these regulations is prohibited. It is a violation to fail to comply with a lawful order directed by any Government employee or to knowingly give any false, fictitious, or fraudulent report or other information to any Government employee in the performance of his or her official duties pertaining to the administration of these regulations.
§ 331.17 Minerals.
All activities in connection with prospecting, exploration, development, mining or other removal or the processing of mineral resources and all uses reasonably incident thereto are prohibited.
§ 331.18 Restrictions.
The District Engineer may establish and post a schedule of visiting hours and/or restrictions on the public use of a portion or portions of the WCA. The District Engineer may close or restrict the use of the WCA or portion of the WCA when necessitated by reason of public health, public safety, security, maintenance, or other reasons in the public interest. Entering or using the project in a manner which is contrary to the schedule of visiting hours, closure or restrictions is prohibited.
§ 331.19 Commercial activities.
Unless otherwise authorized in writing by the District Engineer, the engaging in or solicitation of business or money is prohibited.
§ 331.20 Advertisement.
Unless otherwise authorized in writing by the District Engineer, advertising by the use of billboards, signs, markers, audio devices, or any other means whatsoever including handbills, circulars, and posters is prohibited. Vessels or vehicles with semipermanent or permanently installed signs are exempt if being used for authorized recreational activities and in compliance with all other rules and regulations pertaining to vessels and vehicles.
§ 331.21 Unauthorized structures.
The construction, placing, or continued existence of any structure of any kind under, upon, in, or over WCA lands or waters is prohibited unless a permit, lease, license, or other appropriate written agreement therefor has been issued by the District Engineer. Structures not so authorized are subject to summary removal or impoundment by the District Engineer. The design, construction, placing, existence, or use of structures in violation of the terms of the permit, lease, license, or other written agreement therefor is prohibited.
§ 331.22 Abandonment of personal property.
(a) Personal property of any kind left unattended upon WCA lands or waters for a period of 24 hours shall be considered abandoned and may be impounded and stored at a storage point designated by the District Engineer who may assess a reasonable impoundment fee. Such fee shall be paid before the impounded property is returned to its owner.
(b) If abandoned property is not claimed by its owner within 3 months after the date it is received at the storage point designated by the District Engineer, it may be disposed of by public or private sale or by other means determined by the District Engineer. Any net proceeds from the sale of property shall be covered into the Treasury of the United States as miscellaneous receipts.
§ 331.23 Control of animals.
(a) No person shall bring or allow horses, cattle, or other livestock into the WCA.
(b) No person shall bring dogs, cats, or other pets into the WCA unless penned, caged, on a leash under 6 feet in length, or otherwise under physical restraint at all times. Unclaimed or unattended animals are subject to immediate impoundment and removal in accordance with State and local laws.
§ 331.24 Permits.
It shall be a violation of these regulations to refuse to or fail to comply with the terms or conditions of any permit issued by the District Engineer.
§ 331.25 Violation of regulations.
Anyone violating the provisions of this regulation shall be subject to a fine of not more than $500 or imprisonment for not more than 6 months, or both. All persons designated by the Chief of Engineers, U.S. Army Corps of Engineers, for that purpose shall have the authority to issue a citation for the violation of these regulations, requiring the appearance of any person charged with violation to appear before the U.S. Magistrate within whose jurisdiction the violation occurred.
[FR Doc. 82-31501 Filed 12-27-82; 8:45 am]
BILLING CODE 3710-92-M

VETERANS ADMINISTRATION

38 CFR Part 17

Alcohol and Drug Dependence or Abuse Treatment and Rehabilitation

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is publishing final regulations on its implementation of the "Veterans Health Care Amendments of 1979" (Pub. L. 96-22) as amended. The purpose of that Act was to authorize the VA to conduct a five-year pilot program for care, treatment and rehabilitation...
services on a contract basis in halfway houses, therapeutic communities, psychiatric residential treatment centers and other community-based treatment facilities, for eligible veterans suffering from alcohol or drug dependence or abuse disabilities. These regulations are necessary in order to provide the authority to VA medical centers for authorizing needed treatment for eligible veterans, who are in need of, and request alcohol or drug abuse treatment and rehabilitation.

**Effective Date:** April 28, 1980.

The incorporation by reference in this regulation is approved by the Director of the office of the Federal Register.

**For Further Information Contact:** Robert L. Murphy, Mental Health and Behavioral Sciences Service (116C), Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420, (202) 389-5195.

**Supplementary Information:** On pages 55716 through 55720 of the Federal Register of August 21, 1980, an Interim Final Regulation was published for $17.960, title 38 Code of Federal Regulations. Interested persons were given 30 days to submit comments. Two comments were received. One was a question relating to establishing halfway houses for veterans only or using existing facilities where veterans and nonveterans would be treated together with the VA sponsoring the veterans only. Contracts will be negotiated with existing facilities that are able to meet quality and effectiveness standards established by the VA. No attempt will be made to establish facilities for veterans only or using new program activities where none currently exists. The other comments involved additional treatment and transitional assistance required by veterans being discharged from institutional care. Extensive treatment programs are presently available to veterans being release from institutional care to promote adjustment to noninstitutional life. An additional item that has been added involves contract care on an outpatient basis in addition to treatment in residential facilities, and additional standards that must be met to qualify for an award of a contract. The quality and effectiveness standards contained in these regulations are required to be set forth in regulations by law. (See 38 U.S.C. 620A(a)(2)).

These rules are not major rules within the meaning of Executive Order 12291, Federal Regulation, because they will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for any persons or entities, and will not have significant adverse effects on any element of our economy. These rules are exempt from the requirement for initial and final regulatory flexibility analyses of sections 603 and 604 of the Regulatory Flexibility Act (Pub. L. 96–354) because they are not effective prior to January 1, 1981. These rules were effective, on an interim basis, as of April 30, 1980, and, with minor modifications, will remain effective. In any event, these regulations will not have a significant impact on a substantial number of small entities. The pilot program encompassed by these rules involves only a small number of these entities. Moreover, these rules do not impose any requirements that these entities have not previously been required to meet, none of which are economically significant.

Procedural data included in the publication of Interim Final Regulation §17.960 have been omitted leaving only regulatory matters for final publication and inclusion in Title 38 CFR. The section number of this regulation has been changed from §17.960 to §17.53a through 17.53d. Accordingly, §17.960 is removed from Title 38, CFR. The final regulations are hereby adopted as set forth below.

The Catalog of Federal Domestic Assistance Program number is 64.019.

List of subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants program—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans, Incorporation by reference.

Approved: November 24, 1982.

By direction of the Administrator.

Everett Alvarez, Jr.,
Deputy Administrator.

**PART 17—MEDICAL**

1. 38 CFR Part 17 is amended by adding new §§ 17.53a, 17.53b, 17.53c, and 17.53d to read as follows:

§ 17.53a Alcohol and drug dependence or abuse treatment and rehabilitation in residential and nonresidential facilities by contract.

(a) Alcohol and drug dependence or abuse treatment and rehabilitation may be authorized by contract in nonresidential facilities and in residential facilities provided by halfway houses, therapeutic communities, psychiatric residential treatment centers and other community-based treatment facilities, when considered to be medically advantageous and cost effective for the following:

(1) Veterans who have been furnished hospital care in facilities over which the Administrator has direct jurisdiction and such transitional care is reasonably necessary to complete treatment incident to such hospital care.

(2) Persons in the Armed Forces who, upon discharge therefrom will become eligible veterans, when duly referred with authorization for Veterans Administration medical center hospital care in preparation for treatment and rehabilitation in this program under the following limitations:

(i) Such persons may be accepted by transfer only during the last 30 days of such person's enlistment or tour of duty.

(ii) The person requests transfer in writing for treatment for a specified period of time during the last 30 days of such person's enlistment period or tour of duty.

(iii) Treatment does not extend beyond the period of time specified in the request unless such person requests an extension in writing for a further specified period of time and such request is approved by the Veterans Administration Medical Center Director governing treatment and rehabilitation.

(iv) Such care and treatment will be provided as if the person were a veteran, subject to reimbursement by the respective military service for the costs of hospital care and control treatment provided while the person is an active duty member.

(b) The maximum period for one treatment episode is limited to 60 days. The Veterans Administration Medical Center Director may authorize one 30-day extension.

(c) Any person who has been discharged or released from active military, naval or air service, and who, upon application for treatment and rehabilitative services under the authority of this section is determined to be legally ineligible for such treatment or rehabilitation services shall be:

(1) Provided referral services to assist the person, to the maximum extent possible, in obtaining treatment and rehabilitation services from sources outside the Veterans Administration, not at Veterans Administration expense and,

(2) If pertinent, advised of the right to apply to the appropriate military, naval or air service and the Veterans Administration for review of such person's discharge or release from such service. (Pub. L. 96–22, 38 U.S.C. 620A)
§ 17.53b Contracts for residential treatment services for veterans with alcohol or drug dependence or abuse disabilities.

(a) Contracts for treatment services authorized under § 17.53a(a) may be awarded in accordance with applicable Veterans Administration and Federal procurement procedures. Such contracts will be awarded only after the quality and effectiveness, including adequate protection for the safety of the residents of the contractor's program, has been determined and then only to contractors, determined by the Chief Medical Director or designee to meet the following requirements.

(1) Meet fire safety requirements as follows:

(i) The building must meet the requirements of the applicable residential occupancy chapters and the general requirement chapters (1-7, 31) of the Life Safety Code (NFPA 101) published by the National Fire Protection Association (NFPA), Batterymarch Park, Quincy, Massachusetts 02269, 1981 edition. The 1981 edition of the Life Safety Code is hereby incorporated by reference into this section as though set forth in full herein. This code is available for inspection at the Office of the Federal Register, 1100 L. Street, NW, Washington, DC 20408. Any equivalences or variances to Veterans Administration requirements must be approved by the Director, Facility Engineering, Planning, and Construction Office, Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC 20420.

(ii) Where applicable, the home must have a current occupancy permit issued by the local and state governments in the jurisdiction where the home is located.

(iii) All Veterans Administration sponsored residents will be mentally and physically capable of leaving the building, unaided, in the event of an emergency. Halfway house, therapeutic community and other residential program management must agree that all the other residents in any building housing veterans will also have such capability.

(iv) There must be at least one staff member on duty 24 hours a day.

(v) Fire exit drills must be held at least quarterly. Residents must be instructed in evacuation procedures when the primary and/or secondary exits are blocked. A written fire plan for evacuation in the event of fire shall be developed and reviewed annually. The plan shall outline the duties, responsibilities and actions to be taken by the staff and residents in the event of a fire emergency. This plan shall be implemented during fire exit drills.

(vi) A written policy regarding tobacco smoking in the facility shall be established and enforced.

(vii) Portable fire extinguishers shall be installed at the facility. Use NFPA 10, Portable Fire Extinguishers, as guidance in selection and location requirements of extinguishers.

(viii) Requirements for fire protection equipment and systems shall be in accordance with NFPA 101. Where installed, maintenance and testing of these systems/equipment shall include the following:

A) The fire alarm system shall be test operated at least semi-annually.

B) All smoke detectors shall be test operated, by activation of the smoke detector, at least semi-annually.

C) The monthly and annual inspections and the maintenance of the extinguishers shall be in accordance with NFPA 10.

D) All fire protection systems and equipment, such as the fire alarm system, smoke detectors, and portable extinguishers, shall be inspected, tested and maintained in accordance with the applicable NFPA fire codes and the results documented.

(ix) An annual fire and safety inspection shall be conducted at the halfway house or residential facility by qualified Veterans Administration personnel. If a review of past Veterans Administration inspections or inspections made by the local authorities indicates that a fire and safety inspection would not be necessary, then the visit to the facility may be waived.

2) Be in compliance with existing standards of State safety codes and local, and/or State health and sanitation codes.

3) Be licensed under State or local authority.

4) Where applicable, be accredited by the State.

5) Comply with the requirements of the "Confidentiality of Alcohol and Drug Abuse Patient Records" (42 CFR Part II) and the "Confidentiality of Certain Medical Records" (38 U.S.C. 4132), which shall be part of the contract.

6) Demonstrate an existing capability to furnish the following:

(i) A supervised alcohol and drug free environment, including active affiliation with Alcoholics Anonymous (AA) programs.

(ii) Staff sufficient in numbers and position qualifications to carry out the policies, responsibilities, and programs of the facility.

(iii) Board and room.

(iv) Laundry facilities for residents to do their own laundry.

(v) Structured activities.

(vi) Appropriate group activities, including physical activities.

(vii) Health and personal hygiene maintenance.

(viii) Monitoring administration of medications.

(ix) Supportive social service.

(x) Individual counseling as appropriate.

(xi) Opportunities for learning/development of skills and habits which will enable Veterans Administration sponsored residents to adjust to and maintain freedom from dependence on or involvement with alcohol or drug abuse or dependence during or subsequent to leaving the facility.

(xii) Support for the individual desire for sobriety (alcohol/drug abuse-free life style).

(xiii) Opportunities for learning, testing, and internalizing knowledge of illness/recovery process, and for upgrading skills and improving personal relationships.

7) Data normally maintained and included in a medical record as a function of compliance with State or community licensing standards will be accessible.

(b) Representatives of the Veterans Administration will inspect the facility prior to award of a contract to assure that prescribed requirements can be met. Inspections may also be carried out at such other times as deemed necessary by the Veterans Administration.

(c) All requirements in this rule, and Veterans Administration reports of inspection of residential facilities furnishing treatment and rehabilitation services to eligible veterans shall to the extent possible, be made available to all government agencies charged with the responsibility of licensing or otherwise regulating or inspecting such institutions.

(d) An individual case record will be created for each client which shall be maintained in security and confidence as required by the "Confidentiality of Alcohol and Drug Abuse Patient Records" (42 CFR Part II) and the "Confidentiality of Certain Medical Records" (38 U.S.C. 4132), and will be made available on a need to know basis to appropriate Veterans Administration staff members involved with the treatment program of the veterans concerned.

(e) Contractors under this section shall provide reports of budget and case load experience upon request from a
§ 17.53c Contracts for outpatient services for veterans with alcohol or drug dependence or abuse disabilities.

(a) Contracts for treatment services authorized under § 17.53a may be awarded in accordance with applicable Veterans Administration and Federal procurement procedures. Such contracts will be awarded only after the quality and effectiveness, including adequate protection for the safety of the participants of the contractor’s program, has been determined and then only to contractors determined by the Chief Medical Director or designee to be fully capable of meeting the following standards:

(1) The following minimum fire safety requirements must be met:


(ii) Where applicable, the facility must have a current occupancy permit issued by the local and state governments in the jurisdiction where the home is located.

(iii) All Veterans Administration sponsored patients will be mentally and physically capable of leaving the building, unaided, in the event of an emergency.

(iv) Fire exit drills must be held at least quarterly. A written plan for evacuation in the event of fire shall be developed and reviewed annually. The plan shall outline the duties, responsibilities, and actions to be taken by the staff in the event of a fire emergency. This plan shall be implemented during fire exit drills.

(v) Portable fire extinguishers shall be installed at the facility. Use NFPA 10, Portable Fire Extinguishers, as guidance in selection and location requirements of extinguishers.

(vi) Requirements for fire protection equipment and systems shall be in accordance with NFPA 101. Where installed, maintenance and testing of these systems/equipment shall include the following:

(A) The fire alarm system shall be test operated at least semi-annually.

(B) All smoke detectors shall be test operated, by activation of the smoke detector, at least semi-annually.

(C) The monthly and annual inspections and the maintenance of the extinguishers shall be in accordance with NFPA 10.

(D) All fire protection systems and equipment, such as the fire alarm system, smoke detectors, and portable extinguishers, shall be inspected, tested and maintained in accordance with the applicable NFPA fire codes and the results documented.

(vii) An annual fire and safety inspection shall be conducted at the facility by qualified Veterans Administration personnel. If a review of past Veterans Administration inspections or inspections made by the local authorities indicates that a fire and safety inspection would not be necessary, then the visit to the facility may be waived.

(2) Conform to existing standards of State safety codes and local and/or State health and sanitation codes.

(3) Be licensed under State or local authority.

(4) Where applicable, be accredited by the State.

(5) Comply with the requirements of the “Confidentiality of Alcohol and Drug Abuse Patient Records” (42 CFR Part 2) and the “Confidentiality of Certain Medical Records” (38 U.S.C. 4132), which shall be part of the contract.

(6) Demonstrate an existing capability to furnish the following:

(i) A supervised, alcohol and drug free environment, including active affiliation with Alcoholics Anonymous (AA) programs.

(ii) Staff sufficient in numbers and position qualifications to carry out the policies, responsibilities, and programs of the facility.

(iii) Structured activities.

(iv) Appropriate group activities.

(v) Monitoring medications.

(vi) Supportive social service.

(vii) Individual counseling as appropriate.

(viii) Opportunities for learning, testing, and internalizing knowledge of illness/recovery process, and to upgrade skills and improve personal relationships.

(b) Representatives of the Veterans Administration will inspect the facility prior to award of a contract to assure that prescribed requirements can be met. Inspections may also be carried out at such other times as deemed necessary by the Veterans Administration.

(c) All requirements in this rule and Veterans Administration reports of inspection of residential facilities furnishing treatment and rehabilitation services to eligible veterans shall, to the extent possible, be made available to all government agencies charged with the responsibility of licensing or otherwise regulating or inspecting such institutions.

(d) An individual case record will be created for each client which shall be maintained in security and confidence as required by the “Confidentiality of Alcohol and Drug Abuse Patient Records” (42 CFR Part 2) and the “Confidentiality of Certain Medical Records” (38 U.S.C. 4132), and will be made available on a need to know basis to appropriate Veterans Administration staff members involved with the treatment program of the veterans concerned.

§ 17.53d Limitations on payment for alcohol and drug dependence or abuse treatment and rehabilitation.

The authority to enter into contracts shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation acts, and payments shall not exceed these amounts. (Pub. L. 96-22, 38 U.S.C. 620A)

§ 17.960 [Removed]

2. 38 CFR Part 17 is amended by removing § 17.960 in its entirety. (38 U.S.C. 210(c))
ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 204, 205 and 211

[NI-FRL 2202-1]

Noise Emission Standards for Portable Air Compressors, Medium and Heavy Trucks, Motorcycles and Motorcycle Replacement Exhaust Systems, Truck Mounted Solid Waste Compactors, and Noise Labeling Requirements for Hearing Protectors; Final Rule; Revocation of Product Verification Testing, Reporting and Recordkeeping Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency hereby revokes product verification testing and the attendant reporting and recordkeeping requirements for:

(1) Noise Emission Standards for Portable Air Compressors;
(2) Noise Emission Standards for Medium and Heavy Trucks;
(3) Noise Labeling Requirements for Hearing Protectors;
(4) Noise Emission Standards for Truck Mounted Solid Waste Compactors;
(5) Noise Emission Standards for Motorcycles and Motorcycle Replacement Exhaust Systems;

This action stems from the Administrations budget for fiscal year 1982 which did not contain funding for the Noise Enforcement Division to accept or act on the product verification reports after fiscal year 1983. Also, based on the comments received, EPA is revoking the product verification testing provisions.

EFFECTIVE DATE: January 27, 1983.

FOR FURTHER INFORMATION CONTACT: Louise Giersch, (202) 382-2935

SUPPLEMENTARY INFORMATION: EPA promulgated noise regulations which established noise emission standards or labeling requirements for the following:

1. Portable Air Compressors, 40 CFR 204.50 et seq., January 14, 1976 (41 FR 2162)
2. Medium and Heavy Trucks, 40 CFR 205.50 et seq., April 13, 1976 (41 FR 15538)
3. Noise Labeling Requirements for Hearing Protectors, 40 CFR 211.203 et seq., September 27, 1980 (44 FR 56130)
4. Truck Mounted Solid Waste Compactors, 40 CFR 205.200 et seq., October 1, 1980 (44 FR 56526)

Each of the noise regulations, listed above, imposes certain recordkeeping and reporting requirements on manufacturers of the regulated products. Contained within these regulations there are specific provisions for (1) Production Verification Testing, (2) Testing by the Administrator, and (3) Selective Enforcement Auditing. The provisions encompassing “Production Verification (PV) Testing” describe highly structured requirements to test products on an annual basis for their compliance with applicable noise emission standards in accordance with certain specified procedures. Provisions authorizing “Testing by the Administrator” describe the discretionary basis upon which the Administrator may require the testing of products to determine compliance with applicable noise emission standards as well as to determine the appropriateness of a manufacturer’s test facility to conduct such product testing. The provisions related to “Selective Enforcement Auditing” (SEA) authorize the Administrator, on a discretionary basis, to require manufacturers to conduct assembly-line testing of products upon formal request. The latter two provisions apply only when an issue arises concerning product compliance with the applicable noise emission standard, while the former (PV Testing) provisions are required to be met on an annual basis.

Among these provisions there are various recordkeeping and reporting requirements, including the development and submission of PV testing reports and retention of test data supporting such reports.

On August 14, 1981, EPA suspended enforcement of reporting and recordkeeping requirements (46 FR 41057) and simultaneously proposed revocation of the reporting and recordkeeping provisions for each of these regulations (46 FR 41104). The action stemmed from that portion of the Administrations budget for Fiscal Year 1982, subsequently enacted by Congress, which did not contain funding for the Noise Enforcement Division to accept or act on the product verification reports after fiscal year 1981.

A 30 day comment period was established to allow interested parties to comment on the notice of proposed rulemaking. Fourteen written comments were received.

For the reasons discussed in the proposal and summarized below, this final action revokes the reporting and recordkeeping requirements, as proposed. Additionally, in response to the comments received, EPA is revoking the production verification testing provisions of these regulations.

1. Public Comments

Of the fourteen written comments received, seven were from six different manufacturers, three from trade associations, two from State agencies, one from a public interest legal foundation and one from a private citizen.

Four manufacturers commented on the substance of the proposed action and voiced their support. Two of the four also recommended revocation of the product verification and selective enforcement audit requirements to give them additional flexibility to comply with applicable Federal noise emission standards.

Fourteen comments were received from trade associations. Three of the associations supported the proposed action and also requested that additional steps be taken to reduce regulatory burdens on industry. One association suggested the elimination of product verification and selective enforcement audit provisions to allow manufacturers additional flexibility to comply with applicable Federal standards.

One State agency supported the proposed action, while the other stated that if EPA did not intend to enforce its regulations, they should be recinded. The notice of proposed rulemaking announced that EPA was considering the revocation of reporting and recordkeeping provisions of its noise emission regulations. EPA retains the statutory and regulatory tools to enforce its noise emission regulations both under the Agency’s general authority in Section 13 of the Noise Control Act and under selective enforcement auditing and testing by the Administrator provisions within the regulations. EPA intends to use these tools as appropriate.

The public interest legal foundation supported the proposed action and also suggested elimination of product verification, selective enforcement auditing, and testing by the Administrator provisions within the regulations. The private citizen provided general comments on noise produced by trucks and motorcycles.

2. Agency Action

EPA has considered current and proposed future Agency resources, the Presidents policy to reduce the burdens of federal regulation, and public comments where appropriate and has decided to revoke the reporting and
requirements as proposed. Additionally, EPA has considered carefully the comments requesting that the Agency revoke additional regulatory provisions. In light of those comments, EPA is revoking the product verification testing requirements; as discussed below, it does not appear that this burden is necessary in view of the rescission of reporting and recordkeeping requirements.

With elimination of the reporting and recordkeeping requirements, the regulations become in part self-enforcing, since manufacturers no longer report their compliance efforts. Elimination of product verification is consistent with these changes, since without active monitoring by EPA of pre-production compliance, there is no reason to bind manufacturers to a formal program. This action will allow regulated manufacturers to structure their own testing programs to assure their products will meet applicable standards. However, the manufacturers must still comply with applicable standards, and must label each product and warrant that they conform to those standards. Moreover, EPA retains the right to require manufacturers to conduct noise tests, where warranted by the circumstances, both under the regulatory provisions discussed below and under the Agency's general authority in Section 13 of the Noise Control Act.

EPA has decided to retain the selective enforcement auditing and testing by the Administrator provisions in their present form. EPA believes these provisions are both necessary and adequate to determine whether a product or a manufacturer's test facility conforms to applicable specifications and/or standards. Without such provisions, there would be no federal mechanism by which questionable products could be adequately tested for compliance. In instances where there is reason to believe non-complying products have been introduced into commerce, the Administrator could require manufacturers to verify that products are meeting standards. For purposes of such verification, the Administrator could require the manufacturer to perform a selective enforcement audit of production models of the products in question and/or review the manufacturer's files for those products. Additionally, manufacturers remain subject to various penalties and administrative actions where noncomplying products have been distributed.

Retaining these provisions should not burden the regulated manufacturers. Both the selective enforcement auditing and testing by the Administrator provisions are discretionary. Unlike product verification, recordkeeping, and reporting requirements, they do not require manufacturers to take actions or expend resources except where the Administrator determines the facts so warrant.

This action affects only the product verification testing and the reporting and recordkeeping requirements of the regulations. All other provisions of the existing regulations remain in effect. Regulated products remain subject to the noise emission standards, labeling, and warranty requirements of the regulations. Moreover, although EPA will not directly monitor compliance with these regulations, states, localities and individuals can still initiate actions under Section 12 of the Noise Control Act [42 U.S.C. 4911] which provides for citizens' suits to enforce noise control standards. States and localities can also continue to exercise their powers to establish in-use controls for federally regulated products, as provided in Section 6(e) of the Act.

3. Regulatory Review

EPA has determined that this final rulemaking is not a major rule under Executive Order 12291, and therefore does not require a Regulatory Impact Analysis. EPA does not anticipate any significant adverse effects on competition, employment, investment, productivity, or innovation in the regulated industries. This action will result in a significant reduction in mandatory testing, reporting and recordkeeping burdens for the regulated industries and is directly translated into cost savings to those industries.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Under the provisions of the Regulatory Flexibility Act, 5 U.S.C. Section 601 et seq., I hereby certify that this final action will not have a significant economic impact on a substantial number of small entities. The final rule affects only the product verification testing and attendant recordkeeping and reporting requirements of the regulation; other portions of the regulations are unchanged. Reduced testing, reporting and recordkeeping will ease the economic burdens of the affected manufacturers and should cause no adverse economic effects.
Sec.
204.58-2 Tampering.
204.58-3 Instructions for maintenance, use, and repair.
204.59 Recall of noncomplying compressors.

§ 204.2 [Amended]
1. In § 204.2, paragraph (a)(6), is removed.
2. In § 204.2, paragraph (a)(9), is removed.

§ 204.3 [Removed]
3. In § 204.3, paragraph (a) is revised to read as follows:

§ 204.4 Inspection and monitoring.
(a) Any inspection or monitoring activities conducted under this section shall be for the purpose of determining (1) whether test products are being selected and prepared for testing in accordance with the provisions of these regulations, (2) whether test product testing is being conducted in accordance with these regulations, and (3) whether products being produced for distribution into commerce comply with these regulations.

§ 204.5-1 National security exemptions.
(a) Any new product which is produced to conform with specifications developed by a national security agency, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of Sections 10(a)(1), (2), (3), and (4) of the Act.

§ 204.5-1 [Amended]
1. In § 204.5-1, paragraph (b) is removed.

§ 204.5-2 National security exemptions.
(b) No request for a national security exemption is required.

§ 204.5-2 [Amended]
1. In § 204.5-2, paragraph (a) is revised to read as follows:

§ 204.5-2 National security exemptions.
(c) For purposes of Section 11(d) of the Act any testing exemption shall be void ab initio with respect to each new product, originally intended for research, investigations, studies, demonstrations, or training, but distributed in commerce for other uses.

§ 204.5-3 [Removed]
11. Section 204.5-3 is removed.
12. Section 204.5-4 is redesignated § 204.5-2 and is revised to read as follows:

§ 204.5-3 National security exemptions.
(a) A new product which is produced to conform with specifications developed by a national security agency, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of Sections 10(a)(1), (2), (3), and (4) of the Act.

§ 204.5-3 [Amended]
1. In § 204.5-3, paragraph (b) is removed.

§ 204.5-4 Inspection and monitoring.
(a) Any inspection or monitoring activities conducted under this section shall be for the purpose of determining (1) whether test products are being selected and prepared for testing in accordance with the provisions of these regulations, (2) whether test product testing is being conducted in accordance with these regulations, and (3) whether products being produced for distribution into commerce comply with these regulations.

§ 204.5-5 Recall of noncomplying compressors.
9. Section 204.5-1 is removed.
10. Section 204.5-2 is redesignated § 204.5-1 and is revised to read as follows:

§ 204.5-5 Testing exemption.
(a) A new product intended to be used solely for research, investigations, studies, demonstrations or training, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of Sections 10(a)(1), (2), (3), and (5) of the Act.

(b) No request for a testing exemption is required.

§ 204.5-5 [Amended]
1. In § 204.5-5, paragraph (b)(1)(i) is removed.
2. In § 204.5-5, paragraph (b)(1)(ii) is removed.
3. In § 204.5-5, paragraph (b)(1)(iii) is removed.
4. In § 204.5-5, paragraph (b)(2) is removed.

§ 204.5-5-2 Testing exemption.
(a) Prior to distribution in commerce, compressors of a specific configuration must verify such configurations in accordance with this subpart.

§ 204.5-5-2 [Amended]
1. In § 204.5-5-2, paragraph (a) is revised to read as follows:

§ 204.5-5-2 Testing exemption.
(a) The requirements for purposes of Testing by the Administrator and Selective Enforcement Auditing consist of:

* * *
(1) Testing in accordance with §204.54 of a compressor selected in accordance with §204.57-2; and
(2) Compliance of the test compressor with the applicable standards when tested in accordance with §204.54.

27. In §204.55-2, paragraph (c)(1)(iii) is revised to read as follows:

(c) * * *

(ii) Testing in accordance with §204.54 selected in accordance with §204.57-2 which must be a compressor of the configuration which is identified pursuant to paragraph (c)(1)(ii) of this section as having the highest sound level (estimated or actual) within the configuration.

28. In §204.55-2, paragraph (c)(1)(iv) is removed. In §204.55-2, paragraph (c)(2) is revised to read as follows:

(c) * * *

(2) Where the requirements of paragraph (c)(1) of this section are complied with, all those configurations contained within a category are considered represented by the tested compressor.

31. In §204.55-2, paragraph (c)(3) is revised to read as follows:

(c) * * *

(3) Where the manufacturer tests a compressor configuration which has not been determined as having the highest sound level of a category, but all other requirements of paragraph (c)(1) of this section are complied with, all those configurations contained within that category which are determined to have sound levels no greater than the tested compressor are considered to be represented by the tested compressor; however, a manufacturer must for purposes of Testing by the Administrator and Selective Enforcement Auditing verify according to the requirements of paragraph (b)(1) and/or (c)(1) of this section any configurations in the subject category which have a higher sound level than the compressor configuration tested.

32. In §204.55-2, paragraph (d) is revised to read as follows:

(d) * * *

A manufacturer may elect for purposes of Testing by the Administrator and Selective Enforcement Auditing to use representative testing, pursuant to paragraph (c) of this section, all or part of his product line.

33. In §204.55-2, paragraph (e)(1) and (2) are revised to read as follows:

(e) * * *

(1) In the case of representative testing, a new test compressor from another configuration must be selected according to the requirements of paragraph (c) of this section in order to verify the configurations represented by the non-compliant compressor.

(2) Modify the test compressor and demonstrate by testing that it meets applicable standards. The manufacturer must modify all production compressors of the same category and the new configuration is represented by the test compressor before distribution into commerce.

34. In §204.55-2, paragraph (f) is removed.

§§204.55-4 through 204.55-7 [Removed]

35. Sections 204.55-4 through 204.55-7 are removed.

§204.55-8 [Redesignated as §204.55-4]

36. Section 204.55-8 is redesignated §204.55-4.

§§204.55-9 through 204.55-11 [Removed]

37. Sections 204.55-9 through 204.55-11 are removed.

38. Section 204.57-3 is revised to read as follows:

§204.57-3 Test compressor preparation.

(a) Prior to the official test, the test compressor configuration in accordance with §204.57-2 shall not be prepared, tested, modified, adjusted, or maintained in any manner unless such adjustments, preparations, modifications and/or tests are part of the manufacturer’s prescribed manufacturing and inspection procedures and are documented in the manufacturer’s internal compressor assembly and inspection procedures or unless such adjustments and/or tests are required or permitted under this subpart or are approved in advance by the Administrator. The manufacturer may perform adjustments, preparations, modifications and/or tests normally performed by a dealer to prepare the compressor for delivery to a customer or the adjustments, preparations, modifications and/or tests normally performed at the port-of-entry by the manufacturer to prepare the compressor for delivery to a dealer or customer.

(b) Equipment of fixtures necessary to conduct the test may be installed on the compressor: Provided, That such equipment of fixtures shall have no effect on the noise emissions of the compressor, as determined by the appropriate measurement methodology. (c) In the event of compressor malfunction (i.e., failure to start, misfiring cylinder, etc.), the manufacturer may perform the maintenance necessary to enable the compressor to operate in a normal manner.

(d) No quality control, testing, assembly, or selection procedures shall be used on the completed test compressor or any portion thereof, including parts and subassemblies, that will not normally be used during the production and assembly of all other compressors of that category which will be distributed in commerce, unless such procedures are required or permitted under this subpart or are approved in advance by the Administrator.

39. In §204.57-9, paragraph (a)(1) is revised to read as follows:

§204.57-9 Prohibition of distribution in commerce; manufacturer’s remedy.

(a) * * *

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the compressors, describes the problem, and describes the proposed quality control and/or quality assurance remedies to be taken by the manufacturer to correct the problem or follows the requirements for an engineering change. Such requirements include the following:

(i) Any change to a configuration with respect to any of the parameters stated in §204.55-3 shall constitute the addition of a new and separate configuration or category to the manufacturer’s product line.

(ii) When a manufacturer introduces a new category or configuration to his product line, he shall proceed in accordance with §204.55-2.

(iii) If the configuration to be added can be grouped within a verified category and the new configuration is estimated to have a lower sound level than a previously verified configuration within the same category, the configuration shall be considered verified.

§204.57-1 [Amended]

40. In §204.57-1, paragraph (b) is removed and reserved.

§204.56-1 [Amended]

42. In §204.56-1, paragraph (a) is revised to read as follows:

(a) The portable air compressor manufacturer shall include in the
Medium and Heavy Trucks

PART 205—TRANSPORTATION EQUIPMENT NOISE EMISSION CONTROLS

1. The table of contents for Part 205, Subparts A and B, are revised to read as follows:

Subpart A—General Provisions
Sec.
205.1 General applicability.
205.2 Definitions.
205.3 Number and gender.
205.4 Inspection and Monitoring.
205.5 Exemptions.
205.5–1 Testing exemption.
205.5–2 National security exemptions.
205.5–3 Export exemptions.

Subpart B—Medium and Heavy Trucks
205.50 Applicability.
205.51 Definitions.
205.52 Vehicle noise emission standards.
205.54 Test procedures.
205.54–1 Low speed sound emission test procedures.
205.54–2 Sound data acquisition system.
205.55 Requirements.
205.55–1 General requirements.
205.55–2 Compliance with standards.
205.55–3 Configuration identification.
205.55–4 Labeling-compliance.
205.55–5 Labeling-external.
205.55–6 Labeling.
205.56 Testing by the administrator.
205.57 Selective enforcement auditing requirements.
205.57–1 Test request.
205.57–2 Test vehicle sample selection.
205.57–3 Test vehicle preparation.
205.57–4 Testing procedures.
205.57–5 Reporting of the test results.
205.57–6 Acceptance and rejection of batches.
205.57–7 Acceptance and rejection of batch sequence.
205.57–8 Continued testing.
205.57–9 Prohibition on distribution in commerce; manufacturer’s remedy.
205.58 In-use requirements.
205.58–1 Warranty.
205.58–2 Tampering.
205.58–3 Instruction for maintenance, use and repair.
205.59 Recall of noncomplying vehicles.

Appendix I

§ 205.2 [Amended]
2. In § 205.2, paragraph [a](6) is removed.

§ 205.4 [Amended]
3. In § 205.4, paragraph (a) is revised to read as follows:
(a) Any inspection or monitoring activities conducted under this section shall be for the purpose of determining:(1) whether test products are being selected and prepared for testing in accordance with the provisions of these regulations, (2) whether test product testing is being conducted in accordance with these regulations, and (3) whether products being produced for distribution into commerce comply with these regulations.

4. In § 205.4, paragraph (b)(2) add the word “and” at the end of the statement.
5. In § 205.4, paragraph (b)(3) remove the word “and” at the end of the statement.
6. In § 205.4, paragraph (b)(4) is revised.

7. In § 205.4, paragraph (c)(1)(iii) is removed, and paragraph (c)(1)(iv) is redesignated as paragraph (c)(1)(iii).
Paragraph (c)(1)(iv) is reserved.
8. In § 205.4, paragraph (d)(3) is revised to read as follows:

(d) *(3) Where facilities or areas other than those covered by paragraph (d)(2) of this section are concerned, “operating hours” shall mean all times during which product manufacture or assembly is in operation or all times during which product testing and maintenance is taking place and/or production or compilation of records is taking place, or any other procedure or activity related to selective enforcement audit testing or product manufacture or assembly being carried out in a facility.

§ 205.5–1 [Removed]
9. Section 205.5–1 is removed.

§ 205.5–2 [Redesignated as § 205.5–1]
10. Section 205.5–2 is redesignated
§ 205.5–1 and revised to read as follows:

§ 205.5–1 Testing exemption.
(a) A new product intended to be used solely for research, investigations, studies, demonstrations or training, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of section 10(a)(1), (2), (3), and (5) of the Act.
(b) No request for a testing exemption is required.
(c) For purposes of section 11(d) of the Act, any testing exemption shall be void ab initio with respect to each new product, originally intended for research, investigations, studies, demonstrations, or training, but distributed in commerce for other uses.

§ 205.5–3 [Removed]
11. Section 205.5–3 is removed.

§ 205.5–4 [Redesignated as § 205.5–2]
12. Section 205.5–4 is redesignated
§ 205.5–2 and revised to read as follows:
§ 205.5-2 National security exemptions.

(a) A new product which is produced to comply with conform with specifications developed by a national security agency, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of section 10(a) [1], [2], [3], and [5] of the Act.

(b) No request for a national security exemption is required.

(c) For purposes of section 11(d) of the Act, any national security exemption shall be void ab initio with respect to each product, originally intended to be produced to conform with specifications developed by a national security agency, but distributed in commerce for other uses.

(d) Any manufacturer or person subject to the liabilities of section 11(a) with respect to any product originally intended for a national security agency, but distributed in commerce for use in any State, may be excluded from the application of section 11(a) with respect to such product based upon a showing that such manufacturer:

1. Had no knowledge of such product being distributed in commerce for use in any State; and

2. Made reasonable effort to ensure that such products would not be distributed in commerce for use in any State. Such reasonable efforts would include investigation, prior dealings, contract provisions, etc.

§ 205.5-5 [Redesignated as § 205.5-3]

13. Section 205.5-5 is redesignated § 205.5-3.

§ 205.5-6 [Removed]

14. Section 205.5-6 is removed.

§ 205.5-7 [Removed]

15. Section 205.5-7 is removed.

§ 205.51 [Amended]

16. In § 205.51, paragraph [a](20) is removed and reserved.

17. In § 205.51, paragraph [a](28) is revised to read as follows:

(a) * * *

(28) "Test vehicle" means a vehicle selected and used to demonstrate compliance with the applicable noise emission standards.

§ 205.53 [Removed]

18. Section 205.53 is removed.

19. Section 205.54 is revised to read as follows:

§ 205.54 Test procedures.

The procedures described in this and subsequent sections will be the test program to determine the conformity of vehicles with the standards set forth in § 205.52 for the purposes of Selective Enforcement Auditing and Testing by the Administrator.

§ 205.54-2 [Amended]

20. In § 205.54-2, paragraph (b), the last sentence is removed.

21. Section 205.55 is revised to read as follows:

§ 205.55 Requirements.

22. In § 205.55-1, paragraph [a](1) and (2) are removed; paragraphs [a](3) and [a](4) are redesignated paragraphs [a](1) and (2); and new paragraph, [a](1) is revised to read as follows:

(a) * * *

(1) Shall be labeled in accordance with the requirements of § 205.55-5 of this subpart.

23. In § 205.55-1, paragraph [c] is revised to read as follows:

* * *

25. In § 205.55-2, paragraph [a](1) is revised to read as follows:

(a) (1) Prior to distribution in commerce of vehicles of a specific configuration, the first manufacturers of such vehicles must verify such configurations in accordance with the requirements of this subpart.

* * *

26. In § 205.55-2, paragraph [a](2) is removed and reserved.

27. In § 205.55-2, paragraph [b] is revised to read as follows:

* * *

(b) The requirements for purposes of testing by the Administrator and selective enforcement auditing with regard to each vehicle configuration consist of:

1. Testing in accordance with § 205.54 of a vehicle selected in accordance with § 205.57-2, and

2. Compliance of the test vehicle with the applicable standard when tested in accordance with § 205.54.

28. In § 205.55-2, paragraph [c](1)(ii) is revised to read as follows:

(a) * * *

(1) * * *

(iii) Testing in accordance with § 205.54 of a vehicle selected in accordance with § 205.57-2 which must be a vehicle of the configuration which is identified pursuant to paragraph [c](ii) of this paragraph as having the highest sound pressure level (estimated or actual) within the category.

* * *

29. In § 205.55-2, paragraph [c](1)(iii) add "and" at the end of the statement.

30. In § 205.55-2, paragraph [c](1)(iv) remove "and" at the end of the statement.

31. In § 205.55-2, paragraph [c](1)(v) is removed.

32. In § 205.55-2, paragraph [c](2) is revised to read as follows:

* * *

(c) * * *

(2) Where the requirements of paragraph [c](1) are complied with, all those configurations contained within a category are considered represented by the tested vehicle.

* * *

33. In § 205.55-2, paragraph [c](3) is revised to read as follows:

* * *

(c) * * *

(3) Where the manufacturer tests a vehicle configuration which has not been determined as having the highest sound pressure level of a category, but all other requirements of paragraph [c](1) of this section are complied with all those configurations contained with that category which are determined to have sound pressure levels no greater than the tested vehicle are considered to be represented by the tested vehicle, however, a manufacturer must for purposes of Testing by the Administrator and Selective Enforcement Auditing verify according to the requirements of [b](1) and/or [c](1) of this section any configurations in the subject category which have a higher sound pressure level than the vehicle configuration tested.

* * *

34. In § 205.55-2, paragraph [d] is removed.

35. In § 205.55-2, paragraphs [e](1) and (e)(2) are revised to read as follows:

* * *

(e) * * *

(1) In the case of representative testing a new test vehicle from another configuration must be selected according to the requirements of paragraph [c] of this section, in order to verify the configurations represented by the non-compliant vehicle.

(2) Modify the test vehicle and demonstrate by testing that it meets applicable standards. The manufacturer must modify all production vehicles of the same configuration in the same.
manner as the test vehicle before distribution into commerce.
36. In § 205.55–2, paragraph (f) is removed.

§§ 205.55–4 through 205.55–10 [Removed] 37. Sections 205.55–4 through 205.55–10 are removed.


§ 205.56 [Amended] 40. In § 205.56 remove and reserve subparagraph (c)(1)(i) and remove (c)(1)(v).

§ 205.56 [Amended] 41. In § 205.56 remove the word ""; and"" at the end of paragraph (c)(1)(iv).
42. In § 205.57–2, paragraph (a) is revised to read as follows:

§ 205.57–2 Test vehicle sample selection (a) Vehicles comprising the batch sample which are required to be tested pursuant to a test request in accordance with this subpart will be selected in the manner specified in the test request from a batch of vehicles of the category or configuration specified in the test request. If the test request specifies that the vehicles comprising the batch sample must be selected randomly, the random selection will be achieved by sequentially numbering all of the vehicles in the batch and then using a table of random numbers to select the number of vehicles as specified in (c) of this section based on the batch size designated by the Administrator in the test request. An alternative random selection plan may be used by a manufacturer: Provided, That such a plan is approved by the Administrator. If the test request does not specify that test vehicles must be randomly selected, the manufacturer shall select test vehicles consecutively.

(1) Should a situation arise in which the configuration to be tested consists of only vehicles with automatic transmissions, they shall be tested in accordance with § 205.54–1(c)(2).

(2) If the configuration to be tested consists of both automatic transmission and standard transmission vehicles, the test vehicle shall be a standard transmission vehicle unless the manufacturer has reason to believe that the automatic transmission vehicle emits a greater sound level.

43. Section 205.57–3 is revised to read as follows:

§ 205.57–3 Test vehicle preparation.
(a) Prior to the official test, the test vehicle selected in accordance with § 205.57–2 shall not be prepared, tested, modified, adjusted, or maintained in any manner unless such adjustments, preparation, modification and/or tests are part of the manufacturer's prescribed manufacturing and inspection procedures, and are documented in the manufacturer's internal vehicle assembly and inspection procedures or unless such adjustments and/or tests are required or permitted under this subpart or are approved in advance by the Administrator. The manufacturer may perform adjustments, preparations, modifications and/or tests normally performed at the port of entry by the manufacturer to prepare the vehicle for delivery to a dealer or customer.

(b) Equipment or fixtures necessary to conduct the test may be installed on the vehicle: Provided, That such equipment or fixtures shall have no effect on the noise emissions of the vehicle, as determined by measurement methodology.

(c) In the event of vehicle malfunction (i.e., failure to start, misfiring cylinder, etc.) the manufacturer may perform the maintenance that is necessary to enable the vehicle to operate in a normal manner.

(d) No quality control, testing, assembly or selection procedures shall be used on the completed vehicle or any portion thereof, including parts and subassemblies, that will not normally be used during the production and assembly of all other vehicles of the category which will be distributed in commerce, unless such procedures are required or permitted under this subpart.

§ 205.57–9 [Amended] 44. In § 205.57–9, paragraph (a)(1) is revised to read as follows:

(a) * * *
(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the vehicles, describes the problem and describes the proposed quality control and/or quality assurance remedies to be taken by the manufacturer to correct the problem or follows the requirements for an engineering change. Such requirements include the following:

(i) Any change to a configuration with respect to any of the parameters stated in § 205.55–3 shall constitute the addition of a new and separate configuration or category to the manufacturer's product line.

(ii) When a manufacturer introduces a new category or configuration to his product line, he shall proceed in accordance with § 205.55–2.

(iii) If the configuration to be added can be grouped within a verified category and the new configuration is estimated to have a lower sound pressure level than a previously verified configuration within the same category, the configuration shall be considered verified.

* * * * * *

§ 205.58–1 [Amended] 45. In § 205.58–1, paragraph (a) is revised to read as follows:

(a) The vehicle manufacturer shall include the owner's manual or in other information supplied to the ultimate purchaser the following statement:

Noise Emissions Warranty
The manufacturer warrants to the first person who purchases this vehicle for purposes other than resale and to each subsequent purchaser that the vehicle was designed, built and equipped to conform at the time of sale to such first purchaser with all applicable U.S. EPA noise control regulations.

This warranty is not limited to any particular part, component or system of the vehicle. Defects in the design, assembly, or in any part, component, or system of the vehicle which, at the time of sale to such first purchaser, caused noise emission levels to exceed Federal standards are covered by this warranty for the life of the vehicle.

* * * * * *

46. In § 205.58–1, paragraphs (b), (c), and (d) are removed.
47. In § 205.58–2, paragraph (a) is revised; paragraphs (b), (c), and (g) are removed; paragraphs (d) and (e) are revised and redesignated as paragraphs (b) and (c), respectively; and paragraph (f) is redesignated as paragraph (d). The amended portions read as follows:

§ 205.58–2 Tampering.
(a) For each configuration of vehicles covered by this part, the manufacturer shall develop a list of those acts which, in his judgment, might be done to the vehicle in use and which would constitute the removal or rendering inoperative of noise control devices or elements of design of the vehicle.

(b) The manufacturer shall include in the owner's manual the following information:

1. The statement:
Tampering With Noise Control System Prohibited
Federal law prohibits the following acts or the causing thereof:
(1) The removal or rendering inoperative by any person, other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any new vehicle for the purpose of noise
control prior to its sale or delivery to the ultimate purchaser or while it is in use; or (2) the use of the vehicle after such device or element of design has been removed or rendered inoperative by any person.

(2) The statement:
Among those acts presumed to constitute tampering are the acts listed below.

Immediately following this statement, the manufacturer shall include the list developed under paragraph (a) of this section.

(c) Any act included in the list prepared pursuant to paragraph (a) of this section is presumed to constitute tampering; however, in any case in which a prescribed act has been committed and it can be shown that such act resulted in no increase in the noise level of the vehicle or that the vehicle still meets the noise emission standard of §205.52, such act will not constitute tampering.

(d) ** ** **

§205.50-3 [Amended]
48. In §205.58–3, paragraphs (c), (d), and (e) are removed.

Product Noise Labeling

PART 211—PRODUCT NOISE LABELING

1. The table of contents for Part 211, subpart A is revised to read as follows:

Subpart A—General Provisions
Sec.
211.101 Applicability.
211.102 Definitions.
211.103 Number and gender.
211.104 Label content.
211.105 Label format.
211.106 Graphical requirements.
211.107 Label type and location.
211.108 Sample label.
211.109 Inspection and monitoring.
211.110 Exemptions.
211.110-1 Testing exemption.
211.110-2 National security exemptions.
211.110-3 Export exemptions.
211.111 Testing by the Administrator.
Authority: Sec. 8, Noise Control Act of 1972, (42 U.S.C. 4907), and other authority as specified.

§211.209 [Amended]
10. In §211.209, paragraph (1), is removed and paragraphs (a)(1) and (2) are redesignated paragraphs (a)(1)(i) and (2).

§211.210 Requirements.

11. 40 CFR Part 211 is amended by revising the table of contents for Subpart B to read as follows:

Subpart B—Hearing Protective Devices

Sec.
211.201 Applicability.
211.202 Effective date.
211.203 Definitions.
211.204 Hearing protector labeling requirements.
211.204-1 Information content of primary label.
211.204-2 Primary label size, print and color.
211.204-3 Label location and type.
211.204-4 Supporting information.
211.205 Special claims.
211.208 Methods for measurement of sound attenuation.
211.206-1 Real ear method.
211.206-2 through 211.206-10 Alternative test methods [Reserved]
211.207 Computation of the noise reduction rating (NRR).
211.208 Export provisions.
211.210 Requirements.
211.210-1 General requirements.
211.210-2 Labeling requirements.
211.211 Compliance with labeling requirement.
211.212 Compliance audit testing.
211.212-1 Test request.
211.212-2 Test hearing protector selection.
211.212-3 Test hearing protector preparation.
211.212-4 Testing procedures.
211.212-5 Determination of compliance.
211.212-6 Continued compliance testing.
211.212-7 Relabeling requirements.
211.213 Remedial orders for violations of these regulations.
211.214 Removal of label.
APPENDIX A—Compliance Audit Testing Report.
Authority: Sec. 8, Pub. L. 92-574, 88 Stat. 1241 (42 U.S.C. 4907), and additional authority as specified.

12. §211.205, the heading is revised and paragraphs (b) and (c) are removed.

§211.205 Special claims.

** ** ** **

§211.209 [Removed]
15. Section 211.209 is removed.
14. Section 211.210 is retitled to read as follows:

§211.210 Requirements.

§211.210-1 [Amended]
15. In §211.210-1, paragraph (1) and (2) are removed; and paragraphs (a) (3) and (4) are redesignated paragraphs (a) (1) and (2).

10. Section 211.210-2 is retitled to read as follows:

Hearing Protective Devices
§ 211.210-2  Labeling requirements.

17. In § 211.210-2, paragraph (a)(1) is revised to read as follows:
(a)(1) A manufacturer responsible for labeling must satisfy the requirements of this subpart for a category of hearing protectors before distributing that category of hearing protectors in commerce.

18. In § 211.210-2, paragraph (a)(2) is revised to read as follows:

(a) * * *

19. In § 211.210-2, paragraph (a)(3) is revised to read as follows:

(a) * * *

20. In § 211.210-2, paragraph (b) is revised to read as follows:

(b) Labeling requirements regarding each hearing protector category in a manufacturer's product line consist of:

(1) Testing hearing protectors according to § 211.206 and the hearing protectors must have been assembled by the manufacturer's normal production process; and it must have been intended for distribution in commerce.

21. In § 211.210-2, paragraph (d) is removed.

§ 211.210-3 through 211.210-7 [Removed]

22. Sections 211.210-3 through 211.210-7 are removed.

23. Section 211.211 is revised to read as follows:

Section 211.211  Compliance with labeling requirement.

(a) All hearing protective devices manufactured after the effective date of this regulation, and meeting the applicability requirements of § 211.201, must be labeled according to this subpart, and must comply with the Labeled Values of mean attenuation.

(b) A manufacturer must take into account both product variability and test-to-test variability when labeling his devices in order to meet the requirements of paragraph (a) of this section. A specific category is considered when the attenuation value at the tested one-third octave band is equal to or greater than the Labeled Value, or mean attenuation value, stated in the supporting information required by § 211.204-4, for that tested frequency. The attenuation value must be determined according to the test procedures of § 211.206. The Noise Reduction Rating, when calculated using the Labeled Values of mean attenuation that will be included in the supporting information required by § 211.204-4.

§ 211.212-1  [Amended]

24. In § 211.212-1, paragraph (c) (4), the words enclosed by the parenthesis are removed.

25. Section 211.212-3 is revised to read as follows:

§ 211.212-3  Test hearing protector preparation.

The manufacturer must select the test hearing protector according to § 211.212-2 before the official test, and must comply with the test protector preparation requirements described in this subpart:

(a) A test hearing protector selected according to § 211.212-2 must not be tested, modified, or adjusted in any manner before the official test unless the adjustments, modifications and/or tests are part of the manufacturer's prescribed manufacturing and inspection procedures.

(b) Quality controls, testing, assembly or selection procedures must not be used on the completed protector or any portion of the protector, including parts, that will not normally be used during the production and assembly of all other protectors of that category to be distributed in commerce.

26. In § 211.212-6, paragraph (a) is revised to read as follows:

§ 211.212-6  Determination of compliance.

(a) A category will be in compliance with these requirements if the results of the test conducted under the test request show that:

1. The mean attenuation value, at each one-third octave band center frequency as determined from the Compliance Audit Test values plus 3 dB(A), is equal to or greater than the mean attenuation value at the same one-third octave band as stated in the Supporting Information required by § 211.204-4; and

2. The Noise Reduction Rating, when calculated from the mean attenuation values determined by Compliance Audit Testing, equals or exceeds the Noise Reduction Rating as stated on the label required by § 211.204.

Appendix A  [Removed]

27. Appendix A is removed.

Appendix B  [Redesignated as Appendix A]

28. Appendix B is redesignated Appendix A.

Compactors

PART 205—TRANSPORTATION EQUIPMENT NOISE EMISSION CONTROLS

1. The table of contents for Part 205, Subpart F is revised to read as follows:

Subpart F—Truck-Mounted Solid Waste Compactors.

Sec.
205.200  Applicability.
205.201  Definitions.
205.202  Noise emission standards.
205.204  Test procedures.
205.205  Requirements.
205.205-1  General requirements.
205.205-2  Compliance with standards.
205.205-3  Configuration identification.
205.205-4  Labeling.
205.207  Testing by the Administrator.
205.207  Selective enforcement auditing requirements.
205.207-1  Test request.
205.207-2  Test sample selection.
205.207-4  Testing procedures.
205.207-5  Reporting of the test results.
205.207-6  Passing or failing under SEA.
205.207-7  Continued testing.
205.207-8  Prohibition of distribution in commerce; manufacturer's remedy.
205.208  In-use requirements.
205.208-1  [Reserved].
205.208-2  Tampering.
205.208-3  Instructions for maintenance, use and repair.
205.208-4  Noise Level Degradation Factor (NLDF) and retention of durability data.
205.209  Recall of non-complying compactors.

Appendix I—Sample Tables.
Authority: Sec. 6, Noise Control Act (42 U.S.C. 4905) (except where otherwise specified).

§ 205.201 [Amended]
2. In § 205.201, paragraph (a)(13), is removed and reserved.
3. In § 205.201, paragraph (e)(5), is revised to read as follows:

(15) "Test compactor" means a compactor in a test sample.
4. In § 205.202, paragraph (b), the second sentence is revised to read as follows:

§ 205.202 Noise emission standards.

* * * * *

(b) * * * At the time of selective enforcement auditing (SEA) testing prescribed in § 205.207, new truck-mounted solid waste compactors must comply with the standards set forth in paragraph (a) of this section minus the noise level degradation factor (NLDF) developed in accordance with § 205.208-4.

* * * * *

§ 205.203 [Removed]
5. Section 205.203 is removed.

§ 205.204 [Amended]
6. Section 205.204, paragraph (a) is revised to read as follows:

(a) General. This section prescribes the conditions under which noise emission standard compliance testing for selective enforcement auditing or testing by the Administrator must be conducted and the measurement procedures that must be used to determine the maximum noise level of truck-mounted solid waste compactors.

7. In § 205.204, paragraph (g), the last sentence is revised to read as follows:

* * * * *

(g) * * * Tests conducted by manufacturers under approved alternate procedures may be accepted by the Administrator for all purposes, including, but not limited to, selective enforcement audit testing and testing by the Administrator.

8. Section 205.205 is retitled to read as follows:

§ 205.205 Requirements.

* * * * *

§ 205.205-1 [Amended]
9. In § 205.205-1, paragraphs (a)(1) and (2) are removed; paragraph (a)(3) and (4) are redesignated paragraphs (a)(1) and (2); and paragraph (1) is revised to read as follows:

(a) * * *

(1) Shall label each compactor in accordance with the requirements of § 205.205-4 of this subpart; and

* * * * *

10. In § 205.205-1, paragraph (c) is revised to read as follows:

* * * * *

(c) A subsequent manufacturer of a truck-mounted solid waste compactor need not fulfill the requirements of paragraph (a)(1) of this section if the compactor, when received by the manufacturer, fits the definition of a new truck-mounted solid waste compactor in the regulation, and the prior manufacturer had already complied with these requirements.

In § 205.205-1, paragraph (d) is removed.

12. In § 205.205-2 is retitled to read as follows:

§ 205.205-2 Compliance with standards.

* * * * *

13. In § 205.205-2, paragraph (a), (2) and (3) are removed.

14. In § 205.205-2, paragraph (b) is revised to read as follows:

* * * * *

(b) The requirements for purposes of Testing by the Administrator and Selective Enforcement Auditing with regard to each compactor configuration shall consist of:

1. Testing in accordance with § 205.204 of a compactor selected in accordance with § 205.204-2; and

2. Compliance of the test compactor with a noise level such that the arithmetic sum of the Noise Level Degradation Factor (NLDF, determined in accordance with § 205.208-4 of this Subpart) and that noise level does not exceed the applicable standards, when tested in accordance with § 205.204.

15. In § 205.205-2, paragraph (c), paragraph (1) (ii) is revised to read as follows:

* * * * *

(C)(1) * * *

(ii) Testing in accordance with § 205.204 of a compactor, selected in accordance with § 205.207-2 of the configuration identified pursuant to paragraph (c)(1)(ii) of this section as having the highest noise level (estimate or actual) within category:

* * * * *

16. In § 205.205-2, paragraph (c)(1)(v) is removed.

17. In § 205.205-2, paragraph (c)(2) is revised to read as follows:

* * * * *

(c) * * *

(2) If there has been compliance with the requirements of paragraph (c)(1) of this section, all those configurations within a category are considered to be represented by the tested compactor, and therefore considered to be verified.

* * * * *

18. In § 205.205-2, paragraph (c)(3) is revised to read as follows:

* * * * *

(c) * * *

(3) If there has been compliance with all other requirements of paragraph (c)(1) of this section, except that the manufacturer tested a configuration which does not have the highest noise level within a category (as identified in (c)(1)(ii)), all those configurations in the category which have noise levels no greater than that of the tested compactor are considered to be verified. However, a manufacturer must for purposes of Testing by the Administrator and Selective Enforcement Auditing verify all or part of his product line using representative testing pursuant to paragraph (c) of this section.

* * * * *

19. In § 205.205-2, paragraph (d) is revised to read as follows:

* * * * *

(d) A manufacturer may elect to verify all or part of his product line using representative testing pursuant to paragraph (c) of this section.

* * * * *

20. In § 205.205-2, paragraph (e)(1) and (2) are revised to read as follows:

* * * * *

(e) * * *

(1) In the case of representative testing, a new test compactor from another configuration must be selected and verified according to the requirements of paragraph (c) of this section, in order to verify the category represented by the compactor that does not comply; or

(2) Modification of the test compactor and demonstration by testing that it meets applicable standards. The manufacturer shall modify all production compactors of the same configuration in the same manner as the test compactor before distribution into commerce.

* * * * *

21. In Section 205.205-2, paragraph (f) is removed.

§ 205.205-4 through 205.205-10 [Removed]

22. Sections 205.205-4 through § 205.205.10 are removed.

24. In § 205.206 paragraph (c)(1)(i) is removed and [reserved and paragraph (c)(ii) is revised to read as follows:

(c)(i) * * *

(i) Testing of a reasonable number of compactors for purposes of selective enforcement auditing under § 205.207.

(c)(ii) * * *

25. In § 205.206 paragraph (c)(1)(v) is revised to read as follows:

(c)(1) * * *

(v) Testing of up to 50 percent of the manufacturer’s production test products to be tested during a year, if the Administrator determines it is necessary to test these vehicles to assure that a manufacturer has acted or is acting in compliance with the Act.

26. In § 205.207–2, paragraph (c) is revised to read as follows:

§ 205.207–2 Test sample selection.

(c) The compactors of the category configuration or subgroup selected for testing shall have been assembled by the manufacturer for distribution in commerce using the manufacturer’s normal production process.

27. In § 205.207–3 is revised to read as follows:

§ 205.207–3 Test sample preparation.

(a) Before the official test, the test compactor selected must not be prepared, tested, modified, adjusted, or maintained in any manner unless such adjustments, preparation, modification or tests are part of the manufacturer’s prescribed manufacturing and inspection procedures, and are documented in the manufacturer’s internal compactor assembly and inspection procedures, or unless such adjustments or tests are required or permitted under this subparagraph or are approved in advance by the Administrator. For purposes of this section prescribed manufacturing and inspection procedures include quality control testing and assembly procedures normally performed by the manufacturer on like products during production, if the resulting testing is not biased by this procedure. In the case of imported products, the manufacturer may perform adjustments, preparation, modifications or tests normally performed at the port of entry by the manufacturer, to prepare the compactor for delivery to a dealer or customer.

(b) Equipment or fixtures necessary to conduct the test may be installed on the compactor, if such equipment or fixtures have no effect on the noise emissions of the compactor, as determined by the measurement methodology.

(c) In the event of a compactor malfunction (e.g., failure to start) the manufacturer may perform the maintenance that is necessary to enable the compactor to operate in a normal manner.

(d) No quality control, quality assurance testing, assembly or selection procedures may be used on the test compactor or any portion thereof, including parts and subassemblies, that will not normally be used during the production and assembly of all other compactors of the category which will be distributed in commerce, unless such procedures are required or permitted under this subparagraph, or are approved in advance by the Administrator.

28. In § 205.207–5, the address in paragraph (b) is revised to read as follows:

§ 205.207–5 Reporting of the test results.

(b) Administrator, U.S. Environmental Protection Agency, Washington, D.C. 20460.

29. In § 205.207–8, paragraph (a)(1) is revised to read as follows:

§ 205.207–8 Prohibition of distribution in commerce, manufacturer’s remedy.

(a) * * *

(1) Submits a written report to the Administrator which identifies the reason for the non-compliance of the compactors, described the problem and describes the proposed quality control or quality assurance remedies to be taken by the manufacturer to correct the problem.

29. In § 205.207–8, paragraph (1) is revised; paragraphs (b) and (c) are removed; paragraphs (d) and (e) are revised and redesignated paragraphs (b) and (c); paragraph (h) is removed; and paragraphs (f) and (g) are redesignated (d) and (e), respectively. The revised portions of § 205.207–2 read as follows:

§ 205.208–2 Tampering.

(a) For each configuration of compactor covered by this part, the manufacturer shall develop a list of those acts which, in his judgment, might be done to the compactor in use and which would constitute the removal or rendering inoperative of noise control devices or elements of design of the compactor.

(b) The manufacturer shall include in the owner’s manual the following information:

(1) The statement:

Tampering With Noise Control System Prohibited

Federal law prohibits the following acts or the causing thereof:

(1) The removal or rendering inoperative by any person, other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any new compactor for the purpose of noise control prior to its sale or delivery to the ultimate purchaser or while it is in use; or (2) the use of the compactor after such device or element or design has been removed or rendered inoperative by any person.

(2) The statement: Among those acts presumed to constitute tampering are the acts listed below.

Immediately following this statement, the manufacturer shall include the list developed under paragraph (a) of this section.

(c) Any act included in the list prepared pursuant to paragraph (a) of this section is presumed to constitute tampering; however, in any case in which a prescribed act has been committed and it can be shown that such act resulted in no increase in the noise level of the vehicle or that the vehicle still meets the noise emission standard of § 205.202, such act will not constitute tampering.

(d) Manufacturers who only assemble compactors need not fulfill the requirements of paragraphs (a) and (b) of this section. Such manufacturers shall provide ultimate purchasers of their compactors with the tampering list developed by the compactor body manufacturer under paragraph (a) of this section for that particular compactor body and truck chassis combination.

31. In § 205.208–3, paragraphs (c), (d), and (f) are removed; paragraph (e) is redesignated (c) and is revised to read as follows:

§ 205.208–3 Instructions for maintenance, use and repair.

(c) Manufacturers who only assemble compactors are not required to fulfill the requirements of paragraphs (a) and (b) of this section. Such manufacturers shall
provide the maintenance instructions and log book developed by the compactor body manufacturer for that particular compactor body and chassis combination.

Motorcycles

PART 205—TRANSPORTATION EQUIPMENT NOISE

1. The table of contents for Part 205, Subpart D and E is revised as follows:

Subpart D—Motorcycles

Sec. 205.150 Applicability.
205.151 Definitions.
205.152 Noise emission standards.
205.153 Engine displacement.
205.154 Consideration of alternative test procedures.
205.155 Motorcycle class and manufacturer abbreviation.
205.156 Requirements.
205.157-1 General requirements.
205.157-2 Compliance with standards.
205.157-3 Configuration identification.
205.158 Labeling requirements.
205.159 Testing by the Administrator.
205.160 Selective enforcement auditing (SEA) requirements.
205.160-1 Test request.
205.160-2 Test sample selection and preparation.
205.160-3 Test procedures.
205.160-4 Reporting of the test results.
205.160-5 Testing or failing under SEA.
205.160-6 Continued testing.
205.160-7 Prohibition of distribution in commerce; manufacturer’s remedy.
205.162-1 Warranty.
205.162-2 Tampering.
205.162-3 Instructions for maintenance, use, and repair.
205.163 Recall of noncomplying motorcycles; relabeling of mislabeled motorcycles.

Subpart E—Motorcycle Exhaust Systems

205.164 Applicability.
205.165 Definitions.
205.166 Noise emission standards.
205.167 Consideration of alternative test procedures.
205.168 Requirements.
205.168-1 General requirements.
205.168-2 [Reserved]
205.168-3 [Reserved]
205.169 Labeling requirements.
205.170 Testing by the Administrator.
205.171 Selective enforcement auditing (SEA) requirements.
205.171-1 Test request.
205.171-2 Test exhaust system sample selection and preparation.
205.171-3 Test motorcycle sample selection.
205.171-4 Test procedures.
205.171-5 Reporting of the test results.
205.171-6 Pass or failing under SEA.
205.171-7 Continued testing.
205.171-8 Prohibition on distribution in commerce; manufacturer’s remedy.
205.173 In-use requirements.
205.173-1 Warranty.

Sec. 205.173-2 Tampering.
205.173-3 Warning statement.
205.173-4 Information sheet.
205.174 Remedial orders.

Appendix I: Motorcycle Noise Emission Test Procedure
Appendix II: Sampling Tables

Authority: Sec. 3, Noise Control Act (42 U.S.C. 4905) and additional authority as specified.

2. In § 205.151, paragraph (a)(24) is removed and reserved and paragraph (a)(27) is revised as follows:

§ 205.151 Definitions.
(a) * * *

(27) "Test vehicle" means a vehicle in a Selective Enforcement Audit test sample.
* * * *

3. In § 205.154, the last sentence is revised to read as follows:

§ 205.154 Consideration of alternative test procedures.
* * * * * * * *

* * * After approval by the Administrator, testing conducted by manufacturers using alternative test procedures will be accepted by the Administrator for all purposes including, but not limited to, selective enforcement audit testing.

4. Section 205.157 is retitled as follows:

§ 205.157 Requirements.

§ 205.157-1 [Amended]

5. In 205.157-1, paragraphs (a)(1) and (2) are removed; paragraphs (a)(3) and (4) are redesignated paragraphs (a)(1) and (2); and paragraph (a)(1) is revised to read as follows:

(1) Shall be labeled in accordance with the requirements of section 205.158 of this subpart.
* * * *

6. In § 205.157-1, paragraph (c) is revised to read as follows:

(c) Subsequent manufacturers of a new product which conforms to the definition of vehicle in these regulations when received by them from a prior manufacturer, need not fulfill the requirements of paragraph (a)(1) of this section where such requirements have already been complied with by a prior manufacturer.
* * * *

7. Section 205.157-2 is retitled to read as follows:

§ 205.157-2 Compliance with standards.

8. In § 205.157-2, paragraph (a)(1) is revised to read as follows:

(a)(1) Prior to distribution in commerce of vehicles of a specific configuration, the first manufacturer of such vehicle must verify such configurations in accordance with the requirements of this subpart.
* * * *

9. In § 205.157-2, paragraph (a)(2) is revised to read as follows:

(b) The requirements for purposes of testing by the Administrator and selective enforcement auditing with regard to each vehicle configuration consist of:

(1) Testing in accordance with § 205.160-4 of a vehicle selected in accordance with § 205.160-2.

(2) Compliance of the test vehicle with the applicable standard when tested in accordance with § 205.160-4.
* * * *

11. In § 205.157-2, paragraph (c)(1)(iii) is revised to read as follows:

(iii) Testing in accordance with § 205.160-4 of a vehicle selected in accordance with § 205.160-2 which much be a vehicle of the configuration which is identified pursuant to paragraph (c)(1)(ii) of this section as having the highest sound pressure level (estimated or actual) within the category.
* * * *

12. In § 205.157-2, paragraph (c)(1)(v) is removed.

13. In § 205.157-2, paragraph (c)(2) is revised to read as follows:

(c) * * *

(2) Where the requirements of paragraph (c)(1) of this section are complied with, all those configurations contained within a category are considered represented by the tested vehicle.
* * * *

14. § 205.157-2, paragraph (c)(3) is revised to read as follows:

(c) * * *

(3) Where the manufacturer tests a vehicle configuration which has not been determined as having the highest sound pressure level of a category, but all other requirements of paragraph (c)(1) of this section are complied with, all those configurations contained within that category which are determined to have sound pressure levels not greater than the tested vehicle are considered to be represented by the
tested vehicle; however, a manufacturer must for purposes of Testing by the Administrator and Selective Enforcement Auditing verify according to the requirements of (b)(1) and/or (c)(1) of this section any configurations in the subject category which have a higher sound pressure level than the vehicle configuration tested.

15. In § 205.157-2, paragraph (d) is revised to read as follows:

(d) A manufacturer may elect for purposes of Testing by the Administrator and Selective Enforcement Auditing to use representative testing pursuant to paragraph (c) of this section for all or part of his product line.

16. In § 205.157-2, paragraphs (e) (1) and (2) are revised to read as follows:

(e) * * *

(1) In the case of representative testing, a new test vehicle from another configuration must be selected according to the requirements of paragraph (c) of this section, in order to verify the configurations represented by the non-compliant vehicle.

(2) Modify the test vehicle and demonstrate by testing that it meets applicable standards. The manufacturer must modify all production vehicles of the same configuration in the same manner as the test vehicle before distribution into commerce.

17. In § 205.157-2, paragraph (f) is removed.

§§ 205.157-4—205.157-10 [Removed]

18. Sections 205.157-4 through 205.157-10 are removed.

§ 205.158 [Amended]

19. In § 205.158, paragraph (a)(1) is revised to read as follows:

(a)(1) The manufacturer of any vehicle subject to this subpart must, at the time of manufacture, affix a label, of the type specified in paragraph (a) (2), (3), and (4) of this section, to all such vehicles to be distributed in commerce.

20. In § 205.158, paragraph (a)(3) is revised to read as follows:

(a) * * *

(3) The label must be affixed by the vehicle manufacturer to the vehicle in such a manner that the label cannot be removed without destroying or defacing it, and must not be affixed to any piece of equipment that is easily detached from such vehicle.

21. In § 205.158, paragraph (e) is removed.

22. Section 205.159, paragraph (c)(5) is revised to read:

§ 205.159 Testing by the Administrator.

• • • • •

[c] • • •

(5) Testing of up to 10 percent of the manufacturer's test vehicles for a model year if the Administrator determines testing these vehicles at the EPA test site is necessary to assure that a manufacturer has acted or is acting in compliance with the Act.

23. In § 205.160-2, the section title and paragraph (a) are revised to read as follows:

§ 205.160-2 Test sample selection and preparation.

(a) Vehicles comprising the sample which are required to be tested under a test request in accordance with this subpart must be selected consecutively as they are produced. Before the official test, the test vehicle must not be prepared, tested, modified, adjusted, or maintained in any manner unless such preparation, tests, modifications, adjustments or maintenance are part of the manufacturer's prescribed manufacturing and inspection procedures, and are documented in the manufacturer's internal vehicle assembly and inspection procedures, are required or permitted under this subpart, or are approved in advance by the Administrator. For purposes of this section, prescribed manufacturing and inspection procedures include quality control testing and assembly procedures normally performed by the manufacturer on like products during early production if the resulting testing is not biased by this procedure. In the case of imported products, the manufacturer may perform adjustments, preparations, modification or tests normally performed at the port of entry by the manufacturer to prepare the vehicle for delivery to a dealer or customer.

(1) Equipment or fixtures necessary to conduct the test may be installed on the vehicle if such equipment or fixtures have no effect on the noise emissions of the vehicle, as determined by the measurement methodology.

(2) In the event of a vehicle malfunction (i.e., failure to start, etc.) the manufacturer may perform the maintenance that is necessary to enable the vehicle to operate in a normal manner. This maintenance must be documented and reported in the SEA report.

(3) No quality control, quality assurance testing, assembly or selection procedures may be used on the test vehicle or any portion of the test vehicle including parts and subassemblies, unless such quality control, quality assurance testing, assembly or selection procedures are used normally during the production and assembly of all other vehicles of this configuration which will be distributed in commerce, are required or permitted under this subpart or are approved in advance by the Administrator.

(4) If a vehicle is unable to complete the noise tests, the manufacturer may replace the vehicle. Any replacement vehicle must be a production vehicle of the same configuration as the replaced vehicle or a noisier configuration and will be subject to all the provisions of these regulations. Any replacement must be reported in the SEA report.

§ 205.160-3 [Removed and reserved]

24. Section 205.160-3 is removed and reserved.

§ 205.160-4 [Amended]

25. In § 205.160-4, paragraph (b), the first sentence is removed.

26. In § 205.160-6, paragraph (a)(1) is revised to read as follows:

§ 205.160-8 Prohibition of distribution in commerce; manufacturer's remedy.

(a) * * *

(1) Submission of a written report to the Administrator which identifies the reason for the noncompliance of the vehicles, describes the problem and/or quality control or quality assurance remedies to be taken by the manufacturer to correct the problem.

§ 205.161 [Removed]

27. Section 205.161 is removed.

§ 205.162-1 [Removed]

28. Section 205.162-1 is removed.

29. In § 205.162-2, paragraph (a) is revised; paragraphs (b) and (c) are removed; paragraphs (d) and (e) are revised and redesignated paragraphs (b) and (c), respectively; paragraph (g) is removed; and paragraph (f) is redesignated paragraph (d). The revised portions of § 205.162-2 read as follows:

§ 205.162-2 Tampering.

(a) For each configuration of vehicles covered by this part, the manufacturer shall develop a list of acts which, in his judgment, constitute the removal or rendering totally or partially inoperative, other than for purposes of maintenance, repair, or replacement of noise control devices or elements of design of the vehicle.
emission standards prescribed in this 
distributed in commerce in the United 
Federally regulated motorcycles and 
§ 205.168-1 General requirements.
§ 205.168 Requirements.

Tampering With Noise Control System 
Prohibited 
Federal law prohibits the following acts or 
causing thereof: 
(1) The removal or rendering inoperative by 
another person than for purposes of 
maintenance, repair or replacement, of any 
device or element of design incorporated into 
any new vehicle for the purpose of noise 
control prior to its sale or delivery to the 
ultimate purchaser or while it is in use, or (2) 
the use of the vehicle after such device or 
element of design has been removed or 
rendered inoperative by any person. 
(2) The statement: 
Among those acts presumed to constitute 
tampering are the acts listed below. 
Immediately following this statement, the manufacturer must include the list developed under paragraph (a) of this section. 
(c) Any act included in the list prepared pursuant to paragraph (a) of this section is presumed to constitute tampering; however, in any case in which a presumed act of tampering has been committed and it can be shown that such act resulted in no increase in the noise level of the vehicle or that the vehicle still meets the noise emission standard of § 205.152, the act will not constitute tampering.

§ 205.162-3 [Amended]
30. In § 205.162-3, paragraphs (c), (d), and (e) are removed.

§ 205.162-4 [Removed]
31. Section 205.162-4 is removed.

§ 205.165 [Amended]
32. In § 205.165, paragraph (a)(6) is removed and reserved.
33. In § 205.165, paragraph (a)(8) is revised to read as follows: 
(a) * * * 
(b) "Test exhaust system" means an exhaust system in Selective Enforcement Audit test sample. * * * * * * * * * *
34. Section 205.168 is retitled to read as follows:
§ 205.168 Requirements.
* * * * * * *
35. Section 205.168-1 is revised to read as follows:
§ 205.168-1 General requirements.
(a) Each manufacturer of motorcycle exhaust systems manufactured for Federally regulated motorcycles and distributed in commerce in the United States which are subject to the noise emission standards prescribed in this subpart and not exempted in accordance with Subpart A, § 205.5: 
(1) Must label each exhaust system in accordance with the requirements of § 205.169 of this subpart; and 
(2) Must only manufacture exhaust systems which conform to the applicable noise emission standard established in § 205.166 of this regulation when installed on any Federally regulated motorcycle for which it has been designed and marketed.
(b) The manufacturer who is required to conduct testing to demonstrate compliance with a particular standard must satisfy all other provisions of this subpart applicable to that standard.
(c) Prior to distribution into commerce of exhaust systems of a specific category, the manufacturer of the exhaust system shall verify the category in accordance with this subpart.
(2) Notwithstanding paragraph (a)(1) of this section, the manufacturer may distribute in commerce exhaust systems of that category for up to 90 days if weather or other conditions beyond the control of the manufacturer make testing of a category impossible and if the following conditions are met:
(i) The manufacturer performs the tests required under paragraphs (d) or (e) of this section on such category as soon as conditions permit;
(d) The requirements for each exhaust system category consist of:
(1) Testing in accordance with § 205.171-1 of an exhaust system selected in accordance with § 205.171-2.
(2) Compliance of the test exhaust system on a motorcycle for which it is marketed with the applicable standard when tested in accordance with Appendix I; and
(e) A manufacturer is required to verify all categories of exhaust systems within his product line for each class of Federally regulated motorcycle for which it is designed and marketed. A category of a replacement exhaust system is defined by a separate combination of at least the following parameters:
(1) Muffler/Silencer: (i) Volume; (ii) type of absorption material; (iii) amount of absorption material; (iv) length; (v) diameter; (vi) directional flow of exhaust gas; (vii) interior construction; (viii) shell and inner construction material; (ix) number of header pipes entering muffler; and (x) specific motorcycle application.
(2) Expansion Chamber: (i) Volume; (ii) diameter; (iii) construction material; (iv) directional flow of exhaust gas; (v) length; and (vi) specific motorcycle application.
(3) Spark Arrestors: (i) Volume; (ii) construction material; (iii) directional flow of exhaust gas; (iv) length; (v) diameter, and (vi) specific motorcycle application.
(4) Other Exhaust System Components: (i) Volume; (ii) shape; (iii) length; (iv) diameter; (v) material; (vi) directional flow of exhaust gas; and (vii) specific motorcycle application. 
(5) Exhaust system components sold as separate products shall be tested pursuant to § 205.166(b).
(g) Original equipment exhaust systems that are also sold as replacement systems for the same motorcycle configuration need not be tested under this subpart if they have been tested or represented in a test report under Subpart D of this part.
(h) A manufacturer has the following alternatives if any test exhaust system is determined not to be in compliance with applicable standards:
(i) Modify the test exhaust system and demonstrate by testing that it meets applicable standards. The manufacturer must modify all production exhaust systems of the same category in the same manner as the test exhaust system before distribution in commerce.

§§ 205.168-2—205.168-10 [Removed]
36. Sections 205.168-2 through 205.168-10 are removed.

§ 205.169 [Amended]
37. In § 205.169, paragraph (a) is revised to read as follows:
(a) The manufacturer of any product (including the manufacturer of newly produced motorcycles) subject to this subpart must, at the time of manufacture, affix a permanent, legible label, or mark of the type and in the manner described below, containing the information provided below, to all such exhaust systems or exhaust system components to be distributed in commerce.
* * * * * * *
38. In § 205.169, paragraph (f) is removed.

§ 205.170 [Amended]
39. In § 205.170, paragraph (c)(1) is removed and reserved.
40. In § 205.170, paragraph (c)(5) is revised to read as follows:
* * * * * * *
(c) * * * * * * *
(3) In addition to any exhaust systems included in paragraph (c)(1), (2), (3), or (4) of this section, testing of up to 10 percent of the manufacturer's exhaust systems for a model year if the Administrator determines testing these exhaust systems at the EPA test site is
necessary to assure that a manufacturer has acted or is acting in compliance with the Act.

41. In §205.171-2, the section title and paragraph (a) are revised to read as follows:

§205.171-2 Test exhaust system selection and preparation.

(a)(1) Exhaust systems comprising the sample which are required to be selected consecutively as they are produced.

(b) No maintenance may be performed to enable the vehicle to operate in a normal manner. This maintenance must be documented and submitted in accordance with this subpart.

§205.171-6 Testing procedures.

(b) No maintenance may be performed on the test exhaust system except as provided by §205.171-2.

42. Sections 205.171-4 and 205.171-5 are removed.

43. In §205.171-6, paragraph (b), the first sentence is revised to read as follows:

§205.171-10 Prohibition on distribution in commerce; manufacturer's remedy.

(a) * * *

(1) Submission of a written report to the Administrator which identifies the reason for the noncompliance of the exhaust systems, describes the problem and describes the proposed quality control or quality assurance remedies to be taken by the manufacturer to correct the problem.

§205.173-1 Warranty.

(a) The exhaust system manufacturer must include in the information supplied to the ultimate purchaser pursuant to section 205.173-4, the following statement:

Noise Emission Warranty

(The manufacturer) warrants that this exhaust system, at time of sale, meets all applicable U.S. E.P.A. Federal noise standards. This warranty extends to the first person who buys this exhaust system for purposes other than resale, and to all subsequent buyers. Warranty claims should be direct to [Manufacturer shall fill in this blank with his name, address and telephone number.]

46. In §205.173-1, paragraph (b) is removed and reserved and paragraph (a) is revised as follows:

§205.173-3 Warning statement.

The manufacturer must include the following statement pursuant to §205.173-4 with each product of that category the manufacturer distributes into commerce.

* * *

48. Section 205.173-5 is removed.
This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 352

Reemployment Rights; Correction

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations; correction.

SUMMARY: In publishing proposed regulations on reemployment rights in the November 12, 1982, issue of the Federal Register (47 FR 51146), the Office of Personnel Management (OPM) inadvertently left out the address for comments. Any comments on the proposed regulations should be sent to the address below. Written comments may be sent to Richard B. Post, Associate Director, Staffing Group, U.S. Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

ADDRESS: Written comments may be sent to: Joseph A. Morris, General Counsel, Room 5H30, United States Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Chabot, Office of the General Counsel, (202) 632-5421.

SUPPLEMENTARY INFORMATION: Section 7321 of Title 5, United States Code, provides that "* * * an employee in an Executive agency or in the competitive service is not obliged, by reason of that employment, to contribute to a political fund or to render political service * * * and * * * may not be removed or otherwise prejudiced for refusal to do so."

Section 7322 further provides that "* * * an employee in an Executive agency or in the competitive service may not use his official authority or influence to coerce the political action of a person or body."

Federal criminal statutes, at 18 U.S.C. 600, make it unlawful for any person to promise "any employment, position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit, to any person as consideration, favor or reward for any political activity or for the support of or opposition to any candidate or any political party * * *." Federal criminal statutes, at 18 U.S.C. 602, further make it unlawful for "* * * an officer or employee of the United States or any department or agency thereof * * * to knowingly solicit, any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer [or] employee * * *.

Federal criminal statutes, at 18 U.S.C. 603(a), also make it unlawful for "* * * an officer or employee of the United States or any department or agency thereof * * * to make any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 to any other such officer [or] employee * * *, if the person receiving such contribution is the employer or employing of the person making the contribution."

Federal criminal statutes, at 18 U.S.C. 607(a), additionally make it unlawful for "* * * any person," with the exception, stated in 18 U.S.C. 607(b), of certain employees of Congress, "to solicit or receive any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 in any room or building occupied in the discharge of official duties by any person mentioned in [18 U.S.C.] section 603, or in any navy yard, fort, or arsenal."

Section 301(8) of the Federal Election Campaign Act of 1971, as codified at 2 U.S.C. 431(8), defines a "contribution" to include "* * * any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. * * *"

The solicitation, payment, collection, or receipt of political contributions by Federal employees subject to the Hatch Act, if done in the Federal workplace, would violate one or more of the foregoing statutory prohibitions. In addition, even if solicitation of such contributions occurred elsewhere, the payment, collection, or receipt of such contributions in the Federal workplace would still violate the law.

Similarly, the use of a Federal payroll deduction scheme or the Government's allotment system as a conduit for political contributions by Federal employees subject to the Hatch Act would involve the use of Federal workplaces and instrumentalities to pay, collect, and receive such contributions. Because Government payroll deductions and allotments necessarily pass through the hands of supervisors, co-workers, and agency payroll offices, the use of such means to channel political contributions raises the unacceptable possibility of abuse; the certain knowledge that a Federal employee is making or is failing to make a political contribution would enable or encourage supervisors and co-workers to bring varieties of impermissible pressures upon the employee to change such conduct, thereby substantially impairing and inhibiting the employee's exercise of political rights secured by the Constitution.

The regulations presently in force under the Hatch Act make it clear that Federal employees who are covered by

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the Hatch Act have the right to make financial contributions to political parties and organizations; see 5 CFR 733.111(a)(6). Present regulations do not adequately protect employee freedoms and the integrity of the Federal workplace, however, in that they do not clearly state prohibitions against the solicitation, payment, collection, and receipt of political contributions in the Federal workplace and through Government payroll and similar channels.

The congressional declaration of merit system principles that was enacted in Section 101(a) of the Civil Service Reform Act of 1978, 5 U.S.C. 2301(b), commands that "Employees should be * * * protected against arbitrary action, personal favoritism, or coercion for partisan political purposes * * ** 5 U.S.C. 2301(b)(8)(A). Therefore, OPM proposes to amend 5 CFR Part 733 (Political Activity of Federal Employees) to include the foregoing in the list of prohibited political activities set forth in 5 CFR 733.122.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects the political activities of Federal employees.

List of Subjects in 5 CFR Part 733

Political activity of Federal employees.
United States Office of Personnel Management.
Donald J. Devine, Director.

Accordingly, OPM proposes to amend 5 CFR as follows:

PART 733—POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

1. The authority citation for Part 733 read as follows:

Authority: 5 U.S.C. §§ 3303, 3302, 7301, 7324, 7325, and 7327; Reorganization Plan No. 2 of 1978, E.O. 12109; and 3 CFR 1978 Comp., p. 284, unless otherwise noted.

2. In Part 733, § 733.101 would be amended by adding paragraphs (g), (h), and (i) to read as follows:

§ 733.101 Definitions.

(g) "Political fund" means any fund, organization, political action committee, or other entity that, for purposes of influencing in any way the outcome of any partisan election, receives or expends money or anything of value or transfers money or anything of value to any other fund, candidate, organization, political action committee, or other entity.

(h) "Contribution" means any gift, subscription, loan, advance, deposit of money, allotment of money, or anything of value given or transferred by one person to another, including in cash, by check, by draft, through a payroll deduction or allotment plan, by pledge or promise, whether or not enforceable, or otherwise.

(i) "Federal workplace" means any place, site, installation, building, room, or facility in which any Executive department or agency conducts official business, including, but not limited to, office buildings, forts, arsenals, navy yards, post offices, vehicles, ships, and aircraft.

3. In Part 733, § 733.122 (b) is amended by revising subparagraphs (12) and (13) and adding subparagraphs (14), (15), and (16) to read as follows:

§ 733.122 Political management and political campaigning; prohibitions.

(b) * * *

(12) Addressing a convention, caucus, rally or similar gathering of a political party in support of or in opposition to a partisan candidate for public office or political party office;

(13) Initiating or circulating a partisan nominating petition;

(14) Soliciting, collecting, or receiving a contribution from any employee for any political party, political fund, or other partisan recipient;

(15) Paying a contribution to any employee who is the employer or employing authority of the person making the contribution for any political party, political fund, or other partisan recipient.

(16) Soliciting, paying, collecting, or receiving a contribution, at or in any Federal workplace, for any political party, political fund, or other partisan recipient.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273
[Amtd. No. 238]

Food Stamp Program; Notice of Adverse Action and Mass Change

AGENCY: Food and Nutrition Service, USDA.

AGENCY: Proposed rule.

SUMMARY: The Food and Nutrition Service is changing the way a State welfare agency tells food stamp recipients about changes in their food stamps. At present, there is confusion about how the State agency should make changes that affect many or all recipients. There are also needless difficult requirements for informing recipients of individual changes. This proposed rule would simplify these requirements.

DATES: Comments must be received on or before February 28, 1983.

ADDRESS: Please submit comments to Thomas O'Connor, Supervisor, Policy and Regulations Section, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Va. 22302.

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, Va.

FOR FURTHER INFORMATION CONTACT: Mr. O'Connor at the address above; telephone (703) 756-3429.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291. This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 151-1. The Department has classified this rule as a non-major rule. The rule's effect on the economy will be less than $100 million. The rule will have no effect on costs or prices. Competition, employment, investment, productivity and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Regulatory Flexibility Act. Samuel J. Cornelius, Administrator of the Food and Nutrition Service, has certified that this proposal does not have a significant economic impact on a substantial number of small entities. The rule gives State welfare agencies greater flexibility in their administration of the Food Stamp Program.

Paper Reduction Act. This regulation does not contain reporting and recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Mass Changes

A mass change in food stamps is one which affects many or all food stamp recipients. A mass change is also one which the Federal or State governments
cause, not one caused by the recipients. Examples of mass changes are an increase in the Thrifty Food Plan and an increase in Supplemental Security Income payments.

The current regulations discuss four kinds of mass change. First are changes in food stamps which occur according to a schedule for keeping up with the cost-of-living and seasonal variations. Second are changes in public assistance grants. Third are changes in other Federal benefits. Finally there are changes in food stamp regulations concerning the way a State agency notifies a household that a mass change has taken place.

The amendment would provide a way to resolve the often conflicting pressures of specificity and time. Participants need specific information about benefit changes to ensure their accuracy. The State agency needs time to inform individuals about the changes. To resolve this conflict, the Department proposes that the State agency give early information to the household without diminishing the household’s rights.

Notifying Households of Mass Changes

Currently, the regulations do not specify the amount of information which a State agency must give to a household when a mass change occurs. Neither do the regulations give clear instructions about the timeliness of the notice. The Department is proposing guidelines for State agencies to follow.

Content. The Department is proposing that the State agency shall, at a minimum, inform the household of the general nature of the mass change by giving it a range of likely effects. For example a rule might change the percentage of the earned income deduction. The State agency would then inform households of the likely effects, that a household with $100 in monthly wages would probably lose $1 in food stamps, one with $300 in wages would lose $2 in food stamps, etc. The State agency would also notify the household, as it does now, of the household’s rights to a fair hearing, continued benefits, and further information from the State agency.

Beyond this minimum, the Department proposes that the State agency provide the household with as specific information as the State agency can reasonably give. This would not be an encouragement to provide specific information; it would be a requirement.

There are many kinds of specific information which the State agency could provide, including the household’s new benefit or individual notice to a household that its benefits will be reduced or terminated. The State agency may also be able to provide a general explanation of the change, even if it cannot notify specific households of the specific information as the State agency can reasonably give. This would not be an encouragement to provide specific information; it would be a requirement. The State agency would not be required to provide information any earlier than ten days before the effective date of the change.

Conflicts between content and timing. It is clear that there may be, at times, an inverse relationship between content and timing. That is, the State agency may be able to provide specific information, but only at the last minute. Conversely, the State agency may be able to provide early notice, ten days before the effective date. However, the early notice may turn out to be only general.

The Department proposes that, when such a conflict occurs, the State agency resolve it in favor of more specific information with less advance notice. The Department is concerned that a household be able to make an informed decision as to the accuracy of a mass change when applied to itself. An informed decision depends upon the household’s having adequate knowledge of the change.

If the specific information arrives as late as the issuance, the household will then be able to decide whether the State agency’s action is right or wrong. Under the Department’s proposal, the household can ask for a fair hearing. If the household is entitled to continued benefits, the State agency would restate the household’s allotment to its prior level by the issuance date or within five working days, whichever is later.

Continuation of Benefits. (§ 273.12(e)(7)). The current regulations limit the times when a household can obtain continued benefits after it requests a fair hearing about a mass change. Specifically, according to § 273.15(k)(1), there are two conditions to continued benefits, either of which the household must meet. Because the policy concerning continued benefits is not clearly stated in § 273.12(e), the Department proposes to restate the current policy. A household would be entitled to a continuation of benefits only if the fair hearing request is based on either of two specific conditions. The first condition is that there was an error in arithmetic. For example, the State agency may have incorrectly computed the household’s earned income deduction, calculating that 18 percent of $200 in wages was $30. If that incorrect calculation were appealed, the household could receive continued benefits while awaiting the fair hearing decision. The second condition is that the State agency misinterpreted or misapplied Federal policy. For example, a household contained a member 70 years of age (entitling the household to the net income eligibility limit) and the State agency terminated the household because its gross income was too high, the household could receive continued benefits while appealing. As with any continued benefits, the household may not receive them after the end of its certification period.

Because a household may not receive its notice until its issuance date, the household may not request a fair hearing until after it has already received its allotment. In such an instance, the State agency would reinstate the household’s benefits to its prior level. Reinstatement would be the means of continuing the household’s benefits.

Miscellaneous provisions. The Department proposes to amend the introductory sentences in § 273.12(e) on three points. First, this paragraph now specifies that Social Security is the Retirement, Survivors, and Disability Insurance (RSDI) program and that SSI means the Supplemental Security Income program. The second miscellaneous change is that the references to fair hearings during a mass change are gathered into one paragraph for the sake of clarity. The third miscellaneous change would be the deletion of § 273.12(e)(2)(ii). This paragraph is unnecessary, since a separate description of the notice would be added.

Notice of Adverse Action (§ 273.13)

The Department is making two changes in the regulations concerning notices of adverse action. These changes simplify the process of making changes.

Voluntary Termination. (§ 273.13(b)(12)). Currently, the State agency must notify a household at least ten days before its participation is terminated. This is the case even if the household requests the termination. If the household requests termination on April 25, and the State provides advance notice on that day, the ten day period
would expire on May 5. If the household’s next issuance date is May 1, the State agency cannot stop that allotment. The ten day period gives the household an opportunity to reconsider its withdrawal from the program.

The Department believes that a notice of adverse action is not productive in this situation. The State agency is terminating the household’s participation only because the household has requested it. In this situation there is no question of the household’s eligibility or its benefit level. The notice requirement serves only to produce more paperwork for the recipient and the State agency, and to delay the termination. Therefore, the Department proposes to exempt voluntary terminations from the requirement that a notice of adverse action be sent. This exemption applies only in cases where the household specifically requests the termination of its participation in writing or in person. This exemption does not apply when the household reports a change in circumstances which results in termination.

Moving from the Project Area. (§ 273.13(b)(19)). Currently, the regulations require a State agency to terminate participation, without notice, when a household has already moved from the project area (7 CFR 273.13(b)(3). The Department does not propose to change this procedure. The Department does propose to add a new procedure to use when a household reports that it will move from the project area. If the household will not be able to obtain its coupons because it will not be residing in the project area, the State agency would terminate the household’s participation without notifying the household in advance.

This new procedure is meant to deal with the problem of issuing coupons (through direct mailing) and Authorization to Participate (ATP) cards to households which no longer reside in the project area and therefore cannot obtain them. The coupons and ATP cards can be used improperly by persons who wish to abuse the Food Stamp Program. When advance notice of the termination is required, the State agency now must issue benefits if the household reports its future move and leaves the project area in fewer than ten days before its next issuance.

Therefore, the Department proposes that the State agency not provide advance notice. However the State agency would provide notice. The notice would arrive no later than the issuance date. The notice would explain the termination, its effective date, and the household’s right to a fair hearing and continued benefits.

Implementation (§ 272.1)

The Department proposes to require State agencies to implement this amendment’s provisions no later than the first day of the month 90 days after publication of the final rule.

List of Subjects

7 CFR Part 272.

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


Administrative practice and procedure, Aliens, Claims, Fraud, Grant programs—social programs, Penalties, Records, Reporting requirements, Social security, Students.

For the reasons set out in the preamble, the Department proposes to amend Parts 272 and 273 of Chapter II, Subtitle B, Title 7, Code of Federal Regulations, as follows.* * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. In § 272.1, new paragraph (g) (56) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) Implementation. * * * * (56) Amendment 238. State agencies shall implement the mandatory provisions of this amendment no later than the first day of the month 90 days after publication of the final rule.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLD

2. In § 273.12, the introductory text of paragraph (e) is revised; paragraph (e)(2)(ii) is removed; paragraph (e)(2)(ii) is redesignated as paragraph (e)(2)(ii); and new paragraphs (e)(5), (e)(6), and (e)(7) are added; the revisions and additions read as follows:

§ 273.12 Reporting changes.

* * * * *

(e) Mass changes. Certain changes are initiated by the State or Federal government which may effect the entire caseload or significant portions of the caseload. These changes include adjustments to the income eligibility standards, the shelter and dependent care deductions, the Thrifty Food Plan and the standard deduction; annual and seasonal adjustments to Retirement, Survivors, and Disability Insurance (RSDI), and Supplemental Security Income (SSI) and other Federal benefits; periodic adjustments to Aid to Families with Dependent Children (AFDC) or General Assistance (GA) payments; and other changes in the eligibility and benefit criteria based on legislative or regulatory changes.

* * * * *

(5) Notice for Mass Changes. When the State agency makes a mass change in food stamp eligibility or benefits or conducts desk reviews in place of a mass change, it shall notify all households whose benefits are reduced or terminated, except for mass changes made under § 273.12(a)(1).

(i) At a minimum, the State agency shall inform the household of:

(A) The general nature of the change;

(B) Examples of the change’s effect on households’ allotments;

(C) The month in which the change will take effect;

(D) The household’s right to a fair hearing; and

(E) The household’s right to continued benefits.

(ii) In addition, the State agency shall provide the household with as much specific information about the change in the household’s allotment as it can reasonably provide at the time the State agency mails the notice.

(iii) At a minimum, the State agency shall notify the household of the mass change on the date the household is scheduled to receive the allotment which has been changed.

(iv) In addition, the State shall notify the household of the mass change as much before the household’s scheduled issuance date as reasonably possible, although the notice need not be given any earlier than the time required for advance notice of adverse action.

(v) In the event the State agency cannot notify the household of the specific change before the change is effective, the State agency shall provide as specific notice as reasonably possible.

(6) Fair hearings. The household shall be entitled to request a fair hearing when it is aggrieved by the mass change.

(7) Continuation of benefits. A household which requests a fair hearing due to a mass change shall be entitled to continued benefits at its previous level only if the household meets three criteria:

(i) The household does not specifically waive its right to a continuation of benefits;

(ii) The household requests a fair hearing within the time period set by the State agency in accordance with § 273.13(a)(1); and

(iii) The household’s fair hearing is based upon improper computation of
food stamp eligibility or benefits, or
upon misapplication or
misinterpretation of Federal law or
regulation.

* * * * *

In §273.13, new paragraph (12) and
(13) are added to paragraph (b), to read as follows:

§273.13 Notice of adverse action

(b) Exemptions from notice. * * *

(12) The household voluntarily
requests, in writing or in the presence of a
caseworker, that its participation be
terminated.

(13) The State agency determines,
based on reliable information, that the
household will not be residing in the
project area and therefore will be
unable to obtain its next allotment.
When this occurs, the State agency
shall notify the household no later than its
next scheduled issuance date. While the
State agency may notify the household
before its next issuance date the State
agency shall not delay terminating the
household’s participation in order to
provide advance notice. The notice shall
contain all the information required by
paragraph (a)(2) of this section.

§10.551, 47 U.S.C. 2011-2029)
(Catalogue of Federal Domestic Assistance
Programs No. 10.551, Food Stamps)

Dated: December 21, 1983.

Robert E. Leard,
Associate Administrator.

[FR Doc. 82-35093 Filed 12-27-82; 8:45 am]
BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 1011

Milk In Tennessee Valley Marketing
Area; Proposed Temporary Revision
of Shipping Percentage

AGENCY: Agricultural Marketing Service,
USDA.

ACTION: Proposed temporary revision of
rule.

SUMMARY: This notice invites written
comments on a proposal that the supply
plant shipping requirement under the
Tennessee Valley Federal milk order be
decreased temporarily for the months of
January and February 1983. The
temporary change was requested by the
operator of a supply plant that is
regulated as a pool plant by the
Tennessee Valley order. The handler
contends that the change is necessary to
remove the need for its pool supply
plant to incur the cost of uneconomical
shipments of milk to maintain pool
status for its plant during a period of
supply imbalance.

DATE: Comments are due by January 4,
1983.

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

FOR FURTHER INFORMATION CONTACT:
Richard A. Glandt, Marketing Specialist,
Dairy Division, Agricultural Marketing
Service, U.S. Department of Agriculture,
Washington, D.C. 20250; e-mail:
273-4829.

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

It has also been determined that the
potential need for adjusting certain
provisions of the order on an emergency
basis precludes following recent review
procedures set forth in Executive Order
12291. Such procedures would require
that this document be submitted for
review to the Office of Management and
Budget at least 10 days prior to its
publication in the Federal Register.
However, this would not permit the
completion of the procedure in time to
give interested parties timely notice that
the supply plant shipping requirement
for January 1983 would be modified. The
initial request for the action was
received on December 10, 1982.

William T. Manley, Deputy
Administrator, Agricultural Marketing
Service, has determined that this
proposed action would not have a
significant economic impact on a
substantial number of small entities.
Such action would lessen the regulatory
impact of the order on certain milk
handlers.

Notice is hereby given that, pursuant to
the provisions of the Agricultural
Marketing Agreement Act of 1937, as
amended (7 U.S.C. 601 et seq.), and the
provisions of §1011.7(b) of the order, the
temporary revision of certain provisions of
the order regulating the handling of
milk in the Tennessee Valley marketing
area is being considered for the months
of January and February 1983.

All persons who desire to submit
written data, views or arguments in
connection with the proposed revision
should file the same with the Hearing
Clerk, Room 1077, South Building,
United States Department of
Agriculture, Washington, D.C. 20250, not
later than January 4, 1983. Please submit
two copies of the documents filed. The
period for filing views is being somewhat
limited to enable the timely
consideration of this matter since the
proposed action would be applicable to
milk shipments made during January
1983.

All written submissions made
pursuant to this notice will be made
available for public inspection at the
Office of the Hearing Clerk during
regular business hours (7 CFR 1.27(b)).

The provisions proposed to be revised
are the supply plant shipping
percentages set forth in §1011.7(b) that
are applicable during the months of
January and February 1983. It has been
requested that the shipping requirement
be reduced from 100 percent to 50 percent
for the two-month period. Section
1011.7(b) allows the Director of the
Dairy Division to increase or decrease
the applicable shipping percentage up to
10 percentage points in order to obtain
needed shipments for the market or to
prevent uneconomic shipments of milk
to distributing plants.

Kraft, Inc., which operates a supply
plant regulated by the Tennessee Valley
order, has requested a temporary
reduction in the supply plant shipping
requirement of 10 percentage points.
Kraft states that over the past year the
Tennessee Valley market has
experienced an increase in milk
production without a corresponding
increase in Class I sales. The handler
claims that this marketwide
development makes it difficult for its
supply plant to meet the 60 percent
shipping requirement without
engaging in uneconomic shipments of milk if it
wishes to maintain pool plant status.

Kraft expects that the general
imbalance of supply over demand in the
Tennessee Valley market that led to a temporary
reduction in the supply plant shipping
requirements for October and November
1982 will continue through January and
February 1983.

Under the circumstances described, it
may be appropriate to reduce the pool
supply plant shipping percentage for
these months. The proposed temporary
reduction in the shipping requirement
could prevent uneconomic movements
of milk merely for purposes of pool plant
qualification. Also, the reduction could
assure that producers who have been
regularly associated with the fluid
market can continue to share in the pool
proceeds of the market.

List of Subjects in 7 CFR Part 1011

Milk marketing orders, Milk, Dairy
products.
Deregulation of Deposit Rate Ceilings

AGENCY: Depository Institutions Deregulation Committee.

ACTION: Proposed rulemaking.

SUMMARY: As a result of the passage of the Garn-St Germain Depository Institutions Act of 1982, the Depository Institutions Deregulation Committee ("Committee") is requesting public comment on whether it should accelerate the deregulation of interest rate ceilings on deposits and should simplify other regulations on existing deposit categories. Specifically, the Committee requests comment on whether it should: (1) remove all interest rate ceilings immediately OR deregulate accounts with maturities of 91 days or more, except for a minimum early withdrawal penalty OR eliminate all existing time deposit categories with maturities of less than 91 days and extend the maximum maturity on the new Money Market Deposit Account (12 CFR 1204.122) to 91 days; (2) accelerate the current schedule for phasing out interest rate ceilings; (3) simplify the current rate ceiling schedules; (4) simplify interest rate ceilings and other characteristics on the 26-week money market certificate and the 91-day time deposit to make them more consistent; and (5) simplify and rationalize other features of account categories, such as minimum denomination and compounding of interest, to make them more consistent.

DATES: Comments must be received by February 1, 1983.

ADDRESS: Interested parties are invited to submit written data, views, or arguments regarding the proposal to Gordon Eastburn, Acting Executive Secretary, Depository Institutions Deregulation Committee, Room 1058, Department of the Treasury, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20220. All material submitted should include the Docket Number D-0031. Such material will be made available for inspection and copying upon request except as provided in the Committee's Rules Regarding Availability of Information (12 CFR 1202.5).

FOR FURTHER INFORMATION CONTACT: Alan Priest, Attorney, Office of the Comptroller of the Currency (202/447-1880); F. Douglas Birdzell, Counsel, and Joseph A. DiNuzzo, Attorney, Federal Deposit Insurance Corporation (202/389-4147); Rebecca Laird, Senior Associate General Counsel, Federal Home Loan Bank Board (202/377-6446); John Harry Jorgenson, Senior Attorney, Board of Governors of the Federal Reserve System (202/452-3778); or Elaine Boutillier, Attorney-Adviser, Treasury Department (202/566-8737).

SUPPLEMENTARY INFORMATION: The Depository Institutions Deregulation Act of 1980 (Title II of Pub. L. No. 96-221; 12 U.S.C. 3501 et seq.) ("DIDA") was enacted to provide for the orderly phaseout and ultimate elimination of the limitations on the maximum rates of interest and dividends that may be paid on deposit accounts by depository institutions as rapidly as economic conditions warrant. Under the DIDA, the Committee is authorized to phase out interest rate ceilings by any one of a number of methods, including the elimination of interest rate limitations applicable to particular categories of accounts, the creation of new account categories not subject to interest rate limitations, or with interest rate ceilings set at market rates of interest, or any combination of the above.

The Garn-St Germain Depositing Institutions Act of 1982, Pub. L. 97-320 ("Garn-St Germain Act") amended the DIDA and required the Committee to authorize the new Money Market Deposit Account ("MMDA"). After taking public comment, the Committee on November 15, 1982, did create such an account to enable institutions to compete with money market mutual funds, effective December 14, 1982. (47 FR 57719 November 29, 1982) Section 326 of the Garn-St Germain Act requires that the interest rate differential in favor of thrifts be eliminated on or before January 1, 1984.

In March 1982, the Committee adopted a deregulation schedule that phases out interest rate ceilings beginning with longer-term time deposits. With the deregulation schedule in place, the focus of the Committee turned to short-term deposit instruments. Prevailing high interest rates had caused a continued erosion of low-cost deposits at banks and thrifts, as depositors sought market rates elsewhere, particularly through money market mutual funds ("MMFs"). The Committee addressed this problem by authorizing, effective May 1, 1982, a 91-day time deposit with a $7,500 minimum denomination indexed to the 91-day Treasury bill rate, and establishing effective September 1, 1982, a 7- to 31-day deposit account with a $20,000 minimum denomination, also indexed to the 91-day Treasury bill rate. On December 6, 1982, the Committee further deregulated short-term deposits by exempting from interest rate ceiling NOW accounts with average balances of $2,500 that are subject to certain of the restrictions that apply to the MMDA to be effective January 5, 1983. The Committee also reduced to $2,500 the minimum denomination on the 7- to 31-day, the 91-day, and the 26-week MMC categories of deposits, effective January 5, 1983, and eliminated the indexed ceiling on the 7- to 31-day account, effective on that date.

Because of the effect the statutory and regulatory changes summarized above may have on the mix of short-term and long-term deposits of depository institutions, the Committee requests comments on several proposals pertaining to existing interest rate ceilings and account characteristics. The Committee wishes to encourage interested parties to comment on the effect that these changes may have on earnings and liquidity.

Even if opposed to any changes or in favor of complete deregulation of interested rate ceilings, interested parties are requested to comment on changes that should be made if the Committee does decide to accelerate the schedule or to amend the short-term deposit ceiling rate schedules in order to simplify their characteristics and make them more consistent.

Current Ceiling Rate Structure (see Table 1): Under the current interest rate ceiling structure for deposits at federally insured commercial banks, savings and loan associations, and mutual savings banks, most of the interest rate ceilings on traditional, fixed-rate time deposits are superseded as a practical matter by account categories with indexed rates or with no rate ceiling. Also, the MMDA has no interest rate ceiling, and the 7- to 31-day account, effective January 5, 1983, will also have no interest rate ceiling. Deposit categories with maturities of 91 days, 6 months and 2½ to less than 3½ years are available, but such accounts are subject to rate ceilings tied to an index. Other categories with maturities between 31 days and 3½ years are subject to the fixed-rate ceiling schedule. With the exception of the 1½ year IRA/Kegon deposit category (which has a limited purpose), depository institutions cannot offer ceiling-free deposits with
unduly, the Committee believes it is important to consider removing existing interest rate ceilings on longer-term deposits (or accelerating their removal) to allow institutions to offer a range of deposit instruments distinguished primarily by a negotiated rate and maturity. This is especially true since the short-term, ceiling-free accounts may be attractive enough to draw significant funds from longer-term indexed accounts. The flexibility of the management of depository institutions would also be increased by such an action.

**TABLE 2.—CURRENT INTEREST RATE CEILING DEREGULATION SCHEDULE FOR INDEXED TIME DEPOSITS**

<table>
<thead>
<tr>
<th>Original maturity</th>
<th>Commercial bank ceiling</th>
<th>Thrift ceiling</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective Apr. 1, 1983:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2X years or more</td>
<td>Ceiling eliminated</td>
<td>Ceiling eliminated</td>
</tr>
<tr>
<td>1X years or less</td>
<td>Rate less than 2%</td>
<td>2X years Treasury securities</td>
</tr>
</tbody>
</table>

| Effective Apr. 1, 1985: |
|-------------------------|----------------------|
| 1X years or more | Ceiling eliminated | Ceiling eliminated |
| 1X years or less | Rate less than 2% | 2X years Treasury securities |

| Effective Mar. 31, 1986: |
|--------------------------|---------------------|
| 1X years or more | Ceiling eliminated | Ceiling eliminated |
| 1X years or less | Rate less than 2% | 2X years Treasury securities |

*See 12 C.F.R. §1204.119(g).*
*See 12 C.F.R. §1204.119(d).*
*See 12 C.F.R. §1204.119(b).*
*See 12 C.F.R. §1204.119(a).*

**Comments on Elimination or Acceleration of Ceilings**

**Elimination of Rate Ceilings:** The Committee requests comment on whether to eliminate the current rate ceilings (TABLE 1) completely at its next meeting. The Committee is particularly interested in comments on the projected effect such as action would have on institutional earnings and deposit flows. While such an action would effectively eliminate the need for the various existing deposit categories, such as the 91-day, and the 26-week MMC and the short-term fixed-ceiling deposit categories, it would not actually eliminate these accounts. Institutions would probably want to retain some of these categories because they are currently popular with consumers. Eventually, however, the accounts will probably become obsolete like the longer-term fixed-ceiling time deposits shown in the top panel of TABLE 1. Further, while elimination of the rate ceiling structure would automatically remove any interest rate differentials on deposit categories in favor of thrift institutions, the elimination of all differentials must occur on or before January 1, 1984, under section 326 of the Garn-St. Germain Act. Thus, if the Committee eliminated all existing ceilings at its next meeting, and assuming a delayed effective date, the elimination of the thrift differential would be accelerated by no more than 12 months.

An alternative to the removal of the current rate ceiling structure was suggested to the Committee by the Federal Deposit Insurance Corporation ("FDIC"). The FDIC suggests that the Committee completely deregulate all time deposits with original maturities of 91 days or more by removing all interest rate ceilings and other restrictions (except for an early withdrawal penalty) on such time deposits. For such time deposits, if funds are withdrawn within the first 91 days of the deposit, a minimum early withdrawal penalty, requiring the forfeiture of a on-month's interest (not to exceed the interest earned), would be imposed. This penalty would be necessary so that these totally deregulated time deposits can not be structured to provide instant liquidity. If withdrawal is permitted after the first 91 days, institutions would be permitted, but not required by regulation, to impose an early withdrawal penalty. The remaining rate structure on time deposits with maturities of 91 to 364 days would be phased out on March 31, 1986. Alternatively, the Federal Home Loan Bank Board suggested that all categories of time deposits with original maturities of 91 days or less be eliminated and that the maximum maturity of the money market deposit account be extended to 91 days from its current maximum of 31 days. The balance of the ceiling rate structure would be phased out as currently scheduled (TABLE 2).

**Acceleration of Rate Schedule:** As mentioned above, the Garn-St. Germain Act accelerated the total elimination of the thrift differential from March 31, 1986, to on or before January 1, 1984 and directed the Committee to create the ceiling-free MMMDA. Consistent with this Congressional acceleration of the phaseout of limitations on the payment of interest, the Committee also requests comment on accelerating its current schedule (TABLE 2) for phasing out ceilings in general in the event the Committee finds that total deregulation or the removal of ceilings is inappropriate at this time. For example, the entire schedule could be advanced one year so that elimination of all ceilings occurs on April 1, 1985, instead of March 31, 1986, or the one-year interval in TABLE 2 could be reduced to six months. The Committee could also accelerate the removal of ceilings on
longer-term deposits while keeping the short-term portion of the schedule intact. For example, it could accelerate deregulation of ceilings on deposits with maturities of 1½ years or more to April 1, 1983, from April 1, 1984, but leave deregulation of rate ceilings on deposits with maturities of 6 months to 1½ years until the currently scheduled date of April 1, 1985.

Comments on Simplification

In addition to requesting comment on deregulation in general, the Committee also requests comments on how it could simplify current ceiling rate schedules and current account characteristics. The Committee also requests comment on whether it should rescind ceilings on fixed-rate deposits that have been or will be, superseded by indexed or ceiling-free account categories (TABLE 1). The Committee also requests comment on whether it should promptly extend indexing to all categories of fixed-rate deposits that have not yet been superseded by indexed ceilings or by removal of ceilings (TABLE 1).

Ceilings on these newly indexed accounts would be phased out in accordance with the schedule on TABLE 2.

Short-Term Deposit Rate Schedule (TABLE 3): The current ceiling rate structure for the 26-week money market certificate is presented in the top portion of TABLE 3. The schedule is rather complex in that two alternative index rates are used—the most recent auction rate on 6-month Treasury bills or an average of the bill rates at the four most recent auctions—and the formula for determining the ceiling rate changes at five different levels of the index rate.

### Table 3—Current Ceiling Schedules for Short-Term Deposit Accounts

<table>
<thead>
<tr>
<th>Index Rate 1</th>
<th>Commercial Bank Ceiling</th>
<th>Thrift Ceiling</th>
<th>Differential</th>
</tr>
</thead>
<tbody>
<tr>
<td>26-week money market certificates:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greater than 8.75 percent</td>
<td>Index rate + 0.25</td>
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<td>91-day account:</td>
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<tr>
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<tr>
<td>7% to 9.0 percent 1</td>
<td>No ceiling</td>
<td>No ceiling</td>
<td>0.25</td>
</tr>
</tbody>
</table>

1 The index rate for the 26-week MMC is the higher of the most recent auction rate (auction average, discount basis) on 6-month Treasury bills or an average of the four most recent auction rates. The index rate on the 91-day account is the most recent auction rate (auction average, discount basis) on 3-month Treasury bills.

2 The differential is scheduled to be removed on May 1, 1983. At that time, all institutions will be able to pay the index rate at all interest rate levels.

3 The index must be 9.0 percent or below for four consecutive auctions.

The methods of establishing the ceilings on the newer 91-day account (authorized beginning in May 1982) is less complex than the MMC, with the formula for determining the ceiling rate at various index rate levels changing only once, namely, when the 3-month Treasury bill rate reaches 9.0 percent (middle portion of TABLE 3). In addition to different ceiling rate structures, the thrift differential is applied inconsistently to these accounts. It is added to the index rate in the case of the 26-week MMC but is deducted from the index in the case of the 91-day deposit. Moreover, in the case of the 26-week MMC the differential is removed if the index rate goes above 8.75 percent and is removed on the 91-day account when the index rate falls below 9 percent. However, the differential on the 91-day account is scheduled to be eliminated on May 1, 1983, so conforming this feature on these two accounts solely for the purpose of consistency may be unnecessary.

The different methods of calculating the ceilings on the MMC and the 91-day instrument have resulted in a confusing, and in some instances an inconsistent, situation. Therefore, the Committee requests comment on whether and how this schedule should be revised.

Simplification of Other Account Characteristics (TABLE 4): Even if the Committee determines to make no changes to the short-term rate ceiling schedule, other characteristics of the short-term deposit categories could be made more consistent in order to simplify the current account structure. Some of the differences in the short-term deposit accounts are presented in TABLE 4.
TABLE 4—SELECTED CHARACTERISTICS OF SHORT-TERM DEPOSIT ACCOUNTS

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>26-week MMC</th>
<th>91-day account</th>
<th>7- to 31-day account</th>
</tr>
</thead>
</table>
| Minimum 
  denomination | $2,500 1  | $2,500 1  | $2,500 1  |
| Loop hole loans | Permitted | Permitted | Prohibited |
| Index rate | 6-mo bill rate or 4-week average of bill rates | 5-mo bill rate | NA |
| Relation between index rate and ceiling rate | Presented in Table 1 | Presented in Table 1 | NA |
| Minimum ceiling | 7.75 percent | None | None |
| Compounding | Promoted 1 | Prohibited | Prohibited |
| Differential | When index rate is between 7.25 and 8.75 percent | When index rate is above 9 percent | Differential applies to these deposits |
| Scheduled elimination of differential | | | |
| Scheduled elimination of ceiling | Apr. 1, 1985 | | |

2 Although compounding is prohibited, a saver effectively will receive semiannual compounding if the original deposit plus interest is reinvested in another MMC at maturity.
3 Although compounding is prohibited, a saver effectively will receive quarterly compounding if the original deposit plus interest is reinvested in another 91-day certificate at maturity.
4 The full 25 basis point differential is in effect only when the index rate is between 7.5 and 8.5 percent.
5 Scheduled to be eliminated May 1, 1983.
6 Prior to the passage of the Garn-St. Germain Depository Institutions Act, this differential was scheduled to be eliminated on April 1, 1985.

In view of these complexities, the Committee requests comment on whether changes should be made to the existing regulations authorizing these accounts in order to make the regulations less cumbersome and more uniform. The Committee is particularly interested in comments on (1) the relation between the index rate and the ceiling rate, (2) the thrift ceiling rate differential, (3) loophole loans, (4) the use of the four-week average method of calculating the MMC ceiling, and (5) the frequency of compounding that is permitted.

The Committee also requests comment on whether it should phase out minimum denomination requirements. For example, combining the phaseout of the minimum denomination on the MMDA and other short-term accounts with the Committee’s current rate deregulation schedule would have the effect of phasing out passbook and NOW account ceiling rates as well as the minimum denomination on NOW accounts exempt from rate ceilings.

Ceilings on savings account and on NOW accounts not subject to a minimum denomination requirement are not eliminated until March 31, 1986, under the Committee’s current phaseout schedule. As the minimum denomination of indexed or ceiling-free, short-term time deposits is reduced under a phaseout schedule, the ceiling rate on savings and NOW accounts would become less binding, and more depositors would become eligible for the higher rate. For example, the $2,500 minimum denomination on the MMDA, NOW accounts exempt from rate ceilings, the 7- to 31-day account, the 91-day account, and the 26-week MMC could be reduced $500 or $1,000 at the time of each interest rate ceiling adjustment. At the next such adjustment, scheduled for April 1, 1983, the minimum denomination on such accounts could be reduced to $1,500. Subsequent periodic reductions would occur until no minimum denomination would be required on any deposit category.

Outline of Possible Options on Which Comment is Requested

A summary of the options, discussed above, or possible Committee action is presented in an outline form below.

Elimination of Interest Rate Ceilings

1. Should the Committee eliminate the current interest rate ceiling structure (Table 1)?
   a. Should the Committee eliminate all remaining interest rate ceilings immediately?
   b. Should the Committee adopt the FDIC proposal and remove interest rate ceilings and all other restrictions on deposits with original maturities of 91 days or more, except for an early withdrawal penalty for withdrawals made in the first 90 days of the deposit?
   c. Should the Committee adopt the FHJB suggestion by extending the maximum maturity on money deposit accounts to 91 days and eliminating all competing categories of short-term deposits and let the current schedule apply otherwise?
   d. What other methods of eliminating current ceilings should the Committee consider?

Acceleration of the Current Rate Phaseout Schedule (Table 2)

2. Should the Committee accelerate the current phaseout schedule (Table 2)?
   a. Should the Committee simply advance each date in Table 2 by six months or a year or by some other period?
   b. Should the Committee accelerate the long-term phaseout schedule (i.e., move up deregulation of deposits with original maturities of 1 1/2 years or more) but allow the deregulation schedule for all other time deposits to remain intact (i.e., 91-days to 1 year)?
   c. What other methods of accelerating deregulation should the Committee consider?

Simplification of Interest Rate Ceilings

3. If the Committee does not eliminate or accelerate the phaseout of interest rate ceilings in general, should the Committee make changes to the rate ceiling schedule for any category of time deposits (Table 1)?
   a. Should all indexed accounts (middle of Table 1 and Table 3) become ceiling-free when their base rate is at 9 per cent or below (or at some other base rate) for four consecutive auctions (or for some other period)?
   b. Should indexed accounts have a minimum ceiling that remains at 9 per cent (or some other rate) if the auction rate is at or below a rate of 9 per cent?
   c. Should the elimination of the thrift differential be accelerated from its current statutory elimination on December 31, 1983?
   d. Should the Committee rescind existing rate ceilings on all fixed-ceilings time deposits that are now, or in the future will be, superseded by indexed or ceiling-free accounts? (See footnotes 2 & 3 to Table 1)
   e. Should existing ceilings on fixed-rate accounts (top of Table 1) be eliminated and replaced by appropriate market rate indexing (bottom of Table 1), which would then be subject to the phaseout schedule (Table 2)?
   f. What other options for simplifying ceilings should the Committee consider?

Simplification and Rationalization of Interest Rate Ceilings and Other Characteristics of the 26-week MMC and the 91-day Account

4. If the Committee does not make changes to the rate ceiling schedule for deposits in general (No. 3, above), should it make changes to the 26-week MMC and the 91-day account (Table 3)?
   a. Should a Committee remove the interest rate ceilings on the 26-week money market certificate and the 91-day account as it did for the 7- to 31-day account at its last meeting?
   b. Should the 26-week MMC and the 91-day account become ceiling-free
when the rate on U.S. Treasury bills is at 9 percent or below (or at some other rate) for four consecutive auctions (or for some other period)?

b. Should the 26-week MMC and the 91-day account have a minimum ceiling that remains at 9 percent (or at some other rate) if the auction rate is below a rate of 9 percent (or at some other rate)?

c. Should the Committee eliminate the 7.75 percent minimum ceiling for the 26-week MMC?

d. Should the Committee eliminate the auction average or a 4-week average of the auction rates?

e. Should the Committee permit loans to meet the minimum denomination requirements on all accounts OR should it prohibit such loans on all accounts?

f. Should commercial banks be permitted to pay the interest rate ceiling on maturing 26-week MMCs in order to enable them to compete more effectively for such deposits upon maturity?

g. Should the Committee rescind the amendment on the 26-week MMC which permits the ceiling to be higher than the auction average or a 4-week average of the auction rates?

h. What other options concerning changes to the ceiling rates on these accounts should the Committee consider?

Simplification of Characteristics of Deposit Categories

5. If the Committee does not make changes to the schedule for deregulating interest rates, should it make changes to the primary characteristics of short-term deposits (TABLE 4)?

a. Should the Committee permit loans to meet the minimum denomination requirements on all accounts OR should it prohibit such loans on all accounts?

b. Should the Committee establish a schedule for phasing out all minimum denomination requirements (such as reducing the minimum by $500 or $1,000 on each scheduled interest rate phaseout date) OR should it eliminate such requirements immediately?

c. Should the Committee permit compounding on the 26-week MMC and the 91-day account as is currently permitted on all other interest-bearing accounts?

d. Should commercial banks be permitted to pay the ceiling rate for thrills on IRA/Keogh and governmental unit deposits?

e. What other changes to the characteristics of these accounts should the Committee consider?

The Committee wishes to encourage interested parties to comment on the effect these changes may have on earnings and liquidity. Even if opposed to any changes or in favor of complete
deregulation of interest rate ceilings, interested parties should comment on specific changes that they believe should be made if the Committee decides to accelerate the schedule or to amend the short-term deposit ceiling rate schedules in order to simplify and make their characteristics more consistent.

List of Subjects in 12 CFR Part 1204

Banks, Banking.

By order of the Committee, December 22, 1982.

Mark Bender,
Acting Executive Secretary.

[FR Doc. 82-31923 Filed 12-27-82; 8:45 am]

BILLING CODE 4810-25-M

CIVIL AERONAUTICS BOARD

14 CFR Parts 241, 248, 291 and 297

[For Regs. Docket 41147; EDR-450]

Uniform System of Accounts and Reports for Certified Air Carriers;
Submission of Audit and Reconciliation Reports; Domestic Cargo Transportation; and Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations


AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB proposes to eliminate reporting requirements for foreign air freight forwarders and to revise reports required of all-cargo carriers. The CAB also proposes to eliminate the reconciliation report required of certificated air carriers. This information is no longer needed by the CAB and their elimination will reduce burdens on these carriers.

DATE: Comments by February 28, 1983.

 Comments and relevant information received after this date will be considered by the Board only to the extent practicable.

Requests to be put on Service List by January 12, 1983.

The Docket Section prepares the Service List and sends it to each person listed on it, who then serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 41147, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT:


SUPPLEMENTARY INFORMATION:

The Paperwork Reduction Act of 1980, Pub. L. 96-511 (PRA) took effect on April 1, 1981. The law has two general objectives: 1) assure that agencies make only necessary information request of the public, and 2) eliminate those reporting burdens that are found to be unnecessary. It establishes a goal of reducing the existing paperwork burden by 25 percent in 3 years, and consolidates information policy functions within the Office of Management and Budget (OMB).

In light of the impending "sunset" of the CAB, and later, in view of the PRA, the Board has been reviewing the need for its reporting requirements and information systems. The purpose of this review has been to determine which reporting requirements could be eliminated or reduced at or before sunset and which should be transferred to other agencies. Decisions are based on whether the regulatory program that a reporting requirement supports transfers at sunset or expires, and on whether there is still a regulatory need for the report. The conclusions of this review are contained in the staff report "CAB Information Systems and Early Sunset" (Docket 40024), which the Board approved for public release on September 15, 1981.

The Board sent the staff report to the heads of other Federal agencies for their comments before rulemakings were initiated. It recognized that these agencies also use CAB data and that changing the data collection system might impair their programs. The Board also sent the staff report to airline presidents, State aeronautics agencies, hub airport executives and about 275 other interested persons to obtain their views and to let them know that the Board might stop collecting data that they are relying on.

Based on its review of the comments received, the Board has tentatively decided to eliminate some reporting requirements and to reduce the scope of others. In this notice, the Board proposes to eliminate two reporting requirements and to reduce one other. These are: (1) The report required of

...
§ 291.42. If a carrier holds both a 401 and 418 certificate it is presumed to be operating under the section 418 certificate (see § 291.20) unless it is also conducting passenger or international operations.

The staff report recommended that the reporting requirement for 418 carriers in § 291.42 be eliminated. It recommended that these carriers file instead a balance sheet, an income statement, and a summary statistical schedule under Part 241 if they operate large aircraft (aircraft with a capacity of more than 18,000 pounds). Carriers operating small aircraft would not have had any reporting requirements. The reporting obligations of 418 carriers would not have been affected.

The reporting requirements were originally designed to monitor the growth and health of all-cargo carriers during the initial stages of cargo deregulation. It has now been more than 5 years since Congress passed the law deregulating all-cargo service (P.L. 96–163, November 8, 1977) and more than 4 years since the Board issued the rule substantially lessening the extent of its regulation of domestic cargo transportation (ER–1080, 43 FR 53626, November 16, 1978). The Board therefore would favor revoking § 291.42.

The Department of Transportation (DOT), however, has asked the Board not to eliminate all reporting by all-cargo carriers. It stated that it has a need to monitor the level of demand for air cargo activity. Since a substantial portion of this activity is conducted by all-cargo carriers, DOT considered some data reporting by these carriers to be essential. It called for a scaled-down version of the current reporting requirements.

Since DOT will administer most of the Board’s remaining programs after sunset, the Board gives great weight to the views of that agency in these matters. The Board is therefore proposing to revise § 291.42 along the lines requested by DOT. Similar changes are proposed in the Schedule T–8 in Part 241 applicable to section 401 carriers. It will be less expensive to continue these reporting requirements in this way than to eliminate them, if DOT plans to reinstitute them later. Continuing these reporting requirements would also provide for continuity of the cargo data base. We are asking DOT to document for the record its need and economic justification for these reports.

Under this proposal, the reporting obligations of section 418 all-cargo carriers would be reduced to nine items—three profit and loss items (total operating revenues, total operating expenses, and operating income or loss) and six traffic items (total revenue ton-miles, revenue tons enplaned, available ton-miles, aircraft miles flown, aircraft departures performed, and aircraft departures cancelled). There would be approximately an 85 percent reduction in the level of current reporting by these carriers.

Audit and Reconciliation Reports

Part 248 of the Board’s rules (14 CFR Part 248) requires certificated carriers to submit to the Board, if an independent audit is made, two copies of the audit report. This part further requires each carrier to submit a special report reconciling the financial statements certified by a public accountant as part of the independent audit with those that the carrier filed with the Board as part of its Form 41 reports (§ 248.3). This reconciliation report was required to help resolve inconsistencies between the financial statements of the independent auditor and those in the Form 41 reports, and to help the Board detect possible inaccuracies in the Form 41 or violations of the uniform system of accounts.

The staff report recommended that the submission of the audit report be continued but that the reconciliation report be eliminated. No comments were received opposing these recommendations. The Board is therefore now proposing to eliminate § 248.3. Although there were formerly significant differences between the generally accepted accounting principles used by independent auditors and accounting principles that formed the basis for the Form 41 reports, this is no longer the case. By ER–860, 42 FR 19, January 3, 1977, the Board amended Part 241 of its rules (14 CFR Part 241) to minimize the differences between Board regulations and report forms on one hand and generally accepted accounting principles on the other. This reduces the likelihood of inconsistencies between the financial statements of the independent auditor and those in the Form 41 reports.

We are also proposing to make a technical change in §§ 248.2 and 248.4 in light of recent staff reorganizations.

Regulatory Flexibility Act

In accordance with 5 U.S.C. §605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354, the Board certifies that this rule will not, if adopted as proposed, have a significant economic impact on a substantial number of small entities. Most of the entities affected by this proposal would be large certificated air carriers, and the effect of the change
will be a moderate reduction in reporting costs.

List of Subjects in 14 CFR Parts 241, 248, 291, and 297

Accounting, Air Carriers, Antitrust, Air transportation—foreign, Freight Forwarders, Insurance, Reporting requirements.

Accordingly, the Board proposes to amend Chapter II of 14 CFR, as follows:

PART 241-[AMENDED]

1. In Part 241, Uniform System of Accounts and Reports for Certified Air Carriers, schedule T-8 of section 25 would be revised to read:

Section 25 Traffic and Capacity Elements


(a) This schedule shall be filed semiannually by all air carriers holding section 401 certificates that conduct all-cargo operations under certificates issued under section 418 of the Act.

(b) Data reported on this schedule shall include only results of operations conducted in all-cargo aircraft. Data shall be segregated between domestic all-cargo operations conducted within the geographic limitations of section 418 certificates and all other all-cargo operations.

(c) Statement of operations. This statement shall include the following elements:

(1) Total operating revenue, categorized as follows:

(i) Transport revenues from the carriage of property in scheduled and nonscheduled service;

(ii) Transport revenues from the carriage of mail in scheduled and nonscheduled service; and

(iii) Transport-related revenues.

(2) Total operating expenses; and

(3) Operating profit or loss, computed by subtracting the total operating expenses from the total operating revenues.

(d) Summary of traffic and capacity statistics. This summary shall include the following elements:

(1) Total revenue ton-miles, which are the aircraft miles flown on each flight stage times the number of tons of revenue traffic carried on that stage. They shall be categorized as follows:

(i) Property; and

(ii) Mail.

(2) Revenue tons enplaned, reflecting the total revenue tons of cargo loaded on aircraft during the semiannual period;

(3) Available ton-miles, reflecting total revenue ton-miles available for all-cargo service during the semi-annual period, and computed by multiplying aircraft miles flown on each flight stage by the number of tons of aircraft capacity available for that stage;

(4) Aircraft miles flown, reflecting the total number of aircraft miles flown in cargo service during the semiannual period;

(5) Aircraft departures performed, reflecting the total number of take-offs performed in cargo service during the semiannual period; and

(6) Aircraft hours airborne, reflecting the aircraft hours of flight (from take-off to landing) performed in cargo service during the semiannual period.

PART 248-[AMENDED]

2. In Part 248, Submission of Audit and Reconciliation Reports, § 248.2 would be revised by replacing “Bureau of Accounts and Statistics” with “Office of Comptroller”, as follows:

§ 248.2 Filing of audit reports.

(a) Whenever any air carrier subject to § 248.1 shall have caused an annual audit of its books, records, and accounts to be made by independent public accountants, such air carrier shall file with the Board's Office of the Comptroller, in duplicate, a special report consisting of a true and complete copy of the audit report submitted by such independent public accountants, including all schedules, exhibits, and certificates included in, attached to, or submitted with or separately as a part of, the audit report.

(b) Each air carrier subject to § 248.1 that does not cause an annual audit to be made of its books, records, and accounts for any fiscal year shall, at the close of such fiscal year file with the Board’s Office of the Comptroller, as a part of its periodic reports, a statement that no such audit has been performed.

§ 248.3 [Removed and Reserved] 3. Also in Part 248, § 248.3, Reconciliation of reports would be removed and reserved.

4. Also in Part 248, § 248.4 would be revised by replacing “Bureau of Accounts and Statistics” with “Office of the Comptroller”, as follows:

§ 248.4 Time for filing reports.

The report required by this part shall be filed with the Board's Office of Comptroller within 15 days after the due date of the appropriate periodic CAB Form 41 report, filed for the 12-month period covered by the audit report, or the date the accountant submits its audit report to the air carrier, whichever is later.

PART 291-[AMENDED]

5. In Part 291, Domestic Cargo Transportation, § 291.42 would be revised as follows:

§ 291.42 Section 418 financial and statistical reporting.

(a) General instructions.

(1) Carriers operating under section 418 certificates that are not subject to Part 241 of this chapter shall file Form 291, Statement of Operations and Statistics Summary for section 418 operations.

(2) The form required by this section shall be filed semiannually on February 10 and August 10 covering the six months ending December 31 and June 30 respectively. They shall be filed at the Office of the Comptroller, Information Management Division, B-46a, Civil Aeronautics Board, Washington, D.C. 20428.

(3) The carrier's chief accounting officer shall sign a certification attesting to the truth and completeness of the reports required by this section.

(b) Statement of Operations and Statistics Summary of section 418 operations. This statement shall include the following elements:

(1) Total operating revenue, categorized as follows:

(i) Transport revenues from the carriage of property in scheduled and nonscheduled service;

(ii) Transport revenues from the carriage of mail in scheduled and nonscheduled service; and

(iii) Transport-related revenues.

(2) Total operating expenses; and

(3) Operating profit or loss, computed by subtracting the total operating expenses from the total operating revenues.

(c) Summary of traffic and capacity statistics. This summary shall include the following elements:

(1) Total revenue ton-miles, which are the aircraft miles flown on each flight stage times the number of tons of revenue traffic carried on that stage.

They shall be categorized as follows:

(i) Property; and

(ii) Mail.

(2) Revenue tons enplaned, reflecting the total revenue tons of cargo loaded on aircraft during the semiannual period;

(3) Available ton-miles, reflecting the total revenue ton-miles available for all-cargo service during the semiannual period, and computed by multiplying aircraft miles flown on each flight stage by the number of tons of capacity available for that stage.
by the number of tons of aircraft capacity available for that stage;

(4) Aircraft miles flown, reflecting the total number of aircraft miles flown in cargo service during the semiannual period;

(5) Aircraft departures performed, reflecting the total number of take-offs performed in cargo service during the semiannual period; and

(6) Aircraft hours airborne, reflecting the aircraft hours of flight (from take-off to landing) performed in cargo service during the semiannual period.

PART 297—[AMENDED]

Subpart E—[Reserved]

6. In Part 297, Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations, Subpart E, Reporting Requirements, would be removed and reserved.


By the Civil Aeronautics Board.

Phyllis T. Kaylor,
Secretary.

BILLING CODE 6320–01–M
### STATEMENT OF OPERATIONS AND SUMMARY STATISTICS

**FOR SECTION 418 OPERATIONS**

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<tr>
<th>Operating Revenues and Expenses</th>
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CAB Form 291

### REPORT OF ALL-CARGO OPERATIONS

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Schedule 1-8

CAB Form 41

[FR Doc. 82-35143 Filed 12-27-82; 8:45 am]

BILLING CODE 6320-01-C
DEPARTMENT OF HEALTH AND HUMAN SERVICES
Food and Drug Administration
21 CFR Part 184
[Docket No. 78N-0023]

GRAS Status of Ammonium Bicarbonate, Ammonium Carbonate, Ammonium Chloride, Ammonium Hydroxide, and Mono- and Dibasic Ammonium Phosphate

Correction

In FR Doc. 82-28346 beginning on page 46113 of the issue for Friday, October 15, 1982, on page 46115, the third column, in § 184.1137, paragraph [a], the first line should read "(a) Ammonium carbonate ([NH₄]₂CO₃),"

BILLING CODE 1505-01-M

21 CFR Parts 333, 347, and 348
[Docket Nos. 75N-0183, 78N-0021, 78N-0301, and 80N-0476]

Topical Antimicrobial, Topical Antimicrobial, External Analgesic, and Skin Protectant Drug Products for Over-the-Counter Human Use; Advance Notices of Proposed Rulemaking; Extension of Time for Comments and Reply Comments

AGENCY: Food and Drug Administration.

ACTION: Advance notices of proposed rulemaking; extension of comment periods.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment periods to February 4, 1983, and the reply comment periods to March 7, 1983, for the advance notices of proposed rulemaking to establish conditions for the safety, effectiveness, and labeling of over-the-counter (OTC) topical antimicrobial, topical antifungal, external analgesic, and skin protectant drug products as the relate to OTC diaper rash drug products. FDA is taking this action in response to a request to allow more time for interested persons to address adequately issues related to diaper rash drug products as a product category and to consult experts so that more informed comments may be submitted to FDA.


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

21 CFR Part 356
[Docket No. 81N-0033]

Oral Health Care Drug Products for Over-the-Counter Human Use; Advance Notice of Proposed Rulemaking; Extension of Time for Reply Comments

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; extension of reply comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment period for the advance notice of proposed rulemaking to establish conditions for the safety, effectiveness, and labeling of over-the-counter (OTC) oral health care drug products. FDA is taking this action in response to a request to allow more time for interested persons to address adequately several important issues raised during the comment period.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, National Center for Drugs and Biologics (HFN-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857-301-443-4960.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 7, 1982 (47 FR 39408, 39412, 39436, and 39464), FDA issued four advance notices of proposed rulemaking to establish conditions under which OTC topical antifungal, topical antimicrobial, external analgesic, and skin protectant drug products used (1) for the treatment of diaper rash; (2) for the prevention of poison ivy, oak, and sumac; (3) for the treatment of fever blisters; (4) as male genital desensitizers; (5) as astrigents; and (6) as insect bite neutralizers are generally recognized as safe and effective and not misbranded. These notices reopened the administrative records for OTC topical antifungal, topical antimicrobial, external analgesic, and skin protectant drug products to allow for consideration of recommendations on drug products for the six drug categories listed above that were received from the Advisory Review Panel on OTC Miscellaneous External Drug Products. These notices relate to the development of monographs for topical antifungal, topical antimicrobial, external analgesic, and skin protectant drug products in general as part of the ongoing review of OTC drug products conducted by FDA.

Interested persons were given until December 8, 1982 to comment on each advance notice of proposed rulemaking and until January 5, 1983 for reply comments. FDA advised that comments and reply comments were limited to those that relate to drug products for the six drug categories listed above.

In response to the advance notices of proposed rulemaking, the Proprietary Association requested a 60-day extension of the comment periods in order to allow adequate time for the association to address what it considered a number of unique and unexpected problems concerning OTC drug products for the treatment of diaper rash. The Proprietary Association stated that, because categorization of data and a proposed monograph were not included in the Panel's statement on diaper rash drug products, and because of the complexity of the subject on diaper rash and diaper rash drug products, more time was needed by members of the Proprietary Association and other experts to study adequately and consider the best options for handling these products in the OTC drug review process.

FDA has carefully considered the request. The agency believes that information described in the request may be of assistance in adequately establishing the safety and effectiveness of OTC topical antifungal, topical antimicrobial, external analgesic, and skin protectant drug products used for the treatment of diaper rash and is in the public interest. The agency considers a general extension of the comment periods for 60 days to be appropriate. This extension applies only to comments on diaper rash drug products. Accordingly, the comment periods for submissions by any interested person are extended to February 4, 1983 and the reply comment periods are extended to March 7, 1983.

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding these advance notices of proposed rulemaking as they relate to OTC diaper rash drug products. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.


William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

BILLING CODE 4162-01-M
DATE: Written reply comments by January 21, 1983.

ADDRESS: Written reply comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–82, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E Gilbertson, National Center for Drugs and Biologics (HPN–610), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4960.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 30, 1982 (47 FR 32953), FDA issued an extension of comment periods for an advance notice of proposed rulemaking to establish conditions for the safety, effectiveness, and labeling of oral health care drug products for OTC human use. This advance notice of proposed rulemaking, which was based on the recommendations of the Advisory Review Panel on OTC Oral Cavity Drug Products, is part of the ongoing review of OTC drug products conducted by FDA. Interested persons were given until November 22, 1982, to comment on the advance notice of proposed rulemaking and until December 22, 1982, for reply comments.

The Proprietary Association has requested a 60-day extension of the reply comment period in order to allow adequate time for the association to analyze and evaluate comments submitted in response to the advance notice of proposed rulemaking and to prepare reply comments. The association stated that as of December 2, 1982, all comments were not yet available at the Dockets Management Branch, and that the number and length of the comments available on December 2, 1982, were extensive. The association pointed out that the reply comment period runs through the holiday season when many member company employees are not available to analyze and evaluate the comments fully. FDA has carefully considered the request. The agency believes that an extension of the reply comment period may be of assistance in establishing the safety and effectiveness of OTC oral health care drug products and is in the public interest. Because the comment and reply comment periods have already been extended once and because the submitted comments are now available at the Dockets Management Branch, the agency considers an additional extension of 20 days for the reply comment period to be appropriate. Accordingly, the reply comment period for submissions by any interested person is extended to January 21, 1983. Interested persons may submit to the Dockets Management Branch (address above) written reply comments to comments submitted in response to the advance notice of proposed rulemaking. Three copies of any reply comments are to be submitted, except that individuals may submit one copy. Comments and reply comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.


William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

DEPARTMENT OF LABOR
Occupational Safety and Health Administration
29 CFR Part 1910
[Docket No. S–010]
Servicing of Multi-Piece and Single Piece Rim Wheels; Extension of Comment Period
AGENCY: Occupational Safety and Health Administration (OSHA), Labor.
ACTION: Extension of time for submission of written comments.

SUMMARY: This notice extends the comment period for written responses to the questions OSHA presented in the notice of proposed rulemaking: “Servicing of Multi-Piece and Single Piece Rim Wheels” (47 FR 51159, November 12, 1982).

DATES: Written responses to the November 12, 1982 notice must be submitted on or before January 28, 1983.


SUPPLEMENTARY INFORMATION: On November 12, 1982, OSHA published in the Federal Register (47 FR 51159) a proposed rule, “Servicing of Multi-Piece and Single Piece Rim Wheels.” In the proposed rule, OSHA included requirements for the training of all tire servicing employees, establishing a safe practice procedure for servicing single piece rim wheels, using restraining devices or other means of securing the rim wheel during inflation and using only matching rim wheel components (tires and rims). The proposal also contains several minor amendments to the provisions currently applicable to multi-piece rim wheel servicing operations.

In the notice, OSHA requested written responses to many general and special issues pertaining to multi-piece and single piece rim wheels. The written responses were to have been received December 27, 1982.

OSHA has been asked to extend the comment period to allow the interested parties to have sufficient time to compile data and prepare responsive responses to the issues raised in the notice. OSHA believes that the information gathering process will be improved if all interested parties are granted additional time for submission of comments. Thus, OSHA has decided to extend the written comments period to January 28, 1983.

SEC. 8. 64 Stat. 1593 (29 U.S.C. 655), 29 CFR Part 1911; Secretary of Labor’s Order No. 8–70 (41 FR 25059).

Signed at Washington, D.C., this 22nd day of December 1982.

Thorne G. Auchter,
Assistant Secretary of Labor.

DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement
30 CFR Part 913
Public Comment Procedures and Opportunity for Public Hearing on Modified Portions of Illinois Permanent Regulatory Program
AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed Rule.

SUMMARY: OSM is announcing procedures for the public comment period and for requesting a public hearing on the substantive adequacy of certain program amendments submitted by the State of Illinois to satisfy conditions imposed by the Secretary of the Interior on the approval of the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

This notice sets forth the times and locations that the Illinois program and the proposed amendments are available...
for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements and the procedures that will be followed for the public hearing.

DATES: Written comments must be received on or before 4:00 p.m., January 27, 1983, to be considered in the decision on whether the proposed amendments satisfy the conditions of approval.

A public hearing on the proposed modifications will be held only if requested. If no one requests a public hearing, none will be held. If only one person requests a public hearing, a public meeting rather than a public hearing may be held, and a summary of the meeting included in the Administrative Record. If a hearing is requested and scheduled, a notice announcing the time and location of the hearing will be published in the Federal Register. Requests for a public hearing should be directed to Daniel Jones at the address and phone number listed below by 4:00 p.m., January 12, 1983.

ADRESSES: Written comments and requests for a hearing should be sent to: Daniel Jones, Field Office Director, Illinois Field Office, Office of Surface Mining, No. 4 Old Capitol Plaza North, Springfield, Illinois 62701, Telephone: (217) 922-4496.

Copies of the Illinois program, the proposed modifications to the program, a listing of any scheduled public meeting, and all written comments received in response to this notice will be available for public review at the OSM Field Office listed above and at the OSM Headquarters Office and the Office of the regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining, Administrative Record, Room 3315, 1100 L Street NW., Washington, D.C. 20240


FOR FURTHER INFORMATION CONTACT: Mr. Daniel Jones, Field Office Director, Illinois Field Office, Office of Surface Mining, No. 4 Old Capitol Plaza North, Springfield, Illinois 62701, Telephone: (217) 922-4496.

SUPPLEMENTARY INFORMATION:

Background:

The Illinois program was approved on June 1, 1982 (47 FR 23859-23863). The approval was conditioned on the correction of five minor deficiencies. In accepting the Secretary's conditional approval, Illinois agreed to correct deficiencies (a), (d), and (e) by December 1, 1982, and deficiencies (b) and (c) by June 1, 1983. Information pertinent to the general background, revisions, modifications, and amendments to the Illinois permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Illinois program can be found in the June 1, 1983 Federal Register.

Section 1816.64 Use of explosives: Public notice of blasting schedule.

(a) Blasting schedule publication.

(1) Each person who conducts surface mining activities shall publish a blasting schedule at least 30 days, but not more than 60 days, before beginning a blasting program in which blasts that use more than 5 pounds of explosives or blasting agent are detonated. The blasting schedule shall be published in a newspaper of general circulation in a locality of the blasting site.

Section 1817.65 Use of explosives: Surface blasting requirements.

(a) A resident or owner of a dwelling or structure that is located within one-half mile of any area affected by any surface blasting event shall be notified in writing at least 30 days, but not more than 60 days, before beginning a blasting program in which blasts that use more than 25 pounds of explosives or blasting agent are detonated. Such notification shall be accompanied by information advising the owner or resident how to request a pre-blast or condition survey.

(2) To satisfy condition (d), Illinois has amended its rule 1807.11(d) as follows:

Section 1807.11 Procedures for seeking release of performance bond.

(d) Inspection by Department. The Department shall inspect and evaluate the reclamation work involved within 30 days after receiving a completed application for bond release, or as soon thereafter as weather conditions permit. The surface owner, or lessee, or agent thereof shall be given notice of such inspection, and may participate with the regulatory authority in making the bond release inspection.

(3) To satisfy condition (e), Illinois has amended its rule 1843.12(f) and added a new 1843.12(i) as follows:

Section 1843.12 Notices of violation.

(f) Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

(2) Where there is a valid judicial or administrative order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

(3) Where the permittee cannot abate within 90 days due to a labor dispute;

(4) Where climatic conditions preclude abatement within 90 days, clearly:

(i) Would cause more environmental harm than would prevent; or

(ii) Requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

Where abatement of the violation within 90 days would create an imminent danger to the public or would cause, or could reasonably be expected to cause, significant imminent environmental harm to land, air, or water resources.

No extension granted under paragraph (h) exceed 90 days in length. Where the condition or circumstances which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of paragraph (h).

The Secretary seeks public comment on whether the amendments satisfy conditions (a), (d), and (e). If the amendments are approved, conditions (a), (d), and (e) will be removed from the Illinois program.

Additional Determinations

National Environmental Policy Act

Pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), this rule is not a major Federal action and therefore no environmental impact statement, environmental assessment, or FONSI need be prepared on this rulemaking.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act 5 U.S.C. 601 et seq. I certify that this proposed rule will not have a significant
economic impact on a substantial number of small entities.

Executive Order 12291

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

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

J. Steven Griles, Acting Director, Office of Surface Mining.

ACTION:
Proposed Rule; Cancellation of Public Comment Period and Hearing.

SUMMARY: On December 3, 1982, OSM announced the procedures for a public comment period and hearing on the substantive adequacy of Oklahoma's proposed Rules of Practice and Procedure. Those rules were intended to satisfy one of the conditions of the Secretary's approval of the Oklahoma State Program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On December 20, 1982, OSM received from the Oklahoma Department of Mines a request that OSM withdraw the Rules of Practice and Procedure from consideration as a formal program amendment at this time for the reasons set forth later in this notice.

In response to Oklahoma's request, OSM hereby gives notice that it is suspending the public comment period that was to end on January 3, 1983, and cancelling the public hearing that was scheduled to be held on December 27, 1982, in Tulsa, Oklahoma.

DATE: This cancellation is effective December 28, 1982.

ADRESSES: See "Supplementary Information" below for locations where copies of Oklahoma's withdrawal request is available for public inspection and copying.

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

SUPPLEMENTARY INFORMATION:

I. Availability of Copies

Copies of the Oklahoma Department of Mines' withdrawal request is available for review and copying at the OSM offices and the office of the state regulatory listed below. Monday through Friday, 8:00 a.m., to 4:00 p.m., excluding holidays:
Office of Surface Mining Reclamation and Enforcement, Room 5013, 1100 L Street NW, Washington, DC 20240
Office of Surface Mining Reclamation and Enforcement, 333 West Fourth Street, Room 3432, Tulsa, Oklahoma 74103
Oklahoma Department of Mines, 4040 North Lincoln Boulevard, Suite 107, Oklahoma City, Oklahoma 73105

II. Details of the Cancellation of the Public Comment Period and Hearing

On November 9, 1982, OSM received a revised set of Rules of Practice and Procedure from the Oklahoma Department of Mines. See OK–436. The Rules of Practice and Procedure were submitted as a formal state program amendment and were intended to meet the requirements of condition 30 CFR 936.11(b) of the Secretary's approval of the Oklahoma program. That condition requires Oklahoma to amend its Rules of Practice for hearings to make the public participation aspects of those rules no less effective than the public participation aspects of SMCRA, 30 CFR Chapter VII and 43 CFR Part 4.

OSM announced receipt of Oklahoma's proposed program amendment in the Federal Register on December 3, 1982, at 77 FR 54473–54474. The notice stated that the public hearing would be held, if requested, in Tulsa, Oklahoma on December 27, 1982, and that the comment period would close on January 3, 1983.

On December 20, 1982, OSM received a letter from Mr. Blaney Qualls, Director and Deputy Chief Mine Inspector of the Oklahoma Department of Mines. See OK–437. Mr. Qualls requested that the November 9, 1982, submission of Rules of Practice and Procedure be withdrawn from further consideration because those rules had not been adopted under the permanent rulemaking procedures of Oklahoma and to do so would require review by the Oklahoma Legislature during its 1983 session. Mr. Qualls also stated that the Department of Mines had made several revisions to the Rules of Practice and Procedure subsequent to the date when those rules were submitted to OSM as a State program amendment. The Department of Mines Director also indicated that he expects Oklahoma will promulgate permanent Rules of Practice and Procedure on or after February 3, 1983, unless the rules are disapproved by the Legislature.

OSM has decided to honor Oklahoma's request. For this reason, this notice has been issued to inform the public about the circumstances of Oklahoma's withdrawal request and to indicate that the public hearing and comment period have been cancelled. However, OSM will forward to Oklahoma copies of all comments received during the cancelled comment period for the State's consideration in redrafting its rules.

OSM notes that Oklahoma has until May 15, 1983, to meet the requirements of condition 30 CFR 936.11(b).

Wm. B. Schmidt, Assistant Director, Program Operations and Inspection.

ENVIRONMENTAL PROTECTION AGENCY

Hazardous Waste Management Program; Washington Application for Interim Authorization, Phase I and Phase II Components A and B

Correction

FR Doc. 82–34701 was published on page 57022 in the issue of Wednesday, December 22, 1982. It announced a public hearing and comment period. It was incorrectly published as a Rule document and should have appeared in the Proposed Rules section of the Federal Register.
Amendment and Clarification of the Test Procedures and Evaluation Criteria for Fuel Economy Retrofit Devices

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: To eliminate the present confusion regarding the Agency's authority to test fuel additives as part of its retrofit device evaluation program, this rulemaking proposes to revise the definition of "retrofit device" in EPA's fuel economy retrofit device evaluation regulations, 40 CFR Part 610, to include fuel additives and thereby make it consistent with the provisions of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2011. This rulemaking also proposes to revise the definition of a "manufacturer" so that the Agency can more efficiently administer the retrofit device evaluation program. Finally, this rulemaking proposes to require the Administrator to notify manufacturers when it intends to test their fuel economy retrofit device, and to afford them the right to comment on the test design and to observe the test sessions. This formally guarantees certain rights to manufacturers which heretofore had been courteously granted by the Agency as common practice during its evaluation programs.

DATES: Comments must be submitted on or before February 28, 1983.


FOR FURTHER INFORMATION CONTACT: Merrill W. Korth, Test and Evaluation Branch, Emission Control Technology Division, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone (313) 608-4299.

SUPPLEMENTARY INFORMATION: Since publication of the fuel economy retrofit device regulations, 40 CFR Part 610, 44 FR 17948 (March 23, 1979), EPA has evaluated over 30 fuel economy retrofit devices. The devices generally have been mechanical and/or electrical in design. Recently, however, EPA has been receiving requests to evaluate fuel additives as part of the retrofit device evaluation program. EPA considered it appropriate to evaluate fuel additives under the program because: (1) Section 511 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2011, (hereafter referred to as "MVICSAS") includes fuel additives within the definition of "retrofit device"; (2) MVICSA requires EPA to evaluate retrofit devices to determine their effect on fuel economy and emissions of air pollutants; (3) EPA has test procedures in place for evaluating regulated exhaust emissions and fuel economy; and (4) EPA has been interpreting the regulations to mean that fuel additives are included within the definition of retrofit device. For these reasons, EPA has evaluated and tested a number of fuel additives.

During its evaluation of fuel additives under its retrofit device testing program, EPA has found three areas of the existing fuel economy retrofit device regulations which require amendment and/or clarification. First, the preamble to the existing regulations states:

Although fuel additives are also included in this definition (referring to retrofit devices), EPA has not yet developed test protocols for fuel additives, therefore, these rules will not apply to fuel additives. Fuel additive protocols used in this program are being developed as a part of EPA's responsibility to evaluate the emissions impact of fuel additives under Section 211 of the Clean Air Act, 42 U.S.C. 7545 ("The Act") and will be published in a future rulemaking (44 FR 17948, March 23, 1979).

Some manufacturers of fuel additives have interpreted this to mean that EPA had not established test procedures for regulated emissions and fuel economy and that these procedures were being developed under Section 211 of the Act. A second area caused further confusion in that the preamble includes fuel additives as retrofit devices while the regulatory definition does not. Because of the regulatory definition of retrofit device, and the interpretation of the preamble, some manufacturers have questioned the legality of EPA's evaluating and testing of fuel additives. The Agency has always considered fuel additives to be included within the definition of retrofit device. In developing the current retrofit device regulations, the Agency intended to include the identical definition of retrofit devices as contained within the

MVICSA. However, because certain language was inadvertently omitted from the regulatory definition, fuel additives were not included within the definition of a retrofit device. EPA proposes to change the regulatory definition to specifically include fuel additives. In doing so, the regulatory definition will correspond to the MVICSA definition.

In addition, EPA intended that the preamble contrast the different purposes of the testing of fuel additives under the MVICSA with the testing of fuels and fuel additives under Section 211 of the Act, 42 U.S.C. 7545. Because this relationship was not adequately stated, the Agency would like to make this relationship clear.

(1) For the purposes of the MVICSA, the Agency intends to evaluate and test fuel additives as part of its retrofit device evaluation program to determine the effects of fuel additives on fuel economy and emissions. The Agency has test procedures in place which it believes are appropriate for measuring the effect of fuel additives on regulated emissions and fuel economy. These are the same test procedures that have been used for several years for the new vehicle certification and fuel economy programs and also for evaluations of other retrofit devices. Because the Agency believes these procedures are also appropriate for fuel additives, this proposal would make them applicable to the evaluation of fuel additives. Further, in accordance with 40 CFR 610.31(c), EPA will modify these test procedures, as needed, so that a technically correct evaluation of a particular fuel additive can be performed. Comments are specifically solicited on whether these protocols are appropriate for testing and evaluating fuel additives.

(2) For the purposes of Section 211 of the Act, 42 U.S.C. 7545, the Agency has not yet developed test protocols for determining the health effects of fuel additives. It should be emphasized that the fuel economy and emission testing of a fuel additive under the MVICSA would in no way fulfill the responsibility of the manufacturer to perform any health effects tests required by any regulations issued in the future under Section 211 of the Act.

(3) Test procedures and protocols for health effects are being developed under Section 211 of the Act, 42 U.S.C. 7545, and will be published in a later rulemaking.

The third area of the regulations requiring amendment and clarification is the definition of a "manufacturer" as it applies to retrofit devices. The current
regulation, 40 CFR Part 610.11(a)(8), defines a manufacturer as "a person or company who is engaged in the business of manufacturing, distributing, or selling retrofit devices for which a fuel economy improvement claim is made."

Further, 40 CFR 610.12 states that a retrofit device evaluation program will be initiated by the Federal Trade Commission, the EPA Administrator, or upon the application of any manufacturer of a retrofit device. Together, these two sections allow distributors and other persons selling a retrofit device to make application for an EPA evaluation of that device. In some instances, this has resulted in two or more individuals applying for an EPA evaluation of the same retrofit device. The multiple applications have led to confusion, delays, and additional paperwork. Moreover, one manufacturer (who actually produces or assembles the device) has protested that the MVICSA does not provide for the initiation of an evaluation by distributors or dealers (and perhaps even competitors) of the device, i.e., that the manufacturer (one who actually produces or assembles the device) is the only person outside the government who can initiate a device evaluation.

To remedy these problems, this rulemaking proposes to narrow the current regulatory definition by defining a "manufacturer" as one who actually produces or assembles a retrofit device. Therefore, distributors, dealers, and anyone else connected with a device will be precluded from initiating an evaluation unless authorized by the manufacturer. EPA does not expect this change to have a significant impact on distributors and dealers because few applications for evaluation have been made by distributors and dealers and in those instances the application was generally with the consent of the manufacturer.

Finally, this rulemaking proposes to formally assure manufacturers of fuel economy retrofit devices certain rights which until now have been courteously granted, as common practice, by the Agency during its evaluation programs. Specifically, this rulemaking proposes that the Administrator be required to make a reasonable effort to notify manufacturers when the Agency intends to test their devices, to afford them the opportunity to comment on specific test designs, and to attend the test sessions. By guaranteeing these rights, the Agency hopes that more manufacturers will be encouraged to participate in the Agency's testing of their device, early in the test program to resolve minor differences in opinion regarding test designs and thereby improving the evaluation program.

Administrative Designation

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because 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, or government agencies, or significant adverse effects on competition, employment, investment, productivity, or innovation.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Effect on Small Entities

I certify that this action will not have a significant economic impact on a substantial number of small entities. Thus, the Agency has not prepared an analysis under the Regulatory Flexibility Act.

Reporting and Recordkeeping Requirements

This rule creates no new reporting or recordkeeping requirements. It merely clarifies that fuel additives can be tested under the fuel economy retrofit program and makes no change to the existing reporting and recordkeeping requirements.

Availability of Documents

Copies of material relevant to this rulemaking are located in Public Docket No. A–62–01, at the U.S. Environmental Protection Agency, Central Docket Section (A–130), Gallery 1, West Tower Lobby, Waterside Mall, 401 M Street SW., Washington, D.C. 20460. The docket may be inspected between 8 a.m. and 4 p.m., Monday through Friday. A reasonable fee may be charged for copying services.

List of Subjects in 40 CFR Part 610

Fuel Economy, Gasoline, Motor Vehicles.

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.

CIVIL AERONAUTICS BOARD

[Docket No. 41163]

Newark-London Back-Up Case; Postponement of Prehearing Conference

Notice is hereby given that at the request of People Express Airlines, Inc., the prehearing conference in the above-titled matter assigned to be held on December 29, 1982, is postponed of January 4, 1983, at 10:00 a.m. (local time), in Room 1012, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 82-12-102 to that address.

By the Civil Aeronautics Board: December 21, 1982.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 82-35138 Filed 12-27-82; 8:45 am]
BILLING CODE 6335-01-M

CIVIL RIGHTS COMMISSION

Alabama Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 11:00 a.m. and will end at 2:30 p.m., on January 28, 1983, at The Madison, Fountain Room C, 120 Madison Avenue, Montgomery, Alabama 36104. The purpose of this meeting is to report, plan and implement selected Advisory Committee projects.

Persons desiring additional information or planning a presentation to the Committee should contact the Chairperson, Ms. Abigail Turner, P.O. Box 2983, Mobile, Alabama 36601. (205) 433-7400; or the Southern Regional Office, Citizens Trust Bank, Building, Room 302, 75 Piedmont Avenue, N.E., Atlanta, Georgia 30303, (404) 242-4391. The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.


John I. Binkley,
Advisory Committee Management Officer.

[FR Doc. 82-3509 Filed 12-27-82; 8:45 am]
BILLING CODE 6335-01-M

South Carolina Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 11:00 a.m. and will end at 3:30 p.m., on January 19, 1983, at The Gressette Senate Office Building, Room 201, State Capitol Complex, Columbia SC 29201. The purpose of this meeting is to discuss proposal for study on utilization of Chapter 2 educational block grant funds (plan implementation of project), report on Commission funding, and discuss program plans for FY 83.

Persons desiring additional information or planning a presentation to the Committee should contact the Chairperson, Dr. Oscar P. Butler, Jr., P.O. Box 1705, South Carolina State College, Orangeburg, SC 29117, (603) 536-7040; or the Southern Regional Office, Citizens Trust Bank Building, Room 302, 75 Piedmont Avenue, N.E., Atlanta, Georgia 30303, (404) 242-4391. The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.


John I. Binkley,
Advisory Committee Management Officer.

[FR Doc. 82-3509 Filed 12-27-82; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Toshiba Ampex Company, Ltd.; Order

The Office of Export Enforcement, United States Department of Commerce, initiated administrative proceedings pursuant to Section 11(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2401, et seq.) (Supp. III 1979) (the "Act") and Part 388, of the Export Administration Regulations (15 CFR Part 388, et seq. (1981)) (the "Regulations")
against Toshiba Ampex Company, Ltd. ("TOAMCO"), by issuing a Charging Letter alleging that, in the year 1978, TOAMCO violated §§ 387.2 and 387.4 of the Regulations.

The Department and TOAMCO have entered into a Consent Agreement whereby each party has agreed to settle this matter: (1) By a denial to TOAMCO of all export privileges, subject to certain exceptions, for a period ending three months from the date of this order, (2) by a further denial to TOAMCO of the privilege of participating in any transaction which requires a validated export license or reexport authorization, subject to certain exceptions, for a period ending one year from the date of this order, (3) by payment of a civil penalty by TOAMCO in the amount of $6,000, and (4) by undertaking certain corrective measures to ensure compliance with the Regulations.

The Hearing Commissioner approves the Consent Agreement.

It is therefore ordered

First. TOAMCO is denied export privileges, pursuant to Section 11(c)(2) of the Act, as follows:

A. For a period ending three months from the date of this Order, TOAMCO is denied all export privileges, except as authorized by Paragraph 1 of the Consent Agreement.

B. For a period ending one year from the date of this Order, TOAMCO is denied all privileges of participating, directly or indirectly, in any transaction which requires a validated export license or reexport authorization, except as authorized by Paragraph 1 of the Consent Agreement.

C. The last nine months of the denial period set forth in paragraph B. above is suspended pursuant to § 386.16(c) of the Regulations, to be waived at the end of this period, provided TOAMCO has committed no violation of the Act, the Regulations, or this Order.

Second. TOAMCO is assessed a civil penalty, pursuant to Section 11(c)(1) of the Act, in the amount of $6,000 to be paid within 20 days of the service of this Order, in the manner specified in the attached instructions.

Third. Within six months after the date of this Order, TOAMCO shall submit a written report to the Director, Office of Export Enforcement, setting forth in detail the steps TOAMCO has taken to implement the corrective measures specified in the Consent Agreement with respect to continuing operations. Because a copy of such report and accompanying documents may be available for public inspection and copying, TOAMCO may submit, for such public inspection, a duplicate of this report, marked "Public Inspection Copy," and may edit this copy to delete information that would be properly exempt from public disclosure under § 5 U.S.C. 552.

Fourth. The Charging Letter, the Consent Agreement and this Order shall be made available for public inspection pursuant to Section 386.20(c) of the Regulations.

This Order is effective immediately.

DATED: December 17, 1982.

Thomas W. Hoyt,

Hearing Commissioner.

[FR Doc. 82-3510 Filed 12-27-82; 8:45 am]
BILLING CODE 3510-25-M

National Bureau of Standards
(Docket No. 21206-243)

Proposed Federal Information Processing Standard for Codes for Identification of Hydrologic Units in the United States and the Caribbean Outlying Areas

Under the provisions of Public Law 89-306 and Executive Order 11717, the Secretary of Commerce is authorized to establish uniform Federal automatic data processing (ADP) standards. A proposed standard for coding and identification of hydrologic units is being recommended for Federal use. It represents Federal adoption of a data standard developed by the U.S. Geological Survey in cooperation with the U.S. Water Resources Council.

Prior to the submission of this proposal to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

The proposed Federal Information Processing Standard (FIPS) contains two parts: (1) An announcement part which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) the specifications which adopt the set of codes for identification of hydrologic units published in Geological Survey Circular 878-A by the U.S. Geological Survey. Only the announcement is provided in this notice.

Interested parties may obtain copies of the specifications from and submit comments in writing to the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234.

ATTENTION: Proposed FIPS for Hydrologic Units. To be considered, comments on this proposed standard must be received on or before March 28, 1983.

Written comments received in response to this notice plus written comments obtained from Federal departments and independent agencies 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 6628, Main Commerce Building, 14th Street between Constitution Avenue and E Street, N.W., Washington, D.C. 20230.

Persons desiring further information about the proposed FIPS for Hydrologic Units may contact Mr. Roy G. Saltman, Data Element and Representation Standards Program, Data Management and Programming Languages Division, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, telephone: 301/921-3491.


Ernest Ambler,

Director.

Federal Information Processing Standards Publication

1982 (Month) (Day)

Announcing the Standard for Codes for the Identification of Hydrologic Units in the United States and the Caribbean Outlying Areas


1. Name of Standard: Codes for the Identification of Hydrologic Units in the United States and the Caribbean Outlying Areas. (FIPS PUB—).


3. Explanation: This standard adopts the set of codes used to identify hydrologic units published in Geological Survey Circular 878-A. These codes identify a hydrologic system that divides the United States and Caribbean outlying areas into 21 major regions. These regions are further subdivided into approximately 2,500 units that delineate river basins having drainage areas usually greater than 700 square miles. The codes provide a standardized base for use by water-resources organizations in the storage, retrieval, and exchange of hydrologic data; the indexing and inventorying of hydrologic data and information; the cataloging of water-data acquisition activities; and a variety of other applications.

This data standard is one of a series developed under the leadership of the U.S. Geological Survey for use in automated earth-science systems. Earth sciences include
National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Halibut Moratorium; Public Hearings

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

ACTION: Public Hearings.

SUMMARY: The North Pacific Fishery Management Council (Council) and the National Marine Fisheries Service, Alaska Region, will hold public hearings on a proposed moratorium on participation in the Alaska halibut fishery. These will be the first three in a series of proposed hearings.

DATES AND LOCATIONS: The first hearing will be held in Juneau, Alaska, from 1:00 p.m. to 7:00 p.m. on Friday, January 7, 1983, in the Gastineau Room of the Baranof Hotel. The second hearing will be held in Petersburg, Alaska, from 1:00 p.m. to 7:00 p.m. on Saturday, January 8, 1983, in the City Council Chambers, Municipal Building. The third hearing will be held in Ketchikan, Alaska, from 3:30 p.m. to 7:00 p.m. on Sunday, January 9, 1983, in the Conference Room 207, State Office Building, 415 Main Street. Additional hearings planned for Seattle and Kodiak will be announced at a later date. Winter travel in Alaska is sometimes difficult, making it necessary to consider alternative hearing locations and times. Cancellations and new locations, if necessary, will be publicized locally by telephone, radio, newspaper, and television.

FOR FURTHER INFORMATION CONTACT: Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 3136 DDT (605 West Fourth Avenue, Room 166), Anchorage, Alaska 99510; telephone (907) 274-4563.

SUPPLEMENTARY INFORMATION: The proposed rule which is currently under Administration review would impose a moratorium on the entry of certain fishermen into the halibut fishery in waters under U.S. jurisdiction in the North Pacific Ocean International Pacific Halibut Commission (IPHC) management area 2C and 3 and that part of the Bering Sea and Aleutians south of 56°N Latitude (IPHC management area 4). As currently written, the proposed rule would forbid any person to harvest and sell halibut for commercial purposes from May 1, 1983, through December 31, 1985, who had not lawfully harvested and sold halibut from those waters between January 1, 1978, and December 31, 1982. This action is deemed necessary by the Council to prevent a surge of new participation in the fishery in hopes of obtaining rights under a limited entry system currently under Council consideration.


Joe P. Clem
Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 82-35141 Filed 12-27-82; 8:45 am]

BILLING CODE 3510-22-M

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB forms for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration

Title: Trade Opportunity Program (TOP)

Registration Form

Form Number(s): Agency-ITA-427P; OMB–0821-0067

Type of Request: Extension

Burden: 10,000 respondents; 2,250 reporting hours

Needs and uses: Companies subscribe to the TOP Notice Service of Bulletin Service which enables a company to receive trade opportunities according to its overseas interest. The form is used for registration purposes and it allows subscribers to select the specific trade opportunities information suited to their needs.

Affected public: U.S. manufacturers that subscribe to the TOP Notice Service or Bulletin Service.

Frequency: On occasion

Respondent’s obligation: Voluntary

OMB Desk Officer: Ken Allen, 395-3785.

Agency: International Trade Administration

Title: Titanium Sponge and Ingot

OMB Number(s): Agency-ITA-0945

Type of Request: New

Burden: 20 respondents; 20 reporting hours

Needs and uses: The Federal Emergency Management Agency needs capacity data for national stockpiling planning and industry planning. The Department of Defense will use the data for continuing mobilization planning programs.

Affected public: Producers of Titanium Sponge and Ingot

Frequency: Nonrecurring

Respondent’s obligation: Mandatory

OMB Desk Officer: Ken Allen, 395-3785.

Agency: International Trade Administration

Title: Reports of Requests for Restrictive Trade Practice or Boycott—Single for Multiple Transaction

Form Number(s): Agency-ITA–021P, 6051P, 6051P-a; OMB–0625–0036
Announcement of Public Availability of Report on Closed Meeting of Advisory Committees

AGENCY: Department of Commerce.


SUMMARY: The Department of Commerce has prepared its report on the activities of closed or partially-closed meetings of advisory committees as required by the Federal Advisory Committee Act and Office of Management and Budget Circular A-63 of March 1974.

ADDRESSES: Copies of the reports have been filed and are available for public inspection at two locations:


Department of Commerce, Central Reference and Records Inspection Facility, Room 8628, Herbert C. Hoover Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 377-4217, Attention Mrs. G. LeBoo or Mr. A. Pinkey.

SUPPLEMENTARY INFORMATION: The reports cover the closed and partially-closed meetings held in 1981 for 30 Department of Commerce advisory committees and several subcommittees, the names of which are listed below.

Committee (Subcommittee)
Advisory Committee on East-West Trade
Committee of Chairmen of the Industry Secor Advisory Committee (ISAC) for Trade Policy Matters (TPM)
Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee
Computer Systems Technical Advisory Committee
—Hardware Subcommittee
Electronic Instrumentation Technical Advisory Committee
Industry Functional Advisory Committee on Standards for Trade Policy Matters
ISAC on Aerospace Equipment for TPM
ISAC on Capital Goods for TPM
ISAC on Chemical and Allied Products for TPM
ISAC on Consumer Goods for TPM
ISAC on Electronics and Instrumentation for TPM
ISAC on Ferrous Ores and Metals for TPM
ISAC on Footwear, Leather, and Leather Products for TPM
ISAC on Industrial and Construction Materials and Supplies for TPM
ISAC on Lumber and Wood Products for TPM
ISAC on Nonferrous Ores and Metals for TPM
ISAC on Paper and Paper Products for TPM
ISAC on Services for TPM
ISAC on Small and Minority Business for TPM
ISAC on Textiles and Apparel for TPM
ISAC on Transportation, Construction, and Agricultural Equipment for TPM
ISAC on Wholesaling and Retailing for TPM
National Advisory Committee on Oceans and Atmosphere
New England Fishery Management Council
Numerically Controlled Machine Tool Technical Advisory Committee
Pacific Fishery Management Council
Semiconductor Technical Advisory Committee
—Discrete Semiconductor Device Subcommittee
—Microcircuit Subcommittee
—Semiconductor Manufacturing Materials and Equipment Subcommittee
Telecommunications Equipment Technical Advisory Committee
—Switching Subcommittee
Western Pacific Fishery Management Council

At the end of the year the Department of Commerce had 45 other advisory committees which did not hold any closed or partially-closed meetings during the reporting period.

FOR FURTHER INFORMATION CONTACT:

Dated: December 3, 1982

Marilyn S. McLennan
Chief Information Policy and Management Division, Office of Information Management.

[FR Doc. 82-35090 Filed 12-27-82; 8:45 am]
BILLING CODE 3510-CW-M
COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Intent To Impose Controls on Imports of Cotton, Wool, and Man-Made Fiber Textiles and Apparel from the People's Republic of China

The Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of September 17, 1980, as amended, between the Governments of the United States and the People's Republic of China is scheduled to expire on December 31, 1982. Negotiations have been held in an effort to reach a new agreement. To date, no new agreement has been reached; however, negotiations are expected to continue in an attempt to conclude a mutually acceptable agreement.

The purpose of this notice is to advise the public that, if no mutually satisfactory solution is reached by January 15, 1983, the United States Government will take further action under Section 204 of the Agricultural Act, to control imports of cotton, wool, and man-made fiber textile products from the People's Republic of China, effective on January 1, 1983.

In order to carry out the Arrangement Regarding International Trade in Textiles, the MFA, Section 204 authorizes regulation of textiles and textile products from non-signatories to the MFA. These import controls are deemed necessary to avoid frustration of the purposes of the MFA, under which the trade of signatory countries is controlled.

In addition, Article 8 of the MFA requires the United States, as a participating country, to ensure that trade in textiles and textile products from MFA member countries is not more severely restrained than trade in similar goods from non-participating countries which are causing or threatening market disruption.

For the above reasons, it has been determined that, should no arrangement be reached by January 15, 1983, the categories listed below should be controlled, effective as of January 1, 1983, for the merchandise exported during the periods indicated below, produced or manufactured in the People's Republic of China, at the following levels.

<table>
<thead>
<tr>
<th>Category</th>
<th>Limit</th>
<th>Time period (Jan. 1 to Dec. 31, 1983)</th>
</tr>
</thead>
<tbody>
<tr>
<td>334</td>
<td>$192,000</td>
<td></td>
</tr>
<tr>
<td>335</td>
<td>$265,000</td>
<td></td>
</tr>
<tr>
<td>336</td>
<td>$601,929</td>
<td></td>
</tr>
<tr>
<td>339</td>
<td>$338,351</td>
<td></td>
</tr>
<tr>
<td>340</td>
<td>$685,280</td>
<td></td>
</tr>
<tr>
<td>341</td>
<td>$1,098,964</td>
<td></td>
</tr>
<tr>
<td>342</td>
<td>$94,744</td>
<td></td>
</tr>
<tr>
<td>347/348</td>
<td>$1,414,672</td>
<td></td>
</tr>
<tr>
<td>445/446</td>
<td>$1,282,500</td>
<td></td>
</tr>
<tr>
<td>448</td>
<td>$13,060</td>
<td></td>
</tr>
<tr>
<td>631</td>
<td>$453,870</td>
<td></td>
</tr>
<tr>
<td>645/646</td>
<td>$785,495</td>
<td></td>
</tr>
<tr>
<td>649</td>
<td>$465,610</td>
<td></td>
</tr>
</tbody>
</table>

1 Square yards. 2 Dozen pairs. 3 Dozen.

The levels for Categories 335, 342, 445/446, and 645/646 may be adjusted for swing available from other categories under unilateral restraint up to the amounts specified, upon request by the Government of the People's Republic of China. The amount available for Category 335 is 16,550 dozen; for Category 342, 4,737 dozen; for Category 445/446, 12,625 dozen; and for 645/646, 35,010 dozen.

<table>
<thead>
<tr>
<th>Category</th>
<th>Limit (dozen)</th>
<th>Time period (July 30, 1982 to July 29, 1983)</th>
</tr>
</thead>
<tbody>
<tr>
<td>337</td>
<td>717,362</td>
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</tr>
<tr>
<td>340</td>
<td>944,132</td>
<td></td>
</tr>
<tr>
<td>641</td>
<td>759,096</td>
<td></td>
</tr>
<tr>
<td>648</td>
<td>833,162</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Category</th>
<th>Limit (dozen)</th>
<th>Time period (Nov. 26, 1982 to Nov. 25, 1983)</th>
</tr>
</thead>
<tbody>
<tr>
<td>323</td>
<td>41,538</td>
<td></td>
</tr>
<tr>
<td>345</td>
<td>59,446</td>
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</tr>
<tr>
<td>443</td>
<td>7,271</td>
<td></td>
</tr>
<tr>
<td>605</td>
<td>331,690</td>
<td></td>
</tr>
</tbody>
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<tr>
<th></th>
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<tbody>
<tr>
<td>351</td>
<td>452,168</td>
<td></td>
</tr>
<tr>
<td>363</td>
<td>179,416</td>
<td>244,468</td>
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<tr>
<td>634</td>
<td>$1,882,449</td>
<td>$1,718,506</td>
</tr>
<tr>
<td>636</td>
<td>$1,004,429</td>
<td>$1,718,506</td>
</tr>
<tr>
<td>647</td>
<td>$195,671</td>
<td>$623,720</td>
</tr>
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</table>

1 Dozen. 2 Numbers.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>350</td>
<td>24,586</td>
<td>74,547</td>
</tr>
<tr>
<td>447</td>
<td>20,834</td>
<td>53,599</td>
</tr>
</tbody>
</table>

| Chairman, Committee for the Implementation of Textile Agreements. | [FR Doc. 82-35516 Filed 12-37-82; 8:45 am] |

BILLING CODE 3150-25-M

COPRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 81-1]

1980 Cable Royalty Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Eddie W. Ray, Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Rm. 450, Washington, D.C. 20036, 202-653-5175.

SUPPLEMENTARY INFORMATION: 17 USC 111(d)(4) authorizes the Copyright Royalty Tribunal (Tribunal) to distribute royalty fees paid by cable systems to certain copyright owners who have filed claims with the Tribunal. The procedures for distribution of the cable royalty fees are set forth at 17 USC 111(d)(5).

The Tribunal on March 2, 1982 (47 FR 8806) issued public notice declaring the existence of a controversy concerning the distribution among copyright owners of cable royalty fees paid by cable systems for secondary transmission during 1980 pursuant to 17 U.S.C. 111(d)(5)[B]. In accordance with the conduct of the 1978 and 1979 proceedings, the Tribunal resolved that the distribution proceeding would be conducted in two phases. Phase I would determine the allocation of cable royalties to specific groups of claimants. Phase II would allocate cable royalties to individual claimants within each group.

In order to permit the Tribunal to proceed to Phase II of this proceeding, the Tribunal is publishing this summary statement of its Phase I determinations. In accordance with 17 U.S.C. 803(b), a full and complete statement of the Tribunal's conclusions of law, findings of fact, and other relevant determinations will be included in the Tribunal's final determination. Final distribution of cable royalties to claimants will be made at the conclusion of this proceeding. This notice does not constitute a "final determination" pursuant to 17 U.S.C. 803(b) of a "final decision" under 17 U.S.C. 803(e) and 17 U.S.C. 810.

The Tribunal, in its final determination, will provide for the following allocation to categories of the specified percentage of the sum available for distribution:

1. Motion Picture Association of America and other program syndicators including claimants for programs syndicated by commercial television—70%.
2. Joint Sports Claimants—15%.
3. Public Broadcasting Service (for all purposes)—5.25%.
5. Music Performing Rights Societies—4.50%.
6. Canadian Claimants (except radio)—7.5%.
8. Devotional Claimants—0.

No award for any U.S. commercial radio claim. The award for commercial television covers all copyrightable interests, except program syndication.

In preparation for Phase II of this proceeding, the Tribunal directs that not later than January 12, 1983, each claimant category shall notify the Tribunal of any voluntary agreements for distribution of royalty fees among the claimants within a category. The Tribunal further directs that not later than January 12, 1983 any claimant desiring to present evidence during Phase II shall notify the Tribunal of such intention, and the Phase II issues to be decided.

The Tribunal directs that not later than January 18, 1983 parties shall file with the Tribunal and exchange with other parties their direct, written cases, including list of witnesses, prehearing statements, any written witness statements, and all documentary evidence.

Phase II hearings will commence at 10:00 a.m., January 25, 1983 at a location to be announced. Dates and procedures for Phase II rebuttal cases will be announced later.

Commissioner Burg dissents from the Phase I royalty allocation.

All communications on the above matters shall be addressed to Edward W. Ray, Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW, Suite 450, Washington, D.C. 20036, (202) 653-5175.

Edward W. Ray,
Chairman.

[FR Doc. 82-35130 Filed 12-27-82; 8:45 am]
BILLING CODE 1410-01-M

DEPARTMENT OF DEFENSE
Department of the Army

Army Science Board, Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Date of meeting: Monday, January 31, 1983.

Times: 0830–1700 hours (Closed).

Place: The Pentagon, Washington, D.C.

Agenda: The Army Science Board Functional Subgroup on Planning, Concepts, and Management Support will meet for classified briefings and discussions on the present Army planning system in order to analyze this system with respect to long-range planning and materiel acquisition. This meeting will be closed to the public in accordance with Section 552(b) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d).

The classified and non-classified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Helen M. Bowen, may be contacted for further information at (202) 697–9703 or 695–3039.

Helen M. Bowen,
Administrative Officer.

[FR Doc. 82–35137 Filed 12–27–82; 8:45 am]
BILLING CODE 3510–05–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

ASVAB Validation Against Benchmark Industrial Business Occupations.

This contract is designed to validate the test performance of individuals who take the Armed Services Vocational Aptitude Battery by comparing that performance on the test to their work performance. This validation is necessary in order to provide pertinent job validity information to high school counselors who will be counseling students going into the world of work. Without this validity information, the credibility of the program will suffer greatly.

Vocational training organizations: 4,000 responses; 1,000 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,
OUSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 82–35166 Filed 12–27–82; 8:45 am]
BILLING CODE 3710–00–M
Records.

SYSTEM NAME:
A0901.02DASG

Addition

December 21,

Department of Defense.

OSD Federal Register Liaison Officer,
M.

represents a consolidation of records

subject to the Privacy Act of 1974.

Following identification of changes, the
amended notices are set forth in their
entirety below.

DATE:
Actions shall be effective January
27, 1983 unless public comments are
received which result in a contrary
determination.

ADDRESS:
Comments may be submitted to
Headquarters, Department of the
Army, ATTN: DAAG-AMR-S, Room
1146, Hoffman Building 1, 2941
Eisenhower Avenue, Alexandria, VA
22331.

FOR FURTHER INFORMATION CONTACT:
Mrs. Dorothy Karkanen, Office of The
Adjutant General, Department of the
Army, at the above address; telephone:
703/325-6193

SUPPLEMENTARY INFORMATION:
The Department of the Army inventory of
system notices for systems of records
subject to the Privacy Act of 1974
appeared in the Federal Register at:
FR Doc. 82-474 (47 FR 2544), January 18, 1982
FR Doc. 82-5277 (47 FR 8010), March 1, 1982
FR Doc. 82-11002 (47 FR 17324), April 22, 1982
FR Doc. 82-12993 (47 FR 20654), May 13, 1982
FR Doc. 82-16040 (47 FR 25780), June 15, 1982
FR Doc. 82-20780 (47 FR 33314), August 2, 1982
FR Doc. 82-23089 (47 FR 36800), August 24, 1982
FR Doc. 82-27594 (44 FR 44379), October 7, 1982
FR Doc. 82-30218 (47 FR 50065), November 4, 1982
FR Doc. 82-31421 (47 FR 51783), November 17, 1982

Supplementary Information: The system notice being added
represents a consolidation of records
described in 10 notices deleted herein.
None of the actions requires submission of
a report of a new or altered system,
pursuant to 5 U.S.C., 552a(o).

M. S. Healy,
OSD Federal Register Liaison Officer,
Department of Defense.
December 21, 1982.

Addition

A0901.02DASG

SYSTEM NAME:
Medical Facility Administration
Records.
Reason:
Records are covered by OPM/GOVT-1 system of records.

AO908.01DASG
System name:
Patient Accountability Files (44 FR 73924), December 17, 1979.

AO909.05DASG
System name:
Control Card Files (44 FR 73925), December 17, 1979.

AO910.02DASG
System name:
Patient Trust Fund and Baggage Files (44 FR 73925), December 17, 1979.

AO911.02DASG
System name:
Individual Patient Diet Files (44 FR 73926), December 17, 1979.

AO912.06DASG
System name:
Medical Services Account Files (44 FR 73925), December 17, 1979.

AO913.02DASG
System name:
Medical Prescription Files (44 FR 73928), December 17, 1979.

AO914.05DASG
System name:
Blood donor files (44 FR 73939), December 17, 1979.

AO915.02DASG
System name:
Patient Condition Reporting Files (44 FR 73930), December 17, 1979.

AO917.05DASG
System name:
Spectacle Issue and Receipt Files (44 FR 73933), December 17, 1979.

AO918.07DASG
System name:
Medical Facility Individual Reporting Files (44 FR 73931), December 17, 1979.

AO925.04DASG
System name:
Prosthetic Case Files (44 FR 73942), December 17, 1979.

AO926.05DASG
System name:
Prosthetic Case Files (44 FR 73942), December 17, 1979.

AO930.06DASG
System name:
Prosthetic Case Files (44 FR 73942), December 17, 1979.

AO931.24DAAG
System name:
NAP Employee Insurance Files (44 FR 73798), December 17, 1979.

Reason:
Records are consolidated in proposed system of records AO901.02DASG added in this Federal Register.

AO0901.02DASG
System name:
Records are consolidated in proposed system of records AO901.02DASG added in this Federal Register.

AO0901.02DASG
System name:
Records are consolidated in proposed system of records AO901.02DASG added in this Federal Register.

AO607.01bDAPE
System name:
After "Insurance", insert "and Retirement".

AO708.02aDAPC
System name:
Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Before the final paragraph, insert the following:
"Federal Emergency Management Agency: to facilitate participation of Army members in civil defense planning, training, and emergency operations pursuant to the military support of civil defense as prescribed by DOD Directive 3025.10 and Army Regulation 500-70.

"Other elements of the Federal Government pursuant to their respective authority and responsibility.

AO715.001aDAPC
System name:
Personnel Data Card (44 FR 73892), December 17, 1979.

AO607.01bDAPE
System name:
Delete "PL 591, 93rd Congress"; substitute therefor: "Pub. L. 95–595".

AO708.02aDAPC
System name:

AO925.04DASG
System name:
Records are covered by system notice AO607.01bDAPE, Accident and Incident Case Files: Army Safety Management Information System.

AO925.04DASG
System name:
Records are covered by system notice AO607.01bDAPE, Accident and Incident Case Files: Army Safety Management Information System.

AO926.05DASG
System name:
Records are covered by system notice AO607.01bDAPE, Accident and Incident Case Files: Army Safety Management Information System.

AO930.06DASG
System name:
Records are covered by system notice AO607.01bDAPE, Accident and Incident Case Files: Army Safety Management Information System.

AO931.24DAAG
System name:
Records are covered by system notice AO607.01bDAPE, Accident and Incident Case Files: Army Safety Management Information System.

AO708.02aDAPC
System name:
Records are covered by system notice AO607.01bDAPE, Accident and Incident Case Files: Army Safety Management Information System.

AO715.001aDAPC
System name:
Records are covered by system notice AO607.01bDAPE, Accident and Incident Case Files: Army Safety Management Information System.

AO715.001aDAPC
System name:
Records are covered by system notice AO607.01bDAPE, Accident and Incident Case Files: Army Safety Management Information System.

AO715.001aDAPC
System name:
Records are covered by system notice AO607.01bDAPE, Accident and Incident Case Files: Army Safety Management Information System.

AO715.001aDAPC
System name:
Records are covered by system notice AO607.01bDAPE, Accident and Incident Case Files: Army Safety Management Information System.

AO715.001aDAPC
System name:
Records are covered by system notice AO607.01bDAPE, Accident and Incident Case Files: Army Safety Management Information System.
Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Retention and disposal:

Change "8 years" to "1 year"; change period to semi-colon and add: "they are then shipped to the National Personnel Records Center (MPR), St. Louis, MO where they are retained 74 additional years before being destroyed."

Contesting record procedures:

After "determinations", delete remainder and insert in lieu thereof: "are contained in Army Regulation 340-21 (32 CFR Part 505)."

PUBLIC RECORDS SYSTEM

A0314.24DAAG

SYSTEM LOCATION:

Alphabetical Library Borrowers' File
(44 FR 73999), December 17, 1979.

Changes:

Substitute ".07b" for ".08a".

System name:

Library Borrowers/Users Profile Files.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry; substitute therefore: "By the Army to identify individuals authorized to borrow library materials; to insure that all library property is returned and individual's account is cleared; and to provide librarian useful information for selecting, ordering and meeting user requirements."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Retention and disposal:

Delete entry; substitute therefore: "Records are destroyed when no longer needed to obtain and/or control library materials."

System manager(s) and address:

After "Army", delete remainder and substitute therefor: "DAAG-LM, 2461 Eisenhower Avenue, Alexandria, VA 22331."

A0314.24DAAG

SYSTEM NAME:

Nonappropriated Fund Employee Insurance and Retirement Files.

SYSTEM LOCATION:


Eisenhower Avenue, Alexandria, VA 22331.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army nonappropriated fund (NAF) employees who participate in the NAF Group Insurance and Retirement Plan.

CATEGORIES OF RECORD IN THE SYSTEM:

Monthly and cumulative insurance and retirement deductions for each NAF employee, together with employee's name and SSN.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:


ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

By the Department of the Army to substantiate initial enrollment and subsequent changes in the NAF Group Insurance and Retirement Plan; to verify monthly deductions and to compute annuities, refunds and death benefits.

SAFEGUARDS:

Records are located in controlled areas within building having security guards; information is accessed only by individuals who are properly cleared and trained and have need therefor in the performance of official duties.

RECORD ACCESS PROCEDURES:

Individuals should address their request as specified in "Notification of record access" and furnish their full name, Social Security Account Number, NAF activity in which employed, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; NAF Personnel Offices.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0708.02aDAAG

SYSTEM NAME:

Official Military Personnel File.

SYSTEM LOCATION:


Secondary: US Army Enlisted Records and Evaluation Center; US Army Reserve Components Personnel and Administration Center; and National Personnel Records Center, General Services Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Each individual on active duty in the US Army in enlisted, appointed, or commissioned status, or in a USA or AUS retired status; each individual not on active duty who has a reserve status in an enlisted, appointed or commissioned status, or in a retired reserve status; and each individual who was an enlisted, appointed, or commissioned member of the US Army and who was completely separated by discharge, death, or other termination of his/her military status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include enlistment contract; Veterans Administration laws; physical evaluation board proceedings; military occupational specialty data; statement of service; qualification record; group life insurance election; emergency data; application for appointment; qualification/evaluation report; oath of office; medical examination; security questionnaire; application for retired pay; application for correction of military records; application for active duty; transfer or discharge report; active
duty report; voluntary reduction; line of duty and misconduct determinations; discharge or separation reviews; police record checks consent/declaration of parent/guardian; Army ROTC supplemental agreement; award recommendations; academic reports; casualty reports; US field medical card; retirement points; deferment; pre-induction processing and commissioning data; transcripts of military records; summary sheets review of conscientious objector; election of options; oath of enlistment extensions; survivor benefit plans; efficiency reports; records of proceeding, Title 10 U.S.C. section 815 appellate actions; determination of moral eligibility; waiver of disqualifications; temporary disability record; change of name; statements for enlistment; acknowledgments of service requirements; retired benefits; application for review of physical evaluation board and disability board; appointments; designations; evaluations; extensions; birth certificates; photographs; citizenship statements and status; educational constructive credit/ transcripts; flight status board reviews; assignment agreements/limitations/ waivers/election and travel; efficiency appeals; promotion/reduction recommendations/approvals; declinations/announcements; notifications/reconsiderations/ worksheets/elections/letters of notification to deferred officers and promotion passover notifications; absence without leave and desertion records; FBI correspondence; miscellaneous correspondence, documents, and military orders relating to military service including information pertaining to dependents, inter-service action, in-service details, determinations, reliefs, component; awards, pay entitlements, releases, transfers, and other military service data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
By the Department of the Army: to maintain, use, collect, and disseminate information with respect to an individual holding a military status or former military status, including regular reserve, retired, former member separated, or deceased. Information pertains to individual's former, current, and subsequent to active duty status; birth; citizenship; parentage; home of record; education; training; dependents; travel; language proficiency; former and current associations; brotherhood, memberships and related affiliations with organizations and like collective elements which service member divulges as having meaning, substance, or significance to his/her military service status; assignment history; and other related military experiences, qualifications, training, preferences, restrictions, and status actions.
Department of State: to issue passport/visa/to document persona non-grata status, attaché' assignments, and related administration of personnel assigned and performing duty with the Department of State.
Department of Treasury: to issue bonds; to collect and record income taxes.
Department of Defense: to authorize and consume all inter-service requirements relating to inter-service retirement requirements pertaining to the Army, Navy, Air Force, and Coast Guard (when the latter is operational under DOE).
Department of Justice: to file fingerprints; to perform intelligence functions.
Department of Agriculture: to coordinate matters related to its advanced education program.
Department of Labor: to accomplish actions required under Federal Employees Compensation Act.
Department of Health and Human Services: to provide services authorized by medical, health, and related functions authorized by 10 U.S.C., sections 1074-1079.
Nuclear Regulatory Commission: to accomplish requirements incident to nuclear accident/incident control officer functions.
American Red Cross: to accomplish coordination and complete service functions including blood donor programs and emergency investigative support and notifications.
Civil Aeronautics Board: to accomplish flight qualifications, certification, and licensing actions.
Federal Aviation Agency: to determine rating and certification (including medical) of in-service aviators.
General Services Administration: for records storage and archival services and for printing of directories and related material which includes personal data.
US Postal Service: to accomplish postal service authorization involving postal officers and mail clerk authorizations.
Veterans Administration: to provide information relating to benefits, pensions, in-service loans, insurance, and appropriate hospital support.

Bureau of Immigration and Naturalization: to comply with statutes relating to alien registration and annual residence/location.
Office of the President of the United States of America: to exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.
Federal Maritime Commission: to obtain licenses for military members accredited as captain, mate, and harbor master for duty as Transportation Corps warrant officer.
Each of the several States, and US possessions: to support state bonus applications; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard affairs.
Civilian educational and training institutions: to accomplish student registration, tuition support, tests, and related requirements incident to in-service education programs in compliance with 10 U.S.C., Chapters 102 and 103.
Social Security Administration: to obtain or verify Social Security Account Number; to transmit Federal Insurance Compensation Act deductions from Member's wages.
Department of Transportation: to coordinate and exchange necessary information pertaining to inter-service relationships between US Coast Guard and US Army when service members perform duty with the USCG.
Civil authorities: for compliance with 10 U.S.C. 814.
Department of the Air Force: to administer personnel support for Army members assigned for duty with the Air Force.
Department of the Navy: to administer personnel support for Army members assigned for duty with the Navy or Marine Corps.
US International Communication Agency: to investigate applicants for sensitive positions pursuant to Executive Order 10450.
Federal Emergency Management Agency: to facilitate participation of Army members in civil defense planning, training, and emergency operations pursuant to the military support of civil defense as prescribed by DOD Directive 3025.10 and Army Regulation 500-70.
Other elements of the Federal Government pursuant to their respective authority and responsibility.

Record of the identity, diagnosis, prognosis, or treatment of any client/
Inquiries for records of commissioned or warrant officers who were completely separated from the service after 30 June 1917, or enlisted members who were completely separated after 31 October 1912 should be sent to: Chief, National Personnel Records Center, General Services Administration, 8700 Page Boulevard, St Louis, MO 63132; (314) 268-7770.

Inquiries for records of commissioned officers or warrant officers who were completely separated after the service on active duty, or Army enlisted reservists not on active duty, or members of the National Guard who performed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status should be sent to: Commander, US Army Reserve Components Personnel and Administration Center, 8700 Page Boulevard, St Louis, MO 63132; (314) 268-7762.

RECORD ACCESS PROCEDURES:
Written requests should contain full name of individual, service identification number, current or former military status, and appropriate return address.

Personal visits may be made to the appropriate location based on the individual's status; individual should provide commonly acceptable identification such as valid driver’s license, employment identification, and verbal information relating to his/her military status.

CONTESTING RECORD PROCEDURES:
The Army’s rules for access to records and for contesting records are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:
Enlistment, appointment, or commission related forms pertaining to individual's military status; academic, training, or qualifications records acquired prior to or during military service; correspondence, forms, records, documents, and other relevant papers originating in or collected by DA staff agencies and commands, other Federal agencies, commission, boards, or authority, state and local governmental entities; civilian education and training institutions; and members of the public whom such information obtained directly concerns the military service member.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:
None.

SYSTEM NAME:
SIPERS Personnel Data Card.

SYSTEM LOCATION:
Each active Army unit furnishing personnel and strength data to the Department of the Army.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
Active duty Army members (commissioned, warrant, and enlisted).

CATEGORIES OF RECORDS IN THE SYSTEM:
DA Form 2475–2 which includes individual's name, Social Security Number, organization, unit, station, grade and pay group, bloodtype, duty assignment, duty phone, local address and phone number, name and address of next-of-kin, home of record, place of birth, awards, military occupational specialty evaluation data, and unit commander's name and grade. In addition, records include actions reported as SIPERS change report remarks on members assigned/attached to a military unit bearing on the legal and financial rights of the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
By the Department of the Army: to account for and maintain data relating to each assigned and/or attached active military person; to support the accounting of and reporting function incident to maintenance of the Officer Master File, Enlisted Master File, the Military Personnel Records Jacket, and the Official Military Personnel File; for personnel management actions and reports.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Paper records in file folders; magnetic tapes and disks.

RETRIEVABILITY:
By individual's surname; SSN.

SAFEGUARDS:
Records are maintained in secured areas accessible only to authorized military personnel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Microfiche stored randomly in electromechanical storage/retrieval devices. Temporary files consist of paper records in file folders; selected data automated for management purposes on tapes, disks, cards, and other computer media.

RETRIEVABILITY:
Alphabetically by surname; automated data retrieved by name, SSN, or ADP parameter; records of reserve, retired, and deceased persons retrieved by SSN terminal digit sequence.

SAFEGUARDS:
Records are maintained in areas accessible only to authorized personnel; automated records are further protected by authorized passwork system for access terminals, controlled access to operation locations, and controlled output distribution.

RETENTION AND DISPOSAL:
Microfiche and paper records are permanent; they are retained in active file until termination of service, held in inactive file in accordance with retention and retirement schedule and subsequently retired to the National Personnel Records Center, St. Louis, MO.

SYSTEM MANAGER(S) AND ADDRESS:

NOTIFICATION PROCEDURE:
Inquiries for records of commissioned or warrant officers (including members of Reserve Components) serving on active duty should be sent to:
Commander, US Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332; (703) 325–9808.

Inquiries for records of personnel centers, 200 Stovall Street, Alexandria, VA.

NOTIFICATION PROCEDURE:
Inquiries for records of personnel centers, 200 Stovall Street, Alexandria, VA.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Microfiche stored randomly in electromechanical storage/retrieval devices. Temporary files consist of paper records in file folders; selected data automated for management purposes on tapes, disks, cards, and other computer media.

RETRIEVABILITY:
Alphabetically by surname; automated data retrieved by name, SSN, or ADP parameter; records of reserve, retired, and deceased persons retrieved by SSN terminal digit sequence.

SAFEGUARDS:
Records are maintained in areas accessible only to authorized personnel; automated records are further protected by authorized passwork system for access terminals, controlled access to operation locations, and controlled output distribution.

RETENTION AND DISPOSAL:
Microfiche and paper records are permanent; they are retained in active file until termination of service, held in inactive file in accordance with retention and retirement schedule and subsequently retired to the National Personnel Records Center, St. Louis, MO.

SYSTEM MANAGER(S) AND ADDRESS:

NOTIFICATION PROCEDURE:
Inquiries for records of personnel centers, 200 Stovall Street, Alexandria, VA.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Microfiche stored randomly in electromechanical storage/retrieval devices. Temporary files consist of paper records in file folders; selected data automated for management purposes on tapes, disks, cards, and other computer media.

RETRIEVABILITY:
Alphabetically by surname; automated data retrieved by name, SSN, or ADP parameter; records of reserve, retired, and deceased persons retrieved by SSN terminal digit sequence.

SAFEGUARDS:
Records are maintained in areas accessible only to authorized personnel; automated records are further protected by authorized passwork system for access terminals, controlled access to operation locations, and controlled output distribution.

RETENTION AND DISPOSAL:
Microfiche and paper records are permanent; they are retained in active file until termination of service, held in inactive file in accordance with retention and retirement schedule and subsequently retired to the National Personnel Records Center, St. Louis, MO.

SYSTEM MANAGER(S) AND ADDRESS:

NOTIFICATION PROCEDURE:
Inquiries for records of personnel centers, 200 Stovall Street, Alexandria, VA.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Microfiche stored randomly in electromechanical storage/retrieval devices. Temporary files consist of paper records in file folders; selected data automated for management purposes on tapes, disks, cards, and other computer media.

RETRIEVABILITY:
Alphabetically by surname; automated data retrieved by name, SSN, or ADP parameter; records of reserve, retired, and deceased persons retrieved by SSN terminal digit sequence.

SAFEGUARDS:
Records are maintained in areas accessible only to authorized personnel; automated records are further protected by authorized passwork system for access terminals, controlled access to operation locations, and controlled output distribution.

RETENTION AND DISPOSAL:
Microfiche and paper records are permanent; they are retained in active file until termination of service, held in inactive file in accordance with retention and retirement schedule and subsequently retired to the National Personnel Records Center, St. Louis, MO.

SYSTEM MANAGER(S) AND ADDRESS:

NOTIFICATION PROCEDURE:
Inquiries for records of personnel centers, 200 Stovall Street, Alexandria, VA.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Microfiche stored randomly in electromechanical storage/retrieval devices. Temporary files consist of paper records in file folders; selected data automated for management purposes on tapes, disks, cards, and other computer media.

RETRIEVABILITY:
Alphabetically by surname; automated data retrieved by name, SSN, or ADP parameter; records of reserve, retired, and deceased persons retrieved by SSN terminal digit sequence.

SAFEGUARDS:
Records are maintained in areas accessible only to authorized personnel; automated records are further protected by authorized passwork system for access terminals, controlled access to operation locations, and controlled output distribution.

RETENTION AND DISPOSAL:
Microfiche and paper records are permanent; they are retained in active file until termination of service, held in inactive file in accordance with retention and retirement schedule and subsequently retired to the National Personnel Records Center, St. Louis, MO.

SYSTEM MANAGER(S) AND ADDRESS:

NOTIFICATION PROCEDURE:
Inquiries for records of personnel centers, 200 Stovall Street, Alexandria, VA.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Microfiche stored randomly in electromechanical storage/retrieval devices. Temporary files consist of paper records in file folders; selected data automated for management purposes on tapes, disks, cards, and other computer media.

RETRIEVABILITY:
Alphabetically by surname; automated data retrieved by name, SSN, or ADP parameter; records of reserve, retired, and deceased persons retrieved by SSN terminal digit sequence.

SAFEGUARDS:
Records are maintained in areas accessible only to authorized personnel; automated records are further protected by authorized passwork system for access terminals, controlled access to operation locations, and controlled output distribution.

RETENTION AND DISPOSAL:
Microfiche and paper records are permanent; they are retained in active file until termination of service, held in inactive file in accordance with retention and retirement schedule and subsequently retired to the National Personnel Records Center, St. Louis, MO.

SYSTEM MANAGER(S) AND ADDRESS:

NOTIFICATION PROCEDURE:
Inquiries for records of personnel centers, 200 Stovall Street, Alexandria, VA.
personnel who are trained, cleared, and have official need for the information.

RECORD SOURCE CATEGORIES:

- From the Enlistment Record (DD Form 4), Report of Separation (DD Form 214) for reenlistees, Extension of enlistment (DA Form 1695), Special Orders issued by enlistment/reenlistment authorities, personal information furnished by the individual, documents/records/forms originated within the reporting unit.

RECORD ACCESS PROCEDURES:

- Individual should write or visit the reporting unit of assignment/attachment, furnishing name, SSN, military or other normally acceptable identification, and details that will assist in locating the information sought.

CONTESTING RECORD PROCEDURES:

- The Army's rules for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

- System notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

- Authorized users of Army library facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Name, address, SSN, and telephone number of the user.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

- By the Army to identify individuals authorized to borrow library materials; to insure that all library property is returned and individual's account is cleared; and to provide librarian useful information for selecting, ordering, and meeting user requirements.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

- Card files, magnetic tapes, computer printouts.

RETRIEVABILITY:

- By user's surname, SSN, and/or residence.

SAFEGUARDS:

- Information is maintained in areas accessible only to authorized persons who have official need therefor. Libraries are secured during non-duty hours.

RETENTION AND DISPOSAL:

- Records are destroyed when no longer needed to obtain and/or control library materials.

SYSTEM MANAGER(S) AND ADDRESS:

- The Adjutant General, Headquarters, Department of the Army [DAAG-LM], 2461 Eisenhower Avenue, Alexandria, VA 22331.

NOTIFICATION PROCEDURE:

- Individuals desiring to know whether this system contains information on them should inquire of the specific library that provided services, furnishing their name, period in which a user, and any other information that would assist in locating applicable records.

RECORD ACCESS PROCEDURES:

- Individuals seeking access should follow the guidance in "Notification procedure".

CONTESTING RECORD PROCEDURES:

- The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

- From the individual.
CONTESTING RECORD PROCEDURES:
The Agency’s rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 226b (see also OSD Administrative Instruction Number 81).

RECORD SOURCE CATEGORIES:
Application and related forms from the individual applying for position.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:
None.

DEFENSE SCIENCE BOARD TASK FORCE ON INTERNATIONAL INDUSTRY-TO-INDUSTRY ARMAMENTS COOPERATION; ADVISORY COMMITTEE MEETING


At the meeting on 19 January 1983 the Defense Science Board Task Force on International Industry-to-Industry Armaments Cooperation will meet in closed session on 19 January 1983 in the Pentagon, Washington, D.C. The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

The conference will be held on January 16, 1983. Request to speak should be made by close-of-business on January 12, 1983. Written comments may be submitted in lieu of an oral presentation. These written comments will be due by close-of-business on January 18, 1983.

FOR FURTHER INFORMATION CONTACT:
Robert M. Stronach, General Counsel, Office of Fuels Programs, Economic Regulatory Administration, Room 18, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252-9482.

James K. White, Assistant General Counsel, Office of Fuels Programs, Economic Regulatory Administration, Room 18, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252-9482.

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Canadian and Mexican Natural Gas Imports; Conference

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Conference.

SUMMARY: The Department of Energy (DOE) will hold a public conference with respect to importation of Canadian and Mexican natural gas on January 18, 1983, beginning at 10:00 a.m., e.s.t., in the auditorium, Room GE-086, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., in which all interested persons are invited to participate. The purpose of the conference is to solicit comments on various issues related to overland importation of natural gas. The DOE is seeking information to define the nature and extent of concerns associated with these imports in current and future markets and how these concerns might be resolved. This conference will afford interested persons the opportunity to present their views to the DOE on these matters.

DATES: The conference will be held on January 18, 1983. Request to speak should be made by close-of-business on January 12, 1983. Written comments may be submitted in lieu of an oral presentation. These written comments will be due by close-of-business on January 18, 1983.

FOR FURTHER INFORMATION CONTACT: Robert M. Stronach, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-007 (RG-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-9482.

James K. White, Assistant General Counsel, Natural Gas and Mineral Leasing, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-6667.


Background

The DOE has the responsibility under section 3 of the Natural Gas Act to authorize imports of natural gas unless it finds that such imports will not be consistent with the public interest. The DOE has decided to solicit public
comment from interested parties on the nature and extent of concerns associated with natural gas imports from Canada and Mexico and to seek views on appropriate solutions. In recent import proceedings, we have found that imported gas will be needed in the U.S. in the future as long as the price is reasonable, and we have noted the long history of reliability of our overland gas imports. We are now seeking suggestions for an approach that would permit flexible prices responsive to market forces while at the same time ensuring that the public interest is served.

As of April 1, 1981, Canadian gas imports reached a uniform border price of $4.94 per MMBtu, after five increased that more than doubled the price in less than two years. The Canadian government sets the price of its gas exports based on the price of crude oil imported into eastern Canada adjusted for certain transportation costs. The price of Mexican imports is essentially tied to the price of a group of representative crude oils or the Canadian price, whichever is higher. These imports have experienced similar price increases since gas started flowing from Mexico in 1980. (All import prices are authorized by the U.S. on a case-by-case basis.)

Accordingly to intervenors in various import proceedings, letters received from the public, their Congressional representatives, industry and consumer groups, and others, Canadian and Mexican gas may be priced higher than supply, demand and completing oil prices would permit in a free market. Furthermore, lower cost domestic gas which is now available as a result of reduced demand is often not taken, while at the same time take-or-pay requirements in most contracts for Canadian and Mexican gas may cause pipelines to take the higher cost imported gas. Although imports account for less than 5 percent of the total U.S. natural gas supply, these imports may have a substantial impact on the price of gas in certain states and regions, particularly in the Midwest, the Northwest and California.

Matters To Be Discussed at Conference

The DOE is particularly interested in responses to the following questions. Persons wishing to comment are encouraged to focus on their region, state, service area, company, association of group, or on their interest as a producer, transporter, distributor, importer or consumer of natural gas. Participation by state public utility commissions is especially welcome.

(1) What types of alternative pricing systems, as opposed to a uniform border price, would permit imported natural gas to enter the domestic system at competitive prices? How would such a system assure flexibility to serve individual markets over time?

(2) How can a market-oriented, flexible pricing system for imports be implemented? How would state energy regulatory authorities view such a system?

(3) With more flexible prices, would take-or-pay or minimum bill requirements cease to be a serious concern? If so, why? If not, how could these problems be resolved?

(4) Has the cost of Canadian and Mexican gas made it more difficult to sell gas in U.S. markets? If so, how?

(5) Is a premium price appropriate for imported gas? If so, under what conditions?

Conference Procedures

The conference will be conducted in an informal manner using a panel approach to permit participation by various elements of the DOE and other concerned agencies. The presiding official will conduct the conference in a fashion that will facilitate the orderly presentation of interested persons' oral statements. The DOE reserves the right to select the persons to be heard at this conference, to schedule their respective statements, and to establish the procedures governing the conduct of the conference. All interested persons are encouraged to present their views: however, statements may be subject to time limitations if determined necessary by the presiding official.

Questions will be asked of persons presenting statements by members of the panel and a free dialogue between the panel and the speakers will be encouraged. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity for further comments, time permitting. The presiding official may also allow questions from the audience if time permits. Any further procedural rules needed for the proper conduct of the conference will be announced by the presiding official.

This conference will be open to the public. However, any person who wishes to be scheduled to make an oral statement at the conference should notify the Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, RG—43, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 522-482. (202) 525-9842, on or before January 12, 1982. This request should indicate the person (with address and telephone number) who wishes to speak and the amount of time desired. Any person making an oral presentation should bring at least 50 copies of their statement to the conference for distribution to other attendees. Persons wishing to speak at the conference who have not scheduled time will be given an opportunity to do so if time permits.

Any person who wishes to file written comments with the DOE in lieu of an oral presentation or in addition to their oral statement must make such filing with the Director, Natural Gas Division, By January 16, 1982, at the above address. The filing should be labeled "Overland Imported Natural Gas Comments." Any submission including information or data considered confidential by the person furnishing it must be so identified on the first page of the document, one copy only. The person also should submit a copy of the document with the confidential material excluded. The DOE reserves the right to determine the confidential status of the information or data and to treat it according to our determination. All comments (with confidential material excluded) received by the DOE will be available for public inspection in the Natural Gas Division Docket Room, Room GA—007, Forrestal Building, 1000 Independence Avenue Ave. SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

A transcript of the conference will be made and will be available for public review at the Natural Gas Division Docket Room at the above address between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Rayburn Hanzlik,
Administrator, Economic Regulatory Administration.

[FW Doc. 82-3061 Filed 12-23-82 12:09 pm] [BILLING CODE 4605-51-M]

Federal Energy Regulatory Commission

[Docket No. CP83-89-000]

Algonquin Gas Transmission Co.; Application

December 21, 1982.

Take notice that on November 5, 1982, Algonquin Gas Transmission Company (Applicant), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP83-89-000 an application

1This application was originally submitted as Algonquin Gas Transmission Company, Docket Nos. CP81-303, CP81-309, and CP77-329 and as Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company, Docket No. CP88-238.
pursuant to Section 7(c) of the Natural Gas Act, for amendment of four of its existing certificates of public convenience and necessity issued in Docket Nos. CP67-303, CP68-238, CP69-41, and CP75-349, all as more fully described in the application which is on file with the Commission and open to public inspection.

Applicant requests clarification or in the alternative amendment of the authorizations issued in Docket Nos. CP67-303, CP68-41, CP75-349, and CP68-238, so as to authorize the past and future transportation of excess quantities of natural gas on behalf of three of its existing transportation customers, Central Hudson Gas & Electric Corporation (Central Hudson), Orange and Rockland Utilities, Inc., (Orange and Rockland), and Consolidated Edison Company of New York, Inc., (Con Ed). Applicant asserts that it intends to perform the transportation on a best-efforts basis, pursuant to Section 7 of Applicant's Rate Schedule T-1.

Applicant states that it has been advised by the Commission's staff that the existing authorizations for the subject transportation services for Central Hudson and for Orange and Rockland are narrower than the language of Rate Schedule T-1 and do not authorize best-efforts transportation of gas tendered by Texas Eastern for the account of those Rate Schedule T-1 customers. Further, Applicant states that by the same reasoning it would appear that the Rate Schedule T-1 transportation of gas supplied by Tennessee Gas Pipeline Company, a Division of Tenneco Inc., for the account of either Central Hudson or the remaining Rate Schedule T-1 customer, Con Ed, may not be covered by the existing authorizations.

Applicant states no additional facilities are required to effectuate the transportation of natural gas proposed herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20428, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (19 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-35119 Filed 12-27-82; 8:45 am] BILLING CODE 6717-01-M

[Project No. 6789-001]

Atkins, Callie H.; Exemption From Licensing

Issued December 22, 1982.

A notice of exemption from licensing of a small hydroelectric project known as the Advance Mills Project No. 6789, was filed on November 28, 1982, by Callie H. Atkins. The proposed hydroelectric project would have an installed capacity of 100 kW and would be located on the North Rivanna River in Albemarle County, Virginia.

Pursuant to Sections 4.109(b) and 375.308(ss) of the Commission's regulations, and subject to the terms and conditions set forth in Section 4.111 of the Commission's regulations, the Director, Office of Electric Power Regulation, issues this notification that the above project is exempted from licensing as of December 25, 1982.

Lawrence R. Anderson,
Director, Office of Electric Power Regulation.

[FR Doc. 82-35113 Filed 12-27-82; 8:45 am] BILLING CODE 6717-01-M

[Project No. 5225-001]

Barrett, Harold T., Jr.; Surrender of Preliminary Permit

December 21, 1982.

Take notice that Harold T. Barrett, Jr., Permittee for the proposed Tallahassee Shoals Hydropower Project No. 5225, has requested that its preliminary permit be terminated. The permit was issued on December 17, 1981, and would have expired on May 31, 1983. The project would have been located on the Middle Oconee River in Clarke and Jackson Counties, Georgia.

The Permittee filed its request on November 29, 1982, and the surrender of the preliminary permit for Project No. 5225 is deemed accepted as of the date of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-35119 Filed 12-27-82; 8:45 am] BILLING CODE 6717-01-M

[Docket No. RE81-102-001]

Board of Public Utilities, Kansas City, Kansas; Application for Exemption

December 22, 1982.

Take notice that Kansas City Board of Public Utilities (KCB) filed an application on November 18, 1982 for exemption from certain requirements of Part 290 of the Commission's Regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act. Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or before June 30, 1984, information on the costs of providing electric service as specified in Sections 290.201(j), 290.302 (a) and (b), and 290.403(b).

In its application for exemption KCB states that it should not be required to file the specified data for the following reasons (in part):

(1) No record is kept of common utility plant and expenses.

(2) No accounting distinction is made between fixed versus variable maintenance expenses.

(3) KCB's load research program is still in the formative stages and the accuracy level specified in Section 290.403(b) will not be possible.

Copies of the application for exemption are on file with the Commission and are available for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official
State publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, on or before 46 days following the date this notice is published in the Federal Register.

Within that 45 day period such person must also serve a copy of such comments on: Robert L. Sadrakula, Kansas City Board of Public Utilities, 700 Minnesota Avenue, Kansas City, Kansas 66101.

Kenneth F. Plumb, Secretary.

[FR Doc. 82-35112 Filed 12-27-82; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RE80-2-001]  
Cliffs Electric Service Co.; Application for Exemption  
December 22, 1982.

Take notice that Cliffs Electric Service Company (Cliffs Electric) filed an application on November 5, 1982 for exemption from certain requirements of Part 290 of the Commission’s Regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act, Order No. 46 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or before June 30, 1984, information on the costs of providing electric service as specified in Subparts B, C, D, and E. On April 22, 1980, the Commission issued an order (Docket No. RE80-2-000) granting Cliffs Electric an exemption from the requirements of Subparts B, C, D, and E of Part 290 of the Commission's regulations for the filings that would otherwise have been required on or before November 1, 1980 and June 30, 1982. In addition, the order stated that future applications for exemption by Cliffs Electric shall include a statement as to whether the utility publish a summary of its retail service (industrial load consisting of iron mines owned or operated by applicant's parent company) is substantially the same as described in its previous application. Copies of the application for exemption are available to the Commission and are available for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official State publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, on or before 45 days following the date this notice is published in the Federal Register.

Within that 45 day period such person must also serve a copy of such comments on: William J. Madden, Jr., Esq., Debevoise & Liberman, 1200 17th Street, NW., Washington, D.C. 20036.

Kenneth F. Plumb, Secretary.

[FR Doc. 82-35114 Filed 12-27-82; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. ER83-185-000]  
Consumers Power Co.; Filing  
December 21, 1982.

The filing Company submits the following:

Take notice that Consumers Power Company (Consumers) on December 8, 1982, tendered for filing Amendment No. 1 to the Transmission Agreement between Consumers and the Dow Chemical Company (Transmission Agreement). The Transmission Agreement became effective May 25, 1979, and was accepted for filing by letter of September 11, 1979 in FERC Docket No. ER79-755. The proposed changes would supplement and modify paragraph No. 3 of the Transmission Agreement by substituting a $0.24 per kilowatt per week demand charge for the existing $0.19 per kilowatt per week demand charge. In addition the existing paragraph No. 12 of the Transmission Agreement is cancelled by Amendment No. 1 and a new paragraph No. 12 is substituted stating that unless earlier terminated by mutual agreement of Consumers and Dow-Midland the Transmission Agreement shall continue to be in effect until the effective date of the Agreement for Electric Service between Consumers and the Dow Chemical Company (dated June 21, 1978) or until July 31, 1984, whichever date is earlier.

Consumers states that the charge for transmission service by Consumers is $0.24 per kilowatt per week, based on the maximum scheduled one-hour kilowatt demand during the each week determined at Consumers point of interconnection with Detroit Edison. This rate is consistent with (1) Amendment No. 4 to the Consumers-Edison-Toledo Operating Agreement (Docket No. ER81-514-000 accepted for filing at FERC on 7/6/81) and (2) Amendment No. 16 to the Consumers-Edison-I&M Operating Agreement (Docket ER80-174 accepted for filing at FERC on October 17, 1980).

Copies of the filing were served upon the Dow Chemical Company, the Michigan Public Service Commission and the Detroit Edison Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed or on or before January 8, 1983. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb, Secretary.

[FR Doc. 82-35115 Filed 12-27-82; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. CP83-90-000]  
Gas Gathering Corp.; Application  
December 22, 1982.

Take notice that on November 16, 1982, Gas Gathering Corporation (Applicant), P.O. Box 519, Hammond, Louisiana 70404, filed in Docket No. CP83-90-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that on August 27, 1982, it entered into a transportation agreement with United in which Applicant agreed to transport up to 5,000
Mcf of natural gas per day for United. It is asserted that the gas subject to this agreement is produced from Davis Oil Company's St. Martin Land Company No. 1 well located in St. Martin Parish, Louisiana. Applicant states that it would transport the subject volumes approximately 27 miles and deliver equivalent volumes for United's account to Transcontinental Gas Pipe Line Corporation's Sherburne Meter Station in Pointe Coupee Parish, Louisiana.

It is asserted that Applicant assessed United 9.25 cents per MMTu for this service.

Any person desiring to be heard or to make any protest with reference to said application should apply on or before January 13, 1983 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

Kenneth F. Plumb, Secretary.

[FR Doc. 82-35137 Filed 12-27-82; 8:45 am]
BILLING CODE 6717-01-M

{Docket No. ER83-182-000}

Montana Power Co.; Filing

December 21, 1982.

The filing Company submits the following:

Take notice that Montana Power Company (Montana) on December 7, tendered for filing a Letter Agreement dated June 1, 1982. Between Montana and Western Area Power Administration (WAPA) providing for the sale of nonfirm energy.

Montana States that under the terms of this Letter Agreement, it will make available to WAPA nonfirm energy.

Montana indicates that the terms of the Letter Agreement have been agreed to by the parties.

Montana further states that the rate for nonfirm energy sold to WAPA under this Letter Agreement shall be between 11.08 ($0.01108) and 15.0 ($0.015) mills per kilowatt-hour.

An effective date of May 1, 1982 is proposed and waiver of the Commission's notice requirements is therefore requested.

Montana also tendered for filing a Notice of Cancellation of an agreement for the sale of nonfirm energy between Montana and Western Area Power Administration (WAPA). According to Montana this agreement has expired as of its own terms and has not been renewed.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 5, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb, Secretary.

[FR Doc. 82-35130 Filed 12-27-82; 8:45 am]
BILLING CODE 6717-01-M

{Docket No. CP70-195-002}

Natural Gas Pipeline Co. of America; Petition To Amend

December 22, 1982.

Take notice that on November 22, 1982, Natural Gas Pipeline Company of America (Petitioner), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP70-195-002 a petition to further amend the order, as amended, in Docket No. CP70-195 pursuant to Section 7 of the Natural Gas Act so as to reduce the contract transportation quantity for the transportation of natural gas for NICOR Supply Inc. (Supply), from 1,350 Mcf per day to 775 Mcf per day, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by order issued July 13, 1970, as amended, it was authorized to transport gas for Supply from the Green No. 1 well in Beckham County, Oklahoma, to Supply's parent company, Northern Illinois Gas Company. It is stated that production from the Green No. 1 well has decreased and that Supply has requested from Petitioner a reduction in the daily transportation quantity. Petitioner is obligated to transport to 775 Mcf per day.

Petitioner indicates that its Rate Schedule X-30 provides Supply with the right to change the contract transportation quantity only once.

Any person desiring to be heard or to make any protest with reference to said petition to amend should apply on or before January 6, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All such motions or protests should be filed on or before January 5, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb, Secretary.

[FR Doc. 82-35121 Filed 12-27-82; 8:45 am]
BILLING CODE 6717-01-M

1 This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.
New England Power Pool; Filing
December 21, 1982.

The filing Company submits the following:


NEPOOL Executive Committee indicates that the Amendment (1) changes Section 8.13(c) to clarify and expand the authority of the pool's Operations Committee to adopt and implement uniform rules and procedures for determining when a participant's generating unit's outage for maintenance shall be approved for Scheduled Outage Service and to determine whether the applicable Capability for a unit to be used in determining the amount of a participant's Scheduled Outage Service shall be the unit's Seasonal Capability or its Temporary Capability and (2) modifies Section 12.8 to conform to the changes being made in Section 8.13(c) and to resolve various questions of interpretation which have arisen regarding the rights of the participants to receive Scheduled Outage Service pursuant to this section.

NEPOOL proposes that the Amendment become effective as of December 1, 1982, and has requested waiver of the Commission's notice requirements.

Copies of the filing were served upon all electric utilities furnishing or receiving service under the NEPOOL Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) All such motions or protests should be filed on or before January 5, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb, Secretary.

[FR Doc. 82-35122 Filed 12-27-82; 8:45 am]
BILLING CODE 6717-01-M

Pennsylvania Power & Light Co.; Filing
December 22, 1982.

The filing Company submits the following:

Take notice that Pennsylvania Power & Light Company (PP&L) on December 3, 1982, tendered for filing as a rate schedule an executed agreement dated as of November 24, 1982 between PP&L and Orange and Rockland Utilities, Inc. ("Orange and Rockland"). The proposed rate schedule provides for the sale of interruptible power and energy by PP&L to Orange and Rockland.

The rate schedule provides for a maximum energy reservation charge rate of $24.70 per megawatt hour and an energy charge rate based upon the incremental cost of providing the energy. PP&L requests waiver of the Notice requirements of Section 205 of the Federal Power Act and Section 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective December 3, 1982.

PP&L states that a copy of its filing was served on Orange and Rockland and the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.212).

All such motions or protests should be filed on or before December 30, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb, Secretary.

[FR Doc. 82-35122 Filed 12-27-82; 8:45 am]
BILLING CODE 6717-01-M

United Gas Pipe Line Co.; Application
December 21, 1982.

Take notice that on November 23, 1982, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP83-102-000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to the sales of natural gas to Natural Gas Pipeline Company of America (Natural) for resale at a delivery point in Polk County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it has been authorized to make sales of natural gas to Natural for resale in volumes of up to 75,000 Mcf per day since November 14, 1962, and that these sales are made pursuant to United's Rate Schedule PL-N. United states that the service agreement between United and Natural for these sales expires on December 31, 1982, and that Natural has informed United that it does not desire to purchase gas subsequent to that date and requests United to seek abandonment of service.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 7, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing herein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if
the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-35125 Filed 12-27-82; 8:45 am]
BILLING CODE 6717-01-M

Coronado Shores Condominium Association #1; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 22, 1982.

On December 9, 1982, Coronado Shores Condominium Association #1, 1730 Avenida del Mundo, Coronado, California 92118, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to section 292.207 of the Commission's rules.

The topping cycle cogeneration facility will be located at the Applicant's address. The facility will consist of a reciprocating engine/generator set with heat recovery systems. The electric power production capacity of the facility will be 150 kilowatts. Recovered heat will be used in heating applications. The primary energy source to the facility will be natural gas. Installation of the facility is anticipated to begin in the spring of 1983. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-35118 Filed 12-27-82; 8:45 am]
BILLING CODE 6717-01-M
Employment in Nuclear-Related Activities’.


DATE: Written comments must be submitted on or before January 27, 1983.

ADDRESS: Comments should be sent to Ms. June S. Chewning at the address listed immediately below.

FOR FURTHER INFORMATION CONTACT: To obtain additional information or copies of the ER-828, contact Ms. June S. Chewning (ER-43), Senior Manpower Analyst, Office of Energy Research, Department of Energy, Mail Station: 3F-052, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 252-6641.

SUPPLEMENTARY INFORMATION:
I. Current Action
II. Differences Between Form ERDA-601 and Form ER-828
III. Request for Comments
I. Current Action

OER proposes Form ER-828, “A Survey of Occupational Employment in Nuclear-Related Activities,” designed to supersede Form ERDA-601 with a similar title, which expired effective April 1982. OER plans to implement Form ER-828 to continue the data series initiated by the Atomic Energy Commission and the Bureau of Labor Statistics in 1960. Form ER-828 would be conditional upon approval of the Office of Management and Budget. The data will be collected and processed by the Oak Ridge Associated Universities, Inc. OER will publish aggregated data from ER-828 in a highlights report of the findings, and will include information from the survey in publications incorporating data on other energy sources form various surveys conducted by OER. Publications will be distributed to requesters from industry, academia, the general public, DOE and other Federal and State government agencies. OER and other DOE components will use the information in conjunction with data from other sources in making projections of needs for nuclear trained manpower and for program planning.

The respondent burden, defined as person-hours required to complete a form, varies depending on firm size and personnel data keeping methods. However, the burden is estimated to be slightly less than for the predecessor Form ERDA-601, i.e., 2.5 hours instead of 2.75.

II. Differences Between Form ERDA-601 and Form ER-828

The data collected on Form ER-828 and its predecessor Form ERDA-601 are identical. A copy of Form ERDA-601 is included. The only differences in the data collections are:

A. The survey will be conducted for the Office of Energy Research rather than for the Office of Light Water Reactors.

B. The survey has been renamed, “A Survey of Occupational Employment in Nuclear-Related Activities,” and has been assigned a new form number, ER-828. All necessary changes in the form required to incorporate the new sponsor, title, and number, will be made.

C. Section 2 (“Scope of Survey”) will be revised. Questions concerning past establishment involvement in nuclear-related activities will be deleted. The wording and format of the question pertaining to present establishment involvement in nuclear-related activities will be reworded and redesigned to clarify that establishments not engaged in nuclear-related activities should complete section 2 and return the form. This allows deletion of out-of-scope establishments from the mailing list eliminating further contact.

D. Section 5 (“Occupational Employment in Nuclear or Nuclear-Related Activities”) will be revised. The section title and references to the survey will be changed as per the new survey title. The section 5 instructions will be reworded to remove ambiguity as to which workers should be included in the section 5 occupational breakdowns for total nuclear-related workers and nuclear-related workers conducting R&D. Because of small employment totals in past survey years, the occupational group, “medical scientists” will be deleted, as will its definition in the "Occupational Definitions" section. Medical scientists will be reported under “All other life scientists.”

E. Section 6 (“Employment in Nuclear or Nuclear-Related Activities by Industrial Segments”) will be revised. The section title and references to the survey will be changed as per the new survey title. The instructions will be revised to clarify the identification of the establishment’s principal nuclear-related activity. This revision will incorporate the methodology employed by Department of Labor and Department of Commerce establishment surveys by defining principal activities as that which involves the largest value of goods or services produced. The ambiguity of the present instructions concerning where the principal activity is to be listed will be clarified.

III. Request for Comments

Form ERDA-601 is reproduced following this notice. OER invites prospective respondents to comment on the planned revisions within 30 days of the publication of this notice. The following general guidelines are provided to assist in the preparation of responses:

(A potential data provider)

A. Are the instructions and definitions clear and sufficient?

B. Can the data be submitted using the definitions included in the instructions?

C. Can the data be submitted in accordance with the response time specified in the instructions?

D. How many hours, including time for preparation and administrative review, will your company require to complete and submit the form?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as development, assembly, equipment, ADP and other administrative costs directly attributable to providing this information.

F. How can the form be improved?

(As a potential user)

A. Do you need data at the levels of detail indicated on the form?

B. For what purposes would you use these data? (Be specific)

C. How could the form be improved to better meet your specific data needs?

D. Are there alternative sources of data and do you use them? What are their deficiencies?

OER is also interested in receiving comments from persons as to their views on the need for the collection of this information at all.

Comments submitted in response to this Notice will be included in the request for Office of Management and Budget approval of this data collection and will become a matter of public record.

Issued in Washington, D.C., December 17, 1982.

Yvoone M. Bishop, Director, Statistical Standards, Energy Information Administration.

BILLING CODE 6450-01-M
4.2 Total Employment

Were any employees of this and/or any part of the establishment hired under a sponsored summer student or comparable program? [ ]

If you checked "Yes" as of April 15, 1981, please complete the remainder of the questionnaire. If you checked "No", please return the questionnaire to avoid further correspondence.

3. Type of Establishment Identification (Check one.)

Type 1. Nonprofit Research Establishment [ ] (31)
Type 2. Private Industrial and/or Research Establishment [ ] (32)
Type 3. DOE-Owned Research Laboratory, Test Facility, and/or Production Facility [ ] (33)

4. Employment Summary

4.1 Total Employment. Enter the total number of employees of the establishment (both full- and part-time, salaried and hourly, production, maintenance, office-clerical, administrative, managerial, etc.) included all personal whether or not engaged in nuclear or nuclear energy-related activities. Exclude temporary employees hired under a sponsored summer student or comparable program......................... (069999)

4.2 Total Employment in Nuclear or Nuclear Energy-Related Activities. Of the number of employees reported above, how many were working in nuclear or nuclear energy-related activities? Include a reasonable pro rata distribution of indirect employees of the establishment whose work is necessary to the conduct of nuclear or nuclear energy-related activities. Exclude persons working alma in facility construction......................... (069999)

Remarks

ERDA-601 April 1981
For the occupations listed below, classify employees who worked in nuclear or nuclear-energy-related activities by the occupation in which they spent most of their time. Do not classify an employee in more than one occupation. Employees reported in column 1 who spend 50% or more of their time in research and development activities also should be reported in column 2. Definitions are provided on page 4.

### TABLE

<table>
<thead>
<tr>
<th>Occupation</th>
<th>As of April 15, 1981 Code</th>
<th>As of April 15, 1981 Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>MANAGERS (see definition)</td>
<td>10000</td>
<td>TOTAL ENGINEERS (see definition) 12000</td>
</tr>
<tr>
<td>TOTAL ENGINEERS (see definition)</td>
<td>21003</td>
<td>Draftsmen 32003</td>
</tr>
<tr>
<td>Chemical Engineers</td>
<td>21004</td>
<td>Electrical and Electronics Technicians 32004</td>
</tr>
<tr>
<td>Civil Engineers</td>
<td>21005</td>
<td>All Other Engineering Technicians 32005</td>
</tr>
<tr>
<td>Electrical and Electronics Engineers</td>
<td>21006</td>
<td>Physical Science Technicians 33001</td>
</tr>
<tr>
<td>Mechanical Engineers</td>
<td>21007</td>
<td>Life Science Technicians 33002</td>
</tr>
<tr>
<td>Nuclear and Reactor Engineers</td>
<td>21015</td>
<td>Health Physics Technicians and Radiation Monitors 33003</td>
</tr>
<tr>
<td>Metallurgical Engineers</td>
<td>21016</td>
<td>Senior Nuclear Reactor Operators (see definition) 34043</td>
</tr>
<tr>
<td>All Other Engineers</td>
<td>21017</td>
<td>Nuclear Reactor Operators (see definition) 34090</td>
</tr>
<tr>
<td>TOTAL MATHEMATICIANS (see definition)</td>
<td>22000</td>
<td>Auxiliary Reactor Operators (see definition) 34051</td>
</tr>
<tr>
<td>TOTAL PHYSICAL AND EARTH SCIENTISTS (see definition)</td>
<td>22001</td>
<td>All Other Technicians 35000</td>
</tr>
<tr>
<td>Chemists</td>
<td>22002</td>
<td>WELDERS WITH NUCLEAR CERTIFICATION (see definition) 58015</td>
</tr>
<tr>
<td>Geologists and Geophysicists</td>
<td>22003</td>
<td>ALL OTHER SKILLED CRAFT WORKERS (see definition) 60001</td>
</tr>
<tr>
<td>Physicists</td>
<td>22004</td>
<td>CLERICAL WORKERS (see definition) 60000</td>
</tr>
<tr>
<td>Metallurgists</td>
<td>22005</td>
<td>ALL OTHER WORKERS who spend more than 50% of their time in nuclear-related activities (service workers, sales workers, laborers, operators, and all other workers not classified above) (see definition) 88999</td>
</tr>
<tr>
<td>All Other Physical Scientists</td>
<td>22006</td>
<td></td>
</tr>
<tr>
<td>TOTAL LIFE SCIENTISTS (see definition)</td>
<td>22007</td>
<td></td>
</tr>
<tr>
<td>Biological Scientists</td>
<td>22008</td>
<td></td>
</tr>
<tr>
<td>Medical Scientists</td>
<td>22009</td>
<td></td>
</tr>
<tr>
<td>Health Physicists</td>
<td>22010</td>
<td></td>
</tr>
<tr>
<td>All Other Life Scientists</td>
<td>22011</td>
<td></td>
</tr>
<tr>
<td>ALL OTHER PROFESSIONAL WORKERS (see definition)</td>
<td>22012</td>
<td></td>
</tr>
<tr>
<td></td>
<td>22013</td>
<td></td>
</tr>
</tbody>
</table>

**SUMMATION INSTRUCTIONS:** The sum of all employment in nuclear or nuclear-energy-related activities, by occupation, entered in column 1 above must equal the entry in item 4.2.

### RESEARCH AND DEVELOPMENT

1. **Research and Development** includes research in the following types of activities: (a) Pursuit of planned research of new knowledge, whether or not the research has reference to a specific application. (b) Application of existing knowledge to problems involved in the creation of a new product or process, including work required to improve possible uses. (c) Application of existing knowledge to problems involved in the improvement of an existing product or process.

**Remarks**

1. **Remarks**

2. **Remarks**
6. Employment in Nuclear or Nuclear Energy-Related Activities by Industrial Segments

Distribute total employment in the Nuclear or Nuclear Energy-Related Activities (item 4.2) as of April 15, 1981, as follows:

Column 1 List each industrial segment (see definition A) in descending order of the number or proportion of employees in each segment as of April 15, 1981. The principal segment of the establishment should appear on line 6.1.

Column 2 List the segment number for each activity shown in column 1. (See definition A.)

Column 3 & 4 Distribute the total employment reported in item 4.2 by segment in column 3, if available. If employment data are not available, show a percentage distribution by segment in column 4 of the total employment reported in item 4.2. There should be an entry in either columns 3 or 4 for every segment shown in columns 1 and 2. The total of column 4, if used in lieu of column 3, should equal 100%.

<table>
<thead>
<tr>
<th>Industrial Segment Name</th>
<th>Industrial Segment No.</th>
<th>Distribution of Employees Engaged in Nuclear or Nuclear Energy-Related Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Number of Employees</td>
</tr>
<tr>
<td>6.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.4</td>
<td></td>
<td>Total = Item 4.2</td>
</tr>
</tbody>
</table>

*Principal nuclear or nuclear energy-related activity

Definitions for the Survey of Occupational Employment in Nuclear or Nuclear Energy-Related Activities

A. Industrial Segments

Nuclear or nuclear energy-related activities are comprised of the following industrial segments:

Code  Description

1. Uranium Mining: Reduction of uranium ores to concentrates. Excludes milling.

2. Processing and Enrichment of Reactor Fuel Materials: Refining of reactor fuel concentrates and conversion of refined fuel concentrates and recovered U-235/U-238 to uranium hexafluoride, enrichment of these fuel materials in the isotope U-235, followed by conversion to oxides, carbides, or other fuel compositions.

3. Production of Special Materials for Use in Reactors: Preparation and treatment of core structural and cladding materials such as zirconium, control rod materials such as hafnium and boron, and moderators such as heavy water and graphite.

4. Reactor and Reactor Component Design and Manufacturing: The design and/or manufacture of nuclear reactors and reactor components, including control rods and drives for power, test, and research purposes and missiles and space applications. Includes the assembly, testing, and disassembly of reactors and the testing of materials for reactor use.

5. Fuel Fabrication: Production of fuel forms (pellets, coated particles, etc.), and encapsulation of fuel forms in fuel assemblies.

6. Transportation of Nuclear Materials: Packaging and interfacility transportation of special nuclear materials, fabricated fuel assemblies, irradiated fuel assemblies, and other radioactive materials.


8. Design and Engineering of Nuclear Facilities: Design and engineering of all nuclear facilities, with the exception of those included in segments 4 (reactor and reactor component), 5 (fuel fabrication), 11 (nuclear instruments, gauges, and control devices), and 12 (accelerators). Excludes persons working on site in facility construction.

9. Nuclear Reactor Operation and Maintenance: Operation and maintenance of nuclear power production, test, and research reactors. Includes operation and maintenance of auxiliary systems for supply and treatment of power, air, water, etc.

10. Radiation Protection: Manufacturing, processing, and packaging of radiation, including radiochemicals, radiopharmaceuticals, and other radioactive labeled compounds. Includes irradiation of medical supplies, food, and agricultural products, and of commercial materials. Excludes in-plant processing incidental to another activity.

11. Design and Manufacturing of Nuclear Instruments, Gauges, and Control Devices: Design and manufacture of hot cell and laboratory instruments and monitoring and control devices, radiographic and teletherapy equipment, activation analysis systems, etc.

12. Accelerators: The design, engineering, manufacturing and/or construction, operation/maintenance, and research and development conducted for all classes of accelerators.

13. Environmental and Ecological Research and Evaluation: Activities to preserve, improve, or restore the natural environmental and ecological balance. Types of activities covered are thermal and effects of radiation on plants, animals, and marine life.

14. Biological and Medical Research: Research on the interaction of radiation with biological systems; use of radiation and radiological in diagnosis and treatment of illness; study of effects of low-level radiation and ingestion of toxic and radioactive materials on biological systems.

15. Reactor Research, Development, and Evaluation: Activities related to research, development, and demonstration of new fission reactor systems, components, fuels, moderators, etc. Includes development, conduct, evaluation, and analysis of reactor safety tests.

16. Commercial Laboratory Services: Provides laboratory service activities for other establishments. Examples of services are activation analysis, film badge service, mass spectrometry, radiography, and physical testing.

17. Health Physics and Industrial Safety: Establishes, evaluates, and monitors working conditions for compliance with industrial safety and radiation exposure standards.

18. Weapons Development and Production: Develops, designs, tests, and fabricates nuclear weapons.

19. Research and Development in Nuclear Energy: Investigations directed toward the development of new or further scientific knowledge of the subject. It also covers systematic application of scientific knowledge directed toward the creation of new or substantially improved processes, procedures, techniques, etc. Excludes research and development reported under segments 12, 13, 14, and 15, which are to be reported separately.

20. Industrial Radiography: Commercial radiographic services. Excludes in-plant radiography where its use is incidental to another activity.

21. Miscellaneous: Activities not classified in any of the above segments, such as consultant services, laundry services, and leasing services.
B. Occupational Definitions

Employees in the specialized occupations covered by this survey should be counted on a "Working As" basis, as of the date of the report (April 15, 1981), regardless of field of degree or whether they hold a college degree. For example, an employee trained as an Engineer but working as a Mathematician as of the date of the report should be reported as a Mathematician. Similarly, an employee trained as a Life Science Technician but working as a Health Physics Technician, include all employees in research and development, production, management, technical service, sales, and other positions which require them to use the indicated level of knowledge in their work. Exclude persons working on site in facility construction.

Managers (Occ. Code 10000): Include persons concerned with policymaking, planning, organizing, staffing, directing, and/or controlling activities that are common to many types of organizations, usually through subordinate supervisors who directly supervise the activities of the company or establishment work force and/or professional or technical management.

Engineers (Occ. Code 21000): Count all persons actually engaged in engineering work at a level which requires knowledge of engineering equivalent to that acquired through completion of a 4-year college course, regardless of whether they hold a college degree. Exclude persons trained in engineering, but currently employed in positions not requiring the use of such training.

Nuclear and Reactor Engineers (Occ. Code 21015): Count all engineers who are concerned with the release, control, and use of all types of energy from nuclear sources, including the design and development of fission or fusion reactors for the controlled release of nuclear energy, and the applications of radiation. Include Nuclear Reactor Operators.

Mathematicians (Occ. Code 22100): Count only those persons whose positions require a knowledge of mathematics equivalent to at least that acquired through a 4-year college course with a major in mathematics and who spend the greatest proportion of their time in development or application of mathematical techniques, regardless of whether they hold a college degree. Include Actuaries, Statisticians, and Computer Programmers only if they specialize in mathematical techniques. Exclude Accountants.

Physical and Earth Scientists (Occ. Code 22200): Count all Chemists, Physicists, Meteorologists, Geographers, Geophysicists, and other Physical and Earth Scientists who are actually engaged in scientific work at a level which requires a knowledge of the physical sciences equivalent to that acquired through completion of a 4-year college course with a major in one of the physical sciences, regardless of whether they hold a college degree. Exclude persons trained in the physical sciences but currently employed in positions not requiring the use of such training.

Life Scientists (Occ. Code 22300): Count all Health Physicists, Medical Scientists, Agricultural Scientists, Biological Scientists, and other Life Scientists who are actually engaged in scientific work at a level which requires a knowledge of the life sciences equivalent to that acquired through completion of a 4-year college course with a major in one of the life sciences fields, regardless of whether they hold a college degree. Exclude persons trained in the life sciences but currently employed in positions not requiring the use of such training. Exclude Psychologists. See definitions for Health Physicists and Biological Scientists.

Biological Scientists (Occ. Code 22303): Count all persons who meet the general requirements for "Life Scientists" and who spend the greatest proportion of their time in scientific work dealing with life processes other than those classified in the agricultural and medical sciences. Include Pathologists, Microbiologists, Pharmacologists, Toxologists, Botanists, Zoologists, etc.

Medical Scientists (Occ. Code 22305): Count only those Physicians, Dentists, Public Health Specialists, Pharmacists, and members of other professional functions who meet the general requirements for "Life Scientists" and who are concerned with the understanding of human diseases and improvements of human health, and spend the greatest proportion of their time in clinical or laboratory investigation or other research, production, technical writing, and related activities. Exclude from this category all practitioners—that is, all Medical Scientists who spend the greatest proportion of their time providing care to patients, dispensing drugs or services, or in diagnosis, etc. Persons working as Pathologists, Microbiologists, Pharmacologists, etc., should be excluded from the figures for Medical Scientists and included in the figures for Biologists.

Health Physicists (Occ. Code 22307): Count all persons who meet the general requirements for "Life Scientists or Engineers" and who are concerned with programs to protect plant and reactor personnel from radiation hazards; develop inspection standards, radiation exposure limits, and decontamination procedures, conduct tests to insure that radiation is not in excess of permissible limits; and design or modify such health physics equipment as detectors and counters to improve radiation protection.

All Other Professional Workers (Occ. Code 29000): Include all other workers concerned with such fields as law, education, labor, and business relations requiring a substantial educational preparation, usually at the university level.

Technicians (Occ. Code 30000): Count all persons actually engaged in technical work at a level which requires knowledge of engineering, mathematical, and physical or life sciences, comparable to that acquired either through study in technical institutes, junior colleges, or other formal post-high school training less extensive than a 4-year college course or through equivalent on-the-job training or experience. Some typical job titles are Draftsman, Surveyor, Laboratory Assistant, Physical Science Aide, and Economic Technician. All persons in positions that require the indicated level of knowledge should be counted, regardless of title or description in which employed. Computer Programmers who meet the above definition of Technicians should be reported under "All Other Technicians." Occupation Code 39000. Exclude those persons whose positions require knowledge of training consistent with the foregoing definition of Engineers, Mathematicians, or Scientists, and report them in the appropriate occupational category in the questionnaire. Also, exclude all craftsmen as Machinists and Electricals.

Nuclear Reactor Operators (Occ. Code 34049, 34050, 34051): Count all persons who spend the greatest proportion of their time in (a) the actual manipulation of the controls of a nuclear reactor, or (b) directing others in the manipulation of such controls. Under Nuclear Regulatory Commission (NRC) licensing regulations, the former are referred to as "operators" and the latter as "supervisory operators." Count as "auxiliary operators," those persons who are not licensed operators but work under the supervision of either nuclear or senior operators while preparing to fulfill NRC requirements to become licensed operators. A nuclear reactor is an apparatus, other than a nuclear weapon, designed or used to sustain nuclear fission and self-supporting chain reaction (i.e., power reactors, test reactors, production reactors, research reactors, critical assemblies). Exclude persons who spend the greatest proportion of their time as Nuclear Reactor Operators or in performing other functions of a professional, scientific, or engineering nature.

Welders with Nuclear Certification (Occ. Code 58015): Count all persons certified under NRC requirements who join surfaces, or otherwise make or repair structures or parts, using gas or electric welding, soldering, or brazing equipment with or without filler material; who fuse to join or shape lead products or parts, using a gas torch; who cut or perform metal, using gas or electric welding equipment.

All Other Skilled Crafts and Kindred Workers (Occupational Code 39900): Include all other skilled crafts and kindred workers in production, maintenance, repair, power plant, and material handling occupations that predominantly require thorough and comprehensive knowledge of processes involved in the work, the exercise of considerable independent judgment, usually a high degree of manual dexterity, and some instances, extensive responsibility for valuable product or equipment. Workers in these occupations usually become eligible by serving apprenticeships or completing extensive training periods. Occupations should be counted only if the specific vocational preparation required to perform them involves training or other preparatory in two years or more.

Classical Workers (Occ. Code 60000): Include office and plant clerical personnel. Office clerical work involves preparing, transmitting, transferring, systematizing, and preserving communications and records, collecting accounts and distributing information. Typical examples are Secretaries, Stenographers, Typists, File Clerks, Office Machine Operators, Bookkeepers, Cashiers, Messengers, and Telephone Operators. Plant clerical work involves planning, coordinating, or expediting of production and the flow of work; or the clerical aspects of receiving, storing, issuing, or shipping of materials, merchandise, supplies, or equipment.

All Other Workers (Occ. Code 68999): Include service and sales workers, operatives, laborers, and all other workers not classified above. Exclude persons working on site in facility construction.

[FR Doc. 82-5504 Filed 12-27-82; 8:45 am] BILLING CODE 6450-01-C
FEDERAL HOME LOAN BANK BOARD

[No. 82–811–A]

Prices for Federal Home Loan Bank Services


AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of prices for Federal Home Loan Bank services.

SUMMARY: The Office of District Banks and the Office of Policy and Economic Research of the Federal Home Loan Bank Board are publishing, pursuant to delegated authority, the prices charged by the Federal Home Loan Banks for (1) processing and settlement of items and (2) demand deposit services offered to member institutions.


SUPPLEMENTARY INFORMATION: Section 11(e) of the Federal Home Loan Bank Act (12 U.S.C. 1431(e)) authorizes the Federal Home Loan Banks (1) To accept demand deposits from member institutions, (2) to be drawees of payment instruments, (3) to engage in collection and settlement of payment instruments drawn on or issued by members and eligible institutions, and (4) to engage in such incidental activities as are necessary to the exercise of such authority.

Section 11(e)(2)(B) of the Bank Act (12 U.S.C. 1431(e)) requires the Federal Home Loan Banks: (1) To accept demand deposits from member institutions, (2) to be drawees of payment instruments, (3) to engage in collection and settlement of payment instruments drawn on or issued by members and eligible institutions, and (4) to engage in such incidental activities as are necessary to the exercise of such authority.

The services described in the attached schedules are not identical for any two Banks, as each Bank’s program is tailored to meet the needs of the member institutions in the Bank’s district. Furthermore, the volume of services rendered varies significantly among the districts, with the result that the costs of providing the services also vary from district to district. In light of these considerations, the Board continues its practice of approving separate district fee structures rather than adopting a uniform pricing scheme. This policy is consistent with the Congressional intent that pricing encourage competition.

It is not required that each processing step or transaction performed by a Bank be specifically priced. This policy permits the Banks to establish fee schedules that are in line with the marketing practices of providers of correspondent services in each district. However, total revenue from services must be sufficient to cover costs. In the case of item processing and settlement services, fees must be sufficient to recover all start-up costs within five years. Demand deposit services expenses must be recovered annually, because the Banks have provided these services for many years, and thus have attained mature service volumes.

The price analysis incorporates an imputed “cost of capital adjustment factor” of fifteen percent. This adjustment factor is required by 12 CFR 534.6(b)(2) in order to yield a fee structure competitive with prices charged by private-sector services. The current fifteen-percent figure was derived in accordance with a formula which is described in detail at 45 FR 64161 (September 29, 1980).

The directors of the Office of District Banks and the Office of Policy and Economic Research of the Federal Home Loan Bank Board hereby give notice of the following fee schedules for Federal Home Loan Bank services:

Schedule A: Item Processing and Settlement Services

Federal Home Loan Bank of New York

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Settlement</td>
<td>$75.00</td>
</tr>
<tr>
<td>Statement charge (check number)</td>
<td>$0.025</td>
</tr>
<tr>
<td>Statement charge (non-check number)</td>
<td>$0.05</td>
</tr>
<tr>
<td>Statement charge (counter service)</td>
<td>$0.10</td>
</tr>
<tr>
<td>Statement charge (special service)</td>
<td>$0.25</td>
</tr>
<tr>
<td>Statement charge (other service)</td>
<td>$0.30</td>
</tr>
<tr>
<td>Statement charge (specialized service)</td>
<td>$0.50</td>
</tr>
<tr>
<td>Statement charge (prior service)</td>
<td>$1.00</td>
</tr>
<tr>
<td>Statement charge (current service)</td>
<td>$2.00</td>
</tr>
<tr>
<td>Statement charge (future service)</td>
<td>$5.00</td>
</tr>
<tr>
<td>Statement charge (other service)</td>
<td>$10.00</td>
</tr>
</tbody>
</table>

1 No charges.

FEDERAL HOME LOAN BANK OF ATLANTA

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Settlement only (per month)</td>
<td>$50</td>
</tr>
<tr>
<td>Daily delivery:</td>
<td></td>
</tr>
<tr>
<td>Same day</td>
<td>$0.03</td>
</tr>
<tr>
<td>Next day</td>
<td>$0.05</td>
</tr>
<tr>
<td>Bulk filing</td>
<td>$0.04</td>
</tr>
<tr>
<td>Statement matching</td>
<td>$0.07</td>
</tr>
<tr>
<td>Truncation</td>
<td>$0.03</td>
</tr>
<tr>
<td>Return items</td>
<td>$2.50</td>
</tr>
<tr>
<td>Caution/Alert (stop payment)</td>
<td>$2.00</td>
</tr>
<tr>
<td>Facsimile:</td>
<td></td>
</tr>
<tr>
<td>Large Dollar</td>
<td>$2.00</td>
</tr>
<tr>
<td>On Request</td>
<td>$2.00</td>
</tr>
<tr>
<td>Bookkeeping &amp; Account</td>
<td>$2.00</td>
</tr>
<tr>
<td>Number Rejected</td>
<td>$2.00</td>
</tr>
<tr>
<td>Over-the-counter items</td>
<td>$0.01</td>
</tr>
<tr>
<td>Photocopies</td>
<td>$2.50</td>
</tr>
<tr>
<td>Passbook (check number): Special Accounts</td>
<td>$0.01</td>
</tr>
</tbody>
</table>

Notes: Prices for all services include data transmission to on-line or in-house processors. Actual item delivery expense will be charged to the association as incurred, including postage under “Statement Matching” above. Caution/Alert (stop payment) items that are ultimately returned will incur an additional charge of $2.50 each. The minimum monthly billing for services options (other than Settlement Only) is $75.00.

1 On December 18, 1982, the Board proposed to substitute a ten-year rule for this five-year requirement. Board Resolution 82–411, published in the Proposed Rules Section of the Federal Register of December 23, 1982.
### Monthly Recap (per item)

<table>
<thead>
<tr>
<th>Items/month</th>
<th>Daily Return</th>
<th>Bulk Filing</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
</tr>
<tr>
<td></td>
<td>Unsorted</td>
<td>Sorted</td>
</tr>
<tr>
<td>a. 0 to 5,000</td>
<td>$0.0350</td>
<td>$0.0400</td>
</tr>
<tr>
<td>b. 5,001 to 25,000</td>
<td>$0.0300</td>
<td>$0.0250</td>
</tr>
<tr>
<td>c. 25,001 to 50,000</td>
<td>$0.0250</td>
<td>$0.0200</td>
</tr>
<tr>
<td>d. 50,001 to 75,000</td>
<td>$0.0200</td>
<td>$0.0200</td>
</tr>
<tr>
<td>e. 75,001 to 100,000</td>
<td>$0.0150</td>
<td>$0.0200</td>
</tr>
<tr>
<td>f. 100,001 to 125,000</td>
<td>$0.0125</td>
<td>$0.0175</td>
</tr>
<tr>
<td>g. 125,001 and over</td>
<td>$0.0100</td>
<td>$0.0150</td>
</tr>
</tbody>
</table>

### Special Services

1. Check Retrieval of Original Item
   - $1.50
2. Photocopy (per item)
   - $1.00
3. Advertising Insertion (per item)
   - $0.01
4. Printed—Return Items (per item)
   - $0.05
5. Statement Stuffing Service for Truncated Statements (per statement)
   - $0.09
6. Statement Stuffing of Deposit Tickets and Dishonored Notices (per item)
   - $2.50
7. Return items (per item)
   - $0.00
8. Settlement of NOW item...
   - $0.00
9. Settlement Only (per month flat fee)
   - $0.00

*Current demand accounts utilizing I F T S.*

### Federal Home Loan Bank of Cincinnati

#### Monthly Volume

<table>
<thead>
<tr>
<th>Items/month</th>
<th>Safekeeping (cents)</th>
<th>Truncation, daily or cycled (cents)</th>
<th>Complete (cents)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to 5,000</td>
<td>4.5</td>
<td>5.3</td>
<td>7.7</td>
</tr>
<tr>
<td>5 to 10,000</td>
<td>3.7</td>
<td>4.8</td>
<td>7.5</td>
</tr>
<tr>
<td>10 to 15,000</td>
<td>3.6</td>
<td>4.4</td>
<td>7.3</td>
</tr>
<tr>
<td>15 to 25,000</td>
<td>3.1</td>
<td>3.7</td>
<td>7.2</td>
</tr>
<tr>
<td>25 to 50,000</td>
<td>3.0</td>
<td>3.3</td>
<td>7.0</td>
</tr>
<tr>
<td>50 to 75,000</td>
<td>2.9</td>
<td>3.0</td>
<td>6.6</td>
</tr>
<tr>
<td>75 to 100,000</td>
<td>2.9</td>
<td>2.7</td>
<td>6.5</td>
</tr>
<tr>
<td>100 to 125,000</td>
<td>2.1</td>
<td>2.4</td>
<td>6.4</td>
</tr>
<tr>
<td>125 to 150,000</td>
<td>1.9</td>
<td>2.2</td>
<td>6.3</td>
</tr>
<tr>
<td>150 to 175,000</td>
<td>1.7</td>
<td>2.0</td>
<td>6.2</td>
</tr>
<tr>
<td>175 and up</td>
<td>1.4</td>
<td>1.6</td>
<td>5.8</td>
</tr>
</tbody>
</table>

### II. Ancillary Service Fees

#### Over-The-Counter and Microfilm—$0.035

- **Return Items:** $2.75
- **Exception Safekeeping Statements:** $0.25
- **Photocopies and Facsimiles:** $2.00
- **No Charge for Facsimile Items for Signature Verification on Day of Presentation.**
- **Settlement Only—$40.00 Per Month.**
- **Minimum Processing Fee of $40.00 Per Month Will Apply for Total NOW Services.**

### Federal Home Loan Bank of Des Moines

#### Item Processing:

<table>
<thead>
<tr>
<th>Item Processing</th>
<th>Volume Level</th>
<th>Basic Fee (truncated)</th>
<th>Daily Fee/Cycle</th>
<th>Monthly Fee</th>
<th>Monthly Film Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 10,000</td>
<td></td>
<td>$0.021</td>
<td>$0.016</td>
<td>$0.21</td>
<td>$0.25</td>
</tr>
<tr>
<td>10,001 to 25,000</td>
<td></td>
<td>$0.019</td>
<td>$0.014</td>
<td>$0.19</td>
<td>$0.24</td>
</tr>
<tr>
<td>25,001 to 50,000</td>
<td></td>
<td>$0.017</td>
<td>$0.012</td>
<td>$0.17</td>
<td>$0.22</td>
</tr>
<tr>
<td>50,001 to 75,000</td>
<td></td>
<td>$0.015</td>
<td>$0.010</td>
<td>$0.15</td>
<td>$0.20</td>
</tr>
<tr>
<td>75,001 to 175,000</td>
<td></td>
<td>$0.0125</td>
<td>$0.0075</td>
<td>$0.125</td>
<td>$0.108</td>
</tr>
<tr>
<td>(175,001+Over)</td>
<td></td>
<td>$0.12</td>
<td>$0.006</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Return Items:

- 1 to 2,000 per month: $2.50
- 2,001 to 3,000 per month: $2.00
- 3,001 to 4,000 per month: $1.50
- 4,001 to Over per month: $1.00

#### Special Processing:

- (1) Sort truncated items in account number order ($0.012 per item with a $250 per month minimum)
- (2) Return of truncated items, non-sorted ($0.002 per item)
- (3) Subsequent sort into serial number order ($0.005 per item)
- (4) Other miscellaneous fine sorting requirements ($0.005 per item)

### Other Services:

- **Tape and transmission preparation:** $0.002
- **Key punch (rejects):** $0.04
- **Photo copies:** $2.75
- **Signatures verified:** $0.17
- **Counter items with microfilm:** $0.04
- **Microfilm transmission:** $1.00
- **Microfilm—monthly reports:** $1.50
- **Microfilm—copies:** $0.18
- **Stop payments:** $2.00
- **Original item return:** $2.75
- **Certified checks:** $0.50
- **Counter items without MICR encoding:** $1.00
- **NOW transaction inquiry:** $1.00
- **Telephone advice on missing account number:** $0.50
- **Microfilm copies for audit:** $10.00
- **Telephone check inquiry:** $1.00

Minimum processing fee of $40.00 per month will apply for total NOW services.

#### Pricing

<table>
<thead>
<tr>
<th>Service</th>
<th>Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>NOW Account Service Fees</td>
<td>Basic Service</td>
<td>$0.0200</td>
</tr>
<tr>
<td>Daily Return Bulk File (per item)</td>
<td>$0.0200</td>
<td></td>
</tr>
<tr>
<td>Truncation (per item)</td>
<td>$0.0150</td>
<td></td>
</tr>
<tr>
<td><strong>Additional Services</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Counter items (per item)</td>
<td>$0.0250</td>
<td></td>
</tr>
<tr>
<td>Return items</td>
<td>$0.0250</td>
<td></td>
</tr>
<tr>
<td>Photocopies (per item)</td>
<td>$0.0300</td>
<td></td>
</tr>
<tr>
<td>Facsimile of items (per item)</td>
<td>$0.0020</td>
<td></td>
</tr>
<tr>
<td><strong>Cash Letter Facsimile (per item)</strong></td>
<td></td>
<td>$0.0020</td>
</tr>
<tr>
<td>Special Sorts (per item)</td>
<td>$0.0150</td>
<td></td>
</tr>
<tr>
<td><strong>Monthly Recap (per item)</strong></td>
<td></td>
<td>$0.0025</td>
</tr>
<tr>
<td><strong>Data Transmission (per item)</strong></td>
<td></td>
<td>$0.0000</td>
</tr>
</tbody>
</table>

### Notes:

- *Large items of $1,000 and over will be facsimiled at no charge.*
- *Members may elect to use a combination of the truncated and non-truncated systems. This enables you to offer options to your customers.*
- *Compensation balances are not required.*
FEDERAL HOME LOAN BANK OF LITTLE ROCK

<table>
<thead>
<tr>
<th>Service Description</th>
<th>1982 per Item</th>
</tr>
</thead>
<tbody>
<tr>
<td>* Check capture fee: Includes cash letter verification, settlement, data capture, storage and retrieval capability, transmission of data, microfilm, truncation.</td>
<td>$0.02</td>
</tr>
<tr>
<td>* Fine sort and forward checks to association. Daily (one day delay).</td>
<td>10c</td>
</tr>
<tr>
<td>* Fine sort and forward checks to association. Cycle (5 cycles per month).</td>
<td>20c</td>
</tr>
<tr>
<td>Checks will be sorted by your customer's account number.</td>
<td>.005</td>
</tr>
<tr>
<td>* Return items: Fee for sorting and returning any items (NSFs, stop payments, etc.).</td>
<td>.005</td>
</tr>
</tbody>
</table>

FEDERAL HOME LOAN BANK OF LITTLE ROCK—Continued

<table>
<thead>
<tr>
<th>Service Description</th>
<th>1982 per Item</th>
</tr>
</thead>
<tbody>
<tr>
<td>* Stop payment fee: Fee for receiving and placing on file hold, stop paid, closed accounts, etc.</td>
<td>$0.20</td>
</tr>
<tr>
<td>* Photocopies or original check retrieval.</td>
<td>1.50</td>
</tr>
<tr>
<td>* Postage (for delivery of paid checks by association).</td>
<td>15c</td>
</tr>
<tr>
<td>* Actual cost.</td>
<td>.03</td>
</tr>
</tbody>
</table>

FEDERAL HOME BANK OF TOPEKA

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic services:</td>
<td></td>
</tr>
<tr>
<td>1. Settlement—with Federal Home Loan Bank PROCESSING (no charge).</td>
<td></td>
</tr>
<tr>
<td>2. Settlement only (processing).</td>
<td>$50.00</td>
</tr>
</tbody>
</table>

FEDERAL HOME LOAN BANK OF SAN FRANCISCO

<table>
<thead>
<tr>
<th>Service Description</th>
<th>First Increment lower than 50,000 items/month</th>
<th>Second Increment 50,000-100,000 items/month</th>
<th>Third Increment 100,000-500,000 items/month</th>
<th>Fourth Increment 500,000 items or more/month</th>
</tr>
</thead>
<tbody>
<tr>
<td>Check Capture Fee: Includes cash letter verification, settlement, data capture, storage and retrieval capability, capture report and microfilm.</td>
<td>$0.025</td>
<td>$0.025</td>
<td>$0.020</td>
<td>$0.0175</td>
</tr>
<tr>
<td>Fine Sort and Forward Items: Items will be returned daily under basic service or on a one-day delay for associations wanting the Bank to handle return item processing.</td>
<td>.005</td>
<td>.005</td>
<td>.005</td>
<td>.005</td>
</tr>
<tr>
<td>Check Capture Fee.</td>
<td>.025</td>
<td>.025</td>
<td>.025</td>
<td>.025</td>
</tr>
<tr>
<td>Non-check Debt Processing (per check).</td>
<td>.040</td>
<td>.040</td>
<td>.040</td>
<td>.040</td>
</tr>
<tr>
<td>Filing Fee (truncated item).</td>
<td>.050</td>
<td>.050</td>
<td>.050</td>
<td>.050</td>
</tr>
<tr>
<td>Return Item Processing.</td>
<td>2.00</td>
<td>2.00</td>
<td>2.00</td>
<td>2.00</td>
</tr>
<tr>
<td>Photocopies</td>
<td>3.00</td>
<td>3.00</td>
<td>3.00</td>
<td>3.00</td>
</tr>
<tr>
<td>Statements for Accounts on Truncation (per item).</td>
<td>.100</td>
<td>.100</td>
<td>.100</td>
<td>.100</td>
</tr>
<tr>
<td>Standard Bar-encoded Statements (per statement).</td>
<td>.300</td>
<td>.300</td>
<td>.300</td>
<td>.300</td>
</tr>
<tr>
<td>Nonstandard Statements (per statement).</td>
<td>.500</td>
<td>.500</td>
<td>.500</td>
<td>.500</td>
</tr>
<tr>
<td>Nonstandard Statement inserts (per insert).</td>
<td>.50</td>
<td>.50</td>
<td>.50</td>
<td>.50</td>
</tr>
<tr>
<td>Notes:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. The bank will absorb the cost of couriers and telephone lines to the Angeles are until Los Angeles center is established. Actual item delivery expense will be charged as incurred from either San Francisco or Los Angeles.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Controlling returns and photocopies, or making photocopies from Bank-supplied microfilm, can reduce costs.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Minimum charge for Basic Service is $250/month, and $50/month for Comprehensive Service.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Postage and courier fees will be as billed.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Microfilm fees will be $.50/month for two microfilm per day.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

FEDERAL HOME LOAN BANK OF SEATTLE

<table>
<thead>
<tr>
<th>Pricing Items per month</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard Services</td>
<td>Pricing Items per month</td>
<td>Pricing Items per month</td>
<td>Pricing Items per month</td>
</tr>
<tr>
<td>Daily delivery of items</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. 0 to 50,000.</td>
<td>$0.025</td>
<td>$0.025</td>
<td>$0.025</td>
</tr>
<tr>
<td>b. 50,000 and over.</td>
<td>.02</td>
<td>.02</td>
<td>.02</td>
</tr>
<tr>
<td>c. a. 0 to 50,000 (up to 1 day).</td>
<td>.005</td>
<td>.005</td>
<td>.005</td>
</tr>
<tr>
<td>b. 50,000 and over delay basis.</td>
<td>.03</td>
<td>.03</td>
<td>.03</td>
</tr>
<tr>
<td>B. Truncation.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. 0 to 50,000.</td>
<td>.03</td>
<td>.03</td>
<td>.03</td>
</tr>
<tr>
<td>b. 50,000 and over.</td>
<td>.025</td>
<td>.025</td>
<td>.025</td>
</tr>
<tr>
<td>C. Cycle or month-end delivery:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. 0 to 50,000.</td>
<td>.035</td>
<td>.035</td>
<td>.035</td>
</tr>
<tr>
<td>b. 50,000 and over.</td>
<td>.000</td>
<td>.000</td>
<td>.000</td>
</tr>
<tr>
<td>D. Cycle or month-end delivery with statement matching:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. 0 to 50,000.</td>
<td>.005</td>
<td>.005</td>
<td>.005</td>
</tr>
<tr>
<td>b. 50,000 and over.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Special Services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Return items.</td>
<td>$2.50</td>
<td>$2.50</td>
<td>$2.50</td>
</tr>
<tr>
<td>B. Stop payment items.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>C. Facsimile.</td>
<td>$2.50</td>
<td>$2.50</td>
<td>$2.50</td>
</tr>
<tr>
<td>D. Over the counter overdrafts (truncation).</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>E. Photocopy.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

FEDERAL HOME LOAN BANK OF BOSTON—Continued

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee per month</th>
</tr>
</thead>
<tbody>
<tr>
<td>P. Check retrieval.</td>
<td>$2.50</td>
</tr>
<tr>
<td>G. Information inserts.</td>
<td></td>
</tr>
<tr>
<td>a. .005/item transportation will be applied for institutions outside the Seattle Federal Reserve clearing zone.</td>
<td></td>
</tr>
<tr>
<td>*$2.50 charge on aggregate of items that exceed 2% of items processed. No charge.</td>
<td></td>
</tr>
</tbody>
</table>

FEDERAL HOME LOAN BANK OF BOSTON

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee per month</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account maintenance.</td>
<td>$3.00</td>
</tr>
<tr>
<td>Checks cleared.</td>
<td>.06</td>
</tr>
<tr>
<td>Deposits.</td>
<td>.20</td>
</tr>
<tr>
<td>Debt/credit memos.</td>
<td>.10</td>
</tr>
<tr>
<td>Stop payment orders.</td>
<td>1.00</td>
</tr>
<tr>
<td>Non thanking statements.</td>
<td>1.00</td>
</tr>
<tr>
<td>Wire transfers-out.</td>
<td>2.50</td>
</tr>
</tbody>
</table>

Service includes master deposit account with additional disbursement accounts for checks writing purposes.

Each disbursement account can be reconciled on a periodic basis. Service also includes line of credit to cover overdrafts or short term advances.

Description

Account Maintenance—cost of maintaining account on computer.

Includes one member statement per month. Checks Cleared—checks paid on each disbursement account. Deposits—funds deposited to member accounts.
Debit/Credit Memos—internal debits/credits processed against member accounts. Stop Payment Orders—member request to stop payment on issued check. Non-Routine Statements—account statements other than one per month. Wire Transfers Out—electronic transfer of funds out of a member's account, to another financial institution. Full Reconciliation Per Issue—service provided to reconcile paid checks.

Federal Home Loan Bank of New York

Money Orders and Checks
First 10,000 items per month—$1.195 each.
10,000 plus items per month—$1.145 each.

This fee covers all aspects of the check service including the cost of the blank instruments, stop payment orders, inquiries, and photocopies of paid items stored on microfilm. Blank stock is resupplied automatically, and other forms such as stop payment orders, photo request cards, check control sheets, and address labels are supplied on request.

Wire Out—$7.00

This covers all the costs associated with the wire-out service, including compensating balances held at correspondent banks, third party call-back confirmations, and follow-up investigations.

Coupon Processing, Bond Redemption and Federal Recurring Payments—$4.00

Coupon Processing—This fee covers the costs passed on to the Bank by the custodian bank for processing coupons as they come due, and the Bank's costs related to control of the paper work, and crediting the proceeds to the member's demand account.

Bond Redemption—This fee is applied once for a group of bond received in one batch and covers the costs of handling and crediting the member for the proceeds.

Federal Recurring Payments—This fee is applied each time a credit is received from the Federal Reserve Bank on behalf of a member, and covers the cost of handling the credit.

Bulk Deposits—$1.12

This fee represents the pass-through of costs from our correspondent bank at which the items are deposited. The correspondence MICR encodes the items, prepares cash letters, delivers the items to the clearing system, and transmits credit information to the Bank.

Depositary Transfer Checks—$1.00

This fee represents the cost of processing checks drawn on member-designated depository banks. It covers the cost of receiving instructions from member, issuance of check, presentment and subsequent credit to member's demand account.

FEDERAL HOME LOAN BANK OF PITTSBURGH

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deposit Processing:</td>
<td></td>
</tr>
<tr>
<td>Deposit ticket entry (each item)</td>
<td>$0.15</td>
</tr>
<tr>
<td>Deposit transfer voucher (each item)</td>
<td>$0.25</td>
</tr>
<tr>
<td>Mail deposit ticket entry (each item)</td>
<td>$0.25</td>
</tr>
<tr>
<td>Deposit item processing (each item)</td>
<td>$0.03</td>
</tr>
<tr>
<td>Deposit item handling (each item)</td>
<td>$0.03</td>
</tr>
<tr>
<td>Deposit item return (each item)</td>
<td>$1.00</td>
</tr>
<tr>
<td>Deposit item photocopy (each item)</td>
<td>$0.03</td>
</tr>
<tr>
<td>Deposit pickup (each pickup)</td>
<td>$0.25</td>
</tr>
<tr>
<td>Check and Money Order Clearing:</td>
<td></td>
</tr>
<tr>
<td>Clearing item processed (per item)</td>
<td>$0.00</td>
</tr>
<tr>
<td>Clearing item fine sorting for return with bank statements (per item)</td>
<td>$0.02</td>
</tr>
<tr>
<td>Stop payment orders (per item)</td>
<td>$4.50</td>
</tr>
<tr>
<td>Stopping checks and crediting the proceeds to the member's account</td>
<td>$4.50</td>
</tr>
<tr>
<td>Wire Transfer of Funds:</td>
<td></td>
</tr>
<tr>
<td>Outgoing (per transfer)</td>
<td>$2.75</td>
</tr>
<tr>
<td>Outgoing (per transfer per item)</td>
<td>$0.03</td>
</tr>
<tr>
<td>Incoming (per transfer)</td>
<td>$1.25</td>
</tr>
<tr>
<td>Lockbox Services:</td>
<td></td>
</tr>
<tr>
<td>Lockbox item processing (per item)</td>
<td>$0.11</td>
</tr>
<tr>
<td>Deposit item processing (per item)</td>
<td>$0.02</td>
</tr>
<tr>
<td>Deposit ticket entry (each item)</td>
<td>$0.03</td>
</tr>
<tr>
<td>Transportation (per month, per association)</td>
<td>$20.00</td>
</tr>
</tbody>
</table>

The Federal Home Loan Bank of Atlanta offers to its members a complete Demand Deposit Account program. The salient features of the program include account reconciliation, fine sorting of checks, safeguarding of money orders and reconciled checks, and the Idle Funds Transfer Program. The Bank will pay for all members check and money orders and only requires a compensating balance in return for item services. If the member decides to pay for the printing charge of the checks and money orders, an allowance will be made to the prices listed below:

FEDERAL HOME LOAN BANK OF ATLANTA—Continued

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>d. Savings bonds (per month)</td>
<td>$50.00</td>
</tr>
<tr>
<td>e. Deposit items at Fed (per month)</td>
<td>$50.00</td>
</tr>
</tbody>
</table>

Cost of check printing will be charged directly to association.

Federal Reserve charges for wire transfers are reflected in the above schedule. Any other charges which the Federal Reserve System may impose in the future may result in adjustments to the above schedule.

Any special services will be charged on an hourly basis.

Federal Home Loan Bank of Indianapolis

The Demand Deposit clearings will have the following service charges:

<table>
<thead>
<tr>
<th>Quarterly transaction volume</th>
<th>Paid check charge</th>
<th>Advices</th>
</tr>
</thead>
<tbody>
<tr>
<td>First 3,750</td>
<td>$0.13</td>
<td>$0.55</td>
</tr>
<tr>
<td>Next 9,000</td>
<td>$0.11</td>
<td>$0.42</td>
</tr>
<tr>
<td>Next 12,500</td>
<td>$0.09</td>
<td>$0.20</td>
</tr>
<tr>
<td>Next 25,000</td>
<td>$0.08</td>
<td>$0.15</td>
</tr>
<tr>
<td>All over $50,000</td>
<td>$0.07</td>
<td>$0.10</td>
</tr>
</tbody>
</table>

Overdrafts are assessed a charge at 2% above the variable advance rate, with a minimum charge of $25.
Collected balances will earn at an interest rate that approximates the 91-day Treasury Bill rate.

**Descriptions**

Service fees include processing of checks, deposits, journal transactions and stop payment requests. Accounts may be evaluated on an unrequited or reconciled basis. An additional charge will be made for reconciliation advice.

Monthly statements are provided on or before the 25th day of each month containing information or daily collected balances, daily check and advice volumes, interest earned and balances, daily check and advice containing information or daily collected balances.

Service charges are as follows:

<table>
<thead>
<tr>
<th>Metropolitan Area</th>
<th>Service Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detroit</td>
<td>Transit Item Deposit Program</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Cash item deposited</td>
<td>$0.05</td>
</tr>
<tr>
<td></td>
<td>Return item</td>
<td>$0.50</td>
</tr>
<tr>
<td></td>
<td>Courier charges</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Assurance on time</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Expression</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Security charges</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Service Description</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Coin and Currency Program</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Service Description</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Deposit items</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Check encodings</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Charge backs</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Food stamps</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Coupons deposited</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Coin and currency orders</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Money transfers</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Wire transfers</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Wire in</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Wire out</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Wire to third party</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Quick deposit drafts</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Quick drafts</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Checks supplied by the bank, requests for money order forms and postage courier services are provided at actual cost.</td>
<td></td>
</tr>
</tbody>
</table>

**FEDERAL HOME LOAN BANK OF CHICAGO—Continued**

<table>
<thead>
<tr>
<th>Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fee</td>
</tr>
</tbody>
</table>

**FEDERAL HOME LOAN BANK OF LITTLE ROCK**

<table>
<thead>
<tr>
<th>Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fee (per item)</td>
</tr>
</tbody>
</table>

**FEDERAL HOME LOAN BANK OF TOPEKA**

<table>
<thead>
<tr>
<th>Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fee</td>
</tr>
</tbody>
</table>

**FEDERAL HOME LOAN BANK OF DES MOINES**

<table>
<thead>
<tr>
<th>Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fee</td>
</tr>
</tbody>
</table>

**FEDERAL HOME LOAN BANK OF SAN FRANCISCO**

<table>
<thead>
<tr>
<th>Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fee</td>
</tr>
</tbody>
</table>

**FEDERAL HOME LOAN BANK OF SEATTLE**

<table>
<thead>
<tr>
<th>Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fee</td>
</tr>
</tbody>
</table>

1. No charge.
2. Actual costs above standard check.
3. Per daily occurrence and interest penalty at category II advance rate plus 1 percent.

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**Descriptions**

1Standard Service—Includes check reconciliation as well as all other services associated with DDA. Checks are matched to a register file built by paper (maintenance) or magnetic tape data.

2Truncated Standard Service—Identical to No. 1 except that checks are not returned to the association. Checks are on file 90 days, then destroyed. The 3% discount from our standard service fee is possible through reduced filing, reader/sorter processing, postage and preparation for mailing.

3Unreconciled Service—The Bank merely debits the DDA statement for checking checks. No register files are built or maintained by the system. At statement cycle date, a magnetic tape of paid checks is sent to the association as input for its own automated checks reconciliation system. The physical checks are fine-sorted by check number and returned with the statement. The 4% discount is available since the Bank does not have to manually prepare and enter checks maintenance data. Data files at the Bank are 25% smaller for this service.

4Truncated Unreconciled Service—This service is identical to No. 3 except that checks are not returned to the association.
**FEDERAL HOME LOAN BANK OF SEATTLE—Continued**

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-authorized deposit transfers (per pre-authorized check)</td>
<td>1.25</td>
</tr>
<tr>
<td>Stop payments (per stop)</td>
<td>2.25</td>
</tr>
<tr>
<td>Government recurring payments (per item)</td>
<td>.25</td>
</tr>
<tr>
<td>Unreconciled charges</td>
<td></td>
</tr>
<tr>
<td>Checks paid and line sorted (per item)</td>
<td>.075</td>
</tr>
<tr>
<td>Reconciled Charges (per item):</td>
<td></td>
</tr>
<tr>
<td>Checks paid and reconciled (tape entry)</td>
<td>.065</td>
</tr>
<tr>
<td>Checks paid and reconciled (register entry)</td>
<td>.065</td>
</tr>
<tr>
<td>Cost of check supplies</td>
<td></td>
</tr>
<tr>
<td>Cost pass-through from supplier</td>
<td>('')</td>
</tr>
</tbody>
</table>

*Actual cost.*

By the Federal Home Loan Bank Board.

James R. Silkenstein,
Acting Director, Office of District Banks.
Charlotte A. Chamberlain,
Director, Office of Policy and Economic Research.

[F.R. Doc. 82-34816 Filed 12-27-82; 8:45 a.m.]
BILLING CODE 6720-01-M

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**FEDERAL RESERVE SYSTEM**

**Agency Forms Under Review**

December 20, 1982.

**Background**

When executive departments and independent agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act [44 U.S.C. Chapter 33]. Departments and agencies use a number of techniques to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibilities under the act also considers comments on the forms and recordkeeping requirements that will affect the public. Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. OMB's usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the Federal Register, but occasionally the public interest requires more rapid action.

**List of Forms Under Review**

Immediately following the submission of a request by the Federal Reserve for OMB approval of a reporting or recordkeeping requirement, a description of the report in published is the Federal Register. This information contains the name and telephone number of the Federal Reserve Board clearance officer (from whom a copy of the form and supporting documents is available). The entries are grouped by type of submission—i.e., new forms, revisions, extensions (burden change), extensions (no change), and reinstatements.

Copies of the proposed forms and supporting documents may be obtained from the Federal Reserve Board clearance officer whose name, address, and telephone number appear below.

The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF 8S), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review.

**FOR FURTHER INFORMATION CONTACT:**


**Request for Deletion of an Existing Report**


Agency form number: FR 2418a

Frequency: Monthly

Reporters: Commercial banks

SIC Code: 602pt.

Small businesses are affected.

General description of report:

Respondent’s obligation to respond is voluntary [12 U.S.C. 240(a), (i) and 353 et seq.]; a pledge of confidentiality is promised [5 U.S.C. 552(b) (4) and (b) (6)].

The report collects data by business of borrower. The data are used for monitoring sources of demand for business loans at banks and the extent of only term lending by banks. For some time the Federal Reserve has been able to make only limited use of the 2418a data. It has become increasingly difficult to categorize loan data by type of industry given the rise in conglomerate activity that has occurred over recent years. Therefore, it was decided that the 2418a should be discontinued.


James McAfee,
Associate Secretary of the Board.

[FR Doc. 82-35060 Filed 12-27-82; 8:45 a.m.]
BILLING CODE 6210-01-M

**Arthur Bancshares Corp. et al.; 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 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 of St. Louis, for review. 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, indentifying 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 Chicago (Franklin D. Dreyer, Vice President) 230 S. Dearborn St., Chicago, Illinois 60690:

1. Arthur Bancshares Corp., Arthur, Illinois; to become a bank holding company by acquiring 100 percent (less directors' qualifying shares) of the voting shares of State Bank of Arthur, Arthur, Illinois. Comments on this application must be received not later than January 20, 1983.

B. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, D.C. 20551:

1. Revenswood Financial Corporation, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Ravenswood, Chicago, Illinois. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago. Comments on this application must be received not later than January 20, 1983.


James McAfee,
Associate Secretary of the Board.

[FR Doc. 82-35060 Filed 12-27-82; 8:45 a.m.]
BILLING CODE 6210-01-M

**Mellon National Corp.; Merger of Bank Holding Companies**

Mellon National Corporation, Pittsburgh, Pennsylvania, has applied for the Board’s approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with
The Girard Company, Philadelphia, Pennsylvania. 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 Girard Company, Bala Cynwyd, Pennsylvania, also engages in the following nonbank activities: leasing personal property and equipment; providing data processing services; underwriting credit life and credit accident and health insurance and provide portfolio investment advice to individuals outside the United States. 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 nonbank prohibitions in section 4 of the Act (12 U.S.C. 1843).

Mellon National Corporation would also acquire Girard International Bank, Miami, Florida, and New York City, New York, a corporation organized pursuant to section 25(a) of the Federal Reserve Act (12 U.S.C. 611 et seq.).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland. 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 January 17, 1983. 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.


James McAfee,
Associate Secretary of the Board.

[FR Doc. 82-35057 Filed 12-27-82; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Immunization Practices Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control announces the following Committee meeting.

Name: Immunization Practices Advisory Committee

Dates: January 24-25, 1983

Place: Conference Room 207, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333

Time: 8:35 a.m.

Type of Meeting: Open

Contact Person: Jeffrey P. Koplan, M.D., Executive Secretary of Committee (1-3035), Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333

Purpose:

The Committee will discuss such topics as influenza, Hepatitis B, Japanese B encephalitis, and smallpox vaccines; guidelines for hospital workers; and will consider other matters of relevance among the Committee's objectives.

Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: December 17, 1982.

William H. Foegle,
Director, Centers for Disease Control.

[FR Doc. 82-35061 Filed 12-27-82; 8:45 am]
BILLING CODE 4190-10-M

National Institute for Occupational Safety and Health; Occupational Safety and Health Field Research Projects; Correction

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control, Public Health Service, HHS.

ACTION: Notice of Research Project Initiation; Correction.

SUMMARY: This document corrects a notice of research project initiation that appeared at page 49471 in the Federal Register of Monday, November 1, 1982 (47 FR 49471). This action is necessary to make the notice consistent with language used in the NIOSH criteria document on polychlorinated biphenyls (PCB's).

FOR FURTHER INFORMATION CONTACT: David P. Brown, Division of Surveillance, Hazard Evaluations, and Field Studies, NIOSH, Robert A. Taft Laboratories, 4878 Columbia Parkway, Cincinnati, OH 45228, Telephone: (513) 869-2094.

SUPPLEMENTARY INFORMATION: Field work on a research project entitled "Reproductive History Study of Women Exposed to Polychlorinated Biphenyls in the Workplace" is scheduled to begin on December 13, 1982. A notice to that effect was published as FR Doc. 82-29863 appearing on page 49471 in the November 1, 1982, issue of the Federal Register.

On page 49471, column 3, in the first paragraph under the heading "Background", the following sentence should be deleted:

"In animals and humans, PCB's have been found to be carcinogenic."

In its place should be substituted the following language to be consistent with the NIOSH criteria document on PCB's:

"PCB's have also been found to induce tumors in experimental animals after repeated oral ingestion. Because of these findings, PCB's are considered to have carcinogenic potential in humans."

Dated: December 17, 1982.

J. Donald Miller,
Director, National Institute for Occupational Safety and Health.

[FR Doc. 82-35061 Filed 12-27-82; 8:45 am]
BILLING CODE 4190-10-M

Food and Drug Administration

[Docket No. 82F-0364]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of tris(2,4-di-tert-butylphenyl)phosphate as an antioxidant and/or thermal stabilizer for polycarbonate resins.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5)), 72 Stat. 1786 (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 2B3664) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010(b) [21 CFR 178.2010(b)] be amended to provide for the safe use of tris(2,4-di-tert-butylphenyl)phosphate as an antioxidant and/or thermal stabilizer for polycarbonate resins complying with § 177.1580 [21 CFR 177.1580].

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no
significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5000 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Sanford A. Miller, Director, Bureau of Foods.

[FR Doc. 82-34917 Filed 12-27-82; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 82F-0028]
Toy Seikan Kaisha, Ltd.; Filing of Food Additive Petition; Amendment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the amendment of a filing notice published on March 19, 1982 (47 FR 11971) on behalf of Toy Seikan Kaisha, Ltd. This notice amends the list of substances covered by the food additive petition to include an optional trimethoxysilane coupling agent.


SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 [21 U.S.C. 348(b)(5)]), notice is given of a petition (FAP 238315) by Toy Seikan Kaisha, Ltd., 3-1 Uchisaiwaicho 1-Chome, Chiyoda-ku, Tokyo 100, Japan. This amendment to the filing notice adds trimethoxysilane coupling agents containing amino, epoxy,ether and/or mercapto groups as optional coupling agents in the 2-component aliphatic polyurethane laminating adhesive for fabricating retortable pouches described in the filing notice.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Sanford A. Miller, Director, Bureau of Foods.

[FR Doc. 82-34917 Filed 12-27-82; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 82F-0028]
Toy Seikan Kaisha, Ltd.; Filing of Food Additive Petition; Amendment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the amendment of a filing notice published on March 19, 1982 (47 FR 11971) on behalf of Toy Seikan Kaisha, Ltd. This notice amends the list of substances covered by the food additive petition to include an optional trimethoxysilane coupling agent.


SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 [21 U.S.C. 348(b)(5)]), notice is given of a petition of filing notice published on March 19, 1982 announcing the filing of a petition (FAP 238315) by Toy Seikan Kaisha, Ltd., 3-1 Uchisaiwaicho 1-Chome, Chiyoda-ku, Tokyo 100, Japan. This amendment to the filing notice adds trimethoxysilane coupling agents containing amino, epoxy,ether and/or mercapto groups as optional coupling agents in the 2-component aliphatic polyurethane laminating adhesive for fabricating retortable pouches described in the filing notice.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Sanford A. Miller, Director, Bureau of Foods.

[FR Doc. 82-34917 Filed 12-27-82; 8:45 am]
BILLING CODE 4160-01-M

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

New York District Office, chaired by George J. Gerstenberg, District Director.

DATE: Friday, January 14, 1983, 1:30 p.m. to 3:30 p.m.

ADDRESS: 20 Federal Plaza, Rm. 30-37A, New York, NY.

FOR FURTHER INFORMATION CONTACT: Marta De Arce, Consumer Affairs Officer, or Carolyn L. Hommel, Consumer Affairs Officer, Food and Drug Administration, 850 Third Ave., Brooklyn, NY 11232, 212-955-5043.

Houston Station, chaired by Anthony J. Whitehead, Chief.

DATE: Thursday, January 27, 1983, 10 a.m.

ADDRESS: 1440 N. Loop, Suite #250, Houston, TX.

FOR FURTHER INFORMATION CONTACT: Sheryl Lunnon-Baylor, Public Affairs Officer, Food and Drug Administration, 1440 N. Loop Suite #250, Houston, TX 77009, 713-229-3530.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Officers, and to contribute to the agency's policymaking decisions on vital issues.

Dated: December 17, 1982.
William F. Randolph, Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-34917 Filed 12-27-82; 8:45 am]
BILLING CODE 4160-01-M

Health Care Financing Administration

Medicare and Medicaid Programs; Tax Equity and Fiscal Responsibility Act of 1982; Information Notice on Medicare and Medicaid Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice describes briefly some of the provisions of Title I of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248, enacted September 3, 1982) that affect eligibility, benefits, reimbursement, and
This notice describes briefly some of the provisions of the new legislation relating to the Medicare and Medicaid programs that are sufficiently complete and clear that we believe they can take effect without issuance of regulations. We have provided a summary of these provisions to give notice to program administrators, providers of services, beneficiaries, and the general public that they are being implemented. We will also incorporate many of these provisions in conforming regulations and program issuance, as appropriate, at a later date.

There are provisions in the new law that conflict with current regulations, or portions of current regulations. To the extent that the new statutory provisions conflict with our existing regulations, the provisions of the new law supersede those portions of the regulations. Other portions of the same regulations and all other existing regulations remain in effect.

This Notice is not intended to be an exhaustive listing of new provisions that are self-implementing. We note that, with respect to all Medicaid provisions that are self-implementing, States may adopt any lawful interpretation of these new provisions until final regulations are adopted or interpretations are issued.

Summary of Specific Provisions

(As stated in the Notice of proposed rulemaking."

**Background**

On September 3, 1982, the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, was enacted. Title I of this Act (the Medicare and Medicaid Amendments of 1982) added a variety of new provisions to encourage cost effectiveness and efficient operation among individuals and institutions furnishing services under Medicare and Medicaid.
B (Supplementary Medical Insurance) premium and increases the premium on July 1, 1963, and on July 1, 1984 to a level that will result in monthly premiums being equal to 25 percent of the Supplementary Medical Insurance program costs for aged beneficiaries. During this period, premium increases would not be limited to, as required by section 1839(c)(2) of the Act, the lower percentage of—(1) the most recent increase in cash social security benefits; or (2) the increase in the costs of the Supplementary Medical Insurance program. The method of calculating premiums in effect before this amendment resumes July 1, 1985.

Amends: Sections 1839 (c)(2) and (c)(3); and 1844(a)(1)(A)(i) and (ii) of the Act.

Adds: Sections 1839 (g)(1) and (g)(2) of the Act.

Effective: These provisions are effective from July 1, 1983 through June 30, 1985.

8. Section 125—Special Medicare enrollment without penalty for merchant seamen. This provision establishes a special enrollment period for merchant seamen. During this period, merchant seamen who were eligible for both Medicare in September 1981 and services provided under the Public Health Service Act at any time during the period beginning on March 10, 1981 through September 30, 1981 (the last day merchant seamen were eligible for care at Public Health Service hospitals), may enroll in the Supplementary Medical Insurance program, with the option of entitlement beginning the month after enrollment, or October 1981. Premium amounts will not be subject to the usual increase for late enrollment. Those few seamen who are eligible for hospital insurance for which a premium must be paid will have the same options for month of enrollment.

Effective: October 1, 1982 through December 31, 1982.


Amends: Sections 1842(b)(3)(B)(ii)(II); 1841(b)(2)(A); 1841(b)(3); and 1844(a)(3)(B) of the Act; and 1870(c) of the Act; and the Internal Revenue Code of 1954.

Adds: Sections 1839 (g)(1) and (g)(2) of the Act.


Any other amendment made to the Act or to the Internal Revenue Code of 1954 made by these Medicare technical amendments is effective as if it had been originally included as a part of Pub. L. 97-35.

8. Section 134—Medicaid coverage of home care for certain disabled children. This provision gives States the option of covering under Medicaid certain disabled children age 18 or under who are living at home. A State could extend such protection to an individual who would be eligible for supplemental security income (or State supplemental income) payments, and therefore Medicaid, if that individual were in a medical institution. The State must determine that—(a) the child requires the level of care provided in an institution; (b) it is appropriate to provide such care outside of the institution; and (c) the estimated cost of care at home is no higher than the estimated cost of institutional care.

Amends: Section 1902(e) of the Act.

Effective: October 1, 1982.

9. Section 138—Medicaid funding in American Samoa. This amendment provides Medicaid funding to the territory of American Samoa. Federal matching of 50 percent of expenditures is authorized up to a maximum of $750,000 per year. Due to the unique circumstances in the health system in American Samoa, the Secretary may waive any Medicaid requirements, other than those relating to the Federal Medical assistance percentage, the $750,000 per year maximum, and the requirement that Federal matching payments be available only for amounts expended by American Samoa.

Amends: Sections 1101(a)(1), 1108(c), 1902(j), and 1905(b)(2) of the Act.

Effective Date: October 1, 1982.


Among other changes, this section—
• Specifies that an exception to the effective date of October 1, 1981 can be made for the State plan requirement that States—(1) inform all eligible children of EPSDT services, (2) provide or arrange for requested screening services, and (3) arrange for corrective treatment, if the Secretary determines that action by the State legislature is required to make these plan changes. If State legislation is needed, EPSDT informing, screening, and treatment requirements that were paragraphs 403(g)(1), (2), and (3) of the Act (prior to their repeal) apply until the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after Act 13, 1981-137(a)(4).
• Restates a State’s authority to cover optional categorical groups and requires that at least the standard mandatory services in section 1902(a)(10)(A) of the Act be provided for these groups—137(b)(7).
• Requires States that provide Medicaid to the medically needy to use a single standard for income eligibility and a single standard for resource eligibility for the medically needy. Also, this amendment requires that in determining income and resource eligibility for the medically needy, States must use the same methodology that is used for determining income and resource eligibility in the most appropriate cash assistance program. Thus, in States in which the supplemental security income program (SSI) is in effect and that provide Medicaid to all SSI recipients, the methodology for determining the income and resources of the aged, blind, or disabled medically needy must be that of the SSI program. For other medically needy individuals, the methodology must be the same as would be employed in determining cash assistance eligibility under the most appropriate State plan to which the medically needy group is most closely categorically related—137(b)(8).
• Revises minimum requirements for coverage of medically needy children to require States with medically needy programs to cover as medically needy, individuals under age 18, who, except for income and resources, would be eligible for Medicaid as a member of a categorically needy group whom the State is required to cover under section 1902(a)(10)(A)(ii) (generally, cash assistance recipients)—137(b)(9).
• Exempts Federally qualified HMOs from utilization control penalty requirements—137(b)(11).
• Requires recertification of care every 60 days (rather than annually) for all individuals in intermediate care facilities, except for those individuals in intermediate care facilities for the mentally retarded for whom annual recertification still applies—137(b)(12).
• Clarifies Secretarial/State authority to inspect the records of an HMO that relate to either—(1) the ability of the HMO to bear the risk of financial loss; or (2) the services performed and reimbursement levels. Before this amendment, the statute may have appeared to allow inspection only of records containing both types of information—137(b)(14)(A).
• Clarifies that claims made before FY 82 (rather than FY 81) are excluded from the Medicaid reduction provision—137(b)(15)(A).
• Specifies that Indian Health Service payments and payments to State fraud control units are excluded from the Medicaid Reduction provision—137(b)(15)(B).
• Enumerates that Arizona is excluded from the Medicaid reduction provisions—137(b)(15)(C).
• Clarifies that, in determining if States qualify for an offset to Medicaid reduction due to the hospital cost review program, the Secretary may specify the annual period to use in calculations rather than using calendar years—137(b)(15)(D).
• Includes definition of United States in determining increases in hospital costs in the United States—137(b)(15)(E).
• Modifies the target rate provision to exclude the Indian Health Service and State Medicaid fraud control unit payments—137(b)(15)(A).
• Removes, for purpose of calculating States' target rates only, the effect of changes after FY 1981 in States' Federal medical assistance percentages—137(b)(15)(F).
• Adds pregnant women as a discrete category of individuals who could receive medical assistance—137(b)(16).
• Revokes the Secretary's authority under section 1915(b) to waive the requirements for States contracting on a risk basis with Health Maintenance Organizations (HMOs) and other prepaid entities found at section 1903(m) of the Social Security Act.
• Revokes the Secretary's waiver authority under section 1915(b) to waive the requirements for States contracting on a risk basis with Health Maintenance Organizations (HMOs) and other prepaid entities found at section 1903(m) of the Social Security Act.
• Removes, for purpose of calculating States' target rates only, the effect of changes after FY 1981 in States' Federal medical assistance percentages—137(b)(15)(F).
• Adds pregnant women as a discrete category of individuals who could receive medical assistance—137(b)(16).
• Revokes the Secretary's authority under section 1915(b) to waive the requirements for States contracting on a risk basis with Health Maintenance Organizations (HMOs) and other prepaid entities found at section 1903(m) of the Social Security Act. However, this limitation on the Secretary's waiver authority does not apply where a waiver was granted by the Secretary and the arrangement was in place before August 10, 1982. This exemption extends only for the period for which the waiver was initially approved—137(b)(16).
• The type of services that may be covered by a primary care case management system or a specialty physician services arrangement under section 1915(b) of Act has been changed from "primary care services" to "medical care services." This means that specialty physician services arrangements need not include primary care services—137(b)(17).
• Clarifies that in evaluating an individual's need for home and community-based services, the State must also look at an individual's eligibility for the services provided under the home and community-based waiver—137(b)(18).
• Clarifies that fraud and abuse recoveries greater than 1 percent can be carried forward for more than one quarter for determining whether a State achieves sufficient recoveries to have its reduction reduced by one percent under section 1903(e)(2)(C) of the Act—137(b)(19).

Amends: Sections 914(b)(2)(A) and (c)(2) of the Omnibus Reconciliation Act of 1980, Public Law 96-499.

Sections 2181(b), (c)(1) and (c)(2), 2171(a)(3); 2181(b); and 2193(c)(3)[B] of Public Law 97-35.

Sections 501(b)(1)(D) and (b)(2); 505 (2)(B) and (2)(D); 1134(4); 1134(5); (a), (a)(10)(A), (a)(10)(C); (ii), (a)(10)(C); (ii) and (b); 1903(f)(3), (g)(1), (g)(1)(A), (k), (m)(2)(2)(A), (s)(1)(A), (s)(1)(B), (s)(1)(C), (s)(3)(D), (s)(4)(B), (s)(5)(B), (s)(5)(B), (t)(1)(A), (t)(1)(B), (t)(1)(C), (t)(2)(A) and (t)(3); 1905(a), (a)(1) and (h)(1)(C); and 1915(b), (b)(1), (c)(1), (c)(2)(B), (c)(3), (c)(4) and (f) of the Act.

Amends: Section 1905(a)(vii) of the Act.

The effective date for the amendments to Public Law 96-499 is effective September 3, 1982.

Except as provided in the following three sentences, any amendment to Public Law 97-35 made by this section is effective as if it had been originally included in the provision of Public Law 97-35 to which the amendment relates.

Section 1903(f)(3) of the Social Security Act is effective October 1, 1982.

The limitation on the Secretary's waiver authority applicable to section 1905(m) of the Act under section 1915(b) of the Act is effective August 10, 1982.

Except as otherwise provided, any amendment to the Social Security Act made by the preceding provisions of this section is effective as if it had been originally included in the provision of the Social Security Act to which the amendment relates, as such provision of the Social Security Act was amended by the Omnibus Budget Reconciliation Act of 1981.

In the September 29, September 30, and October 1, 1982 issues of the Federal Register, we publish proposed and final regulations concerning many other provisions of the Tax Equity and Fiscal Responsibility Act of 1982. Most of those provisions concern reimbursement to providers of medical services. We will also develop regulations, program instructions and other materials for the other provisions of the new legislation, as appropriate, over the next few months.

Catalog of Federal Domestic Assistance Program No. 13,714, Medical Assistance Programs; No. 13,773, Medicare-Hospital Insurance Program; and No. 13,774, Medicare-Supplementary Medical Insurance Program.

Dated: November 24, 1982.

Carolyn K. Davis,
Administrator, Health Care Financing Administration.

Approved: December 16, 1982.

Richard S. Schweiker,
Secretary.

[FR Doc. 82-35084 Filed 12-27-82; 8:45 am]
BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT-82-78]

Yellowstone Diversion Project; Availability of Draft Environmental Statement and Public Hearing Notice

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement on Intake Water Company's proposed Yellowstone Diversion Project. This statement (INT-82-78, dated December 22, 1982) was made available to the public on December 22, 1982.

The draft environmental statement describes the potential effects of the Bureau's proposal to permit Intake Water Company to construct facilities to divert water from the Yellowstone River near Intake, Montana, to an offstream reservoir site for subsequent municipal, industrial and possibly agricultural use. Intake Water Company holds a water right from the state of Montana for the diversion. Approximately 135 acres of land administered by the Bureaus of Reclamation and Land Management will be needed for the pumping plant, pipeline and reservoir.

Written comments must be submitted to the Regional Director by March 1, 1983.

Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, Room 7022, Bureau of Reclamation, Washington, DC 20240, Telephone: (202) 343-3911

Division of Management Support, General Services, Library Section, Code 950, Engineering and Research Center, Denver Federal Center, Denver, CO 80225, Telephone: (303) 234-3019

Regional Director, Bureau of Reclamation, Federal Building, 316 N. 20th St., Billings, MT 59103, Telephone: (406) 657-8214

Single copies of the statement may be obtained on request to the Director, Office of Environmental Affairs, Bureau of Reclamation, or the Regional Director.
at the above addresses. Copies will also be available for inspection in libraries in the project vicinity.

A public hearing will be held February 16, 1983, at Glendale, Montana, Best Western Holiday Lodge, Holiday Lodge Basement, 7:00 p.m.

Oral statements at the hearing will be limited to a period of 15 minutes. Speakers will not be allowed to trade their time to obtain a longer oral presentation; however, the person authorized to conduct the hearing may allow any speaker to provide additional oral comment after all persons wishing to make comment have been heard. Speakers will be scheduled according to the time preference mentioned in their letter or telephone request, whenever possible, and any scheduled speaker not present when called will lose his or her privilege in the scheduled order and his or her name will be recalled at the end of the scheduled speakers. Requests for scheduled presentations should be received prior to 4:30 p.m., February 14, 1983. The final date for submission to the record for all supplemental comments will be March 1, 1983. Organizations or individuals desiring to present a statement at the hearing should write the Regional Director, Bureau of Reclamation, Upper Missouri Region, P.O. Box 2553, Billings, Montana 59103, or telephone (406) 657-6605 or (406) 657-6558 and announce their intention to participate.

Comments will be accepted from other parties present following the presentation of all scheduled testimonies. If further information is needed, phone (406) 657-6605 or (406) 657-6558.


Robert N. Broadbent,
Commissioner of Reclamation.

[F.R. Doc. 82-35094 Filed 12-27-82; 8:45 a.m.]
BILLING CODE 4310-09-M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Applications

The applicants listed below wish to conduct certain activities with Endangered Species:

Applicant: Leland B. Hayes, Quail Breeder’s Society, Redmond, OR—PRT 2-9941.

The applicant requests a permit to export ten (10) captive-bred masked bobwhite quail Colinus virginanus ridgewayi] to the World Pheasant Association, England, for enhancement of propagation.

Applicant: Walter B. Sturgeon, Durham, NH—PRT 2-9854.

The applicant requests a permit to purchase in interstate commerce six (6) captive-bred nene geese Branta sandvicensis] from the San Diego Zoo, California, for enhancement of propagation.

Applicant: Denver Zoo, Denver, CO—PRT 2-9882.

The applicant requests a permit to import on a breeding loan one male lowland gorilla Gorilla gorilla] for enhancement of propagation from the Rotterdam Zoo, the Netherlands.


The applicant requests a permit to import two male Cuban crocodiles Crocodylus rhombifer] for enhancement of propagation from the Havana Zoo, Cuba.

Applicant: Milwaukee County Zoo, Milwaukee, WI—PRT 2-9884.

The applicant requests a permit to import one male gorilla Gorilla gorilla] for enhancement of propagation from Osnabruck Zoo, West Germany.

Humane care and treatment during transport, if applicable, has been indicated by the applicants.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.


Larry LaRochelle,
Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[F.R. Doc. 82-35153 Filed 12-27-82; 8:45 a.m.]
BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 17, 1982. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by January 12, 1983.

Beth Grosvenor,
Acting Chief of Registration, National Register.

FLORIDA

Lake County

Eustis, Pendleton, William Kimbrough, House (The Palms), 1208 Chesterfield Rd.

Nassau County

Fernandina Beach, Merrick-Simmons House, 102 S. 10th St.

Orange County

Winter Park, Comstock-Harris House, 724 Bonita Dr.

Polk County

Lakeland, Lake Mirror Promenade, Between Lemon St. and Lake Mirror Dr.

GEORGIA

Monroe County

Forysth, Forsyth Commercial Historic District, Main, Lee, Johnston, Adams, Jackson, Kimball, and Harris Sts.

KENTUCKY

Lincoln County

Humble vicinity, Helm-Engleman House, N of Hubble on Engleman Lane

LOUISIANA

Jefferson Parish

Gretna, Crockett, David, Fire Hall and Pump, 205 Lafayette St.

Washington Parish

Bogalusa, US Post Office, 305 Avenue B

West Feliciana Parish

St. Francisville vicinity, Solitude Plantation House, NW OF St. Francisville on Tunica Rd.

MARYLAND

Baltimore (Independent City)

Federal Reserve Bank of Richmond, Baltimore Branch, 114 E. Lexington St.

Brown’s Arcade, 323-329 N. Charles St.

Evergreen House, 4545 N. Charles St.

Garrett County

Grantsville vicinity, Stanton’s Mill, E of Grants on MD 40

Harford County

Baldwin vicinity, Hidden Valley Farm, 2918 Green Rd.

Montgomery County

Poolesville vicinity, Poole, Nathan Dickerson, House, 15000 Edwards Ferry Rd.

Washington County

Burtner vicinity, Search Well, SE of Burtner on Manor Church Rd.

Hagerstown, Hagerstown Commercial Core Historic District, Potomac, Washington, Franklin

Antietam, Summit and Jonathan Sts.
INTERSTATE COMMERCE COMMISSION

[Decision-Notice—OP3 MC-F-064]

Motor Carriers; Finance Application

The following applications seek approval to consolidate, purchase merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), Rules Governing Applications Filed By Motor Carriers Under 49 U.S.S. 11344 and 11349, 303 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the Federal Register. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2 [d].

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments [e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights] that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action. Under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision notice, or the application of a non-complying applicant shall stand denied.
By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

Agatha L. Mergenovich,
Secretary.

Please direct status inquiries to Team 3 (202) 279-5223.

MC-F-15019, filed November 30, 1982. KUSKOKWIM TRANSPORTATION COMPANY d.b.a. KUSKOKWIM TRANSPORTATION COMPANY (KTC) (429 D St., Suite 307, Anchorage, AK 99501) PURCHASE—UNITED TRANSPORTATION, INC. (UTI) (Box 285, Bethel, AK). Representative: Michael Joseph, 1776 F St., NW., Washington, D.C. 20006. KTC, a joint venture, seeks authority to purchase the interstate operating rights and properties of UTI. Kuskokwim Transportation Services Corporation (Services), and in turn Kuskokwim Corporation, its noncarrier parent which controls 51 percent interest, and Puget Sound Tug & Barge Company (Puget) and in turn its noncarrier parent, Crowley Maritime Corporation, which controls a 49 percent interest in KTC, seek to acquire control of said rights through the transition. KTC is seeking to acquire the operating rights contained in Certificate No. MC-123384, authorizing the transportation of general commodities, (1) between Bethel, AK, and points within 9 miles thereof, limited, in point of time expiring on December 21, 1985, to the extent that it authorizes the transportation of classes A and B explosives, and (2) bulk petroleum products, between Bethel, AK, and points within 23 miles thereof; and in Certificate W-1152: (Sub-Nos. 2 and 5) authorizing the transportation of general commodities by self-propelled vehicles, between specified points in Alaska on the Kuskokwim River, in seasonal operations from May 15 to October 15. KTC holds no authority from the Commission. Services and Puget (both noncarriers), control KTC. Services is a wholly owned subsidiary of The Kuskokwim Corporation (Kuskokwim), and Puget is a wholly owned subsidiary of Crowley Maritime Corporation (Crowley). Crowley owns all of the stock of (a) Crowley Towing and Transportation Co., which in turn, owns all of the stock of TMT Intermodal Transport, Inc. (MC-141323), (b) Puget, which in turn, owns the stock in Arctic Lighterage Company (MC-141842 and Subnumbers thereunder) and (W-1229 Sub-No. 1), Puget owns all of the stock of (a) Drummond Lighterage Company (W-580 Sub-No. 10), (b) Columbia Common Carriers, Inc. (W-13395), (c) Mukluk Freight Lines, Inc. (MC-115818 Sub-Nos. 8 and 12X), (d) North Star Forwarding Co. (FF-908 and Sub No. 1), [e] Northwestern Construction, Inc. (MC-145929). Crowley owns all of the stock of Harbor Tug & Barge Company, which in turn, owns all of the stock of Harbor Carriers, Inc. (W-379 Sub-No. 5).

Condition.—Kuskokwim Corporation, which controls Kuskokwim Transportation Services Corporation, and Crowley Maritime Corporation, which controls Puget Sound Tug & Barge Co., are necessary parties to the application and must each seek joinder, as such, in the application. [FR Doc. 82-35072 Filed 12-27-82: 8:45 am] BILLING CODE 7035-01-M

(Volume No. OP3-MCFC-61)

Motor Carriers; Finance Applications; Decision Notice

Decided: December 18, 1982.

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find: Each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsideration; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1181.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 20 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered: The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board Number 3, Members Krock, Joyce, and Dowell.

Agatha L. Mergenovich,
Secretary.

Please direct status inquiries to Team 3, (202) 279-5223.

MC-FC 81017. By decision of December 16, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, Review Board Number 3 approved the transfer to Frank J. and Shirley Pratzzola, doing business as Thomas Gerrity Moving and Storage, Taylor, PA, of Certificate No. MC-128536, issued April 30, 1988 to Scranton Moving Company, Inc., authorizing the transportation of household goods, over irregular routes, between Scranton, PA, and points within 25 miles thereof (except Wilkes-Barre, PA), on the one hand, and, on the other, points in MA, CT, NY, NJ, MD, DE, and DC.

Representative: Peter P. Teyoun, Suite 611 Connell Building, Scranton, PA 18503.

[FR Doc. 82-35072 Filed 12-27-82: 8:45 am] BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision Notice

In the matter of Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers.


The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1180, published in the Federal Register on November 24, 1982, at 47 FR 53271. For compliance procedures see 49 CFR 1180.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(F).

Persons wishing to oppose an application must follow the rules under 49 CFR Part 1180, Subpart E. In addition to fitness grounds, these applications
may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title, 49, Subtitle IV, United States Code, and the Commission's regulations.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,
Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly noted.

Please direct status inquiries to Team Five at (202) 275-7289.

Volume No. OP5-295

Decided: December 17, 1982.

By the Commission. Review Board No. 3, members Krock, Joyce, and Dowel.


Transporting household goods, between points in the U.S. under continuing contract(s) with Merrill Lynch Relocation Management, I Inc. of White Plains, NY.


Transporting commodities in bulk, between points in the U.S. under continuing contract(s) with Pressure Vessel Service, Inc. of Detroit, MI, and its subsidiary, PVS Chemicals, Inc. of Copley, OH.


MC 114028 (Sub-51), filed November 29, 1982. Applicant: ROWLEY INTERSTATE TRANSPORTATION COMPANY, INC., 2010 Kerper Blvd., Dubuque, IA 52001. Representative: Carl L. Steiner, 135 South LaSalle St., Chicago, IL 60603, (312) 230-9375. Transporting general commodities (except classes A and B explosives, household goods, and commodities in bulk), between Brooklyn, NY, East St. Louis, IL, Milwaukee, WI, points in Berkshire County, MA, Litchfield and New London Counties, CT, North Hampton County, PA, Vigo County, IN, Cook County, IL, Jackson County, MO, Dallas County, TX, Dekalb County, GA, Beaverhead County, MT, and points in CA, NC, and NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI).


MC 120228 (Sub-3), filed December 7, 1982. Applicant: OIL COUNTRY HAULERS, INC., P.O. Box 3270, Crosby, TX 77532. Representative: James W. Hightower, 5601 Marvin D. Love Freeway, Suite 301, Dallas, TX 75237-2365, (214) 399-4108. Transporting Mercer commodities between points in AR, CO, LA, KS, NM, OK, TX, and WI.

MC 134799 (Sub-8), filed December 9, 1982. Applicant: BILL BURTON & SONS, INC., P.O. Box 404, Newbury, MI 49668. Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49685-0801, 616-941-3533. Transporting coal, between points in MI, MN, OH, and WI.

MC 144239 (Sub-15), filed December 7, 1982. Applicant: J.L.T. CORPORATION, Route 22, White House Station, NJ 08889. Representative: Charles J. Williams, P.O. Box 186, Scotch Plains, NJ 07076, (201) 322-5030. Transporting such commodities as are dealt in or used by grocery and food business houses, between points in the U.S. (except AK and HI).

MC 147198 (Sub-13), filed December 7, 1982. Applicant: P. & E. I. TRUCK LINES, INC., P.O. Box 175, Roseville, IL 60063. Representative: Paul J. Maton, 27 East Monroe St., Suite 1000, Chicago, IL
Applicant: AKIO FORWARDING, Inc., Members Carleton, Williams, and Ewing.

Volume No. OP4-085

LA, between points in Washington and plastic products, Box Representative: Stanley W. Ludwig, P.O. INC., 912 Eicher, Springdale, AR 53705-0086, (608) 238-3119.

Suite Richard A. Westley, 4506 Regent St., Hazel Green, WI 53719, (608) 476-3420.

TRANSPORT, continuing contract(s) with Cargill Inc., of Minneapolis, Armin Plastic Oklahoma, Inc., of Tulsa, OK, Linear Films Inc., of Tulsa, OK, and Ritricia Plastic Corp. of Wichita, KS, (2) salt and salt products, between points in the U.S. under continuing contract(s) with Cargill Inc., of Minneapolis, MN, and (3) pulp, paper and related products, between points in the U.S. under continuing contract(s) with Weyerhaeuser Co., of Tacoma, WA.

MC 161229 (Sub-1), filed December 6, 1982. Applicant: LOVE TRANSPORT COMPANY, INC., P.O. Box 546, Wichita, KS 67201. Representative: Robert W. Love (same address as applicant), (918) 332-1185. Transporting (1) rubber and plastic products, between points in the U.S. under continuing contract(s) with Armin Plastic Oklahoma, Inc., of Tulsa, OK, Linear Films Inc., of Tulsa, OK, and Ritricia Plastic Corp. of Wichita, KS, (2) salt and salt products, between points in the U.S. under continuing contract(s) with Cargill Inc., of Minneapolis, MN, and (3) pulp, paper and related products, between points in the U.S. under continuing contract(s) with Weyerhaeuser Co., of Tacoma, WA.

MC 164909 (Sub-1), filed December 9, 1982. Applicant: WIEDERHOLT TRANSPORT, INC., Route 2, Box 426, Hazel Green, WI 53811. Representative: Richard A. Wesely, 4500 Regent St., Suite 100, P.O. Box 5068, Madison, WI 53705-0068, (608) 238-3119. Transporting Chemicals and related products, between points in IL, IA, MN, and WI.

MC 165018, filed December 6, 1982. Applicant: HARVEY'S TRUCKING, INC., 912 Eicher, Springfield, AR 72764. Representative: Stanley W. Ludwig, P.O. Box 265, 529 S. Holcomb Street, Springfield, AR 72764, (501) 751-0452. Transporting feed and feed ingredients, between points in Washington and Howard Counties, AR, on the one hand, and, on the other, points in AR, IA, KS, LA, MO, NE, OK, TN and TX.

For the following, please direct status inquiries to Team 4 at 202-275-7069.

Volume No. OP4-085

Decided: December 20, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

FF-637, filed December 10, 1982. Applicant: AKIO FORWARDING, INC., 91-779A Makule Rd., Ewa Beach, HI 96707. Representative: Willard A. Hashimoto (same address as applicant), (808) 689-0440. As a freight forwarder, in connection with the transportation of used household goods, and automobiles, between points in the U.S. (except AK and HI), under continuing contract(s) with Griesedieck Beverage Company, Inc., and Ed Windler & Sons, Inc., both of St. Charles, MO.

MC 165106, filed December 9, 1982. Applicant: RAY TRUCKING COMPANY, INC., P.O. Box 1206 Florissant, MO 63031. Representative: B. W. LaTourrette, Jr., 11 S. Meramec, Suite 1400 St. Louis, MO 63105 (314) 727-0777. Transporting beer, malt beverages, and malt beverage containers, between points in the U.S. (except AK and HI), under continuing contract(s) with Griesedieck Beverage Company, Inc., and Ed Windler & Sons, Inc., both of St. Charles, MO.

MC 165129, filed December 10, 1982. Applicant: GEORGE M. ANDERSON, d.b.a. MACHINERY TRANSPORT, P.O. Box 60, Duvall, WA 98019. Representative: Robert G. Gleason 1127-10th E. Seattle, WA 98102 (206) 325-9875. Transporting those commodities which because of their size or weight require the use of special handling or equipment, between points in the U.S. (except HI), under continuing contract(s) with N.C. Machinery Co., of Seattle, WA; Leaven Construction and Equipment Co., of Woodinville, WA; Calkins Equipment Co., of Everett, WA; Duvall Sand & Gravel, of Redmond, WA, Kihl & Son Welding, of North Pole, AK, and Simlog Leasong Company, of Bellevue, WA.

MC 165146, filed December 10, 1982. Applicant: McINTOSH IMPLEMENT, INC., P.O. Box 367, McIntosh, SD 57641. Representative: J. Maurice Andren, 1734 Sheridan Lake Rd., Rapid City, SD 57701, (605) 343-4038. Transporting (1) general commodities (except classes A and B explosives and household goods), between points in ND and SD, on the one hand, and, on the other, points in CO, GA, ID, IL, IN, IA, KS, MN, MO, MT, NE, ND, OR, PA, SD, WA, WI, and WY; (2) farm machinery and tractors, between points in MT, NE, and WY, on the one hand, and, on the other, points in IN, IA, KS, MN, MO, and WI; and (3) Lumber and wood products, between points in ID, OR, MT, and WA, on the one hand, and, on the other, points in IL, IA, MN, NE, and WI.


[FR Doc. 82-33079 Filed 12-27-82; 8:45 am]

BILLING CODE 7035-01-M
Motor Carriers; Permanent Authority Decisions; Decision-Notice

In the matter of Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods).

The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the Federal Register on November 1, 1982, at 47 FR 49783, which redesignated the regulations at 49 CFR 1100.251, published in the Federal Register on December 31, 1982. For compliance procedures, see 49 CFR 1100.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common or contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the Federal Register on November 24, 1982, at 49 FR 53271. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These applications may be protested only on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, or, if the application later becomes unopposed, appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 2, Members: Keeton, Williams, Ewing.

Agatha L. Mergenovich, Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce, over regular routes unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Please direct status inquiries to Team Four at (202) 275-7666.

Volume No. Op 4-883

Decided: December 17, 1982.

MC 28657 (Sub-8), filed December 7, 1982. Applicant: I-V COACHES, INC., 1600 Bayou St., Vincennes, IN 47591. Representative: Harry J. Harman, 700 Harrison Bldg., 143 W Market St., Indianapolis, IN 46204, (317) 694-4242. Transporting passengers, in special and charter operations, between points in St. Joseph, Berrien and Cass Counties, MI, Allen County, IN, and extending to points in Kalamazoo County, MI, and Berrien County, IN.

Volume No. Op 4-884

Decided: December 20, 1982.

MC 109667 (Sub-1), filed December 3, 1982. Applicant: KEITH STODOLA AND CECIL A. STODOLA, d.b.a. STODOLA BROTHERS TRUCKING, Route 1, P.O. Box 24, Sarona, WI 54870. Representative: Cecil A Stodola (same address as applicant), (715) 499-3281. Transporting food and other edible products and byproducts intended for human consumption, (except alcoholic beverages and drugs), agricultural limestone and fertilizers, and other soil conditioners by the owner of the motor vehicle in such vehicle, between points in the U.S. (except HI and AK).

Condition: Issuance of a certificate in the proceeding is subject to prior or coincidental cancellation, at applicant's written request, of Certificate of Registration No. MC-109667.

MC 114057 (Sub-5), filed December 13, 1982. Applicant: SAFETY TRANSIT TOURS OF EDEN, INC., P.O. Box 1058, Eden, NC 27288. Representative: Archie W. Andrews, P.O. Box 1166, Eden, NC 27288, (919) 635-4711. Transporting passengers, in charter and special operations, beginning and ending at points in NC and VA, and extending to points in the U.S. (except HI).
Note—Applicant seeks to provide privately-funded charter and special transportation.


Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 147047 (Sub-12), filed December 13, 1982. Applicant: CAPITAL WIRE & CABLE CORPORATION, d.b.a. C.W.C. TRUCKING COMPANY, P.O. Box 7, Plano, TX 75074. Representative: William Sheridan, P.O. Box 5049, Irving, Plano, TX 75074. (214) 255-6279. Transporting passengers, in charter and special operations, between points in the U.S. (except AK and HI).

MC 159116 (Sub-4), filed December 13, 1982. Applicant: FRONTIER TRAILS, INC., Rear 30-135 Port St., Newark, NJ 07105. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602. (312) 726-6525. Transporting passengers, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165096, filed December 7, 1982. Applicant: MURRAY BROS. TRUCKING, INC., P.O. Box 2000, Wapakoneta, OH 45895. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. (614) 228-1541. Transporting for or on behalf of the United States Government general commodities (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 165116, filed December 9, 1982. Applicant: RAY CHAIN, d.b.a. RLC DIST. CO., 3814 Anton, San Antonio, TX 78223. Representative: Harry F. Fruen, Suite 115, 5001 Brentwood Stair Rd., Fort Worth, TX 76112. (817) 457-0604. Transporting food and other edible products and byproducts intended for human consumption (except alcoholic beverages and drugs), agricultural limestone and fertilizers and other soil conditioners by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 165138, filed December 9, 1982. Applicant: JAMES R. CHRONISTER, P.O. Box 321, Lavaca, AR 72941. Representative: James R. Chronister (same address as applicant). (501) 674-5428. Transporting food and other edible products and byproducts intended for human consumption (except alcoholic beverages and drugs), agricultural limestone and fertilizers and other soil conditioners by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

[FR Doc. 82-5079 Filed 12-27-82; 8:45 am] BILLING CODE 7035-01-M

[Volume No. 318]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: December 20, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the Federal Register of December 31, 1980, at 45 FR 66747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137-12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed. Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10822(b).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.


MC 85255 (Sub-74)X, filed November 22, 1982. Applicant: PUGET SOUND TRUCK LINES, INC., P.O. Box 24526, Seattle, WA 98124. Representative: James F. Walker, (same as applicant). Subs 23, 28, 60F, and 72F, (1) broaden to (a) "forest products, lumber and wood products" from forest products, lumber, lath, and shingles, in Sub 23; (b) "machinery, building materials, and metal products" from machinery, contractors' equipment, and structural steel, in Sub 28; (c) "building materials" from insulation, in Sub 60F; (d) "pulp, paper, and related products" from paper and paper products, in Sub 72F; (2) expand Kirkland, WA to King County, WA, Sub 60F; (3) change one-way to radial authority in Subs 28 and 60F.

MC 141236 (Sub-2)X, filed December 6, 1982. Applicant: TWINCO TRUCKING CO., INC., 145 Talmadge Rd., Edison, NJ 08817. Representative: Ronald L. Shappas, 450 Seventh Avenue, New York, N.Y. 10123. Lead and Sub 1 permits, broaden territorial authority to "between points in the U.S. (except Alaska and Hawaii), under continuing contract(s) with named shipper.

[FR Doc. 82-5079 Filed 12-27-82; 8:45 am] BILLING CODE 7035-01-M

Motor Carriers; Republications of Grants of Operating Rights Authority Prior to Certification

[Decision Volume No. 081]

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the Federal Register.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this Federal Register notice. Such pleading shall address specifically the issue(s) indicated as the purpose for republication. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

Agatha L. Mergenovich, Secretary.

MC 149287 (Sub-No. 3) (republication), filed February 9, 1982; published in the...
Federal Register issue of March 1, 1982; and republished this issue. Applicant: SUPER TRUCK LINES, INC., 801 West Pershing Road, Chicago, Illinois 60606. Representative: William Shipley, P.O. Box 1585, Hot Springs, Arizona 79101. Phone: 501-262-3600. In a decision, by the Commission, acting as an Appellate Division, decided November 10, 1982, and finds that performance by applicant:

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirement of prior approval under 49 U.S.C. 10903 et seq. the abandonment of a 250 foot segment of Chicago and North Western Transportation Company track in La Crosse, WI, from the requirement of prior approval under 49 U.S.C. 10903 et seq.

DATES: This exemption is effective on January 27, 1983. Petitions for reconsideration of this action must be filed by January 17, 1983, and petitions for stay must be filed by January 7, 1983.

ADDRESSES: Send pleadings to:
(1) Rail Section, Room 5349, Interstate Commerce Commission, Washington, DC 20423; and
(2) Mr. John T. Van Gessel, Law Dept. Chicago and North Western Transportation Co., One North Western Center, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Louie E. Gitomer, (202) 275-7245; or Anne K. Quinlan, (202) 275-6458.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, Interstate Commerce Commission, Washington, D.C. 20423, (202) 299-4357—DC metropolitan area, (800) 424-5403—Toll free for outside the DC area.

Decided: December 20, 1982. 
By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.
Agatha L. Mergenovich, Secretary. 
[FR Doc. 82-35077 Filed 12-27-82; 8:45 am] 
BILLING CODE 7035-01-M

[Finance Docket No. 30066]

SOO Line Railroad Co.—Abandonment Exemption—Between Wimbledon and Clements ville, ND

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts from the requirement of prior approval under 49 U.S.C. 10903 et seq. the abandonment by the Soo Line Railroad Company of 9.4 miles of track between milepost 314.4 at Wimbledon, ND, and milepost 323.8 at Clementsville, ND, subject to the standard labor protective conditions.

DATES: This exemption will be effective January 27, 1983. Petitions to stay the effectiveness of the decision must be filed by January 7, 1983 and petitions for reconsideration must be filed by January 17, 1983.

ADDRESSES: Send pleadings to:
(1) Rail Section, Room 5349, Interstate Commerce Commission, Washington, DC 20423; and
(2) Mr. John T. Van Gessel, Law Dept. Chicago and North Western Transportation Co., One North Western Center, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Louie E. Gitomer, (202) 275-7245; or Anne K. Quinlan, (202) 275-6458.

SUMMARY: The Commission exempts the abandonment of a track mileage of track between milepost 314.4 at Wimbledon, ND, and milepost 323.8 at Clementsville, ND, subject to the standard labor protective conditions.

DATES: This exemption will be effective January 27, 1983. Petitions to stay the effectiveness of the decision must be filed by January 7, 1983 and petitions for reconsideration must be filed by January 17, 1983.

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(1) Rail Section, Room 5349, Interstate Commerce Commission, Washington, DC 20423; and
(2) Mr. John T. Van Gessel, Law Dept. Chicago and North Western Transportation Co., One North Western Center, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Louie E. Gitomer, (202) 275-7245; or Anne K. Quinlan, (202) 275-6458.
DEPARTMENT OF JUSTICE
Office of Juvenile Justice and Delinquency Prevention

National Advisory Committee for Juvenile Justice and Delinquency Prevention
Change of Location of Meeting

As announced in the Federal Register of November 30, 1982, (Vol. 47, No. 230, page 53959), the twenty-fifth quarterly meeting of the National Advisory Committee for Juvenile Justice and Delinquency Prevention will be held on January 17 and 18, 1983. This is to announce that the location of the meeting has been changed from San Diego, California to Washington, D.C.

The meeting will be held at the National Association of Counties, 440 First Street, NW., 8th floor Board Room, Washington, D.C. from 9:00 a.m. to 5:00 p.m. on both January 17 and 18. Members of the public are welcome.

Agenda items will include: The swearing in of three new members of the Committee; dissemination options for juvenile justice standards; juvenile probation; illegal juvenile immigrants; model code for constitutional standards for juveniles; and OJJDP's FY 83 program plan.

Further information regarding this meeting may be obtained by contacting Nancy L. Kujawski, Office of Juvenile Justice and Delinquency Prevention, 833 Indiana Avenue, NW., Washington, D.C. 20531, (202) 724-7655.


Federal-State Unemployment Compensation Program; Extended Benefits; Ending of Extended Benefit Period in State of Oregon

This notice announces the ending of the Extended Benefit Period in the State of Oregon, effective on December 18, 1982.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Extended Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State, to furnish up to 13 weeks of extended unemployment benefits to eligible individuals who have exhausted their rights to regular unemployment benefits under permanent State and Federal unemployment compensation laws. The Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered “on” when the rate of insured unemployment in the State reaches the State trigger rate set in the act and the State law. During an Extended Benefit Period individuals are eligible for a maximum of up to 13 weeks of benefits, but the total of Extended Benefits and regular benefits together may not exceed 39 weeks.

The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger “off” when the rate of insured unemployment in the State is no longer at the trigger rate set in the law. A benefit period actually terminates at the end of the third week after the week for which there is an off indicator, but not less than 13 weeks after the benefit period began.

An Extended Benefit Period commenced in the State of Oregon on March 16, 1980 and has now triggered off.

Determination of “off” Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the period consisting of the week ending on November 27, 1982, and the immediately preceding twelve weeks, fell below the State trigger rate, so that for that week there was an “off” indicator in the State.

Therefore, the Extended Benefit Period in the state terminated with the week ending on December 18, 1982.

Information for Claimants

The State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits of the end of the Extended Benefit Period and its effect on the individual’s right to Extended Benefits. 20 CFR 615.13(d)(3).

Persons who wish information about their rights to Extended Benefits in the State named above should contact the nearest State employment service office or unemployment compensation claims office in their locality.


Albert Angrisani,
Assistant Secretary of Labor.
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, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

[Application No. D-3681]

Retirement Plan of Girard Bank (the Plan) Located in Philadelphia, Pennsylvania

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 408(a), 408(b)(1) and 408(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) of the Code shall not apply to: (1) The proposed 99 year lease by the Plan of a certain parcel of land and improvements thereon (the Property) from Girard Bank (the Bank), the Plan sponsor; (2) the proposed sublease, for ten years, of the Property by the Plan to Girard Realty Corporation (GRC), a party in interest with respect to the Plan; (3) the proposed sublease, for ten years, of the Property by GRC to the Bank; and (4) the possible purchase of the Property by the Plan from the Bank.

Effective Date: If granted, the exemption will be effective December 27, 1982.

Written Comments and Hearing Requests: All interested persons are invited to submit written comments or requests for a hearing on the pending exemption within 30 days from the date of publication of this Federal Register notice. Comments and requests for a hearing should state the reasons for the writer’s interest in the pending exemption.

1. The Plan is a defined benefit pension plan which had approximately 3600 participants and net assets of approximately $45,045,234 on December 31, 1981. The Bank is the trustee of the Plan as well as the Plan sponsor. The Bank and GRC are each wholly owned subsidiaries of The Girard Company. The Property, which is a certified historic building located at the northeast corner of Second and Chestnut Streets in Philadelphia, is used by the Bank for retail banking services and office space. The Property underwent extensive exterior and interior renovations during 1976 and 1977 at a cost of approximately $1,500,000 to the Bank. A recent appraisal of the Property as of August 12, 1982 by Mr. Harvey Zalesne (Zalesne) and Mr. Joel D. Kulick (Kulick) of the firm of Zalesne & Herd, Philadelphia, Pennsylvania, indicated a fair market value of $2,000,000 and a fair market rental value of $300,000 per year. Zalesne, Kulick and Zalesne & Herd are independent of The Girard Company and its affiliates, and have extensive experience in appraising commercial properties. Kulick is an M.A.I. certified appraiser.

2. The Bank proposes to lease the Property to the Plan pursuant to a 99 year lease (the Lease). The Plan will lease the Property for $2,000,000, payable in advance, plus one dollar per year. This amount is the fair market value of the Property as determined by Zalesne and Kulick and represents less than five percent of the Plan’s current assets. The Lease will be triple net, i.e., the Plan will be responsible for all taxes, maintenance fees and expenses, utility charges, insurance premiums and similar charges incurred with respect to the Property. The Bank, however, will warrant to the Plan and hold the Plan harmless for the first ten years of the Lease term as to the structural soundness of the building on the Property and as to the fact that the building meets all applicable building codes. A purchase option provision in the Lease will permit the Plan to purchase the fee simple interest in the Property at any time during the Lease term for one dollar. The Plan will also have the unilateral right to terminate the Lease at any time by giving ninety days notice to the Bank, however, the Plan will have no rights to any refunds of any rent already paid to the Bank at the time of termination.

3. Upon execution of the Lease, the Plan will sublease the Property to GRC (the GRC Sublease), which will in turn sublease the Property back to the Bank (the Bank Sublease). Both subleases will also be triple net. The applicants state that they have been advised that use of the long term Lease, purchase option and leaseback arrangements may enable the Plan to command a higher price for the Property in any subsequent sale of the Property, should the Plan exercise its purchase option and sell the Property, because the Property will not be appraised for local tax purposes until upward of a year after its purchase, thereby lowering a subsequent purchaser’s initial carrying costs.

4. The GRC Sublease will have a term of ten years, but may be terminated by the Plan, as lessor, at any time after two years from its commencement. The initial rental to be paid to the Plan by GRC will be $300,000 per year, which is the fair market rental value of the Property as determined on August 12, 1982 by Zalesne and Kulick. An escalator clause in the GRC Sublease provides for an automatic increase of 2.5% of the prior year’s rental rate each year, and additionally, the Property will be re-appraised every two years and the rent will be adjusted upward if necessary, to reflect at least the then current fair market value of the Property as determined by a qualified, independent appraiser. The GRC Sublease, which is triple net, provides that GRC will be responsible for all taxes, maintenance fees and expenses, utility charges, insurance premiums and similar charges incurred with respect to the Property.

5. GRC will then sublease the Property to the Bank for a ten year period. The Bank Sublease, which is also triple net, will have the same terms and conditions as the GRC Sublease. However, should the Plan decide to terminate the GRC Sublease, the Bank Sublease would be automatically terminated.

6. The real estate firm of Strouse, Greenberg & Co. (Strouse), Philadelphia, Pennsylvania, which is independent of all parties to the proposed transactions, has accepted appointment as an independent fiduciary for the Plan with respect to the subject transactions. Strouse will approve and monitor the Leases on behalf of the Plan. The sole party to authorize, on behalf of the Plan, the Plan’s exercise of its rights to purchase the Property or to terminate the Lease from the Bank and/or the GRC Sublease, and additionally, will take any steps necessary to enforce the rights of the Plan with regard to all the subject transactions. Strouse has reviewed its undertakings as an independent fiduciary with attorneys at Dechert, Price & Rhoads, Philadelphia, Pennsylvania, who have extensive experience in matters involving fiduciary responsibility and employee benefit plans.

Strouse has reviewed the needs of the Plan, the Plan’s most recent financial statements, the proposed Lease, the GRC Sublease and the Bank Sublease (collectively, the Leases), the appraisals of fair market value and fair rental value
of the Property and various financial studies and analyses of the real estate industry, and represents that the proposed transactions are fair to the Plan and in the best interest of the Plan's participants and beneficiaries because: (1) The price of the 99 year Lease from the Bank to the Plan is not more than the appraised fair market value of the Property; (2) the Plan's option to purchase the Property for one dollar permits the Plan to resell the Property at any time that Strouse and the Plan believe such a resale would be in the best interests of the participants and beneficiaries in the Plan, any such resale being subject to the sublease to GRC, which may be canceled any time after two years; (3) the rate of return to the Plan of 15% per annum under the GRC Sublease is favorable to the Plan and not less than the appraised fair rental value under a "triple net lease", where the sublessee, GRC, pays all expenses, taxes and the like; (4) the biannual adjustment of rental rates under the subleases will reflect increases in the applicable fair market rental value of the Property during the ten year term of the subleases; (5) the Plan had net assets as of December 13, 1981 of $43,045,234 and paid benefits in 1981 of $2,633,675, an assets to benefits ratio of 20.1. The investment of $2,000,000 in the Property, about one-twentieth of the Plan's fund, will yield an amount ($300,000) equal to more than one-tenth of the Plan's requirements for benefit payments or to be invested any time. The Plan's investment in the Property will be substantially in excess of the average yield on the Plan's other assets, when compared with the 1981 results; and (7) the Plan's sublessee, GRC, an affiliate of the Bank, will in turn sublease the Property to the Bank, which is a responsible financial institution. The most recent Federal Reserve Bank report available to Strouse, that of March 31, 1982, shows the total equity capital of the Bank was $276,780,000, and Strouse is advised that the Bank ranked 54th among United States commercial banks based upon its total equity capital.

7. In summary, the applicants represent that the proposed transaction meets the statutory criteria for an exemption under section 404(a) of the Act because: (1) The fair market value and fair market rental value of the Property have been determined by qualified, independent appraiser; (2) escalation clauses in the subleases to GRC and the Bank provide for automatic increases of 2.5% of the prior year's rental rate each year, and additionally, the fair market rental value of the Property will be reappraised once every two years to ensure that the Plan is always receiving at least the fair market rental value of the Property; (3) an independent fiduciary has reviewed the needs of the Plan and the proposed transactions and has determined that the proposed transactions are appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; (4) the independent fiduciary will monitor the Leases on the Plan's behalf, authorize the exercise of the purchase option and the termination of the Lease and/or the GRC Sublease on the Plan's behalf and will take any steps necessary to protect the rights of the Plan and its participants and beneficiaries; (5) the proposed transactions will involve less than five percent of the Plan's current assets; and (6) the Bank, as trustee of the Plan, has determined that the transactions are appropriate for the Plan and in the best interests and protective of the Plan's participants and beneficiaries.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8972. (This is not a toll-free number.)

[Application No. D-3719]
The Profit-Sharing Plan and Trust for Employees of the Havi Corporation and Its Subsidiaries (the Plan), Located in Hinsdale, Illinois

Proposed Exemption

The Department is considering granting an exemption under the authority of section 406(a) of the Code and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 4975(b)(1) and (b)(2) of the Code 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 purchase of certain real property (the Land) by the Plan and the lease of the Land to Mersrs. Theodore F. Perlman and Robert E. Rocque (the Developers), who are principals of Havi Corporation (the Employer). Provided the terms and conditions of the transactions are not less favorable to the Plan than those obtainable in similar transactions with an unrelated party.

Summary of Facts and Representations

1. The Employer is a Delaware corporation maintaining its principal place of business at 911 North Elm Street, Hinsdale, Illinois. The Employer is the parent of an affiliated group of corporations (the Havi Group) which includes the Perlman Rocque Company (North), a Minnesota corporation; the Perlman Rocque Company (P-R), an Illinois corporation; and Golden Arch Express, Inc. (GAX), an Illinois corporation. The Employer is engaged primarily in providing management and administrative services to its operating subsidiaries and affiliates, and in distributing foodstuffs, paper goods and supplies through its Perseco Company Division (Perseco). Both North and P-R supply food and related food products to McDonald's franchises. GAX is an interstate carrier and transports, by truck, the supplies of the Havi Group to the McDonald's franchises and performs transportation services for McDonald's subsidiaries and affiliates.

2. The Plan is a profit sharing plan covering all eligible non-union employees of the Employer and those corporations of the Havi Group which have adopted it. As of January 30, 1982, the Plan had an estimated 157 participants and total assets of $2,228,584. American National Bank and Trust Company of Chicago, located in Chicago, Illinois serves as the Plan trustee (the Trustee). The Trustee is responsible for all investment decisions with respect to the assets of the Plan.

3. The Employer desires to centralize its existing operations by causing it, Perseco and GAX to be housed in one facility. To accomplish this objective, the Employer proposes to have the Plan engage in several transactions, among which includes the lease for which it is requesting an exemption. Initially, it is proposed that the Plan purchase the Land for cash from an unrelated party. Then, the Plan will lease the Land to the Developers pursuant to the terms and conditions of a ground lease (the Ground Lease). Within an eighteen month period, the Developers will cause an office building (the Building) to be erected on the Land. Afterwards, the Developers will lease space in the Building to the Employer, its subsidiaries and affiliates.

4. The Land which the Plan will purchase for cash from an unrelated party consists of approximately four acres situated in Westmont, DuPage County, Illinois. The Land is specifically identified as "Lot 2, in Oakmont Centre,
57791

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Unit II. The purchase price for the Land is approximately $83,500,000 as determined by an independent appraisal: The purchase price represents nearly 25 percent of the Plan's total assets. To evidence its ownership of the Land, the Plan will receive a recorded warranty deed.

5. With respect to the Ground Lease executed between the Plan and the Developers, the Plan will receive base rent (payable semiannually in arrears commencing on its purchase of the Land) in an amount equal to 11 1/2 percent of the purchase price (approximately $73,000). In addition to the base rent, the Plan will receive 20 percent of any cost-of-living increases received by the Developers from tenants leasing space in the Building. The Developers will pay, or cause to be paid, all real estate taxes and assessments levied upon and all operating expenses related to the Land and the Building.

The duration of the Ground Lease will be forty years, unless terminated sooner. Commencing on the twelfth year of the Ground Lease, and at the end of each five year period thereafter, and appraisal of the Land and Building will be made by an independent appraiser. Based on the appraisal, the base rent will bear the greater of the rent then being paid (which rent will include all cost-of-living adjustments) or 11 1/2 percent of the appraised value. For a period of six months, commencing at the end of the twelfth year and each five year increment thereafter (the Put Option Period) the Plan may require the Developers to purchase the Land for the greater of its purchase price or the original purchase price (the Put Option), provided an independent fiduciary designated to oversee the proposed transactions makes the decision relative to the exercise of the Put Option. The payment is to be made in four consecutive equal annual installments, with the balance of the principal bearing interest at the prime rate of Continental Illinois National Bank and Trust Company of Chicago, Chicago, Illinois. In the event the Plan elects not to exercise the Put Option, the Developers, for a six month period commencing at the expiration of each Put Option Period may purchase the Land from the Plan at the greater of its purchase price or its then appraised value (the Call Option). Payment by the Developers is to be made within the six month Call Option period.

If a default occurs under the Ground Lease, the Plan will have all rights customarily granted to and/or reserved to ground lessors, including the right to terminate the Ground Lease and accelerate all payments due thereunder or seek indemnification from the Employer which has agreed to guarantee the Ground Lease. As of January 30, 1982, the Employer and members of the Havi Group had combined total assets of $30,235,944.

8. The purchase price and fair rental value of Land have been determined by Messrs. Frank A. Silvka, MAI appraiser and Thomas Rogers, a staff appraiser (the Appraisers) in an appraisal report dated August 6, 1982 and in an addendum to the appraisal report dated October 7, 1982. The Appraisers are unrelated to the Plan, Employer and other parties in interest and are affiliated with Mid America Appraisal and Research Corporation, a real estate consulting firm located in Chicago, Illinois. Based on their analyses of the Land, the Appraisers have placed its fair market value at $635,000 as of May 31, 1982. The Appraisers also opine that based on their experience and judgment as well as their evaluation of all available data, the Ground Lease rental rate of 11 1/2 percent is within the range of fair market rental, though it tends to be near the middle to lower end of the rental range. The Appraisers note that although the Ground Lease has a term of forty years, it may be considered a twelve year investment with a termination date in 1994 since either the Plan or Developers may exercise the Put or Call Options on the twelfth year the Ground Lease is in effect. Assuming either of the parties exercises their respective Option, the Appraisers state that the Plan will be free to make alternative investments.

7. The Trustee has agreed to serve as the independent fiduciary for the proposed transactions. By letter dated September 27, 1982, the Trustee states that although the Employer maintains deposits with the bank ranging between $500,000 to $1 million, these deposits represents an extremely small percentage of the Trustee's average deposits of some $1.9 billion. In addition, the Trustee states that no shareholder of the employer is represented on the Board of Directors of the bank.

As the independent fiduciary, the Trustee will review and monitor the purchase and lease transactions. The Trustee will also make the decision pertaining to the Plan's exercise of the Put Option and it will otherwise protect and enforce the interests of the Plan.

The Trustee believes the proposed transactions are prudent investments for the Plan and in the best interests and protective of the Plan's participants and beneficiaries. The Trustee will not cause the Plan to buy the Land unless it determines that the Land is purchased for its fair market value. With respect to the Put and Call Options, the Trustee has reviewed their terms and it considers them to be appropriate. The Trustee has also reviewed the provisions of the Ground Lease, including the cost-of-living features, and the leases the Developers intend to make to members of the Havi Group.

Based on its evaluation of these leases, the Trustee is satisfied that the base rent to be paid the Plan plus the cost-of-living increments are appropriate and represent fair market value. The Trustee has further considered the propriety of not having the land reappraised for the first twelve years that the Ground Lease is in effect and it believes this condition is acceptable.

Concerning the 11 1/2 percent base rental rate for the Ground Lease, the Trustee states that it is competitive with the market rate and it carries with it the possibility of a higher rate because of increases in the cost-of-living. Although the Ground Lease is for a forty year term, the Trustee notes that the Plan retains the right to recoup the entire investment in twelve years and in each five year increment thereafter. The Trustee also states that the proposed investment in the Land (which represents less than 25 percent of the Plan's current assets) along with a 15 percent investment in common stock will continue the Plan's conservative investment posture.

4. In summary, it is represented that the the proposed transactions satisfy the criteria of section 408(a) of the Act because: (a) the Trustee, as the independent fiduciary, has determined that the Plan's investment in the Land and the Ground Lease to the Developers is in the best interests of the Plan and its participants and beneficiaries; (b) the Trustee will monitor the terms of the Land acquisition as well as the provisions of the Ground Lease, including the Plan's exercise of the Put Option; (c) the Plan will purchase the Land at a cost equal to its fair market value under the direction of the Trustee; (d) the Plan will lease the Land for its fair rental value under the Ground Lease which will contain escalator clauses and require appraisals of the Land at five year intervals after the Ground Lease has been in effect for twelve years; and (e) the Employer will guarantee payments under the Ground Lease in the event of a default by the Developers.

FOR FURTHER INFORMATION CONTACT:
Ms. Jan D. Broady of 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 under section 408(a) of the Act and/or 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/or 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) Before an exemption may be granted under section 408(a) of the Act and/or 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

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or 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.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 22nd day of December 1982.
Alan D. Lebowitz,
[FR Doc. 82-35147 Filed 12-27-82; 8:45 am]
BILLING CODE 4510-29-M

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Merit Systems Protection Board.

ACTION: Annual publication of systems of records.

SUMMARY: The Merit Systems Protection Board (MSPB) publishes this document pursuant to the requirements of the Privacy Act of 1974 at 5 U.S.C. 552a(e)(4). This Act requires agencies to publish annually in the Federal Register a notice of the existence and character of their systems of records.

ADDRESS: Office of the Secretary, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C., 20419.

FOR FURTHER INFORMATION CONTACT: Kathy Semone, Assistant Secretary, 202-653-7200.

SUPPLEMENTARY INFORMATION: MSPB previously published the full text of its systems of records at 48 FR 32330, June 23, 1981, and amended its system entitled MSPB/GOVT-1, Appeal and Case Records at 48 FR 42372, August 20, 1981. The Notice has been corrected to reflect the current addresses of the Board and its Regional Offices. References to “Field Offices” contained within the notice as originally published have been revised to reflect the change in designation of these offices to “Regional Offices” and identification of system locations and system managers has been revised to reflect changes in the position titles of the managers. The authority for maintenance of the system entitled MSPB/INTERNAL-6, Security Office Control Records, has been updated to reflect the issuance of Executive Order 12356 concerning national security information.

Finally, the system entitled MSPB/GOVT-1, Appeal and Case Records, has been modified to exclude appeals filed within agencies prior to September 9, 1974 from coverage. The retention period previously established for these records was seven years; that period has now expired. The MSPB provided notice of its intent to exclude such appeals from coverage in the preamble to the publication of its systems notice on June 23, 1981. Accordingly, any agency continuing to maintain records of appeals filed prior to September 9, 1974 now becomes responsible for publication of its own system notice with respect to those records.

This Notice contains no changes in routine uses for the systems contained herein. It does not contain any material which would require a new or altered systems report as described in Office of Management and Budget (OMB) Circular A–108.

For the Board.
Herbert E. Ellingwood,
Chairman.

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APPENDIX

MSBP/INTERNAL-1

SYSTEM NAME:
Pay, Leave, and Travel Records.

SYSTEM LOCATION:
Director, Office of Administration, Merit Systems Protection Board (MSPB), 1120 Vermont Avenue, N.W., Washington, D.C. 20419, and MSPB Regional Offices (see list of Regional Office addresses in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
Current and former employees of the Merit Systems Protection Board.

CATEGORIES OF RECORDS IN THE SYSTEM:
This system, both manual and automated, contains various records relating to pay, leave, and travel. This includes information such as: name; date of birth; social security number; home address; grade; employing organization; timekeeper number; salary; pay plan; number of hours worked; leave accrual, usage, and balance; Civil Service Retirement contributions; FICA withholdings; Federal, State, and Local tax withholdings; Federal Employees' Group Life Insurance withholdings; Federal Employees' Health Benefits Withholdings; charitable deductions; allotments to financial organizations; garnishment documents; savings bond
allotments; union and management association dues withholding allotments; and travel expenses.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**


**PURPOSE(S):**

These records are used to administer the pay, leave, and travel functions of the Merit Systems Protection Board.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Information from these records may be disclosed:

- a. To the Department of the Treasury to issue checks and U.S. Savings Bonds.
- b. To the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness.
- c. To State offices of unemployment compensation in connection with claims filed by former MSBP employees for unemployment compensation.
- d. To Federal Employees' Group Life Insurance or Health Benefits carriers in connection with survivor annuity or health benefits claims or records reconciliations.
- e. To the Internal Revenue Service and State and local tax authorities.
- f. To the Social Security Administration in connection with FICA withholdings and benefits.
- g. To the Office of Personnel Management in connection with payroll deductions for Civil Service retirement plans.
- h. To the Combined Federal Campaign in connection with payroll deductions for charity.
- i. To the authorized employees of another Federal agency that provides MSBP with manual and automated assistance in processing pay, leave, and travel records.
- j. In the event the individual to whom the record pertains dies, to the person appointed as representative of the estate, or the person designated by the representative, or to a designated beneficiary. When a representative of the estate has not been appointed, the individual's next of kin may be recognized as the representative of the estate.
- k. To officials of labor organizations recognized under 5 U.S.C. Chapter 71 as to the identity of Board employees contributing union dues each pay period and the amount of dues withheld from each contributor.
- l. To officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.
- m. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the MSPB becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.
- n. To any source from which the MSPB requests additional information relevant to an MSPB determination concerning an individual's pay, leave, or travel expenses, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.
- o. To the Federal agency, at its request, for purposes connected with: the hiring or retention of an employee; the issuance of a security clearance; the conduct of a suitability or security investigation of an individual; the classification of a job; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.
- q. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.
- r. To another Federal agency or to a court when the Government is party to a judicial processing before the court.
- s. To the National Archives and Records Service (General Services Administration) pursuant to records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.
- t. In response to a request for discovery or for appearance of a witness, if the information is relevant to the subject matter involved in a pending judicial or administrative processing.
- v. To the General Accounting Office for auditing purposes.

**POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are maintained in file folders and loose leaf binders, and on cards, magnetic tapes and discs.

**RETRIEVABILITY:**

These records are retrieved by name, social security number, or Merit Systems Protection Board employee identification number.

**SAFEGUARDS:**

These records are located in lockable metal filing cabinets or in a secured facility and are available only to authorized personnel.

**RETENTION AND DISPOSAL:**

These records are maintained for varying periods of time in accordance with GAS General Records Schedule 2. Disposal or manual records is by shredding or burning; magnetic tapes and discs are erased.

**SYSTEM MANAGER(S) AND ADDRESS:**

- Director, Office of Administration, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419.

**NOTIFICATION PROCEDURES:**

Individuals wishing to determine whether this system of records contains information about them should contact the System Manager indicated above or the MSPB Regional Office where the individual is or was employed. Individuals must furnish the following information for their records to be located and identified:

- a. Full name; and
- b. Date of birth.

Individuals making inquiries as to the existence of records pertaining to themselves must also follow the MSBP's Privacy Act regulations set forth at 5 CFR 1205.11 regarding such inquiries.

**RECORD ACCESS PROCEDURES:**

Individuals requesting access to their records should contact the System Manager indicated above or the MSPB Regional Office where the individual is or was employed. Individuals must furnish the following information for their records to be located and identified:

- a. Full name; and
- b. Date of birth.

Individuals requesting access must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1201.11 regarding access to records and verification of identity.
CONTESTING RECORD PROCEDURES:
Individual wishing to request amendment of records about them should contact the System Manager indicated above, or the MSPB Regional Office where the individual is or was employed. Individuals must furnish the following information for their record to be located and identified:
   a. Full name; and
   b. Date of birth.
Individuals requesting amendment of their records must also follow the MSPB’s Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

RECORD SOURCE CATEGORIES:
   a. The individual to whom the record pertains;
   b. Merit Systems Protection Board officials responsible for pay, leave and travel functions; and
   c. Other official personnel documents of MSPB.

MSPB/INTERNAL-2

SYSTEM NAME:

SYSTEM LOCATION:
Director, Administrative Services Division, Office of Administration Merit Systems Protection Board (MSPB) 1120 Vermont Avenue, N.W., Washington, D.C. 20419, and MSPB Regional Offices (see list of Regional Office addresses in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
Current and former employees of the Merit Systems Protection Board.

CATEGORIES OF RECORDS IN THE SYSTEM:
The system contains documents related to the authorization and issuance to an individual of a Government motor vehicle operator's permit; also included are reports, correspondence, and fiscal documents pertaining to automobile accidents occurring in a Government-owned or leased automobile or in a privately-owned vehicle while on official business.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

PURPOSE(S):
The records serve to document issuance of a Government motor vehicle operator's accident report and related document may be used in claims settlement litigation regarding an accident involving a Government motor vehicle or privately-owned vehicle while being used on official business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:
Information from these records may be disclosed:
   a. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the MSPB becomes aware of a violation or potential violation of civil or criminal law or regulation.
   b. To any source from which the MSPB requests additional information (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested) where necessary to obtain information relevant to an MSPB decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conduct of a security or suitability investigation of an individual, the classification of jobs, the letting of a contract, or the issuance of a grant or other benefit.
   c. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.
   d. To another Federal agency or to a court when the Government is party to a judicial proceeding before the court.
   e. To the National Archives and Records Service [General Services Administration] pursuant to records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.
   f. To officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.
   g. To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conduct of a suitability or security investigation, the classification of jobs, or the award of a contract, license, grant or other benefit.
   h. To the General Services Administration about accidents involving Government-owned or leased automobiles.
   i. To insurance carriers about accidents involving privately-owned vehicles.
   j. In response to a request for discovery or for the appearance of a witness, if the information is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
These records are maintained in file folders and on indexed application cards.

RETRIEVABILITY:
Records are retrieved by name of the individual on whom they are maintained.

SAFEGUARDS:
Records are maintained in a secured area and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:
Motor vehicle operator records are maintained for three years after the separation of the employee (operator) and are destroyed by shredding. Accident reports are maintained for three years after the date of the report and are destroyed by shredding, except in cases involving litigation. In cases involving litigation, these records are maintained until all litigation has been settled.

SYSTEM MANAGER(S) AND ADDRESSES:
   a. For motor vehicle operator records: Director, Administrative Services Division, Office of Administration, Merit Systems Protection Board, 1120 Vermont Avenue, N.W. Washington, D.C. 20419.
   b. For accident report records: General Counsel, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419.

NOTIFICATION PROCEDURES:
Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate office as follows:
   a. For accident report records: Contact the System Manager indicated above;
   b. For motor vehicles operator records: for current or former MSPB employees: Contact the System Manager indicated above; or the MSPB Regional Office in which employed (see list of Regional Office addresses in the Appendix).
Individuals must furnish the following information for their records to be located and identified:
   a. Full name; and
   b. Date of birth.
Individuals making inquiries as to the existence of records pertaining to themselves must also follow the Board’s Privacy Act regulations set forth at 5 CFR 1205.11 regarding such inquiries.
RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about themselves should contact the appropriate office as follows:

a. For accident report records: Contact the System Manager indicated above;

b. For motor vehicle operator records of current or former MSPB employees: Contact the System Manager indicated above or the MSPB Regional Office in which employed (see list of Regional Office addresses in the Appendix). Individuals must furnish the following information for their records to be located and identified:
   a. Full name; and
   b. Date of birth.

Individuals requesting access must also follow the MSPB’s Privacy Act regulations set forth at 5 CFR 1205.11 regarding access to records and verification of identity.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the appropriate office as follows:

a. For accident report records: Contact the System Manager for these records indicated above;

b. For motor vehicle operator records for current or former MSPB employees: Contact the System Manager indicated above or the MSPB Regional Office in which employed (see list of Regional Office addresses in the Appendix).

Individuals must furnish the following information for their records to be located and identified:

a. Full name; and

b. Date of birth.

Individuals requesting amendment must also follow the MSPB’s Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

RECORD SOURCE CATEGORIES:

a. The individual to whom the record pertains;

b. MSPB employees and other parties involved in the accident;

c. Witnesses to the accident;

d. Police reports and reports of investigation; and

e. Officials of the MSPB and the General Services Administration.

MSBP/INTERNAL-3

SYSTEM NAME:
Grievance Records.

SYSTEM LOCATION:
Personnel Management Division, Office of Administration, Merit Systems Protection Board (MSPB), 1120 Vermont Avenue, NW., Washington, D.C. 20419

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Merit Systems Protection Board who have filed grievances in accordance with the MSPB’s procedures as established under 5 CFR 771. Subpart C.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by MSPB employees. The case files contain all documents related to the grievance, including statements of witnesses, reports or transcripts of interviews and hearings, the employee’s written request for reviews of the initial grievance, designation of the grievance examiner, any written comments by the grievant or his/her representative upon review of the file at the completion of the inquiry, the examiner’s report of findings and recommendations, the grievance decision, and correspondence and exhibits related to the grievance. The system does not include files and records of any grievance filed under negotiated procedures with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:


PURPOSE(S):

These records are used to process grievance filed by MSPB employees for personal relief in matters of concern or dissatisfaction that are subject to the control of MSPB management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from these records may be disclosed:

a. To any source from which the MSPB requests additional information in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

b. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the MSPB becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To a Federal agency, in response to a request for discovery or for appearance of a witness, if the information is relevant to the subject matter involved in a pending judicial or administrative proceeding.

d. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. To the National Archives and Records Service (General Services Administration) pursuant to records management inspection conducted under authority of 44 U.S.C. 2904 and 2906.

g. To officials of the Office of Personnel Management; the Federal Labor Relations Authority; and the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

h. In response to a request for discovery or for appearance of a witness, if the information is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are disposed of three years after closing of the case. Disposal is by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about them should contact the System Manager indicated above. Individuals who have filed grievances are aware of that fact and have been
given an opportunity to review the record. Individuals must furnish the following information for their records to be located and identified:

a. Full name;
b. Date of birth; and
c. Approximate date of closing of the case and kind of action taken.

Individuals making inquiries as to the existence of records pertaining to themselves must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.1 regarding such inquiries.

RECORDS ACCESS PROCEDURES:

Individuals requesting access to their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name;
b. Date of birth; and
c. Approximate date of closing of the case and kind of action taken.

Individuals requesting access must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding access to records and verification of identity.

CONTESTING RECORDS PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the officer ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name;
b. Date of birth; and
c. Approximate date of closing of the case and kind of action taken.

Individuals requesting amendment must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

RECORD SOURCE CATEGORIES:

a. The individual on whom the record is maintained;
b. Witnesses;
c. Agency officials; and

b. Date of the suggestion or nomination for award or quality step increase; and
c. Duty station at the time the suggestion or nomination for award was made.

d. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

RECORDS ACCESS PROCEDURES:

Individuals requesting access to their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name;
b. Date of the suggestion or nomination for award or quality step increase; and
c. Duty station at the time the suggestion or nomination for award was made.
c. Duty station at the time the suggestion or nomination for award was made.

Individuals requesting access must also follow the MSPB’s Privacy Act regulations set forth at 5 CFR 1205.11 regarding access to records and verification of identity.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about themselves should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name;
b. Date of the suggestion or nomination for award or quality step increase; and
c. Duty station at the time the suggestion or nomination for award was made.

Individuals requesting amendment must also follow the MSPB’s Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

RECORD SOURCE CATEGORIES:

a. Individuals submitting suggestions or nominations for awards or quality step increases;
b. Supervisors of employees;
c. Evaluators of suggestions or nominations for awards or quality step increases;
d. Official Personnel Folders; and
e. Staff of the Personnel Management Division, General Accounting Office, and other Federal agencies.

MSPB/INTERNAL-5

SYSTEM NAME:

Individual Production Reports.

SYSTEM LOCATION:

Office of the Managing Director, Merit Systems Protection Board (MSPB), 1120 Vermont Avenue, NW., Washington, D.C. 20419, and at MSPB Regional Offices (see list of Regional Office addresses in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former MSPB employees who have adjudicated appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain production information by type of appeal; number of cases decided; number of hearings held; calendar days elapsed on an average and median basis for each type of case; and the case disposition by type of appeal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 1205, 3301 et seq. 4103, 4902, 4901 et seq.

PURPOSES:

Records are maintained in this system to provide an effective management tool in determining proper assignment, transfer, promotion, detail, training, reassignment, and other personnel actions affecting presiding officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information from these records may be disclosed:

a. To another Federal agency or to a court when the Government is party to a judicial proceeding before the court.
b. To a congressional office in response to an inquiry from that office.
c. To the National Archives and Records Service (General Services Administration) pursuant to records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.
d. In response to a request for discovery or for appearance of a witness, if the information is relevant to the subject matter involved in a pending judicial or administrative proceeding.
e. To officials of the Office of Personnel Management, the Federal Labor Relations Authority and the Equal Employment Opportunity Commission when requested in the performance of their authorized duties.

POLICIES AND PRACTICES OF STORING, RETRIEVAL, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in binders and on computer tapes and discs.

RETRIEVABILITY:

Records are retrieved by the name of the individual on whom they are maintained and by an appeals officer code number.

SAFEGUARDS:

Records are located in lockable cabinets. Access is restricted to those employees who have a need to use these records.

RETENTION AND DISPOSAL:

The record is maintained during the period of the individual’s service with the Board and destroyed by shredding one year after the individual leaves the Board’s employ.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Managing Director for Regional Operations and Director, Office of Appeals, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about them should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name; and
b. Date and location of the last appeal office assignment.

Individuals making inquiries as to the existence of records pertaining to themselves must also follow the MSPB’s Privacy Act regulations set forth at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name; and
b. Date and location of last appeals office assignment.

Individuals requesting access must also comply with the MSPB’s Privacy Act regulations set forth at 5 CFR 1205.11 regarding access to records and verification of identity.

CONTESTING RECORD PROCEDURES:

Individuals requesting amendment of their records should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name; and
b. Date and location of last appeals office assignment.

Individuals requesting amendment must also comply with the MSPB’s Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual on whom the records are maintained;
b. Case Control Records used as computer data input; and
c. Production information by the Regional Director.

MSPB/INTERNAL-6

SYSTEM NAME:

Security Office Control Records.
SYSTEM LOCATION:

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
Current and former Merit Systems Protection Board employees for whom there is an investigative file. The system also contains cards on employees stationed in MSPB Regional Offices for whom the appointing authority is retained in Washington, D.C., and for whom there is an investigative file.

CATEGORIES OF RECORDS IN THE SYSTEM:
The system consists of cards, filed alphabetically, containing name, social security number, date and place of birth, position sensitivity, type and date of investigations, and date and level of clearance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

PURPOSE(S):
These records are used to document security investigations and clearances of MSPB employees.

ROUTE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
There are no disclosures of this information outside of the security office, except to provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Records are stored on cards.

RETRIEVABILITY:
Records are retrieved by the name and date of birth of the individual on whom they are maintained.

SAFE GUARDS:
The cards are stored in locked file cabinets contained within a secured area. These cards do not leave the security office.

RETENTION AND DISPOSAL:
Records are maintained for one year after the individual leaves the Board and then are destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:
Director, Office of Administration, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419.

NOTIFICATION PROCEDURES:
Individuals wishing to determine whether this system of records contains information about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:
- Full name; and
- Date of birth.

RECORD ACCESS PROCEDURES:
Individuals requesting access to their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:
- Full name; and
- Date of birth.

RECORD SOURCE CATEGORIES:
- The individual to whom the information applies;
- The investigative files maintained by the Investigations division. Associate Director/Staffing Systems and Services, Office of Personnel Management; and
- Employment information maintained by the Board's Director of Personnel.

MSPB/CENTRAL-1

SYSTEM NAME:
Survey Mailing Lists.

SYSTEM LOCATION:
Office of Merit Systems Review and Studies, Merit Systems Protection Board (MSPB) 1120 Vermont Avenue, NW., Washington, D.C. 20419 or with private sector contractors participating in the conduct of MSPB surveys.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
Federal employees who have responded affirmatively to MSPB inquiries regarding participation in confidential surveys conducted by the Office of Merit Systems Review & Studies.

CATEGORIES OF RECORDS IN THE SYSTEM:
In this system includes the name and home address of federal employees who have responded affirmatively to inquiries of the Office of Merit Systems Review and Studies regarding participation in an MSPB survey or surveys.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
5 U.S.C. 1205

PURPOSE(S):
Information in this system is used to provide for the mailing of confidential survey questionnaires to survey participants. The questionnaires are used in conjunction with MSPB's performance of merit system studies, as required by 5 U.S.C. 1205, to determine the extent to which merit system principles effectively operate within the Government.

ROUTE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
There are no routine uses for this system which is used solely to provide for mailing of questionnaires to persons covered by this system in conjunction with their participation in confidential surveys conducted by the Office of Merit Systems Review and Studies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
These records are maintained on computer tapes and discs.

RETRIEVABILITY:
These records are retrieved by the names of the individuals on whom they are maintained.

SAFE GUARDS:
These records are stored in secured rooms. Access to and use of these records is limited to those specially designated MSPB or contractor personnel who are responsible for mailing the questionnaires to survey participants. Personnel screening is employed to prevent unauthorized access or disclosure.
RETENTION AND DISPOSAL:
These records are maintained until all questionnaires have been mailed. The records are destroyed by erasure upon completion of the mailing.

SYSTEM MANAGER(S) AND ADDRESS:

NOTIFICATION PROCEDURE:
Individuals inquiring whether this system of records contains information about them should contact the System Manager indicated above. Individuals who have expressed an interest in participating in a Merit Systems survey are aware of that fact. It is necessary to furnish the following information when making inquiries about records:
- a. Full name; and
- b. Name of survey in which individual desired to participate.

Individuals making inquiries as to the existence of records pertaining to themselves must also follow the MSPB’s Privacy Act regulations set forth at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:
Individuals requesting access to their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:
- a. Full name; and
- b. Name of survey in which individual desired to participate.

Individuals seeking access must also follow the MSPB’s Privacy Act regulations set forth at 5 CFR 1205.11 regarding access to records and verification of identity.

CONTESTING RECORDS PROCEDURES:
Individuals requesting amendment should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:
- a. Full name; and
- b. Name of survey in which individual desired to participate.

Individuals requesting amendment must also follow the MSPB’s Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

RECORD SOURCE CATEGORIES:
Information in this system is obtained initially from the Office of Personnel Management and is subsequently affirmed by the individual to whom the record pertains.

SYSTEM NAME:
Panel Respondent Mailing List.

SYSTEM LOCATION:
Office of Merit Systems Review and Studies, Merit Systems Protection Board (MSPB), 1120 Vermont Ave., N.W., Washington, D.C. 20419 or with private sector contractors participating in the conduct of MSPB surveys.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
Federal employees who serve on a semi-permanent panel surveyed quarterly by the Office of Merit Systems Review and Studies by means of confidential questionnaires on issues relevant to the civil service and the merit system.

CATEGORIES OF RECORDS IN THE SYSTEM:
Information in this system includes the name, address and duty station of Federal employees who have agreed to serve as panel members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

PURPOSE(S):
Information in this system is used to provide for the mailing of confidential survey questionnaires to panel members. The questionnaires are used in conjunction with MSPB’s performance of merit system studies, as required by 5 U.S.C. 1205, the extent to which merit system principles effectively operate within the Government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:
There are no routine uses for this system which is used solely to provide for the mailing of confidential questionnaires to panel members approximately four times a year.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
These records are maintained on computer tapes and discs.

RETRIEVABILITY:
These records are retrieved by the names of the individuals to whom they pertain.

SAFEGUARDS:
These records are stored in secured rooms. Access to and use of the records is limited to specially designated MSPB or contractor personnel who are responsible for mailing questionnaires to panel members. Personnel screening is employed to prevent unauthorized access or disclosure.

RETENTION AND DISPOSAL:
These records are retained for the life of the panel, a period not to exceed 1.5 years. Upon dissolution of the panel, the records are destroyed by erasure of the computer tape or disc on which they are stored.

SYSTEM MANAGER(S) AND ADDRESS:

NOTIFICATION PROCEDURES:
Individuals inquiring whether this system of records contains information about them should contact the System Manager indicated above. Individuals who are members of a panel are aware of that fact. It is necessary to furnish the following information when making inquiries about records:
- a. Full name; and
- b. Panel on which individual served.

Individuals making inquiries as to the existence of records pertaining to themselves must also follow the MSPB’s Privacy Act regulations set forth at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:
Individuals requesting access to their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:
- a. Full name; and
- b. Panel on which individual served.

Individuals seeking access must also follow the MSPB’s Privacy Act regulations set forth at 5 CFR 1205.11 regarding access to records and verification of identity.

CONTESTING RECORDS PROCEDURES:
Individuals requesting amendment of records pertaining to them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:
- a. Full name; and
- b. Panel on which the individual served.

Individuals requesting amendment must also follow the MSPB’s Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

RECORD SOURCE CATEGORIES:
Information in this system is obtained initially from the Office of Personnel
Management and is subsequently affirmed by the individual, to whom the record pertains.

**MSPB/CENTRAL-3**

**SYSTEM NAME:**
Correspondence Control Records.

**SYSTEM LOCATION:**
Office of the Secretary, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**
Individuals who have written the MSPB on Official business and whose letters are controlled in order to assure appropriate and timely response; individuals who have written the White House or Congressional offices and whose letters are referred to MSPB for reply or response.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

**PURPOSE(S):**
These records are used to control correspondence with the Board in order to assure appropriate and timely responses.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**
Information from these records may be disclosed to another Federal agency to whom correspondence is referred for reply.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**
These records are maintained on file cards.

**RETRIEVABILITY:**
These records are retrieved by the name of the correspondent or individual on whose behalf the correspondence is transmitted, and the date of the correspondence.

**SAFEGUARDS:**
Access to and use of these records is limited to those persons whose official duties require such access.

**RETENTION AND DISPOSAL:**
These records are retained for two years, then destroyed by shredding.

**SYSTEM MANAGERS AND ADDRESS:**
Secretary, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

**NOTIFICATION PROCEDURE:**
Individuals wishing to determine whether this system of records contains information about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:
- Full name;
- Approximate date of the correspondence; and
- Name of the person writing the correspondence if transmitted on behalf of the individual.

Individuals making inquiries as to the existence of records pertaining to themselves must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding such inquiries.

**RECORD ACCESS PROCEDURES:**
Individuals requesting access to their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:
- Full name;
- Approximate date of the correspondence; and
- Name of the person writing the correspondence if transmitted on behalf of the individual.

Individuals requesting access must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding access to records and verification of identity.

**CONTESTING RECORDS PROCEDURES:**
Individuals wishing to request amendment of records pertaining to them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:
- Full name;
- Approximate date of correspondence; and
- Name of the person writing the correspondence if transmitted on behalf of the individual.

Individuals requesting amendment must also follow the Board's Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

**RECORD SOURCE CATEGORIES:**
Information in this system is provided by the individual to whom the record pertains or by individuals or organizations writing on behalf of the individual.

**SYSTEM NAME:**
MSPB/CENTRAL-4

**SYSTEM LOCATION:**
Merit Systems Protection Board (MSPB), 1120 Vermont Avenue, N.W., Washington, D.C. 20410 and MSPB Regional Offices (see list of Regional Office addresses in the Appendix).

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**
Current and former Federal employees and members of the public who have written the MSPB seeking information, registering complaints, or making known their views.

**CATEGORIES OF RECORDS IN THE SYSTEM:**
This system contains the incoming correspondence and a copy of the MSPB's reply of referral.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

**PURPOSE(S):**
These records are used to document correspondence with the Board.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**
Information from these records may be disclosed:
- To another agency to whom the incoming correspondence is referred for reply.
- To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where there is an indication of a violation or potential violation of a civil or criminal law or regulation.
- To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**
These records are maintained in file folders.

**RETRIEVABILITY:**
These records are retrieved by name and date of correspondence.

**SAFEGUARDS:**
These records are maintained in lockable metal filing cabinets. Access to and use of these records is limited to those persons whose official duties require such access.
These records are maintained to process an individual’s requests made under the provisions of the Freedom of Information and Privacy Act. The records are also used by the MSPB to prepare its annual reports to OMB and Congress required by the Privacy and Freedom of Information Acts.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Information from these records may be disclosed:

b. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.
c. To a Federal agency or to a court when the Government is a party to a judicial proceeding before the court.
d. To the National Archives and Records Service (General Services Administration) in record management inspections conducted under authority of 44 U.S.C. 2904 and 2906.
f. To Federal agencies in order to obtain advice and recommendation concerning matters on which the agency has specialized experience or particular competence which the MSPB may use in making required determinations under the Freedom of Information Act or Privacy Act of 1974.
g. To any source from which the MSPB requests additional information (to the extent necessary to identify the individual, inform the source of the purpose of the request and to identify the type of information requested), where necessary to obtain information relevant to an MSPB decision concerning a Privacy or Freedom of Information Act request.
h. In response to a request for discovery or for appearance of a witness, if the information is relevant to the subject matter involved in a pending judicial or administrative proceeding.
i. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where the MSPB becomes aware of an indication of a violation or
potential violation of civil or criminal law or regulation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
These records are maintained in file folders.

RETRIEVABILITY:
These records are retrieved by name of the individual on whom they are maintained and the date of request.

SAFEGUARDS:
These records are maintained in lockable metal filing cabinets. Access to and use of these records is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:
These records are maintained for five years, then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:
Secretary, Merit System Protections Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419, and MSPB Regional Offices (see list of Regional Office addresses in the Appendix).

NOTIFICATION PROCEDURE:
Individuals wishing to determine whether this system of records contains information about them should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:
- Full name; and
- Approximate date of original request or appeal.

Individuals making inquiries as to the existence of records pertaining to themselves must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

Note.—The amendment provisions for this system are not intended to permit an individual a second opportunity to request amendment of a record which was the subject of the initial Privacy Act amendment request which created the record in the system. That is, after an individual has requested amendment of a specific record in an office system under provisions of the Privacy Act that specific record may itself become part of this system of Privacy Act/FOIA Case Records. An individual may not subsequently request amendment of that specific record again simply because a copy of the record has become part of the second system of Privacy Act/FOIA Case Records.

RECORD SOURCE CATEGORIES:
- The individual who is the subject of the records;
- MSPB officials who respond to Privacy Act/FOIA requests;
- Official personnel documents of the MSPB, including records from any other MSPB system of records included in this notice;
- Other sources whom the MSPB believes have information pertinent to an MSPB decision on a Privacy Act or Freedom of Information Act request; and
- Other agencies referring the request to the MSPB.

MSPB/CENTRAL-6

SYSTEM NAME:
Litigation and Claim Records.

SYSTEM LOCATION:
Office of the General Counsel, Merit Systems Protection Board (MSPB), 1120 Vermont Avenue, N.W., Washington, D.C. 20419.

CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:
- Individuals who file civil actions against the MSPB, its officials and employees.
- Individuals who are parties to actions in which an MSPB final decision is involved but in which the MSPB is not a party to the proceeding.
- Individuals who file claims against the MSPB under the Federal Tort Claims Act.

CATEGORIES OF RECORDS IN THE SYSTEM:
This system includes the following kinds of records: documentation of litigation, including complaints, answers, motions, briefs, orders and decisions; claims and supporting documentation submitted under Federal Tort Claims Act, together with correspondence and records of final administrative determinations.

AUTHORITY FOR MAINTENANCE OF THE RECORDS:

PURPOSE(S):
These records are maintained to defend the MSPB against lawsuits and to settle administrative claims brought against the MSPB.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
Information from these records may be disclosed:
- To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order where the Merit Systems Protection Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.
- To any source from which the MSPB requests information relevant to an MSPB determination concerning one of the purposes for maintenance of the system.
- To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conduct of a security or suitability investigation of an individual, the classification of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency’s decision on the matter.
- To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.
- To a Federal agency or to a court when the Government is party to a judicial proceeding before the court.
- To the National Archives and Records Service (General Services Administration) for records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.
- To the insurance carrier of an employee of, or a claimant against, the MSPB under the Federal Tort Claims Act.

CONTESTING RECORD PROCEDURES:
Individuals wishing to request amendment of records about them should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:
- Full name; and
- Approximate date of original request or appeal.

Individuals requesting amendment must also follow the MSPB's regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

To the insurance carrier of an employee of, or a claimant against, the MSPB under the Federal Tort Claims Act.
Act in order to determine the proper assignment of any liability.

b. In response to a request for discovery or for appearance of a witness, if the information is relevant to the subject matter involved in a pending judicial or administrative proceeding.


POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
These records are maintained in file folders in lockable metal filing cabinets.

RETRIEVABILITY:
Records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:
Records are available only to authorized personnel of the General Counsel's Office and to other specially designated personnel of the MSPB.

RETENTION AND DISPOSAL:
These records are maintained for two years after completion of the litigation or claims settlement and then are destroyed by shredding.

SYSTEM MANAGERS AND ADDRESS:
General Counsel, Office of General Counsel, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419.

NOTIFICATION PROCEDURES:
Individuals wishing to determine whether this system contains a record about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

- Full name;
- Date of birth;
- Description of type of record; and
- Court action number if applicable.

Individuals requesting access must also follow the MSPB's Privacy Act regulations set forth at 5 CFR 1205.11 regarding access to records and verification of identity.

CONTESTING RECORDS PROCEDURES:
Review of request from individuals seeking amendment of their records which have been or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the appropriate system manager indicated above. Individuals must furnish the following for their records to be located and identified:

- Full name;
- Date of birth;
- Description of type of record; and
- Court action number if applicable.

Individuals requesting amendment must also follow MSPB's Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

RECORD SOURCE CATEGORIES:

- The individual on whom the record is maintained;
- Agency officials and records;
- Records of MSPB and Equal Employment Opportunity Commission administrative proceedings and court documents; and
- Witnesses.

MSPB/GOVT-1

SYSTEM NAME:
Appeal and Case Records.

SYSTEM LOCATION:
Office of the Secretary, Merit Systems Protection Board (MSPB), 1120 Vermont Avenue, N.W., Washington, D.C. 20419, the MSPB Regional Offices (see list of Regional Office addresses in the Appendix), and various Federal agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
Current and former Federal employees and applicants for employment who have filed an appeal with the MSPB, its predecessors, or with respect to whom the Special Counsel or a Federal agency has petitioned the MSPB, concerning any matter over which the MSPB has original or appellate jurisdiction.

b. Current and former employees of State and local governments who have been investigated by the Special Counsel and have had a hearing before the MSPB concerning possible violation of the Hatch Act.

CATEGORIES OF RECORDS IN THE SYSTEM:
This system of records contains information or documents, including briefs, pleadings and motions, exhibits, hearing transcripts and MSPB decisions, which comprise the administrative records of appeals and other matters arising under the original and appellate jurisdiction of the MSPB.

This system includes records of appeals filed with the former Federal Employee Appeals Authority and the Appeals Review Board of the Civil Service Commission. This system also includes records of appeals and cases before the MSPB, the Federal Employee Appeals Authority and the Appeals Review Board which are maintained by Federal agencies that are parties to the proceedings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
5 U.S.C. 1205, 1206, 1207, 1208, 7701, and 7702.

PURPOSE(S):
These records are used to document and adjudicate appeals and other matters arising under the MSPB's original and appellate jurisdiction.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

- Information from the record may be disclosed:
  a. To officials of the Equal Employment Opportunity Commission or the Special Panel convened under authority of 5 U.S.C. 7702 when requested in connection with the performance of their authorized duties.
  c. To a member of Congress or the Government Accounting Office regarding the status of an appeal.
  d. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.
  e. To a person from the record of an individual in response to an inquiry...
made by that person on behalf of the individual to whom the record pertains. 

f. To an appropriate Federal, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order upon request of that agency where there is an indication of a violation or potential violation of civil or criminal law or regulation.

g. To the Office of Management and Budget at any stage in the legislative coordination or clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

h. To another Federal agency or to a court when the Government is party to a suit before the court.

i. To any person making an inquiry regarding the status of a proceeding before the MSPB, the nature of the proceeding, and, if applicable, the MSPB decision in the matter.

j. To the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

k. In response to a request for discovery or for appearance of a witness, if the information is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVAL, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM;

STORAGE:
These records are maintained in file folders, binders, dockets cards, microfiche, and computer tapes and discs.

RETRIEVABILITY:
These records are retrieved by the names of the individuals on whom they are maintained or by docket control or decision numbers.

SAFEGUARDS:
Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:
These records are maintained up to two years after a final determination by the MSPB or, in some instances, other administrative authorities or the courts. Thereafter, they are transferred by CSA Regional Federal Records Centers. They are destroyed by the Federal Records Centers when the records are seven years old.

SYSTEM MANAGER(S) AND ADDRESS:
Secretary, Merit System Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419, the MSPB Regional Offices (see list of Regional Office addresses in the Appendix), or the Personnel Officer of the agency within which the appeal arose.

NOTIFICATION PROCEDURES:
Individuals inquiring whether this system of records contains information about them should contact the appropriate System Manager indicated above. Individuals who have filed appeals or are parties to matters before the MSPB are aware of that fact and have been provided a copy of the record. It is necessary to furnish the following information respecting the individual when making inquiries about records:

a. Full name;
b. Date of birth;
c. Kind of action taken by the agency;
d. Date and location of the filing of the appeal or other matter with the MSPB; and

If appropriate, the respective MSPB docket or decision number.

Individuals making inquiries as to the existence of records pertaining to themselves must also follow the Board’s Privacy Act regulations set forth at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:
Individuals requesting access to their records should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name;
b. Date of birth;
c. Kind of action taken by the agency;
d. Date and location of the filing of the appeal or other matter with the MSPB; and
e. If appropriate, the respective MSPB docket or decision control number.

Individuals seeking access must also follow the MSPB’s Privacy Act regulations set forth at 5 CFR 1205.11 regarding access to records and verification of identity.

CONTESTING RECORDS PROCEDURES:
Individuals requesting amendment must also follow the MSPB’s Privacy Act regulations set forth at 5 CFR 1205.21 regarding amendment of records and verification of identity.

These provisions for amendment of the record are not intended to permit the alteration of evidence presented in the course of adjudication before the Board, before or after the Board has rendered a decision on the appeal.

RECORD SOURCE CATEGORIES:
The source of these records are:

a. The individual to whom the record pertains;
b. The agency employing the above individual;
c. The Merit Systems Protection Board, the Office of Personnel Management, Equal Employment Opportunity Commission, the Office of the Special Counsel; and
d. Other individuals or organizations from whom the MSPB has received testimony, affidavits or other documents.

Appendix
Regional Offices of the Merit Systems Protection Board

Atlanta Regional Office, Merit Systems Protection Board, 3rd Floor, North Wing, 1770 Peachtree Street, N.E., Atlanta, Georgia 30309

Boston Regional Office, Merit Systems Protection Board, 100 Summer Street, Room 1736, Boston, Massachusetts 02110

Chicago Regional Office, Merit Systems Protection Board, John C. Kluczynski Building, 31st Floor, 230 South Dearborn Street, Chicago, Illinois 60604

Dallas Regional Office, Merit Systems Protection Board, 1100 Commerce Street, Room 6F20, Dallas, Texas 75242

Denver Regional Office, Merit Systems Protection Board, Denver Federal Center, Building 46. Box 25025, Denver, Colorado 80225

New York Regional Office, Merit Systems Protection Board, New Federal Building, 26 Federal Plaza, Room 2341, New York, New York 10278


St. Louis Regional Office, Merit Systems Protection Board, 1520 Market Street, Room 1740, St. Louis, Missouri 63103-2802

San Francisco Regional Office, Merit Systems Protection Board, 525 Market Street, Room 2800, San Francisco, California 94105

Seattle Regional Office, Merit Systems Protection Board, Federal Building, 915 Second Avenue, Room 1840, Seattle Washington 98174

Washington, D.C. Regional Office, Merit Systems Protection Board, 5203 Leesburg
NATIONAL SCIENCE FOUNDATION

National Science Board; Commission on Precollege Education in Mathematics, Science and Technology; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: National Science Board Commission on Precollege Education in Mathematics, Science and Technology.

Date and Time: January 14, 1983; 9:00 a.m.-4:30 p.m., January 15, 1983; 9:00 a.m.-12:00 p.m.

Place: National Science Foundation, Room 540, 1800 G St., N.W., Washington, D.C. 20550

Type of Meeting: Open.

Contact Person: Dr. Richard S. Nicholson, Executive Director, Commission on Precollege Education in Mathematics, Science and Technology, Room 527, National Science Foundation, Washington, D.C. 20550.

Summary Minutes: Contact Dr. Richard S. Nicholson at the above address.

Agenda: The Commission will define an agenda for activities leading to its final recommendations. In addition, presentations by experts on topics relevant to Commission concerns will take place. These will include discussions about current and emerging educational technologies, and implications from cognitive research for the improvement of science and mathematics learning and teaching.

M. Rebecca Winkler, Committee Management Coordinator.

December 22, 1982.

NRC SAFEGUARDS NUCLEAR REGULATORY COMMISSION

Ad Hoc Committee for Review of Nuclear Reactor Licensing Reform Proposals; Meeting

Notice is hereby given in accordance with Section 10 of the Federal Advisory Committee Act that NRC's Ad Hoc Committee for Review of Nuclear Reactor Licensing Reform Proposals will hold its next meeting at 9:30 a.m., January 12, 1983. This meeting will take place at the address of Shaw, Pittman, Potts and Trowbridge, South Building, 13th Street and Washington Boulevard, Washington, D.C. and will be open for public observation.

At this meeting, the committee will begin its review of administrative proposals for reforming the NRC's licensing process for nuclear plants. A transcript of the meeting will be made available for public inspection and copying at NRC's Public Document Room, 1717 H Street, NW, Washington, DC.

Further information on the meeting may be obtained from Mr. Rothschild, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. (Telephone 202/ 634-1465).

Dated: at Washington, D.C. this 22nd day of December, 1982.

John C. Hoyle,
Advisory Committee, Management Officer.

FR Doc. 82-35105 Filed 12-27-82; 8:45 am
BILLING CODE 7550-01-M

FR Doc. 82-35065 Filed 12-27-82; 8:45 am
BILLING CODE 7550-01-M

NUCLEAR REGULATORY COMMISSION

1:30 P.M.-6:00 P.M.: NRC Safety Research Program and Budget (Closed)-The members will discuss the proposed ACRS report to the U.S. Congress regarding the proposed NRC Safety Research Program and budget for FY 1984-85. Representatives of the NRC Staff will participate to the degree considered appropriate.

This portion of the meeting will be closed to discuss information regarding the impact of proposed budget reductions on continuing the proposed research contracts.

Friday, January 7, 1983

8:30 A.M.-12:00 Noon and 1:00 P.M.-3:30 P.M.: Clinch River Breeder Reactor (Open)—The members of the Committee will hear and discuss details of the plant design regarding proposed construction of the Clinch River Breeder Reactor. ACRS consultants, representatives of the NRC Staff, the Department of Energy, and the Applicant will participate.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this matter.

3:30 P.M.-6:00 P.M.: NRC Safety Research Program and Budget (Closed)—The members will discuss the proposed ACRS report to the U.S. Congress regarding the proposed NRC Safety Research Program and budget for FY 1984-85. Representatives of the NRC Staff will participate to the degree considered appropriate.

This portion of the meeting will be closed to discuss information regarding the impact of proposed budget reductions on continuing the proposed research contracts.

Saturday, January 8, 1983

8:30 A.M.-10:30 A.M: ACRS Subcommittee Activity (Open)—The members will hear and discuss reports of designated subcommittees regarding ongoing safety related activities including proposed revisions of NRC Regulatory Guides, and the proposed NRC policy statement on Severe Accidents and Related Views on Nuclear Reactor Regulation.

10:30 A.M.-12:30 P.M. and 1:30 P.M.-3:30 P.M.: Proposed ACRS Reports (Open/Closed)—The members will discuss proposed reports to the NRC and the U.S. Congress regarding matters considered during this meeting.

The session on the NRC Safety Research Program and Budget will be closed to discuss information regarding the impact of proposed budget reductions on continuing the proposed research contracts.
3:30 P.M.–4:30 P.M. Concluding Session (Open)—Members will complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 1, 1982 (47 FR 43474). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee or Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a telephone call to the ACRS Executive Director (R.F. Fraley) prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information (5 U.S.C. 552(b)(4)) and the premature disclosure of which would frustrate the Commission’s ability to implement affected programs effectively. The authority to close this portion is Exemption 9(b) of the Sunshine Act (5 U.S.C. 552(b)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman’s ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/354–2918), between 8:15 A.M. and 5:00 P.M. EST.


John C. Hoyle, Advisory Committee Management Officer.

[FR Doc. 82–35104 Filed 12–27–82; 8:45 am]
BILLING CODE 7590–01–M

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 79 to Facility Operating License No. DPR–39, and Amendment No. 69 to Facility Operating License No. DPR–48 issued to the Commonwealth Edison Company (the licensee), which revised Technical Specifications for operation of Zion Station. Units 1 and 2 (the facilities) located in Zion, Illinois. These amendments were effective December 3, 1982.

The amendments revise the Technical Specifications for the penetrations pressurization system to accurately define the conditions of operation, applicable modes, and actions to be taken for inoperable systems.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission’s rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission’s rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) The application for amendments dated December 3, 1982, (2) the Commission’s letter dated December 6, 1982, (3) Amendments Nos. 79 and 69 to License Nos. DPR–39 and DPR–48, and (4) the Commission’s related Safety Evaluation. All of these items are available for public inspection at the Commission’s Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Zion-Benton Public Library District, 2600 Emmaus Avenue, Zion, Illinois 60099. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 20th day of December 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga, Chief, Operating Reactors Branch #1, Division of Licensing.

[FR Doc. 82–35104 Filed 12–27–82; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Granting of Relief From Certain Requirements of ASME Code Section XI Inservice Inspection Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to the Connecticut Yankee Atomic Power Company. The relief relates to the Inservice Inspection Program for the Haddam Neck Plant (the facility) located in Middlesex County, Connecticut. The ASME Code requirements are incorporated by reference into the Commission’s rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance.

The relief allows postponement of inservice inspection requirements involving volumetric and visual examinations of a reactor coolant pump casing, pursuant to 10 CFR 50.55a(g)(6)(i) of the Commission’s regulations.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission’s rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission’s rules and regulations in 10 CFR Chapter I, which are set forth in the letter granting relief. Prior public notice of this action was not required since the granting of relief from ASME Code requirements does not involve a significant hazards consideration.

The Commission has determined that the granting of relief will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this action.

For further details with respect to this action, see (1) The licensee’s letter dated September 3, 1982, and (2) the Commission’s letter to the licensee dated December 21, 1982, which contains the Commission’s related evaluation. These items are available for public inspection at the
Amendment No. 15 to License No. DPR-75, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 21st day of December 1982.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield, Chief, Operating Reactors Branch #5, Division of Licensing.

BILLING CODE 7590-01-M

[Docket No. 50-311]

Public Service Electric and Gas Co. et al.; Issuance of Amendment to Facility Operating License.

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 15 to Facility Operating License No. DPR-75, issued to Public Service Electric and Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company and Atlantic City Electric Company (the licensees), which revised the license for operation of the Salem Nuclear Generating Station, Unit No. 2 (the facility) located in Salem County, New Jersey. The amendment is effective as of the date of issuance.

The amendment authorizes deferral of an 18-month Technical Specification surveillance requirement from December 5, 1982, until the first refueling outage in January 1983.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see: (1) The application for amendment dated December 2, 1982, (2) Amendment No. 15 to License No. DPR-75, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 3rd day of December 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga, Chief, Operating Reactors Branch No. 1, Division of Licensing.

BILLING CODE 7590-01-M

[Docket Nos. 50-443/444]

Public Service Company of New Hampshire, et al.; Availability of the Final Environmental Statement for Seabrook Station, Units 1 and 2.

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Final Environmental Statement (NUREG-0895) has been prepared by the Commission's Office of Nuclear Reactor Regulation related to the proposed operation of the Seabrook Station, Units 1 and 2, located in Rockingham County, New Hampshire.

Copies of NUREG-0895 are available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C., and at the Exeter Public Library, Front Street, Exeter, New Hampshire 03833. The document is also being made available at the Office of the Coordinator of Federal Funds, Room 124, State House, Concord, New Hampshire 03301 and at the Stafford Rockingham Regional Council, 1 Water Street, Exeter, New Hampshire 03833.

The notice of availability of the Draft Environmental Statement for the Seabrook Station and request for comments from interested persons was published in the Federal Register on May 21, 1982 (47 FR 22284). Comments received from Federal, State and local agencies and interested members of the public have been included in an appendix to the Final Environmental Statement.

Copies of the Final Environmental Statement (NUREG-0895) may be purchased at current rates, from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, and by GPO deposit account holders by calling (301) 492-2936 or by writing to the U.S. Nuclear Regulatory Commission, Attn: Publication Sales Manager.

Dated at Bethesda, Maryland, this 20th day of December, 1982.

For the Nuclear Regulatory Commission.

George W. Knighton, Chief, Licensing Branch No. 3, Division of Licensing.

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Exempted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the exempted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202-632-6000.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Exempted Service provisions of 5 CFR Part 213 on October 29, 1982 (47 FR 49119). Individual authorities established or revoked under Schedules A, B, or C between October 1, 1982 and November 30, 1982 appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.
Schedule A

The following exceptions are established:

**Department of Defense**

Schedule A authority 213.3106(b)(6) has been revised to allow DOD to appoint dependents of all U.S. personnel assigned overseas (previously applied only to dependents of DOD personnel.) Effective November 1, 1982.

**Department of the Interior**

Schedule A authority 213.3112(a)(1) has been revised to permit appointments to continuing, as well as time limited, positions for technical, maintenance, and clerical positions, at or below grades GS-7, WG-10, or equivalent. Effective November 8, 1982. The following exception is revoked:

**Merit Systems Protection Board**

One Paralegal Specialist, GS-9, Office of the Special Counsel; revoked effective November 22, 1982, because the authority is no longer needed.

**Schedule B**

The following exception is established:

**Export-Import Bank of the U.S.**

One position of Food Service Worker, WG-7604-3, in the Office of the President and Chairman. Effective November 12, 1983.

**Schedule C**

**ACTION**

One Deputy Assistant Director for Legislative and Governmental Affairs. Effective October 5, 1982.

One Staff Assistant to the Deputy Director. Effective October 8, 1982.

One Special Assistant to the Director. Effective October 15, 1982.

**Department of Agriculture**

One Private Secretary to the Deputy Assistant Secretary for Food and Consumer Services. Effective October 5, 1982.

One Special Assistant to the Manager, Federal Crop Insurance Corporation. Effective October 5, 1982.

One Special Assistant to the Deputy Assistant Secretary for Administration, Office of Administration. Effective October 6, 1982.

One Private Secretary to the Director, Office of Rural Development Policy. Effective October 6, 1982.

One Staff Assistant to the Special Assistant to the Secretary, Office of the Secretary. Effective October 6, 1982.

One Private Secretary to the Assistant Secretary for Food and Consumer Services. Effective November 1, 1982.


One Secretary (Typing) to the Deputy Assistant Secretary for Administration, Office of the Secretary. Effective November 8, 1982.

One Secretary (Typing) to the Executive Assistant to the Secretary, Office of the Secretary. Effective November 8, 1982.

**Department of the Air Force**

One Assistant to the Administrator, Rural Electrification Administration. Effective October 22, 1982.


One Staff Assistant to the Secretary of the Air Force, Office of the Secretary of the Air Force. Effective November 22, 1982.

**Department of Commerce**

One Congressional Liaison Officer, Economic Development Administration. Effective October 5, 1982.

One Special Assistant to the Director, Office of Public Affairs. Effective October 5, 1982.

One Confidential Assistant to the Associate Administrator, National Oceanic and Atmospheric Administration. Effective October 13, 1982.

One private Secretary to the Under Secretary, Office of Economic Affairs. Effective October 15, 1982.

One Deputy director, Office of Business Liaison. Effective October 18, 1982.

One Confidential Assistant to the Associate General Counsel for Legislation and Regulation, Office of the Secretary. Effective November 8, 1982.

One Information Receptionist to the Executive Assistant to the Secretary, Office of the Secretary. Effective November 16, 1982.

One Confidential Assistant to the Deputy Assistant Secretary for Industry Projects, International Trade Administration. Effective November 16, 1982.

One Special Assistant to the Deputy Administrator, National Oceanic and Atmospheric Administration. Effective November 16, 1982.

One Secretary to the Deputy Assistant Secretary, International Trade Administration. Effective November 16, 1982.

One Confidential Assistant to the Assistant Secretary for Trade Administration. Effective November 22, 1982.


One Special Assistant to the Secretary of Commerce, Office of the Secretary. Effective November 30, 1982.

One Confidential Assistant to the Deputy Assistant Secretary for East Asia and the Pacific, International Trade Administration. Effective November 30, 1982.

**Department of Defense**

One Executive Assistant to the Assistant Secretary of Defense (Research and Engineering). Effective October 6, 1982.


One Private Secretary to the Assistant Secretary of Defense (Development and Support/PDUSD Research and Engineering). Effective November 15, 1982.

**Department of Education**

One Special Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs. Effective October 6, 1982.

One Confidential Assistant to the Assistant Secretary, Office of Postsecondary Education. Effective October 6, 1982.

One Special Assistant to the Deputy Under Secretary for Planning, Budget and Evaluation. Effective October 6, 1982.

One Personal Assistant to the Deputy Under Secretary for Management. Effective October 8, 1982.

One Special Assistant to the Secretary for Intergovernmental and Intergency Affairs. Effective October 8, 1982.

One Personal Assistant to the Assistant Secretary, Office of Education Research and Improvement. Effective October 12, 1982.

One Confidential Assistant to the Deputy Under Secretary for Intergovernmental and Intergency Affairs. Effective October 13, 1982.

One Special Concerns Officer, Office for Civil Rights. Effective October 14, 1982.

One Personal Assistant to the General Counsel, Office of the General Counsel. Effective October 14, 1982.

One Confidential Assistant to the Assistant Secretary, Office of Educational Research and Improvement. Effective October 16, 1982.
One Special Assistant to the Assistant Secretary for Civil Rights. Effective October 28, 1982.

One Personal Assistant to the Deputy General Counsel, Office of the General Counsel. Effective November 16, 1982.

One Special Assistant to the Assistant Secretary, Office of Educational Research and Improvement. Effective November 22, 1982.

One Confidential Assistant to the Deputy Assistant Secretary, Office of Legislation and Public Affairs. Effective November 22, 1982.

One Confidential Assistant to the Assistant Secretary for Postsecondary Education. Effective November 23, 1982.

One Personal Assistant to the Secretary, Office of the Secretary. Effective November 23, 1982.

One Special assistant to the Deputy Assistant Secretary for Institutional Support and International Education. Office of Postsecondary Education. Effective November 23, 1982.

One Confidential Assistant to the Executive Assistant, Office of the Secretary. Effective November 23, 1982.

One Confidential Assistant to the Director, Regional Liaison Office. Office of the Under Secretary. Effective November 23, 1982.

Department of Energy

One Staff Assistant to the Administrator, Economic Regulatory Administration. Effective October 5, 1982.


One Special Assistant to the Administrator, Bonneville Power Administration. Effective October 18, 1982.

Department of Health and Human Services

One Special Assistant to the Director, Office for Civil Rights. Effective October 6, 1982.


One Confidential Assistant to the Deputy Assistant Secretary for Planning and Evaluation (Health). Effective October 29, 1982.

Department of Housing and Urban Development

One Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity. Effective October 5, 1982.


One Special Assistant to the Regional Administrator, Office of the Regional Administrator. Effective October 15, 1982.

One Special Assistant to the Assistant Secretary for Policy Development and Research. Effective October 20, 1982.

One Staff Assistant to the Deputy Assistant Secretary for Housing Studies. Effective October 21, 1982.


One Staff Assistant to the Assistant Secretary for Policy Development and Research. Effective October 25, 1982.

One Special Assistant to the Secretary (Executive Secretariat Operations), Office of the Assistant Secretary for Administration. Effective October 26, 1982.

One Senior Assistant for Legislation to the Deputy Assistant Secretary for Legislation, Office of Legislation and Congressional Relations. Effective October 26, 1982.

One Senior Legislative Specialist, Office of Legislation and Congressional Relations. Effective October 26, 1982.

One Senior Legislative Specialist, Office of Legislation and Congressional Relations. Effective October 26, 1982.

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations, Office of Legislation and Congressional Relations. Effective November 1, 1982.

One Special Advisor for Minority Programs, Office of the Deputy Secretary for Intergovernmental Relations. Effective November 10, 1982.


One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations, Office of Legislation and Congressional Relations. Effective November 19, 1982.

One Special Assistant to the General Deputy Assistant Secretary for Housing-Deputy Federal Commissioner, Office of the Assistant Secretary for Housing. Effective November 29, 1982.


Department of the Interior

One Special Programs Liaison, Office of the Associate Director. Effective October 4, 1982.

One Special Assistant to the Assistant Secretary, Office of the Secretary. Effective October 6, 1982.

Department of Justice

One Assistant to the Director of Congressional and Public Affairs, Immigration and Naturalization Service. Effective October 6, 1982.

One Special Assistant to the Commissioner, Immigration and Naturalization Service. Effective October 6, 1982.

One Special Assistant to the Director, Women's Bureau. Effective October 6, 1982.

One Staff Assistant to the Counselor, Office of the Attorney General. Effective October 15, 1982.

One Confidential Assistant to the Assistant Attorney General, Office of Legal Policy. Effective October 19, 1982.

One Attorney-Advisor to the Assistant Attorney General, Civil Rights Division. Effective November 5, 1982.

One Special Assistant (Security) to the Associate Commissioner for Enforcement. Effective November 5, 1982.

Department of Labor

One Secretary to the Secretary of Labor. Effective October 12, 1982.

One Confidential Staff Assistant to the Director, Office of Workers' Compensation Programs. Effective October 20, 1982.

One Private Secretary to the Deputy Under Secretary, Office of the Deputy Under Secretary. Effective November 1, 1982.

Department of State

One Congressional Relations Specialist, Bureau of International Organization Affairs. Effective October 6, 1982.

One Member, Policy Planning Staff. Effective October 12, 1982.

One Special Assistant to the Assistant Secretary, Bureau of International Organization Affairs. Effective October 12, 1982.

One Staff Assistant to the Counselor, Counselor of the Department. Effective October 13, 1982.


One Deputy Assistant Secretary, Bureau of Human Rights and
    One Special Assistant to the Assistant Secretary, Bureau of Economic and Business Affairs. Effective November 3, 1982.
    One Staff Assistant to the Assistant Secretary, Office of the Assistant Secretary for Congressional Relations. Effective November 18, 1982.
    One Special Assistant to the Under Secretary, Office of the Under Secretary for Management. Effective November 23, 1982.
    One Special Assistant to the Assistant Secretary, Bureau of Ocean and International Environmental and Scientific Affairs. Effective November 29, 1982.

Department of Transportation
    One Special Assistant to the Director, Office of Public Affairs. Effective October 1, 1982.
    One Special Assistant to the Regional Representative of the secretary in Fort Worth, Texas. Effective October 4, 1982.
    One Confidential Assistant (Senior Economic Advisor) to the Maritime Administrator. Effective October 6, 1982.
    One Congressional Liaison Specialist, Office of Congressional Affairs. Effective October 26, 1982.
    One Confidential Assistant to the Secretary, Office of the Secretary. Effective November 8, 1982.
    One Special Assistant to the Administrator, in San Francisco, California, Urban Mass Transportation Administration. Effective November 8, 1982.
    One Special Assistant to the Assistant Secretary for Budget and Program. Effective November 29, 1982.

Department of the Treasury
    One Special Assistant to the Assistant Secretary, Office of the Assistant Secretary (Public Affairs). Effective October 14, 1982.
    One Special Assistant to the Director of the Mint, Office of the Director. Effective October 21, 1982.
    One Executive Assistant to the Commissioner of Customs, Office of the Commissioner. Effective November 8, 1982.

Appalachian Regional Commission

Commodity Futures Trading Commission
    One Administrative Assistant to the Commissioner, Office of Commissioner West. Effective October 29, 1982.

Consumer Product Safety Commission
    One Staff Assistant to the Commissioner. Effective November 17, 1982.

Equal Employment Opportunity Commission

Environmental Protection Agency
    One Special Assistant to the Administrator, Office of the Administrator. Effective October 25, 1982.
    One Special Assistant to the Chief of Staff, Office of the Administrator. Effective October 26, 1982.

Executive Office of the President
    One Confidential Secretary to the General Counsel, Office of Administration. Effective October 4, 1982.
    One Secretary (Typing) to the Deputy Director, Office of Science and Technology Policy. Effective October 15, 1982.
    One Secretary to the Deputy Director, Office of Management and Budget. Effective October 20, 1982.
    One Legislative Assistant to the Assistant Director for Legislative Affairs, Office of Management and Budget. Effective October 22, 1982.
    One Secretary to the Assistant Director, Office of Management and Budget. Effective November 1, 1982.
    One Secretary to the Deputy Director, Office of Management and Budget. Effective November 12, 1982.
    One Clerk, Legislative Affairs, Office of Management and Budget. Effective November 22, 1982.
    One Secretary to the Associate Director, NSIA, Office of Management and Budget. Effective November 22, 1982.

Export-Import Bank of the U.S.
    One Staff Assistant to the Assistant Director for Multilateral Affairs, Office of Administration. Effective November 30, 1982.

Federal Maritime Commission
    One Special Assistant to the Chairman, Office of the Chairman. Effective November 15, 1982.

Federal Mine Safety and Health Review Commission
    One Secretary (Steno) to the Commissioner. Effective October 22, 1982.

General Services Administration
    One Special Assistant to the Commissioner, Public Buildings Service. Effective October 4, 1982.
    One Deputy Director, Office of Public Affairs. Effective November 15, 1982.
    One Special Assistant to the Administrator, Office of the Administrator. Effective November 23, 1982.

Harry S. Truman Scholarship Foundation
    One Secretary (Stenography) to the Executive Secretary. Effective October 26, 1982.

National Endowment for the Arts
    One Executive Director to the President's Committee on the Arts and Humanities. Effective October 8, 1982.

National Endowment for the Humanities
    One Special Assistant to the Chairman, Office of the Chairman. Effective November 22, 1982.

National Credit Union Administration
    One Special Assistant to the National Credit Union Administration Board Member. Effective October 15, 1982.

Office of Personnel Management
    One Confidential Assistant to the General Counsel, Office of the General Counsel. Effective October 29, 1982.

President's Commission on Executive Exchange
    One Staff Assistant to the Executive Director. Effective November 5, 1982.
    One Secretary (Typing) to the Executive Director. Effective November 12, 1982.
Small Business Administration
One Special Assistant to the Administrator, Office of the Administrator. Effective October 15, 1982.

One Director of Congressional Relations, Office of Congressional and Legislative Affairs. Effective November 8, 1982.

One Director of Private Sector Initiatives, Office of Private Sector Initiatives. Effective November 12, 1982.

One Congressional Relations Specialist, Office of Congressional Relations. Effective November 15, 1982.


One Confidential Assistant to the Associate Deputy Administrator for Special Programs, Office of the Administrator. Effective November 16, 1982.

One Special Assistant to the Director of Public Communications, Office of Public Communications. Effective November 22, 1982.

U.S. Information Agency

One Staff Assistant to the Associate Director for Programs, Office of Personnel. Effective October 5, 1982.

One Confidential Assistant to the Associate Director for Broadcasting. Effective October 25, 1982.

One Special Assistant to the General Counsel, Office of the General Counsel and Congressional Liaison. Effective November 22, 1982.

One Special Assistant to the Associate Director for Broadcasting, Bureau of Broadcasting. Effective November 30, 1982.

U.S. Arms Control and Disarmament Agency

One Special Assistant to the Assistant Director for Multilateral Affairs, Office of Administration. Effective November 30, 1982.

One Staff Assistant to the Assistant Director for Multilateral Affairs, Office of Administration. Effective November 30, 1982.

One Private Secretary to the Principal Deputy Assistant Secretary (International Security Policy). Effective November 19, 1982.

Veterans Administration
One Confidential Assistant to the Administrator of Veterans Affairs, Office of the Administrator. Effective October 4, 1982.

One Confidential Assistant to the Associate Deputy Administrator for Administration. Effective October 12, 1982.


Office of Personnel Management
Donald J. De Vine, Director.

[FR Doc. 82-20053 Filed 12-27-82; 8:45 am]
BILLING CODE 6325-01-M

POSTAL SERVICE
Increase in Rates for Preferred-Rate Mailers Caused by Decrease in Congressional Subsidy

AGENCY: Postal Service.

ACTION: Notice of Increases in Preferred Postage Rates.

SUMMARY: This is to give notice that postage rates for preferred-rate mailers will be increased, as a result of the continuing resolution H.J. Res. 631, signed into law on December 21, 1982. The increase in postage rates is required to make up the difference between the amount of revenue forgone subsidy appropriated by Congress in the continuing resolution and the amount which is authorized to be appropriated by 39 U.S.C. 2401(c). The new rates are contained in the Appendix to this notice.

EFFECTIVE DATE: 12:01 a.m., January 9, 1983.

FOR FURTHER INFORMATION CONTACT: Don S. Allen, (202) 245-4418.

SUPPLEMENTARY INFORMATION: H.J. Res. 631 sets forth the revenue forgone appropriation for the Postal Service for free and reduced-rate mail. The amount which is authorized is less than that authorized under 39 U.S.C. 2401(c). Therefore, in accordance with 39 U.S.C. 3627, the Board of Governors of the Postal Service met on December 21, 1982, and adopted the following Resolution.

In keeping with H.J. Res. 631 (97th Congress), Further Continuing Appropriations, 1983, which provides that postal rates for all preferred rate mailers covered by section 3626 of title 39, United States Code, shall be at step 14, the rates for all preferred rate categories will be adjusted to the step 14 level of the schedules contained in Appendix Two of the Governors' Decision of September 29, 1981 [46 FR 51691-92]. The adjustments shall become effective at 12:01 A.M. on January 9, 1983.

Accordingly, effective at 12:01 a.m. on January 9, 1983, the rates for all preferred-rate categories are adjusted to the step 14 level. The new rates are contained in the Appendix to this notice (39 U.S.C. 401, 403, 404, 2401(c), 3626, 3627).

W. Allen Sanders, Associate General Counsel, Office of General Law and Administration.

APPENDIX

Schedule 1.—Second-Class Rates: In-County

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per pound:</td>
<td>4.1</td>
</tr>
<tr>
<td>Per piece:</td>
<td>2.1</td>
</tr>
<tr>
<td>Presorted to carrier route</td>
<td>2.6</td>
</tr>
</tbody>
</table>

Schedule 2.—Second-Class Rates: Publications of Authorized Nonprofit Organizations, Outside County

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Page:</td>
<td>0.0</td>
</tr>
<tr>
<td>Advertising:</td>
<td>11.0</td>
</tr>
<tr>
<td>1 and 2</td>
<td>11.7</td>
</tr>
<tr>
<td>3</td>
<td>13.0</td>
</tr>
<tr>
<td>5</td>
<td>14.0</td>
</tr>
<tr>
<td>6</td>
<td>15.7</td>
</tr>
<tr>
<td>7</td>
<td>16.8</td>
</tr>
<tr>
<td>8</td>
<td>20.7</td>
</tr>
<tr>
<td>Special Assistant to the Editor:</td>
<td>5.9</td>
</tr>
<tr>
<td>A</td>
<td>4.3</td>
</tr>
<tr>
<td>B</td>
<td>3.9</td>
</tr>
</tbody>
</table>

Schedule 3.—Second-Class Rates: Classroom Publications

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Editorial:</td>
<td>4.7</td>
</tr>
<tr>
<td>Advertising:</td>
<td>6.2</td>
</tr>
<tr>
<td>1 and 2</td>
<td>6.9</td>
</tr>
<tr>
<td>3</td>
<td>8.2</td>
</tr>
<tr>
<td>5</td>
<td>10.1</td>
</tr>
<tr>
<td>6</td>
<td>12.3</td>
</tr>
<tr>
<td>7</td>
<td>14.5</td>
</tr>
<tr>
<td>8</td>
<td>16.6</td>
</tr>
<tr>
<td>Place:</td>
<td>2.5</td>
</tr>
</tbody>
</table>

Schedule 4.—Second-Class Rates: Regular Rate Publications Outside County

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Science of agriculture: Advertising to zones 1 and 2</td>
<td>11.0</td>
</tr>
<tr>
<td>Limited circulation:</td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>5.1</td>
</tr>
<tr>
<td>B</td>
<td>3.5</td>
</tr>
<tr>
<td>C</td>
<td>3.0</td>
</tr>
</tbody>
</table>

Schedule 5.—Third-Class Rates: Nonprofit Bulk

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per pound:</td>
<td>23.3</td>
</tr>
<tr>
<td>Minimum per-piece:</td>
<td></td>
</tr>
<tr>
<td>Required presortation:</td>
<td>5.2</td>
</tr>
<tr>
<td>Presorted to 5-digits</td>
<td>4.3</td>
</tr>
<tr>
<td>Presorted to carrier route</td>
<td>3.3</td>
</tr>
</tbody>
</table>

1. Less the amount of difference between the minimum per-piece rates for required presortation and the appropriate presortation level on a per-piece basis.

Schedule 6.—Fourth-Class Rates: Library

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st pound</td>
<td>36</td>
</tr>
<tr>
<td>Each additional pound through 7 pounds</td>
<td>12</td>
</tr>
</tbody>
</table>
SECURITIES AND EXCHANGE COMMISSION

[Release No. 22771; (70-6791)]

Consolidated Natural Gas Co. and CNG Development Co.; Proposal To Finance Gas Exploration Operations of Newly Organized Nonutility Subsidiary

December 10, 1982.

Consolidated Natural Gas Company ("Consolidated"), 100 Broadway, New York, New York 10005, a registered holding company, and its nonutility subsidiary CNG Development Company ("CNGD"), Four Gateway Center, Pittsburgh, Pennsylvania 15222, have filed with this Commission an application-declaration and amendments thereto pursuant to Sections 6(a), 7, 9(a), 10 and 13 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(3), 86, 87, 90 and 91 promulgated thereunder.

Consolidated proposes to finance the start-up operations of its newly organized subsidiary CNGD, which will engage in natural gas and oil exploration in several Appalachian States including West Virginia, Pennsylvania, Ohio and New York.

Consolidated intends to purchase, for an amount not to exceed $20 million, up to 200,000 shares of CNGD's common stock, $100 par value per share, during the period ending May 31, 1983. CNGD will use the proceeds from the sale of common stock for the drilling of wells, operation and maintenance expenses, working capital purposes, and the acquisition of gas exploration leases exclusively from nonaffiliated persons. By post-effective amendment, CNGD may seek authorization to acquire producing or undeveloped leases, in the Appalachian region, from affiliated subsidiaries. CNGD will sell the gas it produces primarily to Consolidated's utility subsidiaries and their suppliers.

Consolidated has advanced the following reasons for the proposed transactions: (1) A desire to centralize into one subsidiary all exploration, development, leasing and related activities in the Appalachian region; (2) Consolidated's only other production subsidiary, CNG Producing Company ("CNG Producing"), is currently focusing its primary exploration operations in the Gulf of Mexico where geology, operations and drilling techniques differ substantially from the Appalachian region; and (3) several operating subsidiaries of Consolidated possess personnel with many years of experience in Appalachian drilling activities.

It is anticipated that qualified management personnel, scientists and engineers involved in production activities will be transferred permanently to CNGD from various utility subsidiaries including Consolidated Gas Supply Corporation ("Supply"), The East Ohio Gas Company ("East Ohio"), and The Peoples Natural Gas Service Company ("Peoples"). Consolidated Natural Gas Service Company ("Service") will provide certain management and administrative services to CNGD under a service agreement in the same form as existing agreements between Service and other subsidiaries of Consolidated. Supply will render certain legal, accounting and other services to CNGD under an agreement in the same form as an existing agreement for such services between Supply and CNG Producing. All such services will be accounted for and charged in accordance with the cost reimbursement requirements of Rules 90 and 91 under the Act.

It also indicated that, because of the resulting concentration of engineering and technical personnel in CNGD, it may provide under contract to Supply, Peoples and East Ohio, certain technical services related to the production or drilling operations of these subsidiaries. CNGD will provide such services only at the request of the subsidiary and at cost in accordance with the above-cited rules. However, in no event will charges by CNGD exceed the total expense that would have been incurred by the subsidiary had the service been performed by that subsidiary's own internal staff.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by January 5, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve copies on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as amended, or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.

[Release No. 34-19330; File No. SR-NASD-80-10]

Self-Regulatory Organizations; Proposed Rule Change; National Association of Securities Dealers, Inc., Relating to Options in NASDAQ NMS Index

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 1, 1982, the National Association of Securities Dealers, Inc., filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This rule filing involves the addition of the NASDAQ NMS Indices to Exhibit A of the NASD's Options filing which designated those NASDAQ indices which the NASD proposes to trade options in.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purposes of, and basis for the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Association has determined to create various NMS Indices and to trade...
options on them. The purpose of an NMS Index Option would be identical to that of the other NASDAQ Index Options, i.e., to provide an opportunity for investors and market makers to hedge their positions against the systematic risk associated with holding NASDAQ NMS securities.

Statutory Basis—The proposed rule change is consistent with the provisions of Sections 15A(b)(2), 15A(b)(6) and 15A(b)(7) of the Act in providing a system of regulation for trading in NASDAQ Index Options Contracts.

B. Self-Regulatory Organization’s Statement on Burden on Competition

As stated in Amendment No. 1, the NASD does not believe that the trading of options on NASDAQ indices, including NMS Indices, will impose any burden on competition, but will, in fact, increase competition by creating a market that does not exist.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds a much longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission’s Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication. For the Commission by the Division of Market Regulation, pursuant to delegated authority.


George A. Fitzsimmons,
Secretary.

Exhibit A

NASDAQ NMS Composite Index
NASDAQ NMS Industrial Index
NASDAQ NMS Bank Index
NASDAQ NMS Insurance Index
NASDAQ NMS Other Financial Index
NASDAQ NMS Transportation Index
NASDAQ NMS Utilities Index

[FR Doc. 82-35099 Filed 12-27-82; 8:45 am]

BILLING CODE 0101-01-M

[Release No. 19351; (SR-Phlx-82-2)]


December 20, 1982.

The Philadelphia Stock Exchange, Inc. ("Phlx") 1900 Market Street, Philadelphia, PA 19103, submitted on October 28, 1982, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend its by-laws and rules relating to the disciplinary procedures of the exchange. The proposed amendments would provide for the appointment on a case-by-case basis of hearing panels that would conduct the hearing of disciplinary cases and recommends decisions to the Phlx Business Conduct Committee; give the Phlx Business Conduct Committee exclusive jurisdiction to render the initial decision in disciplinary cases; establish a new Phlx standing committee, the Disciplinary Review Committee, that would have jurisdiction to review on appeal decisions of the Business Conduct Committee; leave with the Phlx Board of Governors authority to review on its own motion all decisions in disciplinary cases; narrow the class of disciplinary cases that may give rise to Phlx’s summary judgment procedures; clarify Phlx’s pre-hearing procedures; and clarify when a respondent in a disciplinary case defaults and the consequences of such a default. In addition, the Phlx proposes to adopt a rule specifically prohibiting conduct inconsistent with just and equitable principles of trade.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 19225, November 8, 1982) and by publication in the Federal Register (47 FR 51979, November 18, 1982). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(a) and the rules and the regulations thereunder. It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-35085 Filed 12-27-82; 8:45 am]

BILLING CODE 0101-01-M

[File No. 1-5933]

Sonat Offshore Drilling Inc. (5%) Convertible Subordinated Debentures (due 12-1-92); Application to Withdraw from Listing and Registration

December 20, 1982.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Sonat Offshore Drilling Inc. ("Company") has determined to remove its debentures for listing and registration on the Amex because during the calendar year 1981 and the nine months ended September 30, 1982, only $80,000 and $61,000 principal amount, respectively, of the debentures were traded on the Amex. In addition, as of
September 14, 1982, there was $1,568,000 of the debentures outstanding and held by approximately 147 holders of record. In this regard, the Company believes that the cost and expenses of continued listing on the Amex is not justified. The Amex has no objection to this matter.

Any interested person may, on or before January 12, 1983, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons, Secretary.

[FR Doc. 82-35046 Filed 12-27-82; 8:45 am]
BILLING CODE 6010-01-M

DEPARTMENT OF STATE
Office of the Secretary

[Public Notice CM-8/568]

Modem Working Party of Study Group D, U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the Modem Working Party of Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on January 6 and 7, 1983 at the Sheraton Sand Key Hotel, Clearwater, Florida. Meetings will start at 9:00 a.m. on both days.

Study Group D deals with telecommunication matters relating to the development of international digital data transmission services; the Modem Working Party reviews actual and proposed CCITT recommendations pertaining to the specifications and use of modems in data transmission.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chair. Requests for further information may be directed to Thije de Haas, Chairman of U.S. CCITT Study Group D, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, Boulder, Colorado 80303, telephone (303) 499-1000, ext. 3728.

Dated: December 9, 1982.

Arthur L. Freeman,
Director, Office of International Communications Policy.

[FR Doc. 82-35048 Filed 12-27-82; 8:45 am]
BILLING CODE 4710-07-M

[Public Notice CM-8/567]

Study Group A, U.S. Organization for the International Telegraph and Telephone Consultative Committee (OCITT); Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (OCITT) will meet on January 7 and 8, 1983, 10:00 a.m. in Room 850 of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. This Study Group deals with U.S. Government aspects of international telegraph and telephone operations and tariffs.

The Study Group will discuss international telecommunications questions relating to telegraph, telex, new record services, data transmission and leased channel services in order to develop U.S. positions to be taken at upcoming international Study Groups I and III meetings.

Members of the general public may attend the meeting subject to the instruction of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Earl S. Barbely, Conference Staff, Federal Communications Commission, Washington, D.C. 20554, telephone (202) 632-3214.

Dated: December 9, 1982.

Arthur L. Freeman,
Director, Office of International Communications Policy.

[FR Doc. 82-35047 Filed 12-27-82; 8:45 am]
BILLING CODE 4710-07-M

SYNTHETIC FUELS CORPORATION

Synthetic Fuel Projects; Third Solicitation; Extension of Time for Submission of Microfiche Copies of Proposals

AGENCY: United States Synthetic Fuels Corporation.

ACTION: The time for submission of microfiche copies of proposals under Third Solicitation for Synthetic Fuel Project proposals extended from January 10, 1983 to February 10, 1983.

SUMMARY: Notice is hereby given that the Synthetic Fuels Corporation has extended from January 10, 1983 to February 10, 1983 the date by which microfiche copies of proposals under the Statement of Programmatic Objectives and Third Solicitation for Synthetic Fuels Projects issued August 19, 1982 must be submitted to the Corporation. This extension of time for the submission of microfiche copies does not affect the requirement contained in said solicitation that four print copies of complete proposals must be submitted to the Corporation by 5:00 p.m. (EST), January 10, 1983, addressed to: Projects Office, United States Synthetic Fuels Corporation, 2121 K Street, NW., Fourth Floor, Washington, D.C. 20588.

FOR FURTHER INFORMATION CONTACT: Ralph L. Bayrer, Vice President for Projects, United States Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586, (202) 822-6438.

United States Synthetic Fuels Corporation.

Jimmie R. Bowden, Executive Vice President.

[FR Doc. 82-35136 Filed 12-27-82; 8:45 am]
BILLING CODE 0000-00-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee Review; Review and Solicitation of Public Comment Regarding the Proposed Modification of the List of Articles Eligible For Duty-Free Treatment Under the U.S. Generalized System of Preferences to Remove High Carbon Ferromanganese

Notice is hereby given that the Trade Policy Staff Committee (TPSC) has initiated a review of the removal of high carbon ferromanganese classified under TSUS 606.30 of the Tariff Schedules of the United States Annotated from the list of products currently eligible for duty-free treatment under the U.S. Generalized System of Preferences (19 U.S.C. 2461-2465). Interested parties are requested to provide written comments to the TPSC regarding the removal of this product from the GSP not later than February 1, 1983.

A public hearing on the proposed modification will not be scheduled unless specifically requested by an interested party.

All submissions should conform to 15 CFR 2003.2 and be submitted in twenty copies, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee.
submitted in connection with the proposed modification will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.8 and 15 CFR 2007.7. Parties submitting briefs or statements containing confidential information must indicate clearly on the cover page of each of the twenty copies submitted and each page within the document, where appropriate, that confidential materials are included. Non-confidential summaries of all confidential material must be submitted in twenty copies, in English, at the same time that confidential submissions are filed.

All communications with regard to the proposed modification should be addressed to GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street NW., Room 316, Washington, D.C. 20506. The telephone number of the GSP Subcommittee is (202) 395-6971. Questions may also be directed to any member of the staff of the GSP Information Center.

Frederick L. Montgomery, Chairman, Trade Policy Staff Committee.

[FR Doc. 82-35091 Filed 12-27-82; 8:45 am]
b. Prior to the appointment by the Secretary (or as soon thereafter as practicable) of a person to a position:

(1) Of a confidential or policy determining character (Schedule C or Noncareer Executive Assignment) with the Department at Grades GS-14 through 18, inclusive, SES levels 1 through 6, or Executive Schedule Levels V and IV, or similar position on other pay systems compensated at comparable rates, or

(2) With an international financial institution, the Commissioner, upon request therefor as provided in section 6.b. of this Order, shall cause a tax audit to be performed.

c. Promptly after the effective date of this Order, the Commissioner, upon request therefor as provided in section 6.b. of this Order, shall cause a tax audit to be performed with respect to each person who was not audited under provisions of Treasury Department Order No. 150-87 of July 29, 1977 prior to this Order being issued, and who has entered on duty in a position described in subsection a. or b. of this section.

4. Tax Checks—

a. On an annual basis, and as close to the anniversary date of the appointment to the position as is practicable, the Commissioner, upon request therefor as provided in section 6.b. of this Order, shall cause a tax check to be performed with respect to each person who then continues to serve in a position described in section 3. of this Order.

b. Prior to effectuation of a personnel action assigning a person to any category of positions as specified below, the Commissioner, upon request therefor as provided in section 6.b. of this Order, shall cause a tax check to be performed with respect to each person selected:

(1) By the President or the Secretary (Administration) on a staggered basis, and as close to the anniversary date of the appointment to the position as is practicable, the Commissioner, upon request therefor as provided in section 6.b. of this Order, shall cause a tax check to be performed with respect to each person who then continues to serve in a position described in section 3. of this Order;

(2) For initial entry into any position at any grade from GS-14 through 18, inclusive, SES levels 1 through 6 or Executive Schedule Levels V and IV, or similar positions in other pay systems compensated at comparable rates; and

(3) For initial appointment as an expert, consultant, or advisory committee member.

5. Income Tax Filing Record Checks—

Prior to a person entering on duty in a position by appointment or promotion from within the Department and on an annual basis, as close to the anniversary date of the appointment to a position as is practicable, the Commissioner, upon request therefor as provided in section 6.b. of this Order, shall cause an income tax filing record check to be performed with respect to each person who then continues to serve in a position described in section 4.b.(2) or (3) of this Order.

6. Procedure—

a. The Assistant Secretary (Administration), or his designee, shall request each person subject to a tax audit or tax check (or both) under this Order to execute an appropriate form providing the information necessary to identify the person and locate his or her tax records and authorizing the disclosure of tax return information as provided in this Order. The original of the executed form shall remain on file with the Assistant Secretary (Administration), or his designee. A copy of the executed form shall accompany each request to the Commissioner for a tax audit or tax check. If the person declines to execute the form, the tax audit or tax check (or both) shall nevertheless be performed as specified in this Order based on such information as is available from other sources.

b. The Commissioner shall cause a tax audit or check (or both), as appropriate under this Order, to be made upon receipt of a request therefor from the Assistant Secretary (Administration), or his designee.

c. Upon completion of such tax audit or check (or both), the results shall be forwarded (if an appropriate disclosure authorization has been executed), for information purposes, to the Assistant Secretary (Administration), or his designees; or as requested; or to IRS officers. This shall be done in a manner consistent with sections 7. and 8. of this Order.

d. In the case of income tax filing record checks, a list of the names and social security numbers of those persons for whom such checks are to be made shall be furnished to the Commissioner, or his designee, on a staggered basis throughout the year by the Assistant Secretary (Administration), or his designee. Upon receiving these lists, the Commissioner shall cause, as soon as is practicable, a tax filing record check to be made on each person listed.

e. Upon completion of such income tax filing record checks, the results shall be forwarded to IRS officers for appropriate tax administration enforcement action, if warranted, in accordance with section 8. of this Order.

7. Disclosure—

To the extent permitted by the executed disclosure authorization, the Commissioner, or his designee, shall furnish the results of a tax audit or tax check in summary form to the Assistant Secretary (Administration), or his designee. The underlying documents including audit reports, tax returns and return information shall also be furnished to the Assistant Secretary (Administration), or his designee, when specifically requested in writing by the Assistant Secretary (Administration). Any or all of the same information shall similarly be furnished directly to:

a. The President,

b. Representatives of the Executive Office of the President,

c. The Secretary, or

d. The Deputy Secretary,

when the Commissioner is requested to do so in writing, by the Assistant Secretary (Administration). The Assistant Secretary (Administration) may also provide this information, on his own initiative, to any of the above persons or other Treasury officers who have a need to know such information, such as those exercising personnel administration functions in the various Bureaus or Offices of the Department.

8. Non-disclosure—In any instance in which a tax audit or tax check has been performed by the Internal Revenue Service, and no individually signed disclosure authorization has been provided, and in the case of income tax filing record checks, the results of such tax audit or tax check or income tax filing record checks shall not be disclosed under this Order to anyone not employed by the Internal Revenue Service, but such results shall be furnished to appropriate officers of the Internal Revenue Service for such tax administration enforcement action as is warranted.

9. Circumstances Warranting Immediate Disclosure—

a. The Commissioner shall on his own initiative furnish to the Assistant Secretary (Administration), immediately following the event, the information that a civil penalty for fraud has been assessed, or is proposed for assessment, or an investigation for a possible criminal offense under the internal revenue laws may have been commenced or completed with respect to any Treasury officer, employee, consultant, advisory committee member, or other person serving in the Department or an international financial institution and described in section 3. or 4. of this Order, who has provided a written disclosure authorization under section 6.a. of this Order. Such information shall not be furnished under this Order with respect to a person who has not provided an individually signed disclosure authorization.

b. The Commissioner shall on his own initiative furnish information that a civil penalty for fraud has been assessed, or is proposed for assessment, or an investigation for a possible criminal offense under the internal revenue laws.
has been commenced or completed with respect to any Treasury officer, employee, or other person serving in the Department described in section 3, 4, of this Order. The Inspector General is also designated to receive any underlying documentation and same will be provided directly to the Inspector General by the Internal Revenue Service when the Inspector General specifically requests such information in writing.

Additionally, the Inspector General is authorized to furnish such information to any persons specified in section 7 of this Order or other Treasury officers who have a need to know such information to the same extent that I have authority under such order to furnish others with such information. Such information shall not be furnished under this Order with respect to a person who has not provided an individually signed disclosure authorization.

10. Confidentiality—It is the policy of the Department of the Treasury to make every effort to protect the privacy of all taxpayers, including its own officers and employees. Accordingly, disclosures under this Order shall be kept to the minimum necessary to promote public confidence in the Department and the administration of the Federal tax system.

11. Effect on other regulations and programs—a. Notwithstanding any other provisions of this Order:

(1) The Internal Revenue Service shall conduct and review tax audits, checks and income tax filing record checks in accordance with the Order with regard to its employees and those in the Office of Chief Counsel, IRS, at Grades GS-15 and below; but the results of such audits, checks, and income tax filing record checks shall not be forwarded to the Assistant Secretary (Administration), except as provided for by section 9 of this order. Each employee of the Internal Revenue Service or Office of Chief Counsel, who would otherwise be subject to a tax audit or tax check (or both) under the provisions of this Order, shall be asked to execute an appropriate disclosure authorization so that tax return information may be provided to persons authorized to receive it under section 7 of this Order.

(2) Information forwarded to the Assistant Secretary (Administration), with respect to the Internal Revenue Service officers and those in the Office of Chief Counsel, at SES levels 1 and above, or at Grades GS-16 and above, will, after the review process, be returned to the Commissioner or Chief Counsel, as appropriate, for safekeeping.

(3) All disclosure authorizations executed by employees or officers of the Internal Revenue Service or Office of Chief Counsel will remain on file with the Commissioner, or his designee, or the Chief Counsel, or his designee, as appropriate.

b. In addition, nothing in this Order precludes the Internal Revenue Service, or other Services, Bureaus or Offices of the Department which administer Federal tax or revenue laws, from adopting, with respect to their officers and employees, more stringent provisions than are provided for in sections 3, 4, and 5 of this Order, as may be allowed by law.

c. The requirements of this Order are in addition to any other audit procedures administered by the Internal Revenue Service and applicable to all taxpayers generally. Nothing in this Order is intended to affect, in any way, the process by which the Internal Revenue Service selects returns for audit under the usual procedures applicable to all taxpayers.

d. Nothing in this Order affects the authority of those Treasury officers, in individual Bureaus or Offices of the Department, who exercise personnel administration functions.


3. Effective Date—This Order is effective November 20, 1978.

Donald T. Regan,
Secretary of the Treasury.

[F.R. Doc. 82-35082 Filed 12-27-82; 8:45 am]

BILLING CODE 4810-215-M
Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of January 3, 1983, at 450 5th Street, N.W., Washington, D.C.

A closed meeting will be held on Tuesday, January 4, 1983, at 10:00 a.m. An open meeting will be held on Thursday, January 6, 1983, at 10:00 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present. The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Commissioners Treadway, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 3, 1983, at 10:00 a.m., will be:

- Access to investigative files by Federal, State, or Self-Regulatory authorities.
- Institution of administrative proceedings of an enforcement nature.
- Institution of injunctive action. Opinions.

The subject matter of the open meeting scheduled for Thursday, January 6, 1983, at 10:00 a.m., will be:

- Consideration of whether to grant the application of John B. Licata to become an association person in an unsupervised, proprietary capacity with Argus Management Corporation. For further information, please contact Mary Bianco at (202) 272-2318.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Catherine McGuire at (202) 272-2401.

December 23, 1982.
Tuesday
December 28, 1982

Part II

Department of Health and Human Services

Office of the Secretary

Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From HHS
Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From HHS

AGENCY: Health and Human Services Department.

ACTION: Final rules.


The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also contains certain exceptions that permit, under limited circumstances, use of age distinctions or factors other than age that may have a disproportionate effect on the basis of age. The Act applies to persons of all ages.

These final regulations are designed to guide the actions of recipients of financial assistance from HHS. The regulations incorporate the basic standards for determining what is age discrimination that were set forth in the general regulations. They discuss the responsibilities of HHS recipients and the investigations, conciliation and enforcement procedures HHS will use to ensure compliance with the Act.

V. Important Questions About the Regulations—answers some important questions raised during the development of those regulations.

VI. Examples of How HHS Interprets the Exceptions—illustrates how the exceptions might be applied to hypothetical situations involving HHS recipients.

I. Background

In November 1975 Congress enacted the Age Discrimination Act (42 U.S.C. 6101 et seq.) as part of the amendments to the Older Americans Act (Pub. L. 94-135). The Act prohibits discrimination on the basis of age in all programs and activities receiving Federal financial assistance.

The Act prohibits recipients of Federal financial assistance from taking actions that result in denying or limiting services or otherwise discriminating on the basis of age. The Act also contains certain exceptions that permit, under limited circumstances, use of age distinctions or factors other than age that may have a disproportionate effect on the basis of age.

Like other civil rights statutes, the Act applies only to programs or activities in which there is an intermediary (recipient) standing between the Federal financial assistance and the ultimate beneficiary of that assistance. The Act does not apply to programs of direct assistance (such as the Social Security program) in which Federal funds flow directly and unconditionally from the Federal government to the individual beneficiary of those funds.

Prior to the development of any regulations, the Act required the Commission on Civil Rights to conduct a study of age discrimination in federally funded programs and activities. The Commission transmitted its study to the President and the Congress on January 10, 1978. The Commission published the second part of its study in January 1979. The Act also required each affected Federal agency to respond to the Commission's findings and recommendations, and provided time for the Congress to consider amendments to the Act.

After receipt of the report from the Commission, the Federal agency responsible for the report, the Congress considered amendments to the Age Discrimination Act. In October 1978, Congress amended the Act (Pub. L. 95-478). The amendments: (1) added a private right of action to the Age Discrimination Act; (2) provided a mechanism for the disbursement to alternate recipients of funds that have been withheld under the Age Discrimination Act; (3) added a requirement that the Department of Health, Education and Welfare (now HHS) approve the final regulations of other Federal agencies; (4) made the effective date of regulations implementing the Act no earlier than July 1, 1979; (5) required annual reports to the Congress on progress in implementing the Act; and (6) removed the word "unreasonable" from the Act's statement of purpose. The 1978 amendments left intact the exceptions to the general prohibition against age discrimination contained in the 1975 Act. The amended Act continues to apply to persons of all ages.

The Act requires HHS to issue proposed and then final general regulations setting standards to be followed by all Federal departments and agencies in implementing the Act. HHS issued proposed general regulations on December 1, 1978 and final general regulations on June 12, 1979. Those general regulations and the prohibition against age discrimination became effective on July 1, 1979.

The Act requires each department or agency which operates programs of Federal financial assistance to issue proposed and then final regulations which must be consistent with the general regulations. The Secretary of HHS (now HHS) must approve all agency and department regulations.

On September 24, 1979, HHS issued proposed age discrimination regulations governing the actions of recipients of HHS funds. In May 1980 HHS became HEW according to the Department of Education Organization Act (Pub. L. 96-88). These are the final HEW age discrimination regulations.

II. Regulatory Procedures

Impact Analysis Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules. A major rule is defined in the Order as any rule that has an annual effect on the national economy of $100 million or more—or certain other specified effects. The Department concludes that the regulations implementing the Age Discrimination Act are not major rules within the meaning of the Executive Order because they do not have an effect on the economy of $100 million or more, or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small
entities" an analysis must be prepared describing the rule’s impact on small entities. Small entities are defined by the Act to include small businesses, small nonprofit organizations, and small governmental entities. Based on the cost analysis of the age regulation, the Department finds that the effect of the age regulations on small entities is minimal. Therefore, a regulatory flexibility analysis is not required.

**Paperwork Reduction Act (Recordkeeping and Reporting Requirements)**

These proposed rules place no new reporting or data collection requirements on recipients which require OMB clearance pursuant to the Paperwork Reduction Act.

**III. Rulemaking History**

HHS has been vitally concerned about the need for public participation in the development of these regulations because of the substantial impact the Age Discrimination Act could have on the operation of federally assisted programs.

As a first step in its obligation to issue general, government-wide regulations, HEW published in the Federal Register its Notice of Intent to Issue Age Discrimination Regulations (NOI) on March 2, 1978 (42 FR 5756). The NOI briefly identified some of the major issues addressed later in the regulatory process.

The Notice of Proposed Rulemaking (NPRM) for the general regulations was published in the Federal Register (42 FR 56423-56446) on December 1, 1978. At certain key places in the proposed general regulations, HEW presented options for public consideration and comment. Publication of the proposed rules was followed by a 90-day comment period.

HEW distributed more than 16,000 copies of the proposed general regulations. Copies were mailed to every member of Congress, every State governor, the head of every Federal agency that provides Federal financial assistance, administrators of federally assisted programs, recipients of Federal funds at the State and local levels, interested groups and individuals. In January and early February 1979, HEW held public hearings in Washington, D.C. and in each of HEW’s 10 regions in order to obtain public comment on the proposed general regulations. A total of 170 witnesses made presentations at those hearings. In addition, 240 written comments were received. The comments and verbatim transcripts from the 11 hearings were analyzed and used in the development of the final general regulations published on June 12, 1979.

HEW published its own proposed regulations setting out the age discrimination requirements for its recipients on September 24, 1979. The Department, primarily through its Regional Offices, carried out a major distribution of the proposed regulations to HEW recipients and interested organizations and individuals. Over 40,000 copies of the proposed rules were distributed during the 60 day public comment period.

In addition, staff from the Age Discrimination Task Force conducted informational meetings in Wisconsin, Oregon, Florida and Washington, D.C. during October and early November 1979 to explain the requirements of both sets of regulations. Seventy-two persons sent written comments containing suggestions for improving the proposed regulations. Appendix A to these final regulations contains an analysis of the comments received and responses to those comments.

Implementation by HHS of the age discrimination regulations provides several more opportunities for public comment. Twelve months after the publication of these final regulations HHS will publish the results of a review of the age distinctions it imposes on its recipients by means of regulations, policies and administrative practices. The review, which will be published for public comment, is designed to determine whether each age distinction is permissible under the Act and implementing regulations. HHS will no longer adopt new age distinctions in the administration of its programs of financial assistance unless the age distinction meets the requirements of these regulations and has been published in a regulation after opportunity for public comment. Finally, HHS will examine the effectiveness of these regulations after 30 months, and publish its assessment for comment in the Federal Register.

**IV. Overview of the Regulations**

The following paragraphs summarize the text of the final HHS age discrimination regulations and explain any changes that have been made as a result of the public participation process. The final regulations are divided into 4 subparts:

**Subpart A—General**

**Subpart B—Standards for Determining Age Discrimination**

**Subpart C—Duties of HHS Recipients**

**Subpart D—Investigation, Conciliation and Enforcement Procedures**

There are also two appendices. Appendix A contains an analysis of the public comments; Appendix B contains a listing of the age distinctions found in statutes and regulations governing HHS assisted programs.

**Subpart A—General**

Subpart A explains the purpose of the HHS age discrimination regulations, which is to set out the Department’s policies and procedures under the Act and the general regulations. (§ 91.1) These regulations apply to each HHS recipient and to all programs or activities receiving Federal financial assistance from HHS. (§ 91.2)

Although the Act generally covers all programs and activities that receive Federal financial assistance, it does not apply to any age distinction “established under authority of any law” which provides benefits or establishes criteria for participation on the basis of age or in age related terms. Thus, age distinctions that are “established under authority of any law” may continue in use. These regulations adopt without change the definition of "any law" established in the general regulations. Therefore, these regulations do not apply to age distinctions contained in Federal statutes, State statutes, or local statutes or ordinances adopted by elected, general purpose legislative bodies. (§ 91.2)

The Act also excludes from its coverage most employment practices, except in programs funded under the public service employment titles of the Comprehensive Employment and Training Act (CETA). However, the Age Discrimination in Employment Act (ADEA), administered by the Equal Employment Opportunity Commission (EEOC), continues to be the Federal statute that prohibits employment discrimination against most persons between the ages of 40 and 70 (except in Federal employment, where there is no upper age limit). Subpart A also defines terms used in these regulations. (§ 91.3)

**Subpart B—Standards for Determining Age Discrimination**

Subpart B of these regulations incorporates the basic standards for determining what is age discrimination, which are set out in the general regulations.

The regulations state that no person in the United States shall, on the basis of age, be denied the benefits of, be excluded from participation in, or be subject to discrimination under, any program or activity receiving Federal financial assistance. (§ 91.11)
The specific prohibited actions are patterned after the regulations issued under Title VI of the Civil Rights Act of 1964 (43 CFR Part 80). As a general rule, separate or different treatment which denies or limits service from, or participation in, a program receiving Federal funds will be prohibited by these regulations.

The Act does include some exceptions to the general rule against age discrimination. The regulations provide definitions for two terms that are essential to an understanding of these exceptions: "normal operation" and "statutory objective." (§ 91.12)

The regulations adopt the four-part test established in the general regulations to determine when an explicit age distinction is necessary to the normal operation of a program or to the achievement of a statutory objective of a program. The test (see § 91.13 of the regulations) requires that: The age distinction be used as a measure of another characteristic(s); the other characteristic(s) must be measured in order for the program to continue to operate normally or to meet a statutory objective; the other characteristic(s) can reasonably be measured by age; and the other characteristic(s) is impractical to measure directly on an individual basis.

All parts of the test must be met for an explicit age distinction to satisfy one of these exceptions and to continue in use in a federally assisted program. This four-part test will be used to scrutinize age distinctions that are imposed by recipients in the administration of federally assisted programs, when the recipient alleges the distinction is necessary to the normal operation or the achievement of a statutory objective of a program and when the age distinction is not specifically authorized by a Federal, State, or local statute.

Recipients of Federal funds are also permitted to take an action otherwise prohibited by the Act, if the action is based on "reasonable factors other than age." In that event, the action may be taken even though it has a disproportionate effect on persons of different ages. The regulations require, however, that the factor bear a direct and substantial relationship to the program's normal operation or statutory objective. (§ 91.14)

These regulations place on the recipient of HHS funds the burden of proving that an age distinction or other action falls within the exceptions discussed above. (§ 91.15)

There are three other instances in which an HHS recipient may use age distinctions that would otherwise be prohibited by the Act and these regulations: (1) a recipient may take voluntary affirmative action to overcome the effects of conditions that have resulted in limited participation in the recipient's program on the basis of age (§ 91.16); (2) a recipient may give special benefits to the elderly or to children (§ 91.17); and (3) a recipient may comply with age distinctions contained in HHS regulations. (§ 91.18)

Subpart C—Duties of HHS Recipients

Subpart C explains the duties of HHS recipients which are established by the General regulations.

HHS recipients have primary responsibility to ensure that their programs and activities are in compliance with the Act, the general regulations and these regulations. Recipients must also maintain records to the extent required to determine compliance with the Act and its regulations. (§ 91.31)

Where an HHS recipient passes on financial assistance to subrecipients, the recipient must notify subrecipients of their obligations under the Act and its regulations. HHS recipients must also inform beneficiaries about the protections provided by the Act and its regulations. (§ 91.32)

Each recipient of Federal financial assistance must sign an assurance that it will comply with the Act and its regulations. (§ 91.33)

HHS may require recipients employing the equivalent of 15 or more fulltime employees to examine their use of age distinctions under the Act as part of a compliance review or a complaint investigation conducted by the Department. (§ 91.39)

This self-evaluation requirement has been revised from the provision contained in the government-wide regulation and the Notice of Proposed Rule Making. The prior versions would have required all recipients employing 15 or more employees to complete a written self-evaluation. Section 91.33 states that such recipients may be required to undertake a self-evaluation as part of a compliance review and complaint investigation conducted by the Department. The change is based upon HHS' determination that it will be consistent with the requirements of the Paperwork Reduction Act of 1980, enacted after the publication of the NPRM, the paperwork burden associated with the self-evaluation must be limited to recipients where circumstances indicate, in their discretion, with a compliance review of complaint investigation, the need for the self-evaluation.

Each HHS recipient must keep records and make available to HHS upon request information that HHS determines is necessary to establish whether the recipient is in compliance with the Act and its regulations. Recipients must also allow HHS reasonable access to books and records to the extent HHS finds necessary to determine compliance with the Act and its regulations. (§ 91.34)

Subpart D—Investigation, Conciliation and Enforcement Procedures

Subpart D of these regulations establishes the procedures HHS will use in its investigation, conciliation and enforcement activities. These procedures are closely tied to requirements in the general regulations, primarily in Subpart D. Additional information on the filing of complaints and on mediation is provided in Section V of this preamble.

HHS may conduct compliance or pre-award reviews or use other similar procedures to ensure compliance with the Act and its regulations. These procedures may be used even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation has occurred. (§ 91.41)

Complaints of age discrimination may be filed with HHS by an individual or a class or by a third party. The complaint must allege discrimination occurring on or after July 1, 1979. A complaint must file a complaint within 180 days from the date the complainant first knew of the alleged act of discrimination, although HHS may extend this time limit for good cause. The filing date for a complaint will be the date upon which the complaint is sufficient to be processed. A complaint must identify the parties involved and the date the complainant first had knowledge of the alleged violation, describe generally the practice complained of, and be signed by the complainant. HHS will notify the recipient and the complainant of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the process. HHS will permit a complainant to add information to a complaint when necessary to meet the requirements of a sufficient complaint. HHS will return to the complainant any complaint that does not fall within the jurisdiction of the Act and will explain the reason(s) why the complaint is outside the jurisdiction of the Act. (§ 91.42)

HHS will refer to mediation all sufficient complaints that fall within the coverage of the Act. On June 12, 1979, the Secretary of HEW designated the Federal Mediation and Conciliation
discrimination regulations. These regulations were
implemented in Title VI of the Civil Rights Act of 1964. HHS includes a provision for the deferral of
complaints. These regulations require a State or local government agency to correct a violation. These regulations include a provision for the deferral of
the use of the services of any Federal, State, or local government agency to correct a violation. These regulations include a provision for the deferral of
Federal funds after an informal investigation.

The procedures for securing an agreement to mediate the complaint, although they may not meet with the mediator at the same time. Generally, mediation may last no more than 60 days from the date a complaint is filed with HHS. The mediator will have the authority to terminate the mediation at any time before the end of the 60 day period if the process appears to have broken down. The mediator also has the authority to extend the 60 day mediation period where settlement is likely. A settlement based on terms satisfactory to both parties will be put in writing and sent to HHS. HHS will take no further action on a complaint that has been successfully mediated. The mediator will protect the confidentiality of all information obtained in the course of mediation.

HHS will investigate complaints that are unresolved after mediation or are reopened because the mediation agreement is violated. HHS will first attempt to resolve the complaint through informal fact-finding. An agreement reached during informal investigation will be signed by both parties and by an HHS official. The agreement will not affect any other enforcement effort by HHS. The settlement is not a finding of discrimination against a recipient. If these informal efforts do not succeed, HHS will develop formal findings through further investigation of the complaint. A recipient may not intimidate or retaliate against any person who attempts to exercise a right protected by the Act or who participates in any aspect of the proceedings used to resolve allegations of age discrimination.

The procedures for securing compliance with the Act and these regulations are taken from the general regulations. The procedures include termination of Federal funds after an opportunity for a hearing on the record, referral to the Department of Justice, or the use of the services of any Federal, State or local government agency to correct a violation. These regulations include a provision for the deferral of new Federal financial assistance from HHS when termination proceedings are initiated.

The complaint may file civil actions when administrative remedies are exhausted. Administrative remedies are exhausted if either 180 days have elapsed since the complainant filed the complaint and HHS has made no finding, or if HHS issues a finding in favor of the recipient. The complainant may then file a suit in a U.S. district court where the recipient is found or transacts business. The complainant must indicate, at the time the suit is filed, if attorney's fees will be demanded in the event that the complainant is successful. No action can be brought if the same alleged violation by the same recipient is the subject of a pending action in any U.S. court. Complainants who wish to file an action must give 30 days notice to the Attorney General, the Secretary, and the recipient.

Applicability
These regulations contain two appendices. Appendix A is an analysis of the comments received on the proposed rules and the responses to those comments. Appendix B is a listing of age distinctions contained in the statutes and regulations governing the operation of HHS financial assistance programs. This appendix is designed to aid recipients by identifying those age distinctions which are derived from Federal statutes and regulations. The list of age distinctions in Appendix B is preceded by a more detailed explanation of the purpose of the listing and how it is organized.

V. Important Questions
This section of the preamble answers some important questions about these regulations. Some of the material first appeared in the general regulations published in June 1979, but is repeated here because it is important to an understanding of the provisions which HHS has incorporated in these regulations. The other questions were raised during the public comment period on the proposed HEW regulations.

1. What Ages Does the Act Cover?
Section 303 of the Act prohibits discrimination on the basis of age in federally assisted programs or activities. Although the legislative history indicates Congressional concern for the problems of the elderly in particular, the Congress made it clear in its conference committee report that the Act is intended to apply to persons of all ages. Nowhere in the amendment process was there any discussion of limiting or changing the coverage of the Act. It continues to extend protection to persons of all ages.

Various advocacy groups for older persons suggested that HHS construe the general regulations to protect only the elderly or to provide greater protection for older persons than for other age groups. This construction is not legally supportable in view of the legislative history and the plain language of the Act. Thus all regulations issued to implement the Act provide protection to persons of all ages.

2. When is the Prohibition Against Age Discrimination Effective?
The Act provides that its prohibition of age discrimination becomes effective upon the issuance of regulations. Section 304 provides for the issuance of age discrimination regulations in two phases:

(a) HEW [HHS] publishes general, government-wide regulations to implement the prohibition against age discrimination in federally assisted programs; and
(b) Each Federal agency (including HEW [HHS]) then publishes regulations specific to its programs and consistent with general regulations.

The Act's prohibition of age discrimination became effective when the first set of regulations, the general regulations became effective on July 1, 1979. The general regulations established standards for determining what is age discrimination and procedures for enforcing the Act. All Federal agencies must adopt those standards in their agency specific regulations.

3. Where Can Complaints of Age Discrimination Be Filed With HHS?
Complaints involving HHS recipients and beneficiaries should be sent to:
Office of Program Operations, Office for Civil Rights, Department of Health and Human Services, 330 Independence Avenue, SW., Washington, D.C. 20201.

The complaint must allege age discrimination occurring after July 1, 1979. The complaint should: (a) Identify the parties involved; (b) give the date of
the alleged violation or when the complainant first knew of the alleged violation; (c) generally describe what happened; and (d) be signed by the complainant.

HHS screens all complaints and refers those which describe actions covered by the Act and contain the necessary information to the FMCS for mediation. The FMCS began mediating age discrimination complaints on November 1, 1979.

The Act states that a complainant may file a civil action 180 days from the date the complaint was filed with the Federal agency if the agency has taken no action, or upon the date the agency makes a determination in favor of the recipient, whichever comes first. For purposes of exhaustion of administrative remedies within HHS, the 180 day period will run from the date the complaint is filed with HHS. In cases where HHS has not taken final action on a complaint and 180 days have passed, the complainant retains the option either to file a civil action, or have HHS continue to pursue the complaint through the administrative processes. HHS retains the option to continue its enforcement activities even if a private court suit is filed.

4. What Are the Rules Against Age Discrimination?

These regulations adopt without change the rules against age discrimination from the general regulations. The general regulations provide that, except as provided in the Act and its regulations,** no person in the United States shall, on the basis of age, be excluded from participation in, or be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.** It means that, unless permitted by one of the exceptions, recipients of HHS assistance may not, either directly or indirectly, do anything to exclude persons from their programs or activities on the basis of age. Nor may recipients do anything that is not permitted by one of the exceptions to deny or limit persons on the basis of their age in their efforts to participate in HHS assisted programs or activities.

The prohibition on any age discrimination does not include an absolute prohibition against separate treatment on the basis of age. As a general rule, separate or different treatment which denies or limits services from, or participation in, a program receiving financial assistance from HHS would be prohibited by these regulations. Separate or different treatment which does not deny or limit services is allowable. Separate or different treatment may be necessary to normal operation or to the achievement of a statutory objective by the recipient and may qualify as an exception under these regulations.

5. What Is the Meaning of the Exception for Age Distinctions "Established Under Authority of Any Law"?

The Age Discrimination Act applies to all programs and activities that receive Federal financial assistance. However, the Act does not apply to age distinctions "established under authority of any law" that provide benefits or establish criteria for participation on the basis of age or in age related terms. Age distinctions that qualify under this exemption do not require further scrutiny under these regulations.

The regulations define the term "any law" to mean a Federal, State or local statute or ordinance adopted by an elected, general purpose legislative body. This provision does not provide an automatic exemption for age distinctions that are contained in regulations or in ordinances enacted by bodies which are not elected or are special-purpose even though elected, such as State or local school boards. The first part of Appendix B of these regulations contains a list of the age distinctions found in Federal statutes administered by HHS.

The exemption for age distinctions "established under authority of any law" applies to both explicit uses of age (e.g. a statute that defines an adult to be a person over age 18) and the use of age-related terms (e.g. statutes that refer only to "adults" or "children" or "youths" without defining those terms explicitly). When a statute (Federal, State or local) uses, but does not define, an age-related term, HHS will accept reasonable definitions of those terms in regulations without further scrutiny. Thus, for example, HHS would not ordinarily question a definition of "child" as a person up to age 18, but would seek further justification of a regulation which defines "child" as a person up to age 30.

6. When Is An Age Distinction Necessary to the Normal Operation or to the Achievement of a Statutory Objective of a Program or Activity?

These regulations incorporate from the general regulations the four-part test for determining when an explicit age distinction is necessary to the normal operation of a program or activity, or to the achievement of a statutory objective. HHS will use this four-part test to scrutinize age distinctions imposed in the administration of federally assisted programs, but which are not explicitly authorized by a Federal, State or local statute or ordinance adopted by an elected, general-purpose legislative body. If the age distinction in question fails any part of the four-part test, the recipient of HHS funds may not continue to use that age distinction.

The four-part test is designed to require careful scrutiny of age distinctions in programs receiving Federal financial assistance and to weed out age distinctions that are neither directly related to an essential characteristic of a program nor based on explicitly stated objectives of a law. It is not intended to serve as a basis for permitting continued use of age distinctions in programs for the sake of administrative convenience, if this results in denial or limitation of services on the basis of age.

HHS encourages its recipients to apply every age distinction flexibly; that is, to permit a person who demonstrates eligibility to participate in an activity or program even though he or she would otherwise be barred by the age distinction. Other things being equal, a distinction under review is more likely to qualify under any of the exceptions if it does not automatically bar all those who do not meet the age requirements.

7. When Is the Use of a Factor Other Than Age Exempted From the Coverage of These Regulations?

The Age Discrimination Act permits a recipient of Federal funds to examine its use of factors other than age which have a disproportionate effect on the basis of age in light of the individual facts and circumstances surrounding their use. This examination will determine whether use of the factor other than age is sufficiently related to achieving a legitimate program purpose and, therefore, justifies limiting or denying services or participation to persons disproportionally excluded because of age.

8. What Are "Special Benefits" for the Elderly or Children?

These regulations incorporate the provision of the general regulations permitting a recipient of a program to provide special benefits for children or the elderly.

The special benefits provision resulted from HHS' belief that Congress did not intend to disturb the practice of providing special benefits to children or the elderly. These special benefits often take the form of special discounts or reduced fees for the elderly in a federally funded program.

The provision allowing special benefits has been revised somewhat from that contained in the government-wide regulations and the Notice of Proposed Rule Making to make it clear...
that special benefits are presumed to be within the statutory exemption applicable to actions necessary to the normal operation of a program. The earlier versions stated that special benefits to the elderly or to children shall be presumed to be voluntary affirmative action to overcome the effects of past under-participation in the recipient’s program by the elderly or children so long as the special benefits do not have the effect of excluding otherwise eligible persons from participation in the program. HHS has determined that the new wording is more consistent with the Congressional intent that the normal operation of programs properly designed to provide for special benefits for the elderly or children not be disturbed. Thus, such special benefits are entitled to a presumption of validity. In reviewing such special benefits in specific cases to insure that they are in fact consistent with the Act and Congressional intent, HHS will consider the rationale for the special benefit, the effect on other individuals, and all other relevant factors.

The regulations leave to the reasonable discretion of the recipient the definition of who qualifies as “children” or “the elderly” for purposes of receiving a special benefit.

9. What Is the Effect of Age Discrimination Contained in HHS Regulations?

A new §91.18 has been added to make explicit what is implicit in §90.32 of the government-wide regulation. Section 90.32 of the government-wide regulation established the mechanism for determining that age distinctions imposed by government agencies are consistent with the Age Discrimination Act and implementing regulations. Under this Section, agencies must within 12 months, review age distinctions imposed on recipients by regulations, policies and administrative practices. Each agency must then publish, for public comment, in the Federal Register a comprehensive accounting of all such age distinctions, listing those to be continued, the justification for their continuance, those to be adopted by regulations, and those to be eliminated. After this 12-month period, agencies may not continue any age distinction that has not already been adopted by regulation or is adopted by regulation under the Administrative Procedure Act using the notice and comment procedures specified in 5 U.S.C. 553. In addition, beginning with the effective date of an agency’s final regulations, an agency may not impose a new age distinction unless it is adopted by regulation under the Administrative Procedure Act using these notice and comment procedures.

This comprehensive mechanism for carefully scrutinizing age distinctions imposed by Federal agencies on recipients to insure their consistency with the Age Discrimination Act and implementing regulations is based upon public participation and the rulemaking process of the Administrative Procedure Act, through which the appropriateness and validity of any age distinctions can be thoroughly evaluated. Implicit in this far-reaching mechanism is that age distinctions contained in regulations adopted under the Administrative Procedure Act are entitled to a very strong presumption of permissibility. The new §91.18 makes this explicit by providing that any age distinction contained in a rule or regulation issued by HHS will be presumed to be within the statutory exemption applicable to actions necessary to the achievement of a statutory objective of the program to which the rule or regulation applies. This does not mean that such age distinctions are immune from additional scrutiny to insure their consistency with the Age Discrimination Act and implementing regulations, but that such further scrutiny will be under the general standards of the Act, rather than under the process established for previously unreviewed age distinctions, in which the recipient has the burden of proving that the detailed standards contained in §91.13 of the regulation have been met. Since the review process or rulemaking proceeding subjected the age distinctions to scrutiny on all possible bases, it is appropriate that any subsequent review be limited to determining violations of fundamental statutory requirements. This provision thus reaffirms that recipients upon whom age distinctions are imposed by HHS regulations adopted pursuant to statutory authority and under the Administrative Procedure Act, as well as the public, can be assured that such age distinctions have been carefully considered and are believed by HHS to be permissible under the Age Discrimination Act and implementing regulations.

10. Do the Regulations Require Proportional Allocation of Services and Funds by Age?

Some believe that certain age groups, especially the elderly, do not get their “fair share” of funds or program slots in certain federally funded programs. These persons argue that the serious underrepresentation of certain age groups in the allocation of program funds or services is age discrimination, and should be prohibited by these regulations. These regulations do not require proportional program participation by age or the proportional allocation of funds by age. However, disproportionate allocation of funds or program participation may be one element that triggers an examination of whether age discrimination exists in the federally funded program or activity. If further inquiry is necessary, the recipient may show that the disparity in rates of participation, fund allocation, or services has nondiscriminatory causes.

11. How Do These Regulations Affect the Relationship Between Similar General and Age-Targeted Programs?

Federal funds are used to support a number of programs that provide similar services or benefits both to the general population and to a selected age group within the population. Does the existence of an age-targeted program in any way relieve the general program of its obligation to serve the age group eligible for the age-targeted program? HHS believes that any deviation from a policy of serving all eligible persons regardless of age that results in a denial or limitation of service on the basis of age is only permissible if that action can satisfy one of the exceptions in these regulations. A general program can focus its services by referring persons to existing age-targeted programs only if those actions do not result in the denial of services to the individual or in the provision of lesser or different services.

12. Why is Mediation a Required Step in Resolving Complaints of Age Discrimination?

HHS supports mediation as an important innovation in the resolution of age discrimination complaints. The mediation process represents an effort to provide faster and more creative resolution of complaints through informal methods of dispute resolution. While mediation does represent a new step in the complaint resolution process, the experience in resolving complaints under other civil rights statutes indicates that the 60 days allowed for mediation will not significantly delay the enforcement process.

Mediation is being used with increasing success to resolve disputes between parties outside the traditional area of labor-management negotiations. The most important feature of the mediation process is that it will be under the supervision of an impartial third party, a mediator assigned by the FMCS. FMCS was designated by the Secretary of HEW to mediate age discrimination complaints for all Federal departments and agencies which
distribute Federal financial assistance. The mediator is in no way connected with HHS or the funding agency in the age discrimination dispute. Instead, mediators have been recruited and selected by the FMCS. Each mediator is assigned to the dispute by the FMCS without consultation with HHS.

The mediators have been specially trained in procedures for resolving disputes and in the requirements of the Age Discrimination Act and its implementing regulations. The mediator will contact the two parties and explain the procedures to both the complainant and the recipient. Mediation does not necessarily mean that the two parties to the dispute must meet face-to-face; each may meet separately or otherwise discuss the matter with the mediator. Since the mediated settlement must be satisfactory to both parties, neither the complainant nor the recipient is compelled to settle the complaint. A complainant who believes that he or she is not receiving full satisfaction in the mediation process need not agree to a settlement of the dispute. A complainant will have to wait no more than 60 days for the complaint to be returned to HHS for its investigation to begin. This 60 day period will count as part of the 180 days which must elapse for the complaint to be returned to HHS for its investigation to begin.

The mediation process has been designed to minimize expenses to the parties. The mediator can travel to the location of the parties and the services of the mediator are paid for by the Federal government. The mediation itself is conducted in an informal atmosphere in which both sides attempt to resolve the dispute in a mutually satisfactory manner. This should encourage the parties to discuss their dispute without resort to efforts to build a formal legal case.

HHS believes that the Age Discrimination Act offers a unique opportunity to try this innovative approach to the resolution of disputes. The mediation process is being monitored very closely as it is used to resolve age discrimination complaints received by all recipients of Federal financial assistance. The results of this evaluation will be reported as part of the required review of the effectiveness of the general age discrimination regulations.

VI. Examples of How HHS Interprets the Exceptions to the Prohibition Against Age Discrimination

This section illustrates how HHS would apply the exceptions to the prohibition against age discrimination in situations involving recipients of HHS funds. The examples are intended to illustrate how HHS would apply the standards in these regulations to analyze whether use of any age distinction or a factor other than age is permissible or impermissible under these regulations. The examples are purely hypothetical. Each assumes that the institution involved received funds from HHS and that no exception to the prohibition against age discrimination applies other than the one being discussed. The reader should keep in mind that even slightly different factual situations may require a different analysis and may result in a different conclusion. Thus, recipients of HHS funds should realize the need still exists for case-by-case analysis of any action that raises questions of compliance with the requirements of these regulations.

A. Actions Involving Separate Treatment (§ 91.11)

Examples—Permissible Separate Treatment:

1. A hospital which receives funds from HHS treats children under 16 years of age in a separate unit from the adults served by the hospital. However, essentially comparable services are provided both age groups, including laboratory facilities, specialized care and treatment, and access to the facilities. This separate treatment of the two age groups does not result in a denial or limitation of services, and the practice, therefore, is permissible.

2. A sports league sponsored by a local youth program which receives Federal Title XX funds separates children into three or more age groupings for sports which require physical development or emotional maturity. Essentially comparable sports programs are provided for each age group. The groupings by age are permissible because no denial or limitation of service results.

B. Age Distinctions “Established Under Authority of Any Law” (§ 91.21)

Examples—Age distinctions in HHS-administered Federal statutes:

1. The Health Maintenance Organization (HMO) Act limits enrollment of beneficiaries entitled to benefits under Title XVIII of the Social Security Act (SSA). The SSA requires “... each health maintenance organization with which the Secretary enters into a contract under this section shall have an enrolled membership at least half of which consists of individuals who have not attained age 65.” (42 U.S.C. 1395mm) (Emphasis added)

2. The Aid to Families with Dependent Children (AFDC) program enables “each State to furnish financial assistance for rehabilitation and other services to needy dependent children and the parents or relatives with whom they are living. The term * * * child is defined * * * as * * * (A) under the age of 18 or (B) at the option of the State under the age of 19 and a full-time student * * *.” (42 U.S.C. 601 et seq.) (Emphasis added)

3. The Older Americans Act authorizes the provision of “assistance in the development of new or improved programs to help older persons.” Specifically, it requires States in their State plans to “provide with respect to nutrition services that each project providing nutrition services will be available to individuals aged 60 or older, and to their spouses * * *.” (42 U.S.C. 3007) (Emphasis added)

Examples—Age distinctions in State and local statutes which may affect HHS funded programs:

1. Age limits for requiring parental consent for medical procedures.

2. Age limits for services to those in the “juvenile” justice system.

3. Age limits for compulsory health procedures, such as particular vaccinations against disease.

4. Maximum age limits for “under age” wards of the State.

C. Age Distinctions That Are Necessary To Normal Operation or to the Achievement of a Statutory Objective. (§ 91.13)

To qualify for the normal operation or statutory objective exception, an explicit use of age must meet all four parts of the test set out in § 91.13 which requires that:

(a) the age distinction must be used as a measure of another characteristic(s);
(b) the other characteristic(s) must be measured for the program to operate normally or to meet its statutory objective;
(c) the other characteristic(s) can be reasonably measured by using age; and
(d) it is impractical to measure the other characteristic(s) for each individual participant.

Examples—Permissible Uses of Age Related To Normal Operation:

1. Head Start grantees operate programs which provide comprehensive health, nutritional, educational, social, and other services for children who have not reached compulsory school age. Neither the statute creating Head Start nor its implementing regulations specifies a minimum age limit for Head Start participants.

A local Head Start grantee operates a center that offers a highly structured program stressing group activities to promote the educational, social and nutritional development of the children enrolled. Because of the nature of the center's program, its physical layout, and the training and experience of its staff, the center generally
Analysis of the Use of Age:

(a) The minimum age restriction is used as an approximation of the level of development and the capacity for self-discipline that the child must possess in order to profit from this particular center's pre-school child development program; and
(b) A child's readiness for this pre-school child development program must be measured for the Head Start center to meet its objectives. The enrollment of younger children who are not ready for this program would require significant changes in the program such as providing greater assistance in feeding, changing diapers, clothes, etc., which would impair the center's ability to meet its objectives; and
(c) Age 3 reasonably approximates the level of development at which children are able to respond to simple commands, move about without assistance, feed themselves, control body functions and perform other basic activities that are an essential part of this center's pre-school child development activities; and
(d) It is impractical to measure directly and individually each child's level of physical, mental and emotional development.

The minimum age restriction passes all four parts of the test and, therefore, is necessary for the normal operation of the Head Start center.

2. A community organization receiving Federal financial assistance provides a drug and alcohol education program to young individuals to pursue graduate training in social work.

Analysis of the Use of Age:

(a) Age is used as an approximation of lack of experience and training in social work. The use of age passes all parts of the four-part test. (The use of the age fails this part of the test.)
(b) Lack of experience and training is necessary to the normal operation of the department's graduate fellowship program.
(c) Age, however, is not a reasonable measure of an individual's experience or training. (The use of the age fails this part of the test.)
(d) Age, however, is not a reasonable measure of an individual's ability to perform CPR. (The use of the age fails this part of the test.)
(e) Age, however, is not a reasonable measure of an individual's ability to perform CPR. (The use of the age fails this part of the test.)
(f) Physical ability to perform CPR can be measured directly. Trainees can be tested for strength, endurance and resistance to extreme strain. The use of age fails this part of the test. The use of age, therefore, is not necessary to the normal operation of the CPR program.

Examples—Permissible Uses of Age Related to Statutory Objectives:

1. Applications for grants for disease control programs under the Public Health Service Act can only be approved if they "contain assurances satisfactory to the Secretary that * * * the applicant will conduct such programs as may be necessary (i) to develop an awareness in those persons in the area served by the applicant who are most susceptible to the disease or conditions * * * of appropriate preventive behavior and measures (including immunization) and diagnostic procedures for such diseases, and (ii) to facilitate their access to such measures and procedures." (42 U.S.C. 247b).

A local public health program generally gives priority to immunizations to age categories most susceptible to the disease (e.g. the immunization program is directed to children under 15).

Analysis of the Use of Age:

(a) Age is used as a measure of susceptibility to a particular disease; e.g. ages 1–14 is a measure of susceptibility to measles; (b) Susceptibility to the disease must be measured for the statutory objective to be met;
(c) Age is a reasonable measure of susceptibility to the particular disease; e.g. epidemiological evidence shows that children ages 1–14 are more susceptible to measles; and
(d) Susceptibility to the disease is impractical to measure directly on an individual basis.

The use of age passes all parts of the four-part test. Thus, age is necessary to the achievement of the explicit statutory objective to give priority in immunization to age categories most susceptible to the disease in question.

Examples—Prohibited Uses of Age Related to Statutory Objectives:

1. The statutory objective of the Federal Work Incentive Program (WIN) is to provide job training and placement services to individuals receiving Aid to Families with Dependent Children (AFDC) so that they may be employed and ultimately become self-sufficient. A local WIN office takes the age of the applicant into account and gives a lower priority for the older person who will be more difficult to place in employment.

Analysis of the Use of Age:

(a) Age is used as an approximation of the physical ability to perform CPR. (The use of the age fails this part of the test.)
(b) The physical ability to perform CPR must be measured for the program to achieve its objective.
(b) The selection of applicants most likely to be employed following the training is necessary to achieve the statutory objective. (The use of age fails this part of the test.)

(d) Employability can reasonably be measured on an individual basis. (The use of age fails this part of the test.)

The use of age as a factor in screening applicants for training under the WIN program does not pass parts (c) and (d) and, therefore, is not necessary to achieve the objective of the Federal WIN program.

2. Title IV of the Social Security Act defines child welfare services as "public social services which supplement, or substitute for, parental care and supervision for the purpose of protecting and promoting the welfare of children, including * * * where needed, the provision of adequate care of children away from their homes in foster family homes."

A State may set a maximum age limit of 65 for foster parents. They claim that to meet their statutory objective of providing "adequate care" they cannot select anyone over 65 to be a foster parent.

Analysis of the Use of Age:

(a) Age is used as an approximation of the physical stamina and emotional maturity required to provide parental supervision to children.

(b) It is necessary to assess ability to provide parental supervision to achieve the program statutory objective of "adequate" foster care.

(c) Age is not a reasonable measure of the physical and emotional ability to provide parental supervision to a child. Physical stamina and emotional maturity are highly variable in adults and while there might be variations as people age, there is no specific age beyond which an individual does not have sufficient physical stamina and emotional resources to be an "adequate" foster parent. (The use of age fails this part of the test.)

(d) Applicants to be foster parents are screened individually—there is no reason why an individual's physical stamina and emotional maturity cannot be assessed directly at that time. (The use of age fails this part of the test.)

D. The Use of Factors Other Than Age (§ 91.14)

Example—Permissible Uses of Factors Other than Age:

1. A skills training program which receives Federal Work Incentive Program [WIN] funds uses a physical fitness test as a factor for selecting participants to train for a certain job. The job involves frequent heavy lifting and other demands for physical strength and stamina. Even though older persons might fail the test more frequently than younger persons, the physical fitness test measures a characteristic that bears a direct and substantial relationship to the job which persons are being trained and, therefore, is permissible under the Act.

Example—Prohibited Uses of Factors Other than Age:

1. A training program which receives WIN funds uses a physical fitness test to select participants for a clerical training program. It is claimed that persons who pass the test are likely to do better work than those who are unable to pass the test. Even if this were true, the relationship between the requirements of the job and the requirements of the type of training being offered is not direct and substantial. It is so tenuous and limited that it will not justify the test's age discriminatory effect. In this situation, use of the test would violate the Act.

List of Subjects in 45 CFR Part 91

Aged, Civil rights.

Dated: December 1, 1982.

Betty Lou Dotson,
Director Office of Civil Rights
Department of Health and Human Services.

Approved: December 6, 1982.

Richard S. Schweiker,
Secretary
Department of Health and Human Services.

The Department of Health and Human Services adds Part 91 to Title 45 of the Code of Federal Regulations as set forth below:

PART 91—Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance

Subpart A—General

Sec.
91.1 What is the purpose of the Age Discrimination Act of 1975?
91.2 What is the purpose of HHS' age discrimination regulations?
91.3 To what programs do these regulations apply?
91.4 Definitions of terms used in these regulations.

Subpart B—Standards for Determining Age Discrimination

91.11 Rules against age discrimination.
91.12 Definitions of "normal operation" and "statutory objective."
91.13 Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.
91.14 Exceptions to the rules against age discrimination: Reasonable factors other than age.
91.15 Burden of proof.
91.16 Affirmative action by recipients.
91.17 Special benefits for children and the elderly.
91.18 Age distinctions contained in HHS regulations.

Subpart C—Duties of HHS Recipients

91.31 General responsibilities.
91.32 Notice to subrecipients and beneficiaries.
91.33 Assurance of compliance and recipient assessment of age distinctions.
91.34 Information requirements.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

91.41 Compliance reviews.

Sec.
91.42 Complaints.
91.43 Mediation.
91.44 Investigation.
91.45 Prohibition against intimidation or retaliation.
91.46 Compliance procedure.
91.47 Hearings, decisions, post-termination proceedings.
91.48 Remedial action by recipient.
91.49 Alternate funds disbursement procedure.
91.50 Exhaustion of administrative remedies.


Subpart A—General

§ 91.1 What is the purpose of the Age Discrimination Act of 1975?

The Age Discrimination Act of 1975, as amended, is designed to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also permits federally assisted programs and activities, and recipients of Federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and these regulations.

§ 91.2 What is the purpose of HHS' age discrimination regulations?

The purpose of these regulations is to set out HHS' policies and procedures under the Age Discrimination Act of 1975 and the general age discrimination regulations at 45 CFR Part 90. The Act and the general regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the general regulations permit federally assisted programs and activities, and recipients of Federal funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations.

§ 91.3 To what programs do these regulations apply?

(a) The Act and these regulations apply to each HHS recipient and to each program or activity operated by the recipient which receives or benefits from Federal financial assistance provided by HHS.

(b) The Act and these regulations do not apply to:

(1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body which:

(i) Provides any benefits or assistance to persons based on age; or

Published at 44 FR 32768, July 12, 1979.
Federal financial assistance is extended, subdivision, any public or private political subdivision, any Services.

Department of Health and Human Services.

Federal share of its fair market value is transfer or lease of property if the less than fair market value or for interest in or use of property, including:

provides or otherwise makes available arrangement

interest or use of property, including:

procurement contract or a contract of agreement, contract (other than a any grant, entitlement, loan, cooperative

empowered to extend financial department or agency that is

example, "children," "adult," "older persons," but not "student").

Agency means a Federal department or agency that is empowered to extend financial assistance.

"Federal financial assistance" means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(a) Funds; or
(c) Services of Federal personnel; or
(c) Real and personal property or any interest in or use of property, including:

(1) Transfers or leases of property for less than fair market value or for reduced consideration; and
(2) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

"HHS" means the United States Department of Health and Human Services.

"Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance. "Secretary" means the Secretary of Health and Human Services, or his or her designee.

"Subrecipient" means any of the entities in the definition of "recipient" to which a recipient extends or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

"United States" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

§ 91.14 Definition of terms used in these regulations.

As used in these regulations, the term: "Act" means the Age Discrimination Act of 1975, as amended, (Title III of Pub. L. 94-135).

"Action" means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

"Age" means how old a person is, or the number of years from the date of a person's birth.

"Age distinction" means any action using age or an age-related term.

"Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").

Agency means a Federal department or agency that is empowered to extend financial assistance.

"Federal financial assistance" means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(a) Funds; or
(c) Services of Federal personnel; or
(c) Real and personal property or any interest in or use of property, including:

(1) Transfers or leases of property for less than fair market value or for reduced consideration; and
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"Subrecipient" means any of the entities in the definition of "recipient" to which a recipient extends or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

"United States" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

Subpart B—Standards for Determining Age Discrimination

§ 91.11 Rule against age discrimination.

The rules stated in this section are limited by the exceptions contained in §§ 91.13 and 91.14 of these regulations.

(a) General rule: No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(b) Specific rules: A recipient may not, in any program or activity receiving Federal financial assistance, directly or through another recipient, take any other action which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance;

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance;

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 91.12 Definitions of "normal operation" and "statutory objective.

For purposes of §§ 91.13 and 91.14, the terms "normal operation" and "statutory objective" shall have the following meaning:

(a) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(b) "Statutory objective" means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

§ 91.13 Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited by § 91.11, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

§ 91.14 Exceptions to the rules against age discrimination: Reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by Section 91.11 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 91.15 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 91.13 and 91.14 is on the recipient of Federal financial assistance.

§ 91.16 Affirmative action by recipient.

Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.
§ 91.17 Special benefits for children and the elderly.

If a recipient operating a program provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program, notwithstanding the provisions of § 91.13.

§ 91.18 Age distinctions contained in HHS regulations.

Any age distinctions contained in a rule or regulation issued by HHS shall be presumed to be necessary to the achievement of a statutory objective of the program to which the rule or regulation applies, notwithstanding the provisions of § 91.13.

Subpart C—Duties of HHS Recipients

§ 91.31 General responsibilities.

Each HHS recipient has primary responsibility to ensure that its programs and activities are in compliance with the Act and these regulations, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford HHS access to its records to the extent HHS finds necessary to determine whether the recipient is in compliance with the Act and these regulations.

§ 91.32 Notice to subrecipients and beneficiaries.

(a) Where a recipient passes on Federal financial assistance from HHS to subrecipients, the recipient shall provide the subrecipients written notice of their obligations under the Act and these regulations.

(b) Each recipient shall make necessary information about the Act and these regulations available to its program beneficiaries in order to inform them about the protections against discrimination provided by the Act and these regulations.

§ 91.33 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from HHS shall sign a written assurance as specified by HHS that it will comply with the Act and these regulations.

(b) Recipient assessment of age distinctions. (1) As part of a compliance review under § 91.41 or complaint investigation under § 91.44, HHS may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation, in a manner specified by the responsible Department official, of any age distinction imposed in its program or activity receiving Federal financial assistance from HHS to assess the recipient’s compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act and the HHS regulations, the recipient shall take corrective action.

§ 91.34 Information requirements.

Each recipient shall:

(a) Keep records in a form and containing information which HHS determines may be necessary to ascertain whether the recipient is complying with the Act and these regulations.

(b) Provide to HHS, upon request, information and reports which HHS determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

§ 91.35 Assurance of compliance and recipient beneficiaries in order to inform them about the protections against their obligations under the Act and provide the subrecipients written notice to subrecipients, the recipient shall.

§ 91.36 Notice to subrecipients and regulations.

Duties of HHS Recipients

§ 91.37 General responsibilities.

Each HHS recipient has primary responsibility to ensure that its programs and activities are in compliance with the Act and these regulations, and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford HHS access to its records to the extent HHS finds necessary to determine whether the recipient is in compliance with the Act and these regulations.

§ 91.38 Notice to subrecipients and beneficiaries.

(a) Where a recipient passes on Federal financial assistance from HHS to subrecipients, the recipient shall provide the subrecipients written notice of their obligations under the Act and these regulations.

(b) Each recipient shall make necessary information about the Act and these regulations available to its program beneficiaries in order to inform them about the protections against discrimination provided by the Act and these regulations.

§ 91.39 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from HHS shall sign a written assurance as specified by HHS that it will comply with the Act and these regulations.

(b) Recipient assessment of age distinctions. (1) As part of a compliance review under § 91.41 or complaint investigation under § 91.44, HHS may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation, in a manner specified by the responsible Department official, of any age distinction imposed in its program or activity receiving Federal financial assistance from HHS to assess the recipient’s compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act and the HHS regulations, the recipient shall take corrective action.

§ 91.40 Information requirements.

Each recipient shall:

(a) Keep records in a form and containing information which HHS determines may be necessary to ascertain whether the recipient is complying with the Act and these regulations.

(b) Provide to HHS, upon request, information and reports which HHS determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

§ 91.41 Compliance reviews.

(a) HHS may conduct compliance reviews and pre-award reviews or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. HHS may conduct these reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of the Act and these regulations has occurred.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, HHS will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, HHS will arrange for enforcement as described in § 91.46.

§ 91.42 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with HHS, alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1978. A complaint shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause shown, HHS may extend this time limit.

(b) HHS will consider the date a complaint is filed to be the date upon which the complaint is sufficient to be processed.

(c) HHS will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

1. Accepting as a sufficient complaint, any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant.

2. Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

3. Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

4. Notifying the complainant and the recipient (or their representatives) of their right to contact HHS for information and assistance regarding the complaint resolution process.

(d) HHS will return to the complainant any complaint outside the jurisdiction of these regulations, and will state the reason(s) why it is outside the jurisdiction of these regulations.

§ 91.43 Mediation.

(a) HHS will promptly refer to a mediation agency designated by the Secretary all sufficient complaints that:

(1) Fall within the jurisdiction of the Act and these regulations, unless the age distinction complained of is clearly outside an exception; and,

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible.

(c) If the complainant and the recipient reach an agreement, the mediator shall draft a written statement of the agreement and have the complainant and the recipient sign it. The mediator shall send a copy of the agreement to HHS. HHS will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior
approval of the head of the mediation agency.

(e) The mediation will proceed for a maximum of 60 days after a complaint is filed with HHS. Mediation ends if:
(1) 60 days elapse from the time the complaint is filed; or
(2) Prior to the end of that 60-day period, an agreement is reached; or
(3) Prior to the end of that 60-day period, the mediator determines that an agreement cannot be reached.

This 60-day period may be extended by the mediator, with the concurrence of HHS, for not more than 30 days if the mediator determines that agreement will likely be reached during such extended period.

(f) The mediator shall return unresolved complaints to HHS.

§ 91.44 Investigation.

(a) Informal investigation. (1) HHS will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation HHS will use informal fact finding methods, including joint or separate discussions with the complainant and recipient, to establish the fact and, if possible, settle the complaint on terms that are mutually agreeable to the parties. HHS may seek the assistance of any involved State program agency.

(3) HHS will put any agreement in writing and have it signed by the parties and an authorized official at HHS.

(4) The settlement shall not affect the operation of any other enforcement effort of HHS, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) Formal investigation. If HHS cannot resolve the complaint through informal investigation, it will begin to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations HHS will attempt to obtain voluntary compliance. If HHS cannot obtain voluntary compliance it will begin enforcement as described in § 91.46.

§ 91.45 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, investigation, hearing, or other part of HHS' investigation, conciliation, and enforcement process.

§ 91.46 Compliance procedure.

(a) HHS may enforce the Act and these regulations through:

(1) Termination of a recipient's Federal financial assistance from HHS under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) HHS will limit any termination under § 91.46(a)(1) to the particular recipient and particular program or activity or part of such program and activity HHS finds in violation of these regulations. HHS will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not, and would not in connection with the new funds, receive Federal financial assistance from HHS.

(c) HHS will take no action under paragraph (a) until:

(1) The Secretary has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Secretary has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. The Secretary will file a report whenever any action is taken under paragraph (a).

(d) HHS also may defer granting new Federal financial assistance from HHS to a recipient when a hearing under § 91.46(a)(1) is initiated.

(1) New Federal financial assistance from HHS includes all assistance for which HHS requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New Federal financial assistance from HHS does not include increases in funding as a result of changed computation of formula awards or assistance approved prior to the beginning of a hearing under § 91.46(a)(1).

(2) HHS will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 91.46(a)(1). HHS will not continue a deferral for more than 60 days unless a hearing is held within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Secretary. HHS will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

(3) HHS will limit any deferral to the particular recipient and particular program or activity or part of such program or activity HHS finds in violation of these regulations. HHS will not base any part of a deferral on a finding with respect to any program or activity of the recipient which does not, and would not in connection with the new funds, receive Federal financial assistance from HHS.

§ 91.47 Hearings, decisions, post-termination proceedings.

Certain HHS procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to HHS enforcement of these regulations. They are found at 45 CFR 80.9 through 80.11 and 45 CFR Part 61.

§ 91.48 Remedial action by recipient.

Where HHS finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that HHS may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, HHS may require both recipients to take remedial action.

§ 91.49 Alternate funds disbursement procedure.

(a) When HHS withholds funds from a recipient under these regulations, the Secretary may disburse the withheld funds directly to an alternate recipient: any public or non-profit private organization or agency, or State or political subdivision of the State.

(b) The Secretary will require any alternate recipient to demonstrate:

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

§ 91.50 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act.
Administrative remedies are exhausted if:

1. 180 days have elapsed since the complainant filed the complaint and HHS has made no finding with regard to the complaint; or
2. HHS issues any finding in favor of the recipient.

If HHS fails to make a finding within 180 days or issues a finding in favor of the recipient, HHS shall:

1. Promptly advise the complainant of this fact; and
2. Advise the complainant of his or her right to bring a civil action for injunctive relief; and
3. Inform the complainant:
   (i) That the complainant may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;
   (ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney’s fees, but that the complainant must demand these costs in the complaint;
   (iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Secretary, the Attorney General of the United States, and the recipient;
   (iv) That the notice must state: the alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and, whether or not attorney’s fees are demanded in the event the complainant prevails; and
   (v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

Appendix A—Comment Analysis

The following comments, suggestions, and criticisms were made at public meetings or submitted in writing in response to the proposed rules. After the summary of each comment, a response is set forth stating the changes which have been made in the regulations or the reasons why no change was deemed necessary or appropriate. The comments follow sequentially the questions posed by the Department in the preamble to the proposed rule, and then the sections of the proposed regulations.

**HHS Regulations Format**

**Comment:** Several commenters disagreed with the format suggested in the proposed regulations, cross-referencing provisions from the general regulations into the HHS specific regulations, because the referenced regulations (1) might not be accessible to the user, or (2) might be amended without the user’s knowledge. These commenters requested that subparts A and B of the general regulations be repeated in the HHS specific regulations. Some commenters preferred cross-referencing as a means of differentiating between general requirements and those requirements specific to HHS recipients. A few commenters approved the cross-referencing format on the condition that HHS provide recipients directly with information and verify that the regulations containing all applicable requirements, or that the HHS regulations contain all cross-referenced regulations in an appendix.

**Response:** HHS is persuaded by the comments that the cross-referencing of substantive requirements from the general regulations into the HHS specific regulations is more confusing than time-saving. Accordingly, rather than incorporate substantive provisions of the general regulations into the HHS regulations by reference, substantive provisions are set forth independently in the HHS regulations. These regulations will continue to adopt by reference the hearing procedures used in other civil rights regulations (45 C.F.R. Part 80.9–80.11 and Part 81).

**Use of Examples to Illustrate the Standards, Generally**

**Comment:** Many commenters stated that examples provide helpful guidance in understanding the ADA standards. Some of these commenters requested that examples be included in the text of the final HHS regulations and one suggested that examples be located in an appendix.

**Response:** HHS has included examples in the preamble to the final regulations to illustrate how the ADA standards might be applied in particular situations. Readers are cautioned that the examples are limited to the facts presented and are intended only as guidance to clarify the standards set out in the HHS regulations. The examples should not be considered as definitive judgments by HHS.

**Examples—Permissible Separate Treatment**

**Comment:** One commenter stated that separate treatment should be permitted only when based on factors other than age (e.g., health, safety, physical ability), because permitting separate treatment on the basis of chronological age would open the door for the type of "separate but equal" rationale that has been discredited in other civil rights areas.

**Response:** HHS is sensitive to the need for careful scrutiny of separate treatment to assure that it is not a basis for denying or limiting opportunity to participate in a federally funded program, and believes that the standards in these regulations are sufficient to safeguard against abusive uses of age. On the other hand, HHS believes it is the intent of Congress to permit separate treatment based on age when there is no denial or limitation of service, e.g., in programs where separate treatment allows service to be more responsive to needs of different age groups and therefore may result in better services for each group.

**Examples—Prohibited Uses of Age Related to Normal Operation**

**Comment:** A few commenters objected to the example of limiting medical school admission to persons age 35 or under as a prohibited use of age because of concern about health care costs. These commenters supported the use of age limits for medical school admission as a way to conserve scarce dollar resources.

**Response:** HHS has retained this example. As explained in the analysis of comments on the final regulations, cost-benefit considerations alone are not a justification for using age distinctions. Cost benefit considerations may be used only where the use of age otherwise meets the requirements of the test set out in section 90.14 of the general regulations.

**Alternate Approaches to Regulations—Should the Regulations Address Practices of Specific HHS Recipients, Such as Hospitals?**

**Comment:** Most commenters stated that the regulations should not address practices of specific recipients. Some commenters stated that including illustrative examples in the preamble to the regulations is a better method of clarifying the regulatory standards than attempting to cover the wide variety of recipient programs by specific regulatory provision. No commenters favored addressing specific recipient practices in the HHS regulations.

**Response:** Based on the commenters’ support for HHS’s position that separate provisions addressing the practices of specific HHS recipients are unnecessary, HHS has not included such separate provisions.

**Should the Regulations Set Out More Detailed Requirements About What HHS Technical Assistance and Educational Materials HHS Provides In Recipients?**

**Comment:** Most commenters agreed with HHS that the administrative details of technical assistance and educational materials need not be included in the regulations. A few commenters requested that HHS include information on these topics either in an appendix, or in a general regulatory provision.

**Response:** HHS is committed to providing technical assistance and educational materials by whatever means is most useful to recipients. HHS believes that this commitment is best met by being able to respond to recipients in the manner most effective to the need presented. The regulations therefore continue to require that HHS provide technical assistance and educational materials but do not attempt to define in advance the manner in which the assistance must be delivered.

**Should the Regulations Include More Detailed Provisions for Disbursing Funds to Alternate Recipients in the Case of a Fund Termination?**

**Comment:** Most commenters stated that it is impossible to make detailed provision for disbursing funds to alternate recipients in the case of a fund termination and that the only reasonable method is a case by case determination.

**Response:** HHS has determined that the ADA establishes a minimum standard for selecting an alternate recipient and that any further attempt by HHS to define that standard may unduly restrict the Department’s ability to carry out the purpose of the ADA. The final regulations therefore...
Section 91.3 Definitions—"subrecipient"

Comment: Commenters generally agreed with HHS that the ADA regulations should incorporate the Title VI hearing procedures set out in 45 CFR Part 80.9-80.11 and Part 81 which are the procedures used for hearings, decisions, and post termination proceedings in conjunction with other civil rights statutes.

Response: The final regulations incorporate the hearing procedures set out in 45 CFR Part 80.9-80.11 and Part 81.

Subpart A-General

Section 91.3 Definitions—"subrecipient"

Comment: Commenters generally supported retaining the definition of subrecipient in the final HHS regulations. One commenter found the definition cumbersome because the recipient should be the primary focus of responsibility in these regulations.

Response: HHS has retained the definition of subrecipient in the final regulations because so many commenters questioned whether a subrecipient's obligations differ from those of a recipient. The obligations of an HHS recipient are not based on whether the recipient receives Federal financial assistance directly from HHS or indirectly (as a subrecipient) through another HHS recipient. The definition therefore states clearly that the subrecipient "has all the duties of a recipient in these regulations."

Subpart C-Duties of HHS Recipients

Section 91.31 General Responsibilities

Comment: One commenter requested clarification on who should be responsible for compliance within a multi-unit institution, such as a hospital, when HHS extends a single grant of Federal financial assistance to an institution which then redistributes portions of that assistance to various components within the institution.

Response: Each HHS recipient of Federal financial assistance has responsibility to ensure that its programs and activities are in compliance with the ADA and these regulations. Procedures for assuring compliance are left to the discretion of the recipient institution.

Section 91.33 Recipient Self-evaluation

The requirement for a self-evaluation that appeared in the ADA general regulation has been revised in the final HHS regulations to require, at the discretion of HHS while conducting a complaint investigation or compliance review, that certain recipients examine age distinctions used in their programs to determine whether these age distinctions are permitted under the Act and regulations.

In addition, there is a requirement that each recipient complete an assurance of compliance similar to the assurance of compliance requirement contained in other civil rights regulations.

Section 91.34 Information Requirements

Comment: A number of commenters stated that although it is reasonable for HHS to require information from recipients concerning compliance, HHS should describe as specifically as possible the kinds of data recipients are expected to keep. These commenters stated that because of the cost and time involved in gathering and maintaining data, HHS should keep information requirements to a minimum.

Response: HHS has revised this section to parallel the compliance information sections in the Title VI, Title IX and Section 504 implementing regulations. While recognizing the need for data sufficient to assess recipient compliance, HHS remains committed to lessening the data gathering burden on recipients. HHS further recognizes that there exists no established body of knowledge or experience to guide the assessment of age discrimination. The regulations, therefore, do not impose specific data requirements upon recipients. Rather, they allow HHS to be flexible in determining what kinds of data should be kept by recipients, based on what kinds of data prove useful as we gain experience with the ADA, and age discrimination issues become clearer.

Subpart D-Investigation, Cancellation, and Enforcement Procedures

Section 91.41 Compliance Reviews

Comment: Several commenters stated that the regulations should state clearly what compliance reviews will entail the scope of a review, and what will trigger it. One commenter requested that the regulations specifically limit any compliance review to those portions of an activity or program that receives Federal financial assistance from HHS. A few commenters questioned HHS's authority to conduct a compliance review where no complaint has been filed or in the absence of reasonable grounds to indicate a violation has occurred.

Response: The ADA charges HHS with responsibility to ensure that no person is discriminated against on the basis of age under any program receiving HHS funds. The compliance review provisions in the ADA regulations is similar to the compliance review provisions in the Title VI, Title IX and Section 504 implementing regulations. It is one of several ways in which HHS carries out its responsibility to assure that programs receiving HHS funds are in compliance with the law. The compliance review serves an important oversight function and may be triggered in one of two ways: It may be the direct result of a complaint that alerts HHS to look more closely at a particular program, or it may be part of HHS's ongoing review of a cross section of HHS programs.

Section 91.42 Complaints

Section 91.42(a) Third Party Complaints

Comment: Some commenters opposed third party complaints unless the third party is acting in a legal capacity for the real complainant. These commenters objected to allowing third parties to enter into settlement agreements or to initiate civil actions.

Response: The provision for third party complaints in these regulations is consistent with similar provisions in other HHS regulations implementing civil rights statutes. HHS believes that all allegations of age discrimination should be officially reported and that third party complaints are a useful means of alerting HHS to possible violations of the ADA and these regulations.

Section 91.43 Mediation

Comment: One commenter suggested that any findings of fact made by the mediator should be forwarded to HHS.

Response: The general regulations require that the confidentiality of the mediation be protected. The language of § 91.43(d) is identical to that in § 90.49(c)(3)(iv) of the general regulations. The confidentiality provision deals exclusively with protecting the neutrality of the mediator and protecting the public interest in the success of the mediation process. The parties must be able to speak freely in the mediation without fear that the mediator will testify or provide information in a later enforcement proceeding. The parties must not be bound in subsequent administrative or court proceedings by the statements made in mediation. The terms of any settlement agreed to in mediation will be sent to the agency which received the complaint originally.

§ 91.49 Compliance Procedure

§ 91.49(d) Deferral of new Federal financial assistance

Comment: One commenter stated that the provision allowing HHS to defer granting new Federal financial assistance, when a hearing has been initiated, is unfair because it imposes a penalty prior to establishing the recipient's noncompliance. This commenter suggested that a recipient who defends successfully against a charge of noncompliance should be reimbursed for the cost of the proceedings.

Response: The regulations allow HHS discretion to defer new funds pending the outcome of a hearing to determine whether there has been a violation of the ADA or these regulations. The ADA deferral procedure is consistent with the compliance procedures used under Title VI of the Civil Rights Act of 1964 and the concept of deferral is supported by the Department of Justice in their role as coordinator of Federal enforcement of Title VI. There is no authority under which these regulations can provide for the reimbursement of costs to a recipient who successfully defends against a charge of noncompliance.

§ 91.49 Alternate Funds Disbursal Procedure

Comment: A question was raised concerning the difference between the definition of "recipient" and any public or private agency. The definition of "alternate recipient" found in Section 90.4 of the general regulations, and what the commenter read as a more restrictive definition of "alternate recipient" in Section 91.49 of the HHS regulations. (emphasis added)

Response: The 90.4 definition parallels the definition of recipient found in the regulations.
implementing other civil rights statutes [e.g., Title VI]. Section 305(b) of the Age Discrimination Act requires each Federal agency to make provision in its regulations for the disposal of withheld funds to an alternate recipient which may be, among others "any public or nonprofit private organization or agency ..." HHS has made provision for its alternate funds disposal procedure in § 91.49 and has adopted directly from the ADA the language defining an alternate recipient.

HHS Activities

For the information of recipients and other reviewers, the following is a summary of activities that the general regulations require of HHS. The citation in brackets is to the section of the general regulations which HHS is summarizing.

1. Review age distinctions HHS imposes on its recipients to determine whether they are permissible under the Act. HHS will publish the results of that review for public comment 12 months after HHS publishes its final regulations. [§ 90.32]

2. Cooperate for all compliance and enforcement purposes with other Federal agencies which provide Federal financial assistance to the same recipient or class of recipients. [§ 90.33]

3. Make annual reports to the Congress describing HHS' efforts to carry out the Act. [§ 90.34]

(4) Attempt to ensure that HHS recipients comply voluntarily with the Act. [§ 90.42]

(5) Provide notice and technical assistance to HHS recipients and make available educational materials. [§ 90.43(a)]

(6) Review the effectiveness of these regulations 30 months after they become effective. [§ 90.62]

Appendix

Section 90.31(f) of the general regulations requires each Federal agency to publish an appendix to its final age discrimination regulations containing a list of each age distinction in a Federal statute or in regulations affecting financial assistance administered by the agency. This appendix is HHS's list of age distinctions contained in Federal statutes or in final HHS regulations which:

1. Provide benefits or assistance to persons based upon age; or
2. Establish criteria for participation in age-related terms; or
3. Describe intended beneficiaries or target groups in age-related terms.

The survey of age distinctions affecting HHS' programs of Federal financial assistance is for informational purposes only. Appendix B deals only with HHS programs covered by the Age Discrimination Act. It does not list age distinctions used by HHS in its direct assistance programs, such as the Supplemental Security Income Program, where the Federal assistance goes directly to the ultimate beneficiary rather than through another recipient (e.g. a grantee).

In addition, the appendix contains age distinctions only in HHS regulations which were in final form on January 1, 1982.

How to Read the Appendix of HHS Age Distinctions

The appendix has two sections: A list of age distinctions in Federal statutes, and a list of age distinctions in HHS regulations. The lists are further divided by operating division. The columns should be read from left to right for each age distinction. The first column contains the popular name of the program: the second column has the statute name, public law number and U.S. Code citation for statutes (of the regulation name and Code of Federal Regulations citation for regulations); the third column contains the section number of the public law and a description of the age distinction; the fourth column cites the Catalog of Federal Domestic Assistance number where it is available. Several of the cited programs were incorporated into block grants by the Omnibus Budget Reconciliation Act of 1981. (Pub. L. 97-35) FY '82 is the transition period for many of these programs. Where appropriate, this information is noted in the appendix.

### AGE DISTINCTIONS IN STATUTES AFFECTING HHS

<table>
<thead>
<tr>
<th>Program</th>
<th>Statute</th>
<th>Section and age distinction</th>
<th>CFDA No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Health Service (PHS)</td>
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<tr>
<td>Vitamins and Minerals</td>
<td>Federal Food, Drug, and Cosmetic Act (FDC Act).</td>
<td>Title VI of the Health Services Centers</td>
<td>21 U.S.C. 350 provides that, except in the case of, among others, children under the age of the 12, the Secretary may not establish maximum potency limits for vitamins and minerals, nor classify a vitamin or mineral as a drug solely because it is more potent than nutritionally useful.</td>
</tr>
<tr>
<td>Infant Formula</td>
<td>Infant Formula Act of 1980 Pub. L. 96-359</td>
<td>FDC Act</td>
<td>21 U.S.C. 350(c) establishes a program to ensure the safety and nutrition of infant formula.</td>
</tr>
<tr>
<td>Misbranded Drugs and Devices</td>
<td>FDC Act</td>
<td>FDC Act</td>
<td>21 U.S.C. 352(a)(3) provides that a drug or device is deemed misbranded unless its label bears adequate warnings against use by children where its use may be dangerous to health.</td>
</tr>
<tr>
<td>Filled Milk</td>
<td>Filled Milk Act</td>
<td>FDC Act</td>
<td>21 U.S.C. 61 states that the prohibition against filled milk does not apply to any food compound not readily mistaken for milk or cream where such compounds are designed for feeding infants and young children and is customarily used on physician's order.</td>
</tr>
<tr>
<td>Adolescent Pregnancy Program</td>
<td>Title VI of the Health Services Centers Amendment of 1976, P.L. 94-410, as amended by P.L. 97-35, 42 U.S.C. 300a-21</td>
<td>Title VI of the Health Services Centers Amendment of 1976, P.L. 97-35, 42 U.S.C. 300a-21</td>
<td>Sec. 451(b) The Secretary may make grants to provide &quot;services, give primary emphasis to adolescents who are 17 years of age or under and are pregnant or who are parents.&quot;</td>
</tr>
<tr>
<td>Aging</td>
<td>Public Health Service Act, as amended, P.L. 97-35, 42 U.S.C. 300a-21</td>
<td>Title VI of the Health Services Centers Amendment of 1976, P.L. 97-35, 42 U.S.C. 300a-21</td>
<td>Sec. 451(b) The Secretary may make grants to provide &quot;services, give primary emphasis to adolescents who are 17 years of age or under and are pregnant or who are parents.&quot;</td>
</tr>
<tr>
<td>Childhood Immunization Programs</td>
<td></td>
<td>Title III of the Public Health Service Act, as amended, P.L. 92-449, 42 U.S.C. 247b.</td>
<td>Sec. 202(a) The Secretary is authorized to make grants for ... &quot;child care projects.&quot;</td>
</tr>
<tr>
<td>Genetic Diseases Testing and Counseling Programs and Information and Education Programs</td>
<td></td>
<td>Title XI of the Public Health Service Act, as amended, P.L. 95-410, as amended by P.L. 97-35, 42 U.S.C. 300a-624</td>
<td>Sec. 317(b)(1)(A) The Secretary may make grants &quot;for disease control programs to immunize children against immunizable diseases (including measles, mumps, rubella, poliomyelitis, diphtheria, pertussis, tetanus, and mumps) ...&quot;</td>
</tr>
</tbody>
</table>

Note: This is now in the Maternal and Child Health Block Grant. FY '82 is the transition period.
### Program | Statute | Section and age distinction | CFDA No.
--- | --- | --- | ---
**National Health Service Corps Program** | Title III of the Public Health Service Act, P.L. 94-448, 42 U.S.C. 254k. | Sec. 13.659 | 13.659
**Maternal and Child Health Services Block Grant.** | Title V of the Social Security Act, as amended by P.L. 97-35. | | |

#### Office of Human Development Services (OHDS)

**Child Welfare Services State Grants Program.** | Title IV-B of the Social Security Act, P.L. 98-272, 42 U.S.C. 620, 42 U.S.C. 625. | Sec. 420(a); For the purpose of enabling the United States, through the Secretary, to cooperate with State public welfare agencies in establishing, extending, and strengthening child welfare services. | 13.654

**Federal Payments for Foster care and Adoption Assistance.** | Title IV-E of the Social Security Act, P.L. 98-272 as amended 42 U.S.C. 670 et seq. | Sec. 420(a); For the purpose of enabling the United States, through the Secretary, to cooperate with State public welfare agencies in establishing, extending, and strengthening child welfare services. | 13.659

## Age Distinctions in Statutes Affecting HHS—Continued

### Federal Register / Vol. 47, No. 249 / Tuesday, December 28, 1982 / Rules and Regulations

<table>
<thead>
<tr>
<th>Program</th>
<th>Statute</th>
<th>Section and age distinction</th>
<th>CFDA No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child Welfare Services Research and Demonstration</td>
<td>Title IV-B of the Social Security Act, P.L. 90-248, 42 U.S.C. 626(a)(1)(A), (D), (C) and (2).</td>
<td>Section 426(a) provides: (1) For grants ... (A) to public or other nonprofit institutions of higher learning, and to public or other nonprofit agencies and organizations engaged in research or child welfare activities, for special research or demonstration projects in the field of child welfare which are of regional or national significance and for special projects for the demonstration of new methods or facilities which show promise of substantial contribution to the advancement of child welfare; (B) to States or local public agencies responsible for administering, or supervising the administration of, the plan under this part, for projects for the demonstration of the utilization of research (including findings resulting therefrom) in the field of child welfare in order to encourage experimental and special types of welfare services. ... (C) For grants to public or other nonprofit institutions of higher learning for special projects for training personnel for work in the field of child welfare, including traineeships with stipends and allowances as may be permitted by the Secretary; (2) For contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research, special projects, or demonstration projects relating to such matters.</td>
<td>13.609</td>
</tr>
<tr>
<td>Child Welfare Services Training Grants</td>
<td>Child Abuse Prevention and Treatment Act, P.L. 93-347 as amended; 42 U.S.C. 5102.</td>
<td>Sec. 3: For purposes of this Act the term &quot;child abuse and neglect&quot; means the physical or mental injury, sexual abuse or exploitation, negligent treatment or maltreatment of a child under the age of 18 or the age specified by the child protection law of the State in question, by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary.</td>
<td>13.648</td>
</tr>
<tr>
<td>Child Abuse and Neglect State Grants</td>
<td>Title XX Block Grants to States for Social Services as amended, P.L. 97-35; 42 U.S.C. 1397 et seq.</td>
<td>Sec. 4(b)(1): The Secretary, through the Center, is authorized to make grants to the States for the purpose of assisting the States in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs.</td>
<td>13.626</td>
</tr>
<tr>
<td>Title III Grants for Community State and Programs on Aging</td>
<td>Title III of the Older Americans Act of 1965, P.L. 89-73 as amended 42 U.S.C. 3001 et seq.</td>
<td>..........................</td>
<td>13.630</td>
</tr>
<tr>
<td>Title VI Grants for Indian Tribes</td>
<td>Title VI of the Older Americans Act, P.L. 95-478 as amended by P.L. 97-115; 42 U.S.C. 3057.</td>
<td>..........................</td>
<td>13.630</td>
</tr>
<tr>
<td>Title IV of the Older American Act P.L. 97-115 as amended.</td>
<td>42 U.S.C. 3035a; Title IV-B of Social Security Act, P.L. 90-248; 42 U.S.C. 626(a)(1)(A), (D), (C) and (2).</td>
<td>..........................</td>
<td>13.630</td>
</tr>
<tr>
<td>Developmental Disabilities Program</td>
<td>Title XIX of the Social Security Act 42 U.S.C. 1396a(14).</td>
<td>Health Care Financing Administration (HCFA)</td>
<td>13.690</td>
</tr>
<tr>
<td>Medicaid</td>
<td>Title XIX of the Social Security Act, (Medical Assistance Program), as amended.</td>
<td>Sec. 1905(a)(4)(A): Skilled nursing facility services for persons 21 years of age or older.</td>
<td>13.690</td>
</tr>
<tr>
<td>Skilled Nursing Facility Services</td>
<td>Sec. 1905(a)(4)(A): Skilled nursing facility services for persons 21 years of age or older.</td>
<td>See also 1901, 1902, 1903, and 2171 of P.L. 97-35, 95 Stat. 815.</td>
<td>13.690</td>
</tr>
<tr>
<td>Early and Periodic Screening Diagnosis and Treatment</td>
<td>Sec. 1905(a)(4)(B): Early and periodic screening, diagnosis and treatment for persons under 21 years of age.</td>
<td>See also Sec. 1905(a)(4)(A) for persons age 21 and over.</td>
<td>13.690</td>
</tr>
<tr>
<td>Family Planning Services</td>
<td>Sec. 1905(a)(4)(C): Family planning services for individuals of child bearing age (including minors who can be considered sexually active).</td>
<td>..........................</td>
<td>13.690</td>
</tr>
<tr>
<td>Services Institutions for Tuberculosis or Mental Diseases</td>
<td>Sec. 1905(a)(4)(C): Family planning services for individuals of child bearing age (including minors who can be considered sexually active).</td>
<td>..........................</td>
<td>13.690</td>
</tr>
</tbody>
</table>
### AGE DISTINCTIONS IN STATUTES AFFECTING HHS—Continued

#### [Public Health Service, Office of Human Development Services, Health Care Financing Administration, and Social Security Administration]

<table>
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<tr>
<th>Program</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Inpatient Psychiatric Facility Services</td>
<td>42 U.S.C. 1396(h)(1)(C) and (h)(2)</td>
<td>Sec. 1905(a)(16) and (h)(1)(C) and (h)(2): Inpatient psychiatric facility services for individuals under 21, if provided (excluding services for children). (See also §1905(a)(13) and (18) Medicaid must also be provided to persons receiving Aid to Families With Dependent Children under Title IV-A of the Act (Under (c) or to students under 27 (Sec. 406(a)(7)). A state may at its option provide Medicaid to medically needy who meet the age and other criteria of (c), 19-A, and 21, but whose income is otherwise beyond the eligibility limits for those programs (Sec. 1905(a)(12)). (ii) Sec. 1903(a)(1) and (h)(1)—Medicaid may not be provided for services to individuals over 21 or of disabled individuals who could have been enrolled in Medicare and had these services paid for under Medicare.</td>
</tr>
<tr>
<td>MInDHCARE</td>
<td></td>
<td>Part A—Hospital insurance benefits for the aged and disabled. 13.773</td>
</tr>
<tr>
<td>Health Insurance for the Aged and Disabled</td>
<td>Title XVII of the Social Security Act, (Health Insurance for the Aged and Disabled), as amended.</td>
<td>Sec. 1811. The insurance program for which entitlement is established by sections 223 and 224A provides basic protection against the costs of hospital, home, post-hospital, and home health care, in accordance with this part for (1) individuals who are age 65 or over and are eligible for retirement benefits under Title II of this Act... or under the railroad retirement system, (2) individuals under age 65 who have been entitled for not less than 24 months to benefits under Title II of this Act... on the basis of a disability, and (3) certain individuals who do not meet the conditions specified in either (1) or (2) but who are medically determined to have end stage renal disease. See also: Section 1811(a)(1).</td>
</tr>
<tr>
<td>Hospital Insurance Benefits for the Aged and Disabled</td>
<td>Title II of the Social Security Act, as amended.</td>
<td>Sec. 226 provides that: (a) Every individual who—(1) has attained age 65, and (2)(A) is entitled to monthly insurance benefits under section 202; (B) is a qualified railroad retirement beneficiary, or (C) applies to certain Federal employees, shall be entitled to hospital insurance benefits under part A of Title XVII...</td>
</tr>
<tr>
<td>Transitional Provision</td>
<td>Title I of the Social Security amendments of 1965, P.L. 89-97; 42 U.S.C. 426a.</td>
<td>(b) Every individual who—(1) has not attained age 65, and (2)(A) is entitled to, and has for 24 calendar months been entitled to, (i) disability insurance benefits under section 223 or (ii) child’s benefits under section 223(d) by reason of a disability (as defined in section 223(d); or (ii) widow’s insurance benefits under section 202(a) or widow’s insurance benefits under section 202(b) by reason of a disability (as defined in section 223(d); or (ii) is, and has been for not less than 24 months a disabled qualified railroad retirement beneficiary, within the meaning of section 7(d) of the Railroad Retirement Act of 1974, or (c) applies to certain Federal employees, shall be entitled to hospital insurance benefits under part A of Title XVIII for each month beginning with the later of (i) July 1, 1973 or (ii) the twenty-fifth month of his entitlement or status as a qualified railroad retirement beneficiary described in paragraph (2), and ending... with the month following the month in which notice of termination of such entitlement to benefits or status as a qualified railroad retirement beneficiary described in paragraph (2) is mailed to him, or if earlier, with the month before the month in which he attains age 65...</td>
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<td>(c) For purposes of subsection (a)(1) entitlement of an individual to hospital insurance benefits for a month shall consist of entitlement to have payments made under, and subject to limitations in Part A of Title XVIII on his behalf for inpatient hospital services, post-hospital extended care services, and home health services (as such terms are defined in Part C of Title XVIII) furnished him in the United States or outside the United States in the case of inpatient hospital services furnished under the conditions described in section 1814(f) during such month...</td>
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<td>(d) For purposes of determining entitlement to hospital insurance benefits under subsection (b) in the case of widows and widowers described in paragraph (3)(A)(ii) thereof:—</td>
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<td>(A) the term &quot;age 60&quot; in sections 202(e)(1)(B)(i), 202(e)(5), 202(f)(1)(B)(i), and (B) (6) shall be deemed to read &quot;age 65&quot;...</td>
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<td>(B) the phrase &quot;before she attained age 60&quot; in the matter following subparagraph (F) of section 202(a)(1) and the phrase &quot;before he attained age 60&quot; in the matter following subparagraph (F) of section 202(b)(1) shall each be deemed to read &quot;based on a disability...&quot;...</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2) For purposes of determining entitlement to hospital insurance benefits under subsection (b) in the case of an individual under age 65 who is entitled to benefits under section 202, and who was entitled to widow’s insurance benefits or widow’s insurance benefits based on disability for the month before the first month in which such individual was so entitled to old-age insurance benefits (but ceased to be entitled to such widow’s or widow’s insurance benefits upon becoming entitled to such old-age insurance benefits), such individual shall be deemed to have continued to be entitled to such widow’s insurance benefits or widow’s insurance benefits for and after such first month...</td>
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<tr>
<td></td>
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<td>(3) For purposes of determining entitlement to hospital insurance benefits under subsection (b) any disabled widow age 50 or older who is entitled to mother’s insurance benefits (and who would have been entitled to widow’s insurance benefits by reason of disability if she had filed for such widow’s benefits) shall, upon application, for such hospital insurance benefits be deemed to have filed for such widow’s benefit and shall, upon furnishing proof of such disability prior to July 1, 1974, under such procedures as the Secretary may prescribe, be deemed to have been entitled to such widow’s benefits at the time she would have been entitled to such widow’s benefits if she had filed a timely application therefor.</td>
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<td>Sec. 103. Transitional provision on eligibility of uninsured individuals for hospital insurance benefits—entitlement to benefits...</td>
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<tr>
<td>Program</td>
<td>Statute</td>
<td>Section and age distinction</td>
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<tr>
<td>End Stage Renal Disease Entitlement Provisions.</td>
<td>Title II of the Social Security Act, as amended, P.L. 85-292 as amended by 3278 of P.L. 87-248, 42 U.S.C. 426-1.</td>
<td>(a) Anyone who—(1) has attained the age of 65 (2)(A) attained such age before 1969, or (B) has not less than 3 quarters of coverage ... whenever acquired, for each calendar year beginning after 1958 and before the year in which he attained such age, ... shall (subject to the limitations in this section) be deemed, solely for purposes of section 426 of this title, to be entitled to monthly insurance benefits under such section 402 for each month. ...</td>
</tr>
<tr>
<td>Premium Hospital Insurance</td>
<td>42 U.S.C. 1395-2</td>
<td>Sec. 1918. Hospital insurance benefits for uninsured individuals not otherwise eligible—Individuals eligible to enroll.</td>
</tr>
<tr>
<td>Medicare Part B Supplementary Medical Insurance Benefits for the Aged and Disabled.</td>
<td>Title XVIII of the Social Security Act P.L. 89-97; 42 U.S.C. 1395j et seq.</td>
<td>(a) Every individual who—(1) has attained the age of 65, (2) is enrolled under part B of this title, (3) is a resident of the United States, * * * and (4) is not otherwise entitled to benefits under this part, shall be eligible to enroll in the insurance program established by this part. ...</td>
</tr>
<tr>
<td>Social Security Administration (SSA)</td>
<td></td>
<td>See also Sec. 1602(a)(2) as amended by P.L. 97-248 §116.</td>
</tr>
</tbody>
</table>

| Aid to the Aged, Blind, or Disabled (AABD)                  | Title XVI of the Social Security Act, as amended, P.L. 87-543; 42 U.S.C. 1381i, 42 U.S.C. 1385. | This title is presently in effect in Puerto Rico only. |
| Aid to Families with Dependent Children (AFDC)              | Title IV-A of the Social Security Act, as amended, P.L. 271; 42 U.S.C. 601 et seq. | Sec. 1601 now enables States to furnish financial assistance to needy individuals who are 65 years of age or over, are blind or who are 18 years of age or over and permanently and totally disabled. Section 1605 defines "aid to the aged, blind or disabled" as money payments to, or—medically care in behalf of—needy individuals who are 65 years of age or older, are blind or are 18 years of age or over and permanently and totally disabled. This does not include an individual who is an inmate in a public institution (except as a patient in a medical institution) or an individual under age 65 who is a patient in an institution for tuberculosis or mental diseases. |
| Aid to the Permanently and Totally Disabled (APTD)          | Title XIV of the Social Security Act, as amended, P.L. 87-543; 42 U.S.C. 1361i, 42 U.S.C. 1355. | This title is presently in effect for Guam and the Virgin Islands only. |
| Federal Old-Age Survivors, and Disability Insurance Benefits (OASDI) | Title II of the Social Security Act, as amended, P.L. 89-97; 42 U.S.C. 422. | Sec. 1401—Enables States to furnish financial assistance to needy individuals 18 years of age and older who are permanently and totally disabled and encouraging each State to furnish rehabilitation and other services to help such individuals. Sec. 1405—defines "aid to the permanently and totally disabled" as money payments to, or—medically care in behalf of, or any type or remuneration care recognized under State law in behalf of, needy individuals 18 years of age or older who are permanently and totally disabled. ... |
| Old Age Assistance Program (OAA)                            | Title I of the Social Security Act, as amended, P.L. 271; 42 U.S.C. 301. | This title is presently in effect in Guam and the Virgin Islands only. |

* * *

[Public Health Service, Office of Human Development Services, Health Care Financing Administration, and Social Security Administration]
### Age Distinctions in Statutes Affecting HHS—Continued

**Program** | **Statute** | **Section and age distinction** | **CFDA No.**
--- | --- | --- | ---
Supplemental Security Income Program (SSI) | Title XVI of the Social Security Act, as amended P.L. 92-600, 42 U.S.C. 1382a. | Sec. 1615(a)—A blind or disabled person “who has not attained age 65” shall be referred for vocational rehabilitation service or in the case of blind or disabled children who have “not attained age 16” shall be referred to the State agency administering the State plan, which provides counseling for disabled children, service plans and prompt referral to appropriate medical, education and social services and to provide for children age 6 and under or who have never attended public school, who require preparation for public education, medical, social, developmental and rehabilitation services. Effective October 1, 1982, pursuant to section 212(c)(3) of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981, the age distinctions under the SSI program are as follows: Sec. 1615(a)—A blind or disabled person “who has not attained age 65” shall be referred for vocational rehabilitation service or in the case of blind or disabled children who have “not attained age 16” for a review not less often than quarterly of such person’s disability or blindness and his need for and use of the vocational rehabilitation services”. Section 451—Authorizes the appropriation of funds for the purpose of enforcing the support obligations owed by absent parents to their children, and spouses or former spouses with whom the children are living locating absent parents, establishing paternity and obtaining child and spousal support. Section 452(a) authorizes the Secretary of HHS to establish a separate organizational unit under the direction of the Secretary’s designee who shall establish such standards for State programs for locating absent parents, establishing paternity and obtaining child and spousal support as he determines to be necessary to assure that such program will be effective. Section 454(a) provides that a State plan for child and spousal support, in addition to other requirements must provide that such State will undertake (A) In the case of a child born out of wedlock with respect to whom an assignment under section 402(a)(26) of this title is in effect, to establish the paternity of such child—; and (B) In the case of any child with respect to whom such assignment is effective, to secure support for such child from his parent—. Section 452 defines “child support”, when used in reference to the legal obligations of an individual to provide such support to mean periodic payments of funds for the support and maintenance of a child or children with respect to which such individual has such an obligation and includes but is not limited to, payments to provide for health care, education, recreation, clothing, or to meet other specific needs of such a child or children. | 13,807

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### Age Distinctions in Regulations Affecting HHS

**Program** | **Regulation** | **Section and age distinction** | **CFDA No.**
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Public Health Service, Food and Drug Administration | | | |
Labeling of Drugs for Human Use | Labeling 21 CFR Part 201. | Sec. 201.19 sets forth certain requirements concerning the use of the term “Infant” in human drug labeling. Sec. 201.67(1)(f) sets forth requirements concerning labeling for prescription drugs with pediatric indications. Sec. 201.306(c) sets forth a warning statement concerning children for the labeling of ipecac syrup. Sec. 201.314 contains age distinctions with respect to the labeling of drugs containing salicylates as follows: (a)—children, young children (b)—child, children under 3 years of age (c)—adults (d)—adults (e)—children, children under 3 years of age, children greater than 3 years, children down to age 6, younger children. (f)—children under 3 years of age, younger children, adults (g)—children | |
Prescription Drug Advertising | Prescription Drug Advertising, 21 CFR Part 200. | Sec. 202.10(c)(7)(ix) geriatric patients are given as an example with respect to an advertisement promoting use of a drug in a selected class of patients. Sec. 202.200(c)(9) sets forth certain labeling requirements with respect to infants. | |
Special Requirements for Specific Human Drugs Methadone | Special Requirements for Specific Human Drugs, 21 CFR Part 250. Drugs Used for Treatment of Narcotic Addicts, 21 CFR Part 291. | Sec. 201.505 discloses the use of methods in the treatment of patients of various age groups as follows: (d)(3)(i) and (iv) for patients under the age of 18. Sec. 310.201 establishes conditions for exemption from prescription requirements for certain drugs. Makes numerous references to various age groups i.e., adult children 6-12 years, children 3-6 years, children under 12 years, children under 3 years, children 6 years, children 6 years and over. Sec. 310.500(a) labeling guidelines for the drug, digoxin, include directions for use for newborn infants, infants 1 month-2 years, children 2-10 years, children over 10 years, and adults. Sec. 360.20 suggests that the use of methadone in the treatment of patients of various age groups as follows: (d)(3)(i) and (iv) for patients under the age of 18. | |
New Drugs | New Drugs, 21 CFR Part 310. | | |
Drug Labeling | Interpretive Statements Re Warnings on Drugs and Devices for Over-the-Counter Sale, 21 CFR Part 399. | Sec. 206.20 suggests recommended caution and warnings statements for the labeling of various drugs. Includes caution warnings concerning women of childbearing age, children, children under 6 years of age, infants, children under 3 years of age, children under 6 years of age, children under 12 years of age, children under 3 years of age, children under 6 years of age, children under 2 years of age. | |
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<tr>
<td>Radioactive Drugs</td>
<td>Prescription Drugs for Human Use Generally Recognized As Safe and Effective and Not Misbranded Drugs Used in Research 21 CFR Part 361.</td>
<td>Sec. 361.10(b)(3) establishes generally recognized as safe limits for the radiation dose to an adult research subject.</td>
</tr>
<tr>
<td>OTC Drugs</td>
<td>Over-the-counter (OTC) Human Drugs Which are Generally Recognized as safe and Effective and Not Misbranded 21 CFR Part 200.</td>
<td>Sec. 361.10(b)(3) established a maximum radiation dose for research subjects under 18 years of age.</td>
</tr>
<tr>
<td>Medical Devices</td>
<td>Labeling 21 CFR Part 601</td>
<td>Sec. 601.403 sets forth recommended warnings and caution statements for specific medical devices with respect to children and the elderly.</td>
</tr>
<tr>
<td>Exemptions from Federal Preemption of State and Local Medical Device Requirements.</td>
<td>Exemptions for Specific States 21 CFR Part 606.</td>
<td>Sec. 601.420(c)(9) sets forth certain labeling requirements for hearing aids with respect to children who are prospective hearing aid users.</td>
</tr>
<tr>
<td>Classification of Devices</td>
<td>21 CFR Parts 664–684</td>
<td>Sec. 606.85(b) preempts Ohio Revised Code, section 4747.09, the last two sentences with respect to medical examination of children.</td>
</tr>
<tr>
<td>Childhood Lead-Based Paint Poisoning Program Control.</td>
<td>Grants for the Prevention of Lead-Based Paint Poisoning; 42 CFR Part 91.</td>
<td>Sec. 91.1 This regulation applies to programs for prevention, detection and treatment of incidents of lead-based paint poisoning among children under 6 years of age.</td>
</tr>
<tr>
<td>Childhood Immunization</td>
<td>Grants for Disease Control, Subpart B</td>
<td>Sec. 91.1 This regulation applies to programs for prevention, detection and treatment of incidents of lead-based paint poisoning among children under 6 years of age.</td>
</tr>
<tr>
<td>Influenza Immunization</td>
<td>Grants for Influenza Immunization Programs, Subpart E</td>
<td>This grant program is directed toward the population susceptible to childhood diseases.</td>
</tr>
<tr>
<td>Community Health Services</td>
<td>Grants for Community Health Services, 42 CFR Part 51c.</td>
<td>This grant program is directed toward programs to immunize persons in high-risk groups against influenza. The regulation defines high-risk groups to mean those persons at highest risk of serious illness or death due to influenza and its complications, as specified in grant guidelines.</td>
</tr>
<tr>
<td>Indian Health-Inpatient and Out-patient Care.</td>
<td>Indian Health-Availability of Services, 42 CFR 36, Subpart B.</td>
<td>Sec. 36.11 uses the terms school children as an example of a special group receiving a preventive care service.</td>
</tr>
<tr>
<td>Maternal and Child Health and Crippled Children's Services.</td>
<td>Grants for Maternal and Child Health and Crippled Children's Services, Subpart A, 42 CFR Part 51a.</td>
<td>Sec. 51a.101 et seq. All of Subpart A is age-related toward services for children and women of child-bearing age. Crippled children is defined for program purposes as an individual under the age of 21.</td>
</tr>
<tr>
<td>Special Projects of Regional or National Significance.</td>
<td>Special Projects of Regional and National Significance, 42 CFR Part 51a, Subpart B. Subpart D Project Grants to Institutions of Higher Learning.</td>
<td>Note: Although included in the Maternal Child Health legislation, this program is part of the 15% Federal set aside program which remains categorical. The recent block grant rates removed all of Part 51a after Oct. 1, 1982. Subparts B &amp; D should have been retained and steps are being taken by BHCs to get subparts B &amp; D put back into effect.</td>
</tr>
<tr>
<td>Maternal and Child Health Research Projects.</td>
<td>Research Projects Relating to Maternal and Child Health, 42 CFR Part 206.</td>
<td>Sec. 205(2) refers to the Section 512, Social Security Act, authorization for research projects relating to maternal and child health and crippled children's services. The other applicable portions of the regulations are designed to carry out the research activities for the improvement of maternal and child health.</td>
</tr>
<tr>
<td>Migrant Health Services</td>
<td>Grants for Migrant Health Services, 42 CFR Part 56, Subpart A.</td>
<td>Sec. 56.104(h)(1)(ii) &amp; (iii) requires that applications for grants provide an assessment of the need for services, taking into account, among other things, health indices for the population to be served, such as infant mortality rate, and demographic factors affecting the need and demand for services, such as percentages of such population age 65 and over.</td>
</tr>
<tr>
<td>Program</td>
<td>Regulation</td>
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<tr>
<td>Assistance Programs Office of Family Assistance</td>
<td>Training and use of subprofessionals and volunteers—45 CFR Part 225</td>
<td>Sec. 225.2 State plan requirements</td>
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<tr>
<td>Old Age Assistance Program (OAA)</td>
<td>Coverage and Conditions of Eligibility in Financial Assistance Programs—45 CFR Part 233 (cont.)</td>
<td>Sec. 233.10 General Provisions regarding coverage and eligibility</td>
</tr>
<tr>
<td>Aid to Families with Dependent Children (AFDC)</td>
<td>Coverage and conditions of eligibility in financial assistance programs 45 CFR Part 233 (cont.)</td>
<td>Sec. 223.80 institutional status (a) Federal financial participation</td>
</tr>
<tr>
<td>Aid to the Aged, Blind or Disabled (AABD)</td>
<td>Coverage and conditions of eligibility in financial assistance programs 45 CFR Part 233 (cont.)</td>
<td>Sec. 234.60 Emergency assistance to needy families with children</td>
</tr>
<tr>
<td>Aid to Families with Dependent Children (AFDC)</td>
<td>Coverage and conditions of eligibility in financial assistance programs 45 CFR Part 233 (cont.)</td>
<td>Sec. 233.105 Emergency assistance to needy families with children (a)(1) Federal financial participation is available for emergency assistance to or on behalf of a needy child under the age of 21 and any other member of the household in which he is living</td>
</tr>
<tr>
<td>Social Security Administration (SSA)</td>
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</table>

The regulations carry out the statutory requirement for provision of services for SSI recipients under 16 years of age who are referred to the State crippled children's agency or another State agency which administers programs for disabled children. The age-related requirements are provision of all services including treatment for children age 0 or under or who have never attended public school, and establishment of individual service plans, counseling, referral, and monitoring services for all other children receiving SSI benefits who are 7 to 16 years of age. Note: This is now part of the Maternal and Child Health Block Grant, FY '82 is the transition period.
AGE DISTINCTIONS IN REGULATIONS AFFECTING HHS—Continued

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<tr>
<td>Aid to the Aged, Blind and Disabled (AABD)</td>
<td>Coverage and conditions of eligibility in financial assistance programs 45 CFR part 233 (cont.)</td>
<td>(v) AABD—for needy individuals under the plan who are aged, blind, or 18 years of age or older and permanently and totally disabled.</td>
<td>13.701</td>
</tr>
<tr>
<td>Aid to the Aged, Blind and Disabled (AABD) (cont.)</td>
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<td>(a) Condition for plan approval. A State plan under Title I or XVI of the Social Security Act may not impose any age requirement of more than 65 years.</td>
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<td>(b) Federal financial participation.</td>
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<td>(1) Federal financial participation is available in financial assistance provided to otherwise eligible persons who were, for any portion of the month for which assistance is paid:</td>
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<tr>
<td>Child Support Enforcement Program</td>
<td>Office of Child Support Enforcement 45 CFR Parts 301, 302 and 305.</td>
<td>(i) In OAA or AABD with respect to the aged, 65 years of age or over;</td>
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<td>(ii) In AFDC, under 18 years of age or age 18 if a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age 18;</td>
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<td>(iii) In AABD or AABD with respect to the blind, any age.</td>
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<td>(iv) In APTO or AABD with respect to the disabled, 18 years of age or older.</td>
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<td>(2) Federal determination of whether an individual meets the age requirement of the Social Security Act will be made according to the common-law method (under which a specific age is attained the day before the anniversary of birth) unless the State plan specifies that the popular usage method (under which an age is attained on the anniversary of birth) is used.</td>
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<td>(3) The State agency may adopt an arbitrary date such as July 1 as the point from which age will be computed in all instances where the month of an individual's birth is not available, but the year can be established.</td>
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<td></td>
<td></td>
<td>The cited section of the regulations refer to child support, child support obligations and child support enforcement but do not pertain to eligibility requirements for children or families with dependent children or otherwise of individuals.</td>
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</table>

Office of Human Development Services (OHDS)

Title III of the Older Americans Act of 1965, as amended.

Grants for State and Community Program on Aging.

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<tr>
<th>Basis and purpose of part</th>
<th>45 CFR Part 1321</th>
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<tr>
<td>Staffing</td>
<td>Sec. 1321.1 This part prescribes requirements State agencies must meet to receive grants to develop comprehensive and coordinated systems for the delivery of social and nutrition services under Title III.</td>
</tr>
<tr>
<td>Agency Responsibility; general</td>
<td>Sec. 1321.17(c) Preference. Subject to merit system requirements, the State agency must give preference in hiring to persons 60 or older.</td>
</tr>
<tr>
<td>Long-term care ombudsman program</td>
<td>Sec. 1321.41(d) The State agency must represent the interests of older persons before legislative, executive, and regulatory bodies in the State.</td>
</tr>
<tr>
<td>Service delivery systems responsibilities; general</td>
<td>Sec. 1321.43(a) General rule. The State agency must establish and operate a statewide long-term care ombudsman program that meets the requirements of paragraphs (c) through (f) of this section. The State agency may operate the ombudsman program directly, or by contract or other arrangement, with any public agency or private non-profit organization, except one that is:</td>
</tr>
<tr>
<td>State advisory council</td>
<td>Sec. 1321.45(a) The State agency must: (5) Provide accurate and effective opportunities for older persons to express their views to the State agency on policy development and program implementation under this plan;</td>
</tr>
<tr>
<td>Intragranate funding formula</td>
<td>Sec. 1321.47(a) Functions of the council. A State advisory council on aging must be established to advise and help the State agency to: (3) Represent the interests of older persons.</td>
</tr>
<tr>
<td>Designation of planning and service areas</td>
<td>Sec. 1321.46(b) An intragranate funding formula (developed for the allocation of funds to area agencies) must: (3) Reflect the proportion of persons age 60 and over among the planning and service areas in the State; and (4) Reflect the proportion of persons age 60 and over in greatest economic or social need.</td>
</tr>
<tr>
<td>Factors to be used in designation</td>
<td>Sec. 1321.53(c) Factors to be used in designation in dividing the State into planning and service areas, the State agency must consider: (1) the distribution of persons age 60 and over including those with the greatest economic need.</td>
</tr>
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<td>Program</td>
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<tr>
<td>Interstate planning and service area</td>
<td>Sec. 1321.57(b)</td>
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</tbody>
</table>
| Designation and function of area agencies | Sec. 1321.61(c) | Functions of area agencies. The area agency must—
(2) serve as the advocate and focal point for older persons in the planning and service area. |
| Stafing | Sec. 1321.69(c) | Preference. Subject to merit system requirements the area agency must give preference in hiring to persons 60 or older. |
| Comprehensive and coordinated service delivery system | Sec. 1321.75(a) | The area plan must provide for the development of a comprehensive and coordinated service delivery system for social and nutrition services needed by older persons in the planning and service area in which the area agency enters into cooperative arrangements with other service planners and providers to—
(1) facilitate access to and utilization of all existing services; and
(2) develop social and nutrition services effectively and efficiently to meet the needs of older persons. |
| Content of area plan | Sec. 1321.77(b) | Area agency function requirements. An area plan must provide that the area agency function requirements are met for—
(7) Considering the views of older persons;...
(10) Coordination with other Federal programs serving older persons...
(c) Service delivery requirements. An area plan must provide that the service delivery requirements are met for—
(1) Giving preference to older persons with greatest economic or social need;...
(2) All service providers concerning advisory role for older persons...
(e) Information requirements. The area plan must specify—
(2) A resource allocation plan indicating the proposed use of all funds for programs for older persons directly administered by the area agency;...
(3) Proposed methods for giving preference to those with greatest economic social need;...
(4) Must include...consideration of older persons;...
(6) May not include...a means test...the use of an older person's income or resources to deny or limit that person's receipt of services. |
| Advocacy responsibilities of the area agency | Sec. 1321.91 | The area agency must—
(5) Conduct public hearings on the needs of older persons;...
(7) Represent the interests of older persons to public officials, public and private agencies or organizations;...
(8) Coordinate planning with other agencies and organizations to promote new or expanded benefits and opportunities for older persons. |
| Area agency general planning and management responsibilities | Sec. 1321.99 | The area agency must—
(7) Assist the services needed by older persons;...
(9) The effectiveness of the use of resources in meeting these needs;...
(11) Give preference in the delivery of services to older persons with the greatest economic or social need;...
(6) Provide adequate and effective opportunities for older persons to express their views to the area agency on policy development and program implementation;...
(g) Have outreach efforts to identify older persons and inform them of the availability of services under the plan;...
(k) If possible, have arrangements with children's day care organizations so that older persons can volunteer to help provide day care;...
(l) If possible, have arrangements to use the services provided older individuals under the community schools program. |
| Designation of community focal points for service delivery | Sec. 1321.95(b) | Procedures for designating community focal points for service delivery.
(1) In designating and developing community focal point(s)...
(c) Developing collocation of services. The area agency must—
(1) Establish guidelines for operating schedules at the focal point which are convenient for older persons in the community;... |
| Area agency advisory council | Sec. 1321.97(a) | Functions of the council. (An advisory council must be established to—
(1) Advise the agency...
(3) Represent the interests of older persons...
(4) Review and comment on all community policies, and programs and actions which affect older persons. |
| Outreach, training, and coordination requirements | Sec. 1321.107 | All service providers must comply with procedures established by the area agency for—
(1) Outreach activities to encourage participation of eligible older persons;...
(6) Training and use of elderly and other volunteers and paid personnel;... |
| Preference for older persons with greatest economic or social need | Sec. 1321.109 | All service providers must follow priorities for serving older persons with greatest economic or social need. |
| Contributions for services under the area plan | Sec. 1321.111(a) | Opportunity to contribute. Each service provider must—
(1) Provide each older person with a free and voluntary opportunity to contribute to the cost of the service;...
(2) Protect the privacy of each older person with respect to his or her contributions;... |
| Multipurpose senior centers | Sec. 1321.121(a) | Purpose of making awards. The area agency may award social service funds under this part to a public or private non-profit agency for the following purposes—
(1) Acquiring...a facility...as a multipurpose senior center;...
(2) Constructing a facility...
(3) Have a plan for assuring the safety of older persons in a natural disaster or other safety threatening situations. |
Grants to Indian Tribes for Social and Nutritional Services.

[Public Health Service, Social Security Administration, Office of Human Development Services, and Health Care Financing Administration]

Program

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<td>Funding and use requirements</td>
<td>Sec. 121.135(c) in a facility that is shared with other age groups, funds received may support only: (1) That part used by older persons; or (2) A proportionate share of the costs based on the extent of use of the facility by older persons.</td>
</tr>
<tr>
<td>Nutrition Services</td>
<td>Section 1231.141(a) Purpose of making awards. The area agency may award nutrition service funds received under this part to provide meals and other nutrition services, including outreach, and nutrition education, to older persons. In making these awards the area agency must assure that congregate meals are provided and that home-delivered meals are provided based on an assessment of the need by the area agency and nutrition service providers.</td>
</tr>
<tr>
<td>(b) Eligibility. (1) Congregate nutrition services. A person age 60 or older, and the spouse of the person regardless of age, are eligible to participate in congregate nutrition services. (2) Home-delivered nutrition services. A person age 60 or older who is homemaker is eligible to receive a home-delivered meal under this part if the person is in imminent danger.</td>
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</tr>
<tr>
<td>Special requirements for nutrition services providers.</td>
<td>Sec. 1231.145(a) Requirements for congregate providers. Each congregate provider must— (1) Locate congregate nutrition services as close as possible and, where feasible and appropriate, within walking distance, to the majority of eligible older persons. (2) Requirements for home-delivered meal providers. Each home-delivered meal provider must— (1) With the consent of the older person, bring to the attention of appropriate officials, conditions or circumstances which place the older person in imminent danger.</td>
</tr>
<tr>
<td>Food requirements for all services providers</td>
<td>Sec. 1312.147(b)(2) Food stamp program. The nutrition service provider must coordinate its activities with agencies responsible for administering the food stamp program to facilitate participation of eligible older persons.</td>
</tr>
<tr>
<td>Legal Services</td>
<td>Sec. 1231.161(a) Purpose of award. The area agency must award social service funds under this part for legal services to older persons with economic or social needs. The purpose of awards under this section is to increase the availability of legal services with priority on older persons with the greatest service needs.</td>
</tr>
<tr>
<td>Information and Referral Services</td>
<td>Sec. 1231.161(a) The area plan must provide for information and referral services sufficient to ensure that all older persons within the planning and service area have reasonably convenient access to the service.</td>
</tr>
<tr>
<td>(b) In areas in which a significant number of older persons do not speak English as their principal language, the service provider must provide information and referral services in the language spoken by the older persons.</td>
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</tr>
<tr>
<td>Allocations and grants to States</td>
<td>Sec. 1231.181(c) Allocations for State and Community Programs on Aging. From the sums appropriated each fiscal year for social and nutrition services, each State is allocated an amount based on the ratio of its population age 60 and older to the national population age 60 and older.</td>
</tr>
<tr>
<td>Fifty percent</td>
<td>Sec. 1231.187(b) Waiver. The State agency may waive the fifty percent service requirement for any service for which the area aging demonstration demonstrates that the services provided from other sources meet the needs of older persons.</td>
</tr>
<tr>
<td>Obligation and reallocation</td>
<td>Sec. 1231.197(b) Reallocations. (1) If an Indian tribal organization receives a grant, the commission withhold a portion of the State's allocation for the services based on the number of older Indians.</td>
</tr>
<tr>
<td>Title VI of the Older Americans Act, 45 CFR Part 1326: basics and scope.</td>
<td>Section 1328.1 This part implements Title VI of the Older Americans Act, as amended, by establishing the requirements in this part. The area agency must have a plan for the provision of social and nutrition services to older Indians.</td>
</tr>
<tr>
<td>Definitions</td>
<td>Sec. 1328.3 &quot;Older Indians&quot; means a member of an Indian tribe who is 60 years of age or older.</td>
</tr>
<tr>
<td>Tribal organization eligibility</td>
<td>Sec. 1328.7(a) Tribal organization is eligible to apply for a grant if it— (1) Represents 75 or more older who will receive services; (2) Demonstrates its ability to deliver social and nutrition services to older Indians; (3) Assures that the older Indians it represents under its grant do not receive services under Title III of the Older Americans Act.</td>
</tr>
<tr>
<td>Tribal organization responsibility</td>
<td>Sec. 1328.9 A tribal organization, must— (1) Provide for outreach efforts to identify older Indians and inform them of the availability of services.</td>
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## AGE DISTINCTIONS IN REGULATIONS AFFECTING HHS—Continued

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<tr>
<td>Tribal Organization Responsibilities (cont.)</td>
<td>Section 1329.9(h) A tribal organization, must coordinate, to the extent feasible, with other community agencies including area agencies on aging, in the service area, in planning and providing services to older Indians. (a) A tribal organization, must give preference, wherever feasible, to employing older Indians for full- and part-time staff positions to carry out activities under this part. (b) Provide each older Indian with a full and voluntary opportunity to contribute to the cost of the services. (1) Have procedures (subject to the requirements provided) to ensure that confidentiality of... (2) Represent the interests of older Indians. (3) Provide services under this part in a plain and uniform manner to all providers. (4) Ensure that all services... are provided without consideration of an older Indian's income and resources or ability to pay for services.</td>
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<tr>
<td>Advisory Council</td>
<td>Sec. 1329.11(b) The advisory council must be established and made up of more than 50 percent older Indians. (c) The tribal organization must use the advisory council in... (2) Providing advice and guidance on matters concerning the older Indians.</td>
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<tr>
<td>Contributions</td>
<td>Sec. 1329.15(a) General rule A tribal organization must—(1) Provide each older Indian with a free and voluntary opportunity to contribute to the cost of the service; (2) Protect the privacy of each older Indian with respect to his or her contributions... (b) Contribution schedules. A tribal organization may develop a suggested contribution schedule for services provided... In developing a contribution schedule the tribal organization must consider the income ranges of older Indians... (c) Failure to contribute. A service provider that receives funds may not deny any older Indian a service because the older Indian will not or cannot contribute to the cost of the service. (d) Contributions as program income. Contributions made by an older Indian are considered program income and are to be used for allowable costs of additional...</td>
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<tr>
<td>Nutrition Services</td>
<td>Sec. 1328.17(a) Services that must be provided for or provided for under this part. A tribal organization that receives a grant... must... (2) Provide for information, referral and other services that are being provided from other sources... the tribal organization must demonstrate in its application that the needs of the older Indians in the service area are being met for that category of services. (b) Other services that may be provided under a grant under this part. The tribal organization may provide additional services necessary for the welfare of older Indians that are designed to meet the unique social and nutrition needs of older Indians in the service area.</td>
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<tr>
<td>Legal Services</td>
<td>Section 1328.21(a) General rule The tribal organization must provide nutrition services to older Indians at home or in a congregate setting, and may provide nutrition services to the spouse of older Indians. (b) Food requirements for all nutrition services. The tribal organization must ensure that... (2) Menus are provided to meet the particular... needs of older Indians... (3) Appropriate food containers and utensils are available for use by disabled older Indians upon request... (c) Food Stamps. Where applicable the tribal organization must work with agencies responsible for administering the Food Stamp Program to facilitate participation of eligible older Indians.</td>
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<td>Section 1328.23(a) Purpose The tribal organization must provide legal services to older Indians with social or economic needs. The purpose of legal services under this part is to increase the availability of legal aid to older Indians who have reasonably convenient access to those services, including groups within the private bar that furnish legal services to older persons on a pro bono and reduced fee basis... (c) Case Priorities. A legal service provider... may... set priorities for the categories of cases for which it will provide legal representation in order to concentrate on older Indians... (d) Information about income and resources. A legal services provider may not require an older Indian to disclose information about income or resources as a condition for providing legal services...</td>
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<td>Information and Referral Services</td>
<td>Sec. 1328.25(a) The tribal organization must provide information and referral services so that older Indians have reasonably convenient access to those services. (b) If a significant number of older Indians in the service area do not use English as their principal language, the tribal organization must provide for information and referral services in the language those individuals speak. (c) The tribal organization must establish or have a list of all services that are available to older Indians in the service area. (d) The tribal organization must provide assistance to older Indians to help them take advantage of the available service; and (e) The tribal organization must maintain a list of services needed or requested by the older Indians.</td>
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<td>Program</td>
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<td>Long-Term Care Ombudsman Services</td>
<td>Sec. 1208.27 (a) General rule . . . no tribal organization public agency, or private nonprofit organization may operate an ombudsman program if it is—(1) Responsible for licensing or certifying long-term care facilities or other residential facilities for older persons; (2) An association, or an affiliate or agent of an association, of long-term care facilities for older persons (b) Appointing an ombudsman. The tribal organization must assure that an individual is designated to serve as the long-term care ombudsman and that the following responsibility(ies) are delegated to the ombudsman: (1) Investigate and resolve complaints made by, or for, older Indians residing in the long-term care facilities about administrative actions that may adversely affect their health, safety, welfare or rights (3) Provide information to the tribal organization, and to the Commissioner on request, about problems of older Indians residing in long-term care facilities in the service area . . .</td>
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<td>1328.27</td>
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<tr>
<td>Health and Safety Requirements</td>
<td>Sec. 1208.27 (b) Life Safety . . . the tribal organization may require a recipient of any multipurpose senior center award to (3) Have a plan for assuring the safety of older persons in a natural disaster or other safety threatening situations.</td>
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<td>1328.37</td>
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<td>Surplus Educational Facilities from the Bureau of Indian Affairs.</td>
<td>Sec. 1208.37 If an eligible tribal organization applies for a grant under this part to renovate a surplus educational facility the Bureau of Indian Affairs (BIA) has made available for use as a center, the tribal organization (c) May renovate the center to become an extended care facility or a community center providing nutrition, social and child care services. If a center will be used for services other than services to older Indians, the tribal organization may use funds under this part only— (1) To alter that portion of the center used by older Indians; or (2) For a proportionate share of the alteration costs based on the extent of use of the facility by older Indians.</td>
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<td>1328.43</td>
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<td>Presubmission Requirements</td>
<td>Sec. 1208.36 (b) The tribal organization must include in the preproposal, information to demonstrate that it meets the eligibility requirements specified in §1328.7. The preproposal must include (3) Documentation of its ability to deliver social and nutrition services to older Indians . . .</td>
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<td>1328.51</td>
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<td>Application Requirements</td>
<td>Sec. 1208.43 (c) Application assurances. A tribal organization must provide satisfactory assurances in its application that it has methods and procedures to ensure that the older Indians served under the grant do not receive services under Part 1321 for the period of the grant</td>
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<td>1328.51</td>
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<tr>
<td>Prohibition on Consideration of Program Benefits as Personal Income.</td>
<td>Sec. 1351.1 For purpose of this part: (f) “Homeless Youth” means a person under 18 years of age who is in need of services and without a place of shelter where he or she receives supervision and care. (1) “Runaway Youth” means a person under 18 years of age who absents himself or herself from home or place of legal residence without the permission of parent or legal guardian.</td>
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<td>1351.1</td>
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<tr>
<td>Runaway Youth Program 45 CFR Part 1351—Significant terms</td>
<td>Sec. 1351.10—“The purpose of the Runaway Program is to establish or strengthen existing or proposed community-based runaway youth projects to provide temporary shelter and care to runaway or otherwise homeless youth who are in need of temporary shelter, counseling, and aftercare services”</td>
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<td>1351.10</td>
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<td>Criteria for funding Runaway Youth Programs</td>
<td>Sec. 1351.16. In reviewing applications HHS (considers) . . . but a number of factors . . . (b) the number of runaway or otherwise homeless youth in the area in which the . . . project is located; (c) the availability of services to youth in the area . . .; (d) Plans for meeting the best interests of the youth . . .; (e) Plans for the delivery of aftercare or counseling services to youth . . .</td>
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<td>1351.16</td>
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<td>Additional Information</td>
<td>Sec. 1351.18(b)(1) Confidential Information. All information of individuals served by a runaway youth project shall be confidential and shall not be disclosed or transferred to any individual without written consent of the youth . . . (2) Medical, psychiatric or psychological treatment. No youth shall be subject to medical, psychiatric or psychological treatment without the consent of the youth . . .</td>
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<td>1351.18</td>
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<td>Child Abuse and Neglect Prevention and Treatment program.</td>
<td>Sec. 1340.1—(e) The basic purpose of this program is to assist States and localities, and non-profit private organizations in carrying out their responsibilities for the protection of children and for the amelioration of their environment, particularly as an integral part of a family unit whose adult member(s) need help in coping with emotional or environmental stresses</td>
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<td>1340.1</td>
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<td>Definitions</td>
<td>Sec. 1340.1-2 For purposes of this part— (b)(2) “Child” means a person under the age of 18 . . .</td>
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<td>1340.1</td>
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<td>Demonstrations</td>
<td>Sec. 1340.2—(b) Nature of demonstration programs and projects. (1) Such demonstrations may include, but are not limited to, efforts to provide additional or more effective ways of preventing, identifying or treating child abuse and neglect; testing the feasibility of providing services . . .; innovative services or methods . . .; methods of coordinating . . .; (4) Special criterion for selection-equitable distribution. The formula . . . (must include) a minimum amount and an additional amount based on the number of children under the age of eighteen . . .</td>
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<td>1340.2</td>
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<td>Technical assistance</td>
<td>Sec. 1340.2—(c) Technical assistance . . . will be furnished by the National Center on Child Abuse and Neglect (NCF) . . . the prevention, identification and treatment of child abuse and neglect.</td>
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<td>1340.2</td>
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<td>Training materials</td>
<td>Sec. 1340.2—(d) The National Center on Child Abuse and Neglect . . . will develop . . . and conduct training for personnel who . . . engage in the prevention, identification and treatment of child abuse and neglect.</td>
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<td>1340.2</td>
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<td>Research</td>
<td>Sec. 1340.2—(e) The National Center on Child Abuse and Neglect will conduct research into the causes of child abuse and neglect and into the prevention, identification, and treatment . . .</td>
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<td>Purpose and eligible applicants</td>
<td>Sec. 1340.3—(a) States that qualify . . . may receive grants to initiate or continue the support of programs which can be expected to assist the State in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs . . .</td>
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<td>1340.3</td>
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<td>Program</td>
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<tr>
<td>Establishment of Compliance</td>
<td>Sec. 1240.3-2(b) Whenever State office, agency, or organization is designated by the Governor, they may apply for financial assistance under section 45(b)(1) for the payment of reasonable and necessary expenses in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs. Such State office, agency, or organization need not be limited in its mandate or activities to child abuse and neglect. Such State office, agency, or organization designated by the Governor may enter into purchase agreements with other offices, agencies, or organizations (including Indian Tribal governments) to conduct activities under the grant. The application for such funds shall include a description of the activities presently conducted by the State and its political subdivisions in relation to preventing and treating child abuse and neglect, the activities to be assisted under the grant, a statement of how the proposed activities are expected to develop, strengthen or carry out child abuse prevention and treatment programs.</td>
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<td>Qualifications for Assistance</td>
<td>Sec. 1340.3-3(a) The Act enumerates ten elements of a comprehensive system to prevent and treat child abuse and neglect which a State must have in order to qualify for assistance under section 45(b)(1). The enactment of identical laws and procedures in the States is not necessary. Rather, as its purpose, the Act seeks to ensure that all States receiving assistance under this subsection (in meeting the ten requirements) must provide what may be grouped into four fundamental child protective capabilities: (1) Detection through third party reporting of children in danger; including mandatory and permissive reporting of suspected child abuse and neglect; (2) Child protective services to provide non-criminal investigations for the verification of reports, to provide immediate protection of children such as protective custody, and to provide rehabilitative and ameliorative services; (3) Juvenile or family court action to remove a child or to impose treatment services, and (4) Law enforcement investigations and criminal court prosecution, when appropriate.</td>
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<td>Approval of applications, plan amendments, and funds</td>
<td>Sec. 1340.3-3(a) The Secretary shall approve an application for funds ... if he finds ... (2) That the funds are intended to be used to develop, strengthen, or carry out child abuse or neglect prevention or treatment programs. (b) The Secretary shall approve the initial or continued use of funds for ... projects related to child abuse and neglect ...</td>
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<td>12.560</td>
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<tr>
<td>Head Start Program</td>
<td>Sec. 1204.1-3(a) The Head Start Program is based on the premise that all children share certain needs, and that children of low income families, in particular, can benefit from a comprehensive developmental program to meet those ... (b) The overall goal of the Head Start Program is to bring about a greater degree of social competence in children of low income families. By social competence is meant the child's everyday effectiveness in dealing with both present environment and later responsibilities in school and life. Social competence takes into account the intermeshing of cognitive and intellectual development, physical and mental health nutritional needs and other factors that enable a child to function optimally. The Head Start Program is a comprehensive developmental approach to helping children achieve social competence.</td>
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<td>Eligibility Requirements and Limitations for Enrollment in Head Start, 45 CFR Part 1304</td>
<td>Sec. 1305.3 Unless the Head Start agency's approved grant provides otherwise, only those children between those years of age and the age of compulsory school attendance are eligible to enroll and participate in the Head Start program.</td>
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<td>Child Welfare Services State Grants</td>
<td>Sec. 1302.2(a) There must be a single unit, within the single State agency, at the State level and also at the local level to provide or supervise all services to families and children ... (b) The State plan must also include ... (4) Annual progression in the utilization of increasing numbers of subprofessional staff in achieving the service goals for families and children.</td>
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<td>Eligibility in the States and District of Columbia, 42 CFR Part 405, Definitions</td>
<td>Sec. 435.4 “Categorically needy” means aged, blind or disabled individuals and families and children (1) who are otherwise eligible for Medicaid and who meet the financial eligibility requirements for AFDC, SSI, or an optional State supplementation; or (2) whose categorical eligibility is protected by statute ... “Families and children” refers to eligible members of families with children who are financially eligible under AFDC or medically needy rules and who are deprived of parental support and care as defined under the AFDC program (see 45 CFR 233.90, 233.100). In addition, this group includes individuals under age 21 who are not deprived of parental support or care but are financially eligible under AFDC rules or medically needy rules (see optional coverage group, 435.222). It does not include individuals under age 21 whose eligibility for Medicaid is based on blindness or disability—for these individuals, SSI rules govern.</td>
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<td>Health Care Financing Administration (HCFA)</td>
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<td>Medicaid</td>
<td>Sec. 435.118 The agency must provide Medicaid to children for whom adoption assistance or foster care maintenance payments are made. Sec. 435.222 Individuals under age 21 who would be eligible for AFDC but do not qualify as dependent children (a) The agency may provide Medicaid to Individuals under age 21 (or, at State option, under age 21, 19 or 18) who would be eligible for AFDC if they met the definition of dependent child (see 45 CFR 233.90(c)(1)) (b) The agency may cover all Individuals described in paragraph (a) of this section or reasonable classifications of those individuals (such as the following)</td>
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### AGE DISTINCTIONS IN STATUTES AFFECTING HHS—Continued

**[Public Health Service; Office of Human Development Services, Health Care Financing Administration, and Social Security Administration]**

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<tr>
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<tr>
<td>Eligibility Requirements for Guam, Puerto Rico, Virgin Islands, Services in Medicaid Assistance Programs</td>
<td>42 CFR Part 435.50</td>
<td>436.118; 436.201; 436.222; 436.310; 436.320; 436.520; 436.700</td>
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<td>DEPENDENCE</td>
<td>Categorical Requirements for Eligibility</td>
<td>42 CFR Part 435.510</td>
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<tr>
<td>AGE</td>
<td>42 CFR Part 435.520 Age requirements for (the age) and (children)</td>
<td>436.118; 436.201; 436.222; 436.310; 436.320; 436.520; 436.700</td>
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</table>

1. Individuals under age 21 in foster homes or private institutions for whom a public agency is assuming a full or partial financial responsibility, if the agency covers these individuals, it may also provide Medicaid to individuals under age 21 placed in foster homes or private institutions by private nonprofit agencies.
2. Individuals under age 21 in adoptive residences placed in full or in part by a public agency.
3. Individuals under age 21 in intermediate care facilities, if intermediate care facility services are provided under the plan. If the agency covers these individuals, it may also provide Medicaid to individuals in intermediate care facilities for the mentally retarded.
4. Individuals under age 21 receiving active treatment as inpatients in psychiatric facilities or programs, if inpatient psychiatric services for individuals under age 21 are provided under the plan.
See Sections 441.11 Continuation of FFP for institutional services; 441.13 Prohibitions on FFP; institutionized individuals; 441.15 Home health services; 441.30 Basis and purposes; 441.58 Periodicity schedule; 441.59 Administration; 441.100 Basis and purpose; 441.101 State plan requirements; 441.150 Basis and purpose; 441.151 General requirements; 441.162 Maintenance of effort computation; 441.253 Sterilization of a mentally competent individual aged 21 or older.

Subpart A—Hospital Insurance Benefits

Sec. 405.101 Hospital Insurance benefits; general
(a) An individual who meets the conditions for entitlement to hospital insurance benefits provided under Part A of Title XVIII of the Act is eligible to have payment made on his behalf, or to him directly (for certain hospital services) subject to the conditions and limitations set out in this Part 405 and in the Act for: (1) Inpatient hospital services, post hospital extended care services, and post hospital home health services furnished to him during any month for which he meets such conditions for entitlement to hospital insurance benefits;
(b) Except where payment may be made to the individual for certain hospital services (see §§ 405.156 and 405.157), payment for the services covered under the hospital insurance benefits program is made to the institution or agency eligible to receive payment rather than to the individual to whom the services are furnished.

Sec. 405.102 Hospital Insurance benefits for individuals age 65 or over
(a) Conditions of entitlement. An individual is entitled to hospital insurance benefits under the provisions described in this Subpart A if such individual has attained age 65 and:
(b) Is entitled to monthly insurance benefits under section 202 of the Social Security Act as described in Subpart D of Part 404 of this chapter; or
(c) Is deemed entitled to monthly insurance benefits under section 202 of the Social Security Act, solely for purposes of entitlement to hospital insurance benefits, by meeting the requirements prescribed in § 405.103.
(d) Sec. 405.103 Transitional provisions for entitlement of aged uninsured individuals to hospital insurance benefits.
(e) Requirements. Unless excluded under the provisions of paragraph (b) of this section, an individual age 65 or over will be deemed entitled to monthly insurance benefits under section 202 of the Social Security Act, solely for purposes of entitlement to hospital insurance benefits, if such individual:
(i) Attained age 65 before July 1, 1965, and has not less than three quarters of coverage as defined in Subpart B of Part 404 of this chapter or in section 59(1) of the Railroad Retirement Act of 1937, whenever acquired for each calendar year after 1966 and before the year he attained age 65;
(ii) Is not entitled to hospital insurance benefits as provided in § 405.102(a)(1) and would not be entitled to such benefits upon filing an application for monthly insurance benefits under section 202 of the Social Security Act.
(f) Sec. 405.104 Entitlement to hospital insurance benefits based on end-stage renal disease.
(g) Definitions... "Dependent child" means a person who, on the first day he has end-stage renal disease, is unmarried and meets the dependency requirements for entitlement to child's social security benefits based on the basis of a parent's earnings (see 20 CFR 404.323–404.327(a) and:
(i) Is under age 22;
(ii) Is under a disability that began before age 22 or
(iii) Is under age 22, has received at least one-half support from that parent, and has continuously received at least one-half support from that parent since the day before attaining age 22.
(h) Conditions of entitlement. An individual is entitled to Medicare, part A benefits based on end-stage renal disease if he is medically determined to have that disease and meets the following conditions: . . . He is: . . .
(i) The spouse or dependent child or a person who meets the requirements of paragraph (d)(1)(i) or (d)(1)(ii) of this section.
Sec. 405.105 Hospital insurance entitlement based on entitlement to disability insurance benefits.
(a) Conditions of entitlement—
(i) General. An individual is entitled to hospital insurance benefits described in this Subpart A if such individual:
(ii) Has not attained age 65 and is entitled, and has for the 24 preceding consecutive calendar months been entitled to—
(A) Disability insurance benefits under section 223 of the Social Security Act (see 20 CFR §404.306 of this chapter), or (B) Child's insurance benefits under section 202(6) of the Social Security Act by reason of disability (see 20 CFR §404.320(a)(4)(i) of this chapter), or
(C) Widow's insurance benefits under section 202(6) of the Social Security Act by reason of disability (see 20 CFR §404.328(a)(3)(i) of this chapter and paragraph (a)(2), (4) and (5) of this section), or
(D) Widow(er)'s insurance benefits under section 202(6) of the Social Security Act by reason of disability (see 20 CFR §404.331(a)(3)(i) of this chapter and paragraphs (a)(2) and (4) of this section), or
(E) Has not attained age 65 and is, and has for the immediately preceding 24 consecutive calendar months been, a disabled qualified railroad retirement beneficiary under section 7(d) of the Railroad Retirement Act of 1974.
(F) Modification of age requirement for widow's insurance benefits. For purposes of determining entitlement to hospital insurance benefits under paragraph (d)(1)(i) of this section, 20 CFR §404.320(a)(3)(i) and 404.328(a) are modified by substituting "age 65" where "age 60" appears therein.
### Age Distinctions in Regulations Affecting HHS—Continued

[Public Health Service, Social Security Administration, Office of Human Development Services, and Health Care Financing Administration]

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<td>(3) Modification of age requirement for widower's insurance benefits. For purposes of determining entitlement to hospital insurance benefits under paragraph (a)(1)(ii)(D) of this section, 20 CFR 404.331(a)(3)(ii) and 404.331(c) are modified by substituting &quot;age 65&quot; where &quot;age 62&quot; appears therein.</td>
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<td>(c) End of coverage. The entitlement of an individual entitled under paragraph (a) of this section ends with the last day of whichever occurs first</td>
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<td>(2) The month before the month in which he attains age 65; . . .</td>
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<td>Medicare Part B Supplementary Medical Insurance Benefits for the Aged and Disabled.</td>
<td>Sec. 405.106 Premium hospital insurance</td>
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<td>(a) General. Hospital insurance benefits under Part A of title XVIII are available on a voluntary basis beginning July 1973 to eligible individuals age 65 or over who do not otherwise qualify for hospital insurance benefits and are willing to pay the full average cost of such insurance in a monthly premium. Eligible individuals must enroll timely for this insurance, pay a monthly premium (see paragraph (d) of this section), and enroll or already be enrolled in the supplementary medical insurance plan under Part B.</td>
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<td>(b) Requirements for eligibility to enroll for premium hospital insurance. An individual is eligible to enroll for premium hospital insurance if: (1) He has attained age 65; and</td>
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<td>(a) Benefits and conditions for entitlement. (1) An individual who meets the requirements described in § 405.102 and who requires the services referred to in §§ 405.126-405.128, is eligible to have payment made on his behalf to a participating skilled nursing facility (see § 405.150) for up to 100 days of extended care services (§ 405.124) furnished to him in a spell of illness if he is admitted to such skilled nursing facility within the time specified in paragraph (d) of this section after his discharge from a hospital in which he was an inpatient for not less than three consecutive calendar days (as defined in paragraph (c) of this section) and such discharge occurred on or after the first day of the month in which the individual attained age 65, or after June 30, 1966, whichever is</td>
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<td>Sec. 405.201: Part B of title XVIII of the Act provides for a voluntary &quot;Supplementary medical insurance plan&quot; available to most individuals age 65 and over</td>
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<td>Sec. 405.205: An individual is eligible for enrollment if he is covered under Part A or has attained age 65</td>
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<td>See also §§ 405.312(a); 405.314(a); 405.223(b)(21)(iv) and (v); 405.310(m)(1); 405.316(a)(1); 405.160 (First Paragraph); 405.2020(b)(7) and (d)</td>
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[FR Doc. 82-34592 Filed 12-27-82; 8:45 am]  
BILLING CODE 4450-04-M
Part III

Department of Labor

Mine Safety and Health Administration

Safety Standards for Fire Prevention and Control
DEPARTMENT OF LABOR
Mine Safety and Health Administration
30 CFR Parts 55, 56, and 57
Safety Standards for Fire Prevention and Control

AGENCY: Mine Safety and Health Administration, Labor.
ACTION: Notice of availability of preproposal drafts.

SUMMARY: The Mine Safety and Health Administration (MSHA) has developed a preproposal draft of revisions to current fire prevention and control standards for the metal and nonmetal mining industry. MSHA seeks comment from all interested parties on the preproposal draft. Copies of the draft may be obtained by contacting the Agency.

DATES: Comments must be received on or before February 28, 1983.

ADDRESSES: Send comments to the Office of Standards, Regulations and Variances; MSHA; Room 631, Ballston Towers #3; 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On March 25, 1980, MSHA published an Advance Notice of Proposed Rulemaking (ANPRM) in the Federal Register (45 FR 19257) announcing its comprehensive review of existing metal and nonmetal mine safety and health standards in 30 CFR Parts 55, 56, and 57. The Agency is reviewing the standards to eliminate duplicative and unnecessary standards, provide alternative methods of compliance, reduce recordkeeping requirements, and upgrade provisions consistent with advances in mining technology. MSHA believes that this review will result in more effective regulations for assuring the safety and health of miners. The review is consistent with the specific goals of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

On November 20, 1981, MSHA published a subsequent ANPRM in the Federal Register (45 FR 57253) listing eight sections the Agency had selected for priority review. Standards related to fire prevention and control were included in the priority group.

On March 9, 1982, MSHA published a notice in the Federal Register announcing public conferences to discuss issues related to the standards under priority review. The Section 4 conferences were concluded in April 1982. During the conferences many commenters requested that the Agency make available a preproposal draft of the standards under review before issuing a proposed rule.

MSHA has now completed development of the preproposal draft for Section 4. In addition to revising the substance of the existing standards, the Agency has reorganized Parts 55, 56 and 57 into a single Part 58. This reorganization would eliminate the current repetition of identical standards in the Code of Federal Regulations. The revised standards are designated general, surface, and underground so that they would apply only to the appropriate mining application.

The Agency requests comment on the substance of the preproposal standards, as well as on the reorganization of the standards. In addition, the Agency is interested in any economic data or other regulatory impact information commenters may wish to submit.

A copy of the preproposal draft has been mailed to persons and organizations known to be interested. All other interested persons and organizations may obtain a copy of the draft by submitting a request to the address provided above. The document contains the Agency’s intended revisions, a comparison with existing provisions, and a summary explanation of the proposed changes.


Thomas J. Shepich,
Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 82-35056 Filed 12-27-82; 8:45 am]
BILLING CODE 4510-43-M
Part IV

Department of Health and Human Services

Food and Drug Administration

Labeling for Salicylate-Containing Drug Products; Advance Notice of Proposed Rulemaking
Food and Drug Administration

21 CFR Part 201

(Docket No. 82N-0158)

Labeling for Salicylate-Containing Drug Products

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is considering proposing to require certain over-the-counter (OTC) and prescription salicylate-containing drug products for human use to bear a warning against the use of the products for the treatment of flu or chickenpox in children or adolescents under 16 years of age, because salicylates may be associated with the development of Reye syndrome (RS) in this age group. This advance notice describes the recent studies reporting an association between salicylate use and the development of RS and discusses various criticisms of these studies. This advance notice also discusses specific warning statements under consideration by the agency. FDA is publishing this advance notice so that the agency will have the benefit of a broad range of views early in the rulemaking process, and so that all interested persons will have an opportunity to express their opinions.

DATE: Comments by February 28, 1983.

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

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SUPPLEMENTARY INFORMATION: FDA is considering whether to propose a rule that would require, among other things, that the labeling of certain salicylate-containing OTC and prescription drug products for human use bear a warning that salicylates should not be used in persons under 16 years of age with flu or chickenpox. FDA is considering this action because of recent studies reporting that the use of salicylates to treat these conditions is associated with the development of RS. The products under consideration for bearing a warning are: (1) systemically absorbed OTC salicylate-containing drug products for human use that are administered orally, rectally, or parenterally. The agency invites comments on any matter relevant to the proposed rulemaking being considered.

I. Background

A. Reye syndrome. RS is a disease of unknown cause that is characterized by severe vomiting and irritability or lethargy which may progress to delirium and coma. The illness is described clinically as having an acute onset in which the initial symptom is usually vomiting, which may be profuse and persistent, and which is often accompanied by a change in mental status. The Centers for Disease Control (CDC) has established an epidemiologic case definition for establishing the diagnosis of RS (Ref. 1). In addition, for purposes of management and study, a system of classifying the symptoms of RS into stages has been developed. The stages are zero to V, with V exhibiting the most severe symptoms.

The disease is classically described as occurring in a child or adolescent during the course of or while recovering from a mild respiratory tract infection, influenza, chickenpox, or other viral illness (Refs. 2, 3, and 46). (The illness occurring before RS may be referred to as the antecedent illness.) Influenza and chickenpox are the most commonly associated viral illnesses. The estimated incidence of RS is 0.37 to 4.7 per 100,000 persons under 16 years of age (Ref. 2), but its incidence may be 50 to 60 per 100,000 persons under 18 years of age (Ref. 2), but its incidence may be 50 to 60 per 100,000 in children of that age who have contracted influenza B (Ref. 3). CDC estimates that RS affects 600 to 1,200 children in the United States each year. A careful analysis of RS cases indicates that it is primarily observed in children between 6 months and 15 years of age (Ref. 2). The age distribution of the disease appears to depend on the type of the antecedent illness. Chickenpox-associated RS is found mainly in the 5- to 9-year age group; influenza B-associated RS is seen mainly in the 10- to 14-year age group (Ref. 3).

The mortality rate is high. In the past several years, the case fatality rate reported to CDC has been between 20 and 30 percent (Refs. 1 and 21). Permanent brain damage occurs in many other cases (Ref. 2).

RS was first described by the pathologist Douglas Reye of Australia in 1963 (Ref. 4). Subsequently, there has been substantial interest in monitoring the occurrence of the disease and in attempting to identify causative factors. CDC first initiated nationwide surveillance for the disease in December 1973, in an effort to monitor its incidence during an anticipated epidemic of influenza. In December 1976, CDC and State health departments again intensified surveillance, and have been continuously maintaining surveillance since that time. Since 1976, when 200 and 500 patients per year meeting the CDC case definition have been reported to that agency. As in most disease surveillance systems, reported cases are recognized to represent only a fraction of the actual total, but increases in the number of reported cases have been observed during years of major influenza B and influenza A activity in 1977, 1979, and 1980.

Due in part to the rapid onset of RS, it has been suggested that a toxic agent interacting with the viral infection may be a causative factor in the production of the disease. Suspected agents have included environmental toxins and common medications. In its November-December 1976 Drug Bulletin, FDA reported a recommendation of its Neurologic Drugs Advisory Committee against the use of antiemetics, aspirin, and acetaminophen in children whose signs and symptoms indicate RS (Refs. 5 and 6).

A number of investigators have suggested the possibility that RS may be associated with salicylates. In 1962, before Reye's initial report, Mortimer reported on four cases of fatal varicella (chickenpox) infections associated with hypoglycemia. Mortimer postulated that salicylates may have caused the hypoglycemia and the subsequent unexpected severe illnesses (Ref. 7).

In 1964, Ulian reported 14 cases of what appeared to be by RS and considered salicylate intoxication as a possible cause of the illness in these children (Ref. 8). In 1965, Giles suggested that a direct association existed between RS and salicylates and that in RS patients an enzyme system involving carbohydrate metabolism might by hypersensitive to salicylate (Ref. 9). In 1968, Norman reported a case of biopsy-confirmed RS associated with isolation of influenza B from the liver (Ref. 10). This patient was on long-term salicylate therapy for juvenile arthritis.

In the 1970's, several authors discussed the distinction between RS and acute salicylate intoxication. Evidence to suggest that RS and salicylism (salicylate intoxication) may be biochemically distinct was reported by Hilty in 1974 and updated in 1981 by Romans and Hilty (Refs. 11 and 12). Hilty suggested that RS can be
distinguished from salicylism and other causes of hepatic damage by quantititative analysis of serum amino acids.

Several descriptive studies and two case-control studies examining medication histories of patients with RS were published in the 1970's. Among the studies that reported detailed information on aspirin use, the aspirin use ranged from 53 to 100 percent. The highest rates were reported in studies where information was more likely to be complete. For example, studies involving extensive home interviews found a higher prevalence of salicylate use among RS patients. Aspirin was the only medication received by all RS patients interviewed by Reynolds, but because the doses were not considered to be excessive, the association was not emphasized (Ref. 13). In 1975, Linneman reported a history of aspirin use in 94.6 percent of 56 RS cases with known medication histories (Ref. 14).

Corey reviewed national surveillance data collected from 1973-1974 by CDC (Ref. 15). Data collection for aspirin use was based primarily on reviews on national surveillance forms supplemented in 16 percent of cases by personal communications with health personnel. In the subset of patients for whom medication history was available, 78 percent reported using aspirin. Corey expressed reservations about accuracy of the medication histories obtained through this system, noting that many patients may have erroneously reported not using aspirin.

Two case-control studies published before 1980, one conducted by Ruben (Ref. 16) and the other conducted by Corey (Ref. 17), compared medication histories of RS patients and controls. In both studies, however, interviews too place many months after the occurrence of RS, and controls were not matched for a history of illness temporarily and clinically similar to cases. Medication questions, therefore, were not limited to those medications taken for the illness preceding RS in patients, or for the comparable illness in controls. Starko and colleagues (Ref. 18) were the first investigators to conduct such a study. This study is discussed below.

B. Studies reporting an association between salicylates and RS. For several years, CDC has been involved in investigations of RS. Within the past few years, four case-control studies have been conducted by the Arizona, Ohio, and Michigan State Health Departments in cooperation with CDC. The reports of these studies indicated as an association between RS and the ingestion of salicylates (e.g., aspirin) during the antecedent illness. On the basis of its review of the first three studies (Arizona, Ohio, and first Michigan study), CDC published a recommendation in the Morbidity and Morality Weekly Report on November 7, 1980 (Ref. 19) that "parents should be advised to use caution when administering salicylates to treat children with viral illness, particularly chickenpox and influenza-like illnesses."

A consensus development conference was held at the National Institutes of Health (NIH) in March 1981 to address diagnostic criteria and treatment of RS. Because the conference had not been called to review the first three state studies that had been recently completed at the time of the conference, data from the studies were not presented but were discussed by several participants. The conference report stated that the studies discussed at the conference indicate "an increase in the estimated relative risk of Reye's syndrome, which does not appear to be due to chance" (Ref. 46). The conference report advised that "caution in the use of salicylates in children with influenza and those with varicella is prudent." However, the report also pointed out that "certain similarities between salicylism and Reye's syndrome and those studies reporting an association between Reye's syndrome and salicylate ingestion indicate a need for further carefully designed studies before recommending changes in antipyretic therapy in children" (Reg. 46).

In November 1981, CDC convened a group of outside consultants to review the four State studies. The consultants concluded that there is "strong epidemiologic evidence for an association between the occurrence of Reye's syndrome and the prior ingestion of salicylate containing medication" (Ref. 20). The consultants recommended that "until the nature of the association between salicylates and Reye syndrome is clarified, the use of salicylates should be avoided, when possible, for children with varicella infections and during presumed influenza outbreaks" (Id.). In the Morbidity and Mortality Weekly Report of February 12, 1982 (Ref. 21), CDC reported that the studies indicated an association between salicylates and RS and stated that "until definitive information is available, CDC advises physicians and parents of the possibility of increased risk of Reye syndrome associated with the use of salicylates for children with chickenpox or influenza-like illness."

C. FDA review of the four State studies. In response to the reported association between salicylates and RS, FDA formed a working group composed of members of the agency to review the available data to determine the quality and strength of the association. Despite the apparent association between salicylates and RS reported by the four State studies, the working group recognized that the studies required careful evaluation both because of the inherent limitations of case-control methodology and because of questions raised by earlier reviews of the studies. Case-control studies attempt retrospectively to assess the relationship of an existing disease or disorder to other variables or attributes, such as exposure to medications. After the initial identification of cases, that is, persons with the disease under investigation, a suitable control group of persons without the disease is identified for comparison purposes. The relationship of an attribute to the disease under investigation is examined by comparing the case group and the control group to determine how frequently the attribute is present in each group. Thus, in the RS studies, the investigators attempted to match reported cases of RS with control subjects who appeared to match the case subjects as closely as possible except for the development of RS.

The FDA working group recognized that an adequate evaluation of the four State studies would require consideration of the design and execution of the studies, including such questions as: (1) Potential differences in the type and severity of antecedent viral illness in cases and controls; (2) comparability and accuracy of the drug histories in cases and controls; (3) potential confusion as to the active ingredients in drugs administered to cases and controls; (4) potential differences in methods of collecting data for cases and controls; (5) the period of recall time and differences in the periods of recall time for cases and controls; (6) criteria used for diagnoses of RS and, especially, the criteria employed to establish the onset of RS; and (7) the reasons for the exclusion of reported RS cases from the studies.

In evaluating the available data, the FDA working group's activity included the following:

1. Review of materials available from the investigators in Arizona, Michigan, and Ohio.

2. Review of summaries provided by CDC on studies concerning RS and salicylates (Ref. 22).

3. Review of written analyses by employees or consultants of Sterling Drug (Refs. 23, 24, 25, and 26) and Schering-Plough (Ref. 27), which are two manufacturers of salicylate drug...
products, and meetings with representatives of the two companies to hear presentations of these analyses by each firm (Refs. 28, 29, and 30).

4. Review of the written information presented by the Health Research Group (HRG) and meeting with representatives of HRG to hear their interpretation of the data (Refs. 31 and 32).

5. Site visits to the Michigan State Health Department and the Ohio State Health Department to obtain further details on how the studies in these States were conducted and to audit certain data from the study records (Ref. 33).

6. A meeting with scientists from CDC and National Institutes of Health, at which suggestions for analysis of the date were discussed.

The FDA working group prepared a preliminary report of its review of the four Study states and available information prior to the interpretation of these studies (Ref. 34). That report, dated May 18, 1982, presents a detailed discussion of the results of the studies and the working group's analysis of the data. The following summarizes the results of the four State studies and the working group's analysis of those studies:

1. Arizona study. The first reported case-control study on RS was conducted by Starko et al. in Arizona (Ref. 18). The study included 7 school children, hospitalized December 21 through 25, 1978, during an outbreak of influenza A/Brasil and 16 classmate controls who were ill during December 1978. All seven cases had recent influenza A (H3N1) infections, according to the analysis of blood samples collected. Blood samples were not collected for the control group.

The major finding of the study was that all 7 of the cases, but only 8 of the 16 controls, gave a history of salicylate ingestion during the antecedent illness for cases or during the viral illness for controls. Because the study lacked daily medication recording and had a small sample size, the working group did not attempt to conduct a more detailed analysis of the data from this study.

2. Michigan studies. Two case-control studies were performed by the Michigan Health Department. The first study was conducted during the months of March and April 1980 following an influenza B outbreak during the winter of 1979–1980. The second study began on September 1, 1980, and continued into 1981. Influenza A (H3N2) virus predominated during the second study. A report of these two studies has been published in the June 11, 1982 issue of the Journal of the American Medical Association (Ref. 35).

Under the Michigan State health code, physicians are required to report cases of RS to the State health department within 10 days. During the first study, 56 cases were reported. Twenty-five of the 56 patients were selected for the study because they lived within driving distance of the Michigan Health Department. During the second study, there were 17 cases reported; 5 of the 17 second study cases were excluded by the Michigan Health Department.

During both studies, controls were matched to cases on the basis of gastrointestinal (GI) symptoms, respiratory illness, or chickenpox. In the second study, cases and controls also were matched by temperature strata as follows: less than 100 degrees Fahrenheit, 100.1 to 102.9 degrees, and 103 degrees and over. For the cases, the date of protracted vomiting or behavioral change was established as the date of onset of RS. In the first study, interviews with parents of cases and controls with RS were conducted an average of 45.5 days (4 to 83 days) after the onset of RS. During the second study, interviews took place an average of 4.8 days (2 to 10 days) after the onset of RS in the cases. Interviews for the control groups were conducted an average of 55.3 days (9 to 121 days) for the first study, an average of 12.2 days (9 to 40 days) for the second study.

In the first study, 24 of 25 (96 percent) cases took salicylate-containing medication before the onset of vomiting, compared to 30 of 46 (65 percent) controls. When highest measured temperature was used retrospectively to match controls to cases to attempt to ensure comparability, the difference in salicylate ingestion remained significant in that 14 of 14 (100 percent) cases as compared to 14 of 19 (75 percent) controls (p <.03) had ingested salicylates. During the second year of the study, 12 of 12 (100 percent) cases as compared to only 13 of 29 (45 percent) controls (p <.002) were reported to have received salicylate-containing medications. Medications containing acetaminophen but not salicylates were taken by 8 controls (17.8 percent) and 1 case (4 percent) in year 1 and by 9 controls (51 percent) and no cases in year 2.

Daily medication use was recorded in the second Michigan study for the 12 cases included in the study and their associated controls. This daily record was used to determine whether the cases and controls used salicylates on day 1; day 1 or 2; or day 1, 2, or 3 of their antecedent illness. The FDA working group was thus able to evaluate the apparent association between salicylate ingestion and RS using data where the salicylate use was most likely to be before the onset of RS and most likely to be in response to symptoms of the antecedent illness. Because the data sets to be analyzed consisted of cases matched to one or two controls on the basis of multiple characteristics (age, race, sex, geography, and fever), the working group employed a multiple conditional logistic analysis. That approach accounts for the variable matching to give a valid estimate of the excess risk associated with the cases and salicylate use. The multiple conditional logistic analysis showed that on day 1 of the antecedent illness, cases were 9.1 times more likely to have taken aspirin than their matched controls and that this was statistically highly significant. Because all of the cases used salicylates on days 2 and 3, this analysis could not be performed for day 1 or 2, or for day 1, 2, or 3.

3. Ohio study. The Ohio study was initiated under a contract from CDC in December 1978. The Ohio study, developed by CDC investigators in cooperation with the Ohio State Department of Health, was designed to examine the possible relationship between RS and respiratory viral illnesses. The Ohio State Department of Health also wanted to conduct an exploratory investigation of other possible risk factors, including medications, environmental toxins, and a number of other variables which had been mentioned in the literature. The study was conducted from December 1978 through March 1980 and included 97 cases of RS. Thirty-three of the cases have been identified as "first year" because they were investigated before the collection of data about the development of symptoms and the administration of drugs on a day-to-day basis. The 94 cases for which such data were collected are referred to as "second year."

For both years of the study combined, the Ohio State Department of Health found that salicylates were the only medications which were taken significantly more frequently in cases (94 of 97 = 96.8 percent) than in controls (110 of 156 = 71.5 percent) before the development of symptoms of RS. Medications containing acetyaminophen but not salicylates were taken by 29 of 156 (18.6 percent) controls but only 1 of 97 (1 percent) cases. Medication containing acetyaminophen in combination with salicylates were taken by 28 of 97 (18 percent) cases compared to 51 of 160 (32 percent) controls (p <.01).

The Ohio State University Biometry Facility performed a multiple logistic
analysis using a model which included histories of salicylate ingestion, fever, headache, and sore throat. Adjusting for these potentially distorting variables, cases were found to be 11.3 (p<0.001) times more likely than controls to have taken salicylates. Similar results were obtained from meta-analysis. The Ohio investigators also compared salicylate use in cases and controls matched by highest level of fever. Data had been collected on whether or not the case or control had a fever. If fever was present, the highest level of fever was recorded. The known fever levels were then divided into three strata (98.7 to 99.9; 100.0 to 101.9; 102.0 or higher). Although the prevalence of fever was significantly greater in cases than in controls (74 of 97 cases and 95 of 156 controls had fever (p<0.01)), among those with fever, at each temperature stratum salicylate use was consistently greater among cases (100 percent at each stratum used salicylate) than among controls (67 percent, 81 percent, and 75 percent used salicylate at the respective strata). A report of the Ohio study has been published in the August 13, 1982 issue of the Journal of the American Medical Association (Ref. 75).

Members of the FDA working group made a site visit to the Ohio Department of Health on March 8-10, 1982. They considered it important to evaluate the administration of medications and the development of symptoms on a daily basis to attempt to ensure that the administration of drugs before the onset of RS could be identified. By evaluating the data on a daily basis, the working group could attempt to adjust for any differences between cases and controls in symptoms that might be distorting the results of the analysis. By ascertaining which drugs had been administered before the onset of RS, the working group could test the hypothesis that the salicylate use by the cases might reflect treatment of the symptoms of RS rather than those of the antecedent illness and therefore would not be regarded as a possible cause of RS.

The only data which permitted such an evaluation were the data collected during the second year of the Ohio study. For that reason, the working group examined in detail the original State records of the 64 second-year cases and their associated controls. The working group obtained the information concerning the daily administration of medication and the daily development of symptoms from the original State records. The working group also audited a sample of the first-year cases and the stage 0 cases that were not included in the study and the available information from all the fatal cases. On the basis of this evaluation, the working group concluded that the coding of information from the original investigational records had been performed with an unusually high degree of accuracy. No significant discrepancies were found by examining the original case and control questionnaire forms and comparing them with the coding of the data for computer compilation and analysis.

The Ohio second-year data enabled the FDA working group to analyze both the administration of medication and the development of symptoms on a daily basis, to attempt to adjust for confounding variables in cases and controls, and to ensure that the medications under consideration were administered before RS was present. As was done with the Michigan data, FDA performed a multiple conditional logistic analysis of salicylate exposure during days 1 to 3 of the antecedent illness which adjusted for possible differences between cases and controls which might have been explained by differences in the presence of headache, fever, cough, and sore throat. These symptoms are those for which salicylate-containing medications may have been used. One hypothesis would suggest that if the cases had different symptoms (e.g., more headache or fever) than controls, the higher salicylate use cases could be attributable to the presence of symptoms more likely to be treated with salicylates. In order to examine the possibility that salicylates might have been used to treat early symptoms of RS rather than an antecedent illness, cases (and their matched controls) with 4 or fewer days between the onset of the antecedent illness and the onset of RS were eliminated. On the basis of this analysis, FDA’s working group found that cases of RS were still significantly more likely to have used salicylates. There was significantly less use of acetaminophen in the cases than in controls.

The FDA working group also considered a hypothesis that some of the statistical association in the Ohio second-year data based on salicylate use during days 1 to 3 might be explained by the administration of salicylates after the symptoms of RS had already appeared in some of the cases. As noted earlier, RS typically develops in a child who appears to be recovering from an antecedent illness. Approximately half of the cases (33) had at least a 1-day period between the symptoms of the antecedent illness and the onset of RS when no symptoms were recorded (these are referred to as biphasic cases).

However, a number of cases (30) did not appear to have a symptom-free period between the recorded date of onset of the antecedent illness and the onset of RS (these are referred to as monophasic cases). In one case it was not possible to determine monophasic or biphasic status because that case was not used in the analysis.

Statistical analyses showed a different relative rate of salicylate usage between the monophasic cases and the biphasic cases as compared to their controls. Multivariate conditional logistic analysis of the data on the biphasic cases showed that these cases did not use salicylates in the first 3 days of their illness to any significantly greater extent than their controls. The same analysis of the group with the monophasic illnesses showed that these cases did have a significant excess of use of salicylates over their controls.

The FDA working group also compared salicylate usage in the biphasic versus the monophasic cases (Ref. 74). This analysis showed that fewer cases with biphasic illness used salicylates during days 1 to 3 than those with monophasic illness, although the difference is not significant (82 percent versus 93 percent, p=.17). These analyses appear to indicate that there is a difference between the monophasic and biphasic cases. However, further examination of the data reveals that other factors require consideration in interpreting the relative rates of salicylate usage between cases and controls. The criteria upon which cases were divided into monophasic and biphasic groups were based solely on the symptom pattern reported in the cases. Consequently, the distribution of variables (e.g., salicylate use, headache, fever, etc.) in the controls for the two groups would be expected to be roughly the same. It is not the same. Salicylate use in the biphasic control group was significantly greater during days 1 to 3 than in the monophasic control group (76.5 percent versus 58.3 percent, p<.05). The FDA working group analyzed covariates (fever, headache, cough, sore throat) in the controls for the two groups and did not find symptom differences to explain the greater use of salicylates in the controls for the biphasic than for the monophasic patients.

The FDA working group recognized that at least three possible interpretations of these findings could be considered:

1. Because RS is thought to be a biphasic, rather than a monophasic illness, it might be argued that some of the monophasic cases either had no
antecedent viral illness, the viral illness was not detected, or the symptoms of the antecedent illness and the symptoms of RS were overlapping. Therefore, it could be further argued that in some of the monophasic cases, salicylates might not have been administered before the onset of RS, that salicylates might actually have been used to treat the symptoms of RS, and that salicylate use in those cases might not be implicated as a causative factor in the development of RS.

2. That salicylate use might hasten the development of RS.

3. That the division into groups with monophasic and biphasic illnesses might not have been meaningful and was associated with an artificial difference in the respective control groups that resulted in irrelevant statistical differences in the relative risks calculated for the two groups of RS cases.

Because the FDA working group could not eliminate this third interpretation, it was unable to conclude that the statistical association in the Ohio second year could be explained by the administration of salicylates after the symptoms of RS had appeared.

4. Working group summary. The FDA working group considered that its analysis of the data from the second year of the Ohio study was pivotal to the assessment of the possible association between the use of salicylates in the preceding viral illness and the subsequent development of RS. The working group concluded that its analysis of the data from that study showed that patients with RS (cases) had a greater frequency of salicylate use during the first 3 days of the antecedent viral illness than did children matched for certain selected variables with an illness of a similar nature (controls). The working group found that cases of RS in the study were significantly more likely to have used salicylates, and this association continued even when the data were statistically adjusted to account for differences in cases and controls for the symptoms headache, fever, sore throat, and cough and when cases with 4 or fewer days between the onset of antecedent illness and the onset of RS were eliminated. In addition, the working group found there was significantly less use of acetaminophen, in the cases than in the controls.

The FDA working group report also recognized that the association between salicylates and RS observed in the four State studies might be reflective of factors other than a causative role of salicylates in the development of RS. In addition, the report raised the question whether in some cases the symptoms of RS had developed earlier than was recognized, so that treatment was given after the onset of RS and not during the antecedent illness. Because the working group report reflected a preliminary review and was prepared to provide information for consideration at a public meeting, the working group did not resolve these questions before the public meeting.

D. Reye syndrome workshop. A Reye syndrome workshop was conducted by FDA, CDC, and the National Institute of Allergy and Infectious Diseases of the National Institutes of Health was held on May 24, 1982. A notice announcing the workshop was published in the Federal Register (47FR 20862; May 14, 1982) (Ref. 30). The workshop was scheduled to provide interested persons, including industry and consumer group representatives, an opportunity to discuss the currently available data on RS and to make written submissions and to give oral presentations. A transcript of the meeting was prepared (Ref. 37).

Before the workshop, FDA had made data available that was in its possession and on which it had relied in preparing the working group's preliminary review. The data in the agency's possession did not include the original forms used in conducting the four State studies. The agency has since obtained the original data in the Ohio study (Ref. 111). The data did include FDA's transcription of certain data from the second year of the Ohio study and the second year of the Michigan study (Ref. 38). In addition, the data included a data computer tape provided by the Ohio Department of Public Health on its RS investigation (Ref. 68).

The workshop was attended by invited experts from the academic community, the drug industry, and consumer organizations. The scientific panel members (primarily from the academic community) were asked to review and discuss the data and presentations, but were not asked to make formal recommendations to the sponsoring organizations. However, the members of the scientific panel were provided an opportunity to comment at the close of the meeting. Some of the panel members indicated that the available data were adequate to establish an association between salicylates and RS. Others indicated a belief that the data showed a possible association. Some members indicated that a causal relationship between salicylates and RS had not been shown. Several of the members agreed that physicians and the public should be advised of the possible risks of the use of salicylates to treat certain viral illnesses in children (Ref. 37).

E. FDA evaluation of the four State studies. FDA evaluated the four State studies to address questions concerning the design and execution of the studies. FDA's evaluation of the data from the four State studies included a careful consideration of questions raised concerning the quality of the data. Industry representatives and others contend that the data do not establish an association between salicylate use and the development of RS. In support of this contention they have raised objections to the design and execution of the studies generally, as well as objections to the evaluation of specific factors. FDA scientists have reviewed the questions raised thus far. Summaries of the questions, as well as the agency's tentative responses, follow:

1. It is claimed that the data from the State studies have not been adequately analyzed. Inadequacies in the data analysis, it is argued, included no independent review of the primary data base (e.g., completed questionnaires), no audit of the secondary data base (e.g., computer tapes coding information from the questionnaires), no proper multivariate analysis of the data, and no sensitivity analysis of the odds ratio that measured the probability-RS association. The argument is that because the data analysis was inadequate, the studies cannot be said to have demonstrated an association between salicylate use and RS.

As discussed above, the FDA working group did review the primary data from both Michigan studies and from both years of the Ohio study. The working group also performed a selected audit of the computer tapes from both the Ohio study and concluded that the coding of information from the original investigational records had been done with an unusually high degree of accuracy.

The Ohio State Health Department performed a multivariate analysis of the data from the Ohio study and found a statistically significant association between RS and salicylate use. In addition, the FDA working group's analysis included multivariate analysis using the multiple conditional logistic model (Ref. 112). This form of analysis is primarily designed to analyze matched case-control data where adjustment for covariates is desired. The results of these analyses also support the conclusion that there is an association between salicylate use and RS.

The sensitivity analysis referred to in the criticisms of the State studies is intended to determine the effects of
misclassification on the odds ratio, the measure of association used in these studies. Theoretical studies in the literature (Refs. 40 to 45) have shown that if the misclassification is non-differential, that is, the same level of misclassification exists in both the cases and controls, then the odds ratio tends towards the "null" hypothesis. In other words, the estimated odds ratio will always tend to be less than the true odds ratio. That is, if the same level of misclassification exists in both the cases and controls in the Reye's studies, then the cases are even more likely to have used salicylates in relation to the controls than the analyses have shown. However, if the misclassification is differential, affecting one group more than the other, then the estimated odds ratio can be either less than the true odds ratio or greater.

Without specific information as to the nature of any potential misclassification bias in these studies, the bias' effects cannot be estimated and, therefore, cannot be corrected for. In none of the studies reported are there data indicating that a differential misclassification is operating. Nor are there any supplementary data supporting such a claim. Therefore, a sensitivity analysis may be either unnecessary or impossible with respect to these RS studies.

2. It is claimed that the studies were conducted without a protocol that defined precisely the methods of data acquisition, data analysis, and study monitoring used in the studies. The suggestion is that lack of a protocol may lead to such problems as inconsistencies in interview techniques employed by different interviewers or inconsistent matching of cases and controls, which may distort the study results.

The FDA working group found that better documentation of operational procedures for the studies could have been provided. However, for both years of the Michigan study there was a protocol that included eligibility criteria, so that cases and controls could be consistently matched. Although there was no formal protocol for the Ohio study, the study did have an operational manual which described eligibility criteria, as well as the interviewing procedures. Thus, there were plans for both the Ohio and Michigan studies to guard against distorting inconsistencies.

3. It is claimed that there was no matching of cases and controls on the basis of severity of the antecedent illness. Thus, it is contended, the cases were sicker than controls with respect to such factors as the presence of fever, the degree of fever, and the amount of liquid intake during the acute illness. The severity of illness, it is argued, may have determined the parent's choice of antipyretic drug therapy. The argument is that matching cases and controls for such variables as fluid intake, use of antinauseant medication, and fever could eliminate the association between salicylate use and RS.

The investigators attempted to control for severity by matching cases with ill controls who were from the same classroom and who were ill at about the same time, as well as by matching as many variables as possible. Such matching included, for example, matching cases that had chickenpox with controls that had chickenpox and cases that had respiratory illness with controls that had respiratory illness. Matching with respect to the degree of fever was done in the second year in Michigan, but not in the other studies. In the second-year Michigan study, which included matching by temperature strata, 12 of 12 cases (100 percent) and 13 of 29 controls (45 percent) reported receiving salicylate-containing medications (p < .002). When highest-measured temperature was used retrospectively to match cases and controls in the statistical analysis of the first-year Michigan study, the difference in salicylate ingestion remained significant (100 percent of cases, 73 percent of controls (p < .05)). As discussed earlier, the Ohio investigators also retrospectively matched cases and controls by temperature strata. At each temperature stratum salicylate use was consistently greater among cases than controls. FDA's multivariate conditional logistic analyses, which adjusted for fever, showed that the association between salicylates and RS remains significant.

The data also indicate that the administration of antinauseants is not significantly associated with the antecedent illness, but may be associated with the symptoms of the onset of RS. This was confirmed by FDA's analysis of the second year of the Ohio study, which showed that most antinauseant use was on the day of onset of RS or later. With respect to reduced fluid intake, the question was asked in such a manner that data available with respect to this factor cannot establish whether the reduction in intake was associated with the antecedent illness or with the onset of RS. In addition, FDA's multivariate conditional logistic analyses adjusted for other indications of severity of illness, including cough, headache, and sore throat. After adjusting for these measures of severity of antecedent illness, the association between salicylates and RS remains significant.

4. It is claimed that interviewer bias influenced the results of the studies. Interviewer bias could have resulted in the fact that interviewers were not "blind," i.e., they knew in advance that the parents they interviewed were the parents of cases rather than controls or of controls rather than cases. Such knowledge, it is argued, could cause interviewers to question one group of parents more closely than the other, thereby producing more, or more reliable, information from that group.

Prior knowledge by interviewers that salicylate drugs were suspected more strongly than other factors of being associated with RS could also have biased the questioning. These forms of interviewer bias could have produced biased reporting by the interviewees. For example, if the parents of cases were more closely questioned than parents of controls, it is possible that they would have been more likely to recall the specific medications administered to their children. It is therefore possible that such parents would have been more likely to have remembered that they had administered aspirin, whereas parents of controls would have remembered only that they administered a fever-reducing drug of some sort, thus falsely increasing the incidence of aspirin use in cases compared with controls. It is also possible that if interviewers knew of a potential connection between being on salicylates and RS, they might have persisted in asking parents of cases about medications until receiving a response mentioning a salicylate product, whereas they might not have so persisted when questioning parents of controls.

Although it is true that interviewers knew in advance which families had cases and which had controls, precautions were taken to prevent the introduction of bias into the interviews by reason of such knowledge. Interviewers in the Michigan and Ohio studies received training designed to standardize interviewing technique, so that parents of cases and parents of controls would be asked the same questions in a similar manner.

FDA's review of the questionnaires used in the Michigan and Ohio studies revealed no basis for concluding that salicylate drugs had been given undue attention by the interviewers or that other forms of interviewer bias tainted the responses. Moreover, in the Arizona study and the first Michigan study and the first year of the Ohio study, those conducting the investigation had not concluded that salicylate drugs were more likely than other factors to be
associated with RS. The interviewers in those studies, therefore, were unlikely to have biased the results by any intentional or unintentional desire to elicit information that showed a positive association implicating salicylates in the development of RS. Furthermore, interviewers in the second year of the Ohio study were not informed by the investigators that a possible association between salicylate drugs and RS was suspected.

Finally, the absence of significant interviewer bias in the Michigan studies is suggested by the fact that similar numbers of drug preparations were reported by cases and controls. Because parents of cases and parents of controls reported almost the same numbers of drug preparations given, it does not appear that interviewers persisted longer in their questioning about medications with parents of cases than with parents of controls.

5. It is claimed that the Ohio study may have been flawed by a bias in case selection. A physician at one of the six clinical centers participating in that study has stated that some of the cases he reported to the Ohio State Health Department were excluded from the study (Ref. 79). He indicated that at least four of the cases he reported had no history of salicylate ingestion.

The FDA working group has reviewed the case selection in the Ohio study for each of the participating centers (Refs. 79 and 80). During the 2 years of the study, 11 RS cases were reported from the clinic with which this physician is associated. The Ohio Health Department excluded 5 of those 11 cases from the study for the following reasons: 2 cases were stage 0; 1 case was too young (about 1 year old); 2 cases could not be matched. These exclusions were consistent with the eligibility criteria established and with the procedures used during the period of this study. Of the 11 cases reported from this clinic 8 (73 percent) had used salicylates; of the 8 cases from this clinic which were included in the study, 4 (67 percent) have used salicylates.

The working group saw no indication that the case selection process pertaining to the cases reported from one center was unique. Of all the cases reported to the Ohio Health Department, 163 of 196 (83.4 percent) had used salicylates. Among nonsalicylate users who were not included in the 97 matched cases, 6 were stage 0, 2 were preschool, and 2 apparently could not be matched. There were 31 cases who were not matched, although they were eligible based on stage, degree of illness, and age. Of those, 29 (93.5 percent) had used salicylates. Thus, it does not appear that cases were selected for matching based on whether or not they had used salicylates.

6. It is claimed that product confusion among parents caused misclassification of the drugs used by cases and controls. Thus, it has been argued that some parents may have thought a salicylate product was used when, in fact, it was a nonsalicylate product. It is also asserted that the documentation confirming the medication histories is inadequate. The working group's analysis of those cases which interviewers confirmed the cases' medication histories by visually inspecting the medication bottles. Confirmation by inspecting the medication bottles of the controls would be more likely because the interviews were conducted at the parents' home. In Ohio, there was an extensive effort to identify ingredients properly for single as well as combination drugs. In Michigan, the interviewer notified the family to prepare for the interview and to show the medication bottle to the interviewer. Although parents, in some instances, may have been confused as to the identity of the active ingredient, interviewers in both Ohio and Michigan usually obtained the information from the drug administered, which were then checked to determine and record the active drug ingredient. In Ohio, 90 percent of the cases and 91 percent of the controls supplied brand names; 100 percent of the acetaminophen identification was by brand name.

It is true that the documentation does not show which product identifications were confirmed by visual inspection of the bottles and which were not. However, there is also no documentation showing that any of the visual confirmations revealed a contradiction between the brand name identified and the brand name on the bottle label. Thus, any effect of the visual confirmation on the study analysis remains conjectural.

Analyses have been submitted by industry representatives to show that there is no significant statistical association between salicylate use and RS if two subsets of the second-year Ohio cases identified by FDA's working group are examined (Ref. 101). The following subsets of the 94 second-year Ohio cases were analyzed: (1) The 48 cases with more than 4 days of symptoms before the onset of RS and (2) the 41 cases in which the relationship of salicylate use to onset of RS could be ascertained with reasonable certainty.

The working group's analysis of those 48 cases with more than 4 days of symptoms before the onset of RS showed a positive and statistically significant association between salicylate exposure and RS. The industry submission's analysis of those 41 cases which a positive association was found, however, not statistically significant. The difference between the working group's finding and the industry submission's finding with respect to this subject appears to result from the differences in the databases of the two analyses. The industry submission's coding of subjects from the second year of the Ohio study for exposure to salicylates or nonexposure to salicylates differs from the working group's coding with respect to 11 subjects. This difference appears to be primarily due to the fact that the industry submission had coded controls as exposed if salicylates were used at any time during their illnesses, whereas cases were coded as exposed only if a salicylate was used early in the course of illness.

The working group performed a multiple conditional logistic analysis to test whether differences in symptoms accounted for a greater frequency of salicylate use in cases and found that there was still a significant association of salicylate use with RS after accounting for these differences. The working group attempted both to assure that the database did not include salicylates that were being given specifically to treat RS and to determine whether salicylate use was the result of more severe illness in cases than controls. The industry analysis did not compare equivalent time periods in cases and controls and did not adjust for the severity of illness when examining the relationship between salicylate use and RS.

The industry submission also analyzed a subset of 41 cases in which the relationship of salicylate use to onset of RS could be ascertained with reasonable certainty. The industry submission argued that with this subset of 41 there is also no statistically significant association between salicylate use and RS. FDA's working group had identified and studied this subset of 41 cases in order to determine
whether salicylates were used for treatment of RS, regardless of whether they had been used initially for treatment of the antecedent illness. That is, the 23 cases that began salicylate use on day 1 or 2 of illness and continued until the onset of RS were excluded from this subset because for those 23 cases it could not be determined when the salicylate use for the antecedent illness ended and the salicylate use for RS began. However, because this group of 41 cases does not include all RS cases who used salicylates before onset of RS, the association of RS with prior salicylate usage cannot be determined by comparing only these cases and their controls. Therefore, the industry submission's analysis using this subset of 41 cases to determine the frequency of use of aspirin before the onset of RS is an invalid approach.

8. The industry submission which analyzed the 48 and 41 case subsets also claimed that some of the product identifications recorded on the case report forms were insufficient to determine whether the products contained salicylates (Ref. 101). The industry submission argued that 7 of the subjects in the second year of the Ohio study (4 cases and 3 controls) who were identified as having been exposed to salicylates had received medications which had not been clearly identified as containing salicylates ("indeterminate" medications).

The submission argued that even when all 64 cases are examined, the assumptions about the 7 indeterminate medications lead to critical differences in the results. Using its database, the industry submission presented an analysis showing that when it is assumed that the 7 subjects who took indeterminate medications were exposed to salicylates, the result is a statistically significant association between salicylates and RS. However, when it is assumed that these 7 subjects were not exposed to salicylates, the association is no longer statistically significant. The submission argued that if only 3 of the indeterminate cases are assumed to be unexposed, the results are not statistically significant.

The industry submission based its identification of "indeterminate" medications on the fact that the trade names of some salicylate-containing products are very similar to the trade names of non-salicylate-containing products. For example, "Brand X" may contain aspirin and "Brand X-AF" may contain acetaminophen. FDA's working group assumed that a listing on a case report form for "Brand X" would mean literally that, and would not have been so listed if the brand name were at all different. Therefore, the working group listed these products as salicylates.

However, if it were assumed (as the industry submission assumed) that the correct names of these products could not be determined, then the appropriate approach would be to exclude those subjects from the analysis. That is, if the salicylate exposure is unknown, that subject should not be included as either exposed or unexposed, because either assumption would improperly bias the results. When the subjects identified by the industry submission as having taken "indeterminate" medications are excluded from analysis of all 64 cases, the association between salicylate use and RS remains significant, regardless of whether the industry submission's database or the working group's database is used.

9. It is claimed that, even over relatively short periods of time, parents do not accurately remember significant details about medications they administered to their children, the symptoms their children had during illness, or their children's behavior patterns (e.g., fluid intake) during illness. If recall were equally inaccurate for both groups of parents, it would not ordinarily be expected to bias the information reported for cases and controls. However, in case-control studies parents of cases are typically interviewed shortly after their children's illness, whereas parents of controls are often interviewed weeks or months after illness, and this was true of the Ohio and Michigan studies. Also, parents of cases—children with RS—might remember important details concerning medication or severity of symptoms more clearly than parents of controls, whose children had a far less serious illness. Such differential recall, it is thought, could have biased the results of the Ohio and Michigan studies.

In both the Ohio and the Michigan studies the investigators attempted to identify and interview the parents of controls as quickly as possible, thus minimizing the time differential between the two groups of parents as much as is practicable in case-control studies. Nevertheless, neither the time differential, nor any possible difference in recall accuracy between parents of RS children and parents of control children, could have been entirely eliminated.

Two observations, however, tend to negate the existence of significant recall bias stemming from these factors. First, recall bias would not be expected to result in the selective underreporting of the use of salicylate drugs, and overreporting of the use of acetaminophen, by the control group parents. Recall bias should have produced, instead, underreporting of both medications by the parents of controls. The parents of controls would have had no reason to remember administering an salicylate product. Second, as previously noted, similar numbers of total drug products were reported by both cases and controls in the Michigan studies. Therefore, it does not appear that parents of controls had, in the time period between the child's illness and the interviewer's questioning, forgotten the medications they gave during the illness to any greater degree than the parents of cases had forgotten the medications they had administered.

10. It is claimed that the data do not establish a dose-response relationship between salicylate ingestion and the development of RS. It is argued that one would expect there to be such a relationship if salicylate drugs caused RS. The absence of such a relationship, it is argued, would suggest that a causal relationship between salicylate drugs and RS is biologically implausible.

It is correct that the data do not show a dose-response relationship between salicylates and RS. The data are inadequate to show either the existence or the absence of such a relationship. Demonstration of a dose-response relationship would clearly strengthen an association between salicylates and RS, but its absence does not negate the existence of an association. A correlation between salicylate blood levels and the development of RS has also not been clearly demonstrated. The methodologies reported often lack sensitivity and are affected by confounding factors, such as ketosis (which is present in dehydrated children, such as those who have RS). The significance of the blood levels measured depends on various factors, including information about the amount and timing of all salicylate drugs administered and the physical condition of the child. Data of the requisite quality to determine whether a dose-response relationship exists were not obtained during any of the studies.

Demonstration of a dose-response effect might strengthen the evidence of a causal relationship, but is not essential to show an association or a causal role of salicylates in RS. If the effect of salicylates in RS were dose dependent (e.g., the more toxin taken or present, the greater the toxic response), then such a relationship possibly could be demonstrated by clinical history and by laboratory tests. However, if the role of
salicylates is independent of dose, as it appears to be, then any exposure to salicylates, not necessarily exposure at toxic levels, could be a triggering factor in RS. That is, it is possible that a small amount of salicylates administered under certain circumstances will trigger RS and that it makes no difference whether or not larger amounts are administered. Thus, it is biologically plausible that salicylates could be a factor in causing RS even if no dose-response relationship were shown.

11. It has been argued that the association between salicylates and RS cannot be reconciled with certain facts concerning the identification and the patterns of incidence of RS. The argument is that because aspirin has been so widely used for so many years, it is unlikely that aspirin causes a disease that: (1) has only recently been identified; (2) is very rare; (3) is geographically concentrated; and (4) occurs in Caucasians 90 percent of the time. It has also been argued that the facts that not all children who take salicylates for flu or chickenpox symptoms get RS and that some children get RS without having taken salicylates are inconsistent with a causal connection between salicylate use and RS.

The fact that RS was only identified as a specific disease in 1963 does not mean that it did not exist prior to that time—only that it had not yet been identified as a specific illness. RS is a rare disease; a rare disease is often not identified until sufficient information is accumulated and communicated to interested scientists to allow them to differentiate the symptoms of the disease from those of other diseases. That RS is rare does not, however, mean that there can be no causal relationship between salicylate use and RS. Administration of a drug can result in serious harm in only a small percentage of cases, yet nevertheless be the causal agent. For example, administration of chlorpromazine at a certain dosage has been estimated to cause fatal aplastic anemia in 1 out of 40,000 patients (Ref. 64). The data do show that not all children taking a salicylate for symptoms of flu or chickenpox develop RS. There must be more than one factor involved in the development of RS. That is, there may be certain preconditions, such as genetic predisposition, necessary before RS develops.

Salicylate use could be one element in a chain of causes that lead to RS if most of the elements are present. Nor does the fact that a few cases of RS have been identified in which no salicylates were used prove that salicylates can have no causal role in RS. Salicylate use may be one among several possible causes, not all of which need be present for RS to develop. A number of environmental agents, such as insecticides, mycotoxins, and aflatoxins, have been suggested as possible factors in causing RS (Refs. 81 and 82). However, none of these agents have been confirmed as factors in causing RS by later studies.

Observed geographic differences in the incidence of Reye syndrome may reflect the varying levels of interest of health departments, communities, and physicians and the varying reporting requirements in different States. Whether some environmental agents present in different geographical locations may also be implicated in RS cases is unknown. As yet, there have been no adequate studies conducted to determine whether, in fact, RS does occur disproportionately in certain geographic areas. Even if future studies were to define geographic differences in the incidence of this disease, it is possible that factors other than salicylate use (including influenza and other as yet unidentified risk factors) might explain such observed differences.

Why 90 percent of the RS cases reported each year are among Caucasians is also not understood. It may be that Caucasians have different exposure to predisposing conditions of RS that have not as yet been identified. Perhaps there is a genetic predisposition to RS that is greater among Caucasians. As has been discussed before, salicylate use could be causally associated with RS without being the sole cause. Therefore, the fact that some factor other than salicylate use may result in more RS in Caucasians does not mean that salicylate use does not cause RS.

12. It has been argued that it is likely that a number of the children identified as cases did not actually have RS. The argument that some of the cases probably were misidentified rests on two main points: (1) Not all of the cases of RS were confirmed by liver biopsy and (2) there were low death rates among the study participants. It is claimed that the lack of biopsy confirmation is significant in light of an unpublished study conducted by Sokol, Heubi, and others in Cincinnati, OH. An abstract of their study indicates that 26 percent of subjects diagnosed as having stage I RS using CDC/NIH consensus conference diagnostic criteria were biopsy negative for RS (Ref. 83). It is also stated that in the second year of the Ohio study only 4 percent of the cases died, whereas the national death rate from RS is approximately 22 percent to 40 percent.

It is true that not all of the RS cases were biopsy confirmed. The American Academy of Pediatrics' Committee on Infectious Diseases has pointed out, if any misclassified cases could be eliminated from the analysis, it would be expected that an association between aspirin and RS would be strengthened rather than weakened (Ref. 47). This results from the fact that non-RS individuals, misclassified as RS...
cases, would probably exhibit salicylate patterns more like their controls and hence would dilute an association. Thus, elimination of these cases would further enhance the differences in salicylate use between cases and controls, therefore strengthening an association.

13. It has been argued that an association between salicylates and RS cannot be reconciled with the fact that the liver pathology of RS is different from the liver pathology of salicylism and that the serum patterns of amino acids, free fatty acids, ketones, and urates in RS are different from the serum patterns of the same substances in salicylism.

The liver pathologies and the serum patterns of RS and salicylism do differ. It is generally agreed, however, that RS is neither the same as salicylism nor the results of salicylism. Therefore, it would not be expected that RS and salicylism would have the same liver pathologies and serum patterns. The fact that the liver pathologies and serum patterns of RS and salicylism differ would not negate the existence of an association between salicylism use and RS; it would also be irrelevant to the question of whether salicylism use might be a causal factor in the development of RS.

14. It has been argued that the association between salicylates and RS cannot be reconciled with the fact that the concentration of salicylates needed to produce one proposed mechanism for "salicylates' role in RS occurs at levels that have probably not been reached in most cases. That is, it is claimed that the concentration of salicylates needed to produce a 50-percent inhibition of rate-limiting enzymes for mitochondrial oxidative phosphorylation has not been shown to have been reached in most RS cases.

The mechanisms acting in the origin and development of RS are not fully understood. The possible mechanisms by which salicylates might contribute to causing RS are also not fully understood. One possible mechanism postulated for a causal role of salicylates in RS is that the salicylates inhibit certain mitochondrial functions. Whether this particular postulate can be supported theoretically or by future clinical data is not crucial in determining whether salicylate use plays a causal role in the development of RS.

15. It has been argued that the association between salicylates and RS cannot be reconciled with the fact that the incidence of RS in children with rheumatic disease (such as juvenile rheumatoid arthritis), who regularly receive high dosages of salicylates, is not higher than the incidence of RS in the general population.

The incidence of RS in children with rheumatic disease who are on high-dose salicylate therapy cannot be determined on the basis of the available data. Cases of RS among these children have been reported (Refs. 10 and 37 at page 129). More information on the incidence of RS in this group of children may be useful in understanding the relationship between salicylates and RS. It should be noted again that even if salicylate use is shown to be one causal factor in the development of RS, it is not the sole causal factor. The existence of an antecedent illness, such as the flu or chickenpox, has already been strongly implicated in the development of RS. Perhaps genetic predisposition is also a factor in what may be shown to be a chain of causal factors. Because children with rheumatoid arthritis already have a pathologic disorder, that disorder may be in some way associated with a greater or lesser likelihood of developing RS.

16. It has been argued that there is a medical risk in suggesting that salicylates not be used to treat high fever in children because of the possible harm, including convulsions and damage to the central nervous system, that prolonged high fever can cause. Suggestions have been made that consumers should not be subject to such a risk and that rather than warning consumers against salicylate use, the agency should advise consumers that they should exercise prudence in the use of all medications in children. It has been argued that cautioning against salicylate use will lead to more use of acetaminophen products, which pose risks of liver toxicity. It has also been suggested that a label warning on salicylates concerning RS might lead parents to believe that by not giving their children salicylate products they have removed all risk of RS.

A label warning statement being considered by the agency for certain salicylate-containing drug products would advise consumers against the use of salicylates in persons under 16 years of age with flu or chickenpox unless directed by a doctor. Fever is often associated with these diseases; prolonged high fever can lead to convulsions and, in very rare cases, permanent damage. There are, however, alternative antipyretic drugs that do not contain salicylates. Although there is a risk of liver toxicity associated with acetaminophen use, this risk stems from drug overdose and can be avoided in children largely through use of child-resistant containers. Salicylates also can be dangerous to children if taken in overdose.

More importantly, most levels of fever probably do not require any drug therapy and are not harmful. The American Academy of Pediatrics' Committee on Infectious Diseases has suggested that when a physician believes that control of fever is necessary, such alternative means of fever control as increased fluid intake and sponging with tepid water should be considered (Ref. 47). The labeling statement under consideration would not warn against salicylate use in children in all circumstances. The possible benefits of salicylates might outweigh the risk of Reye syndrome in certain patients, such as those with juvenile rheumatoid arthritis for whom the risk of Reye syndrome may be less important than the benefits gained in treating this chronic debilitating disease.

17. It has been argued that, despite the uncertainties in the data, the public should be warned of the association between salicylate use and the development of RS. It is also claimed that, although the public should be advised generally to use caution in administering antipyretics to children, the available data do not justify a labeling warning requirement specifically for salicylate-containing products. In the June 1982 issue of Pediatrics, the American Academy of Pediatrics published a recommendation of its Committee on Infectious Diseases that "[i]nasmuch as salicylates are over-the-counter preparations, education of parents to their avoidance in influenza and varicella [chicken pox] requires a total community effort. We urge that the appropriate governmental agencies undertake appropriate review and necessary action to inform the public at large" (Ref. 47). On November 8, 1982, the Executive Board of the American...
Academy of Pediatrics stated its belief that labeling aspirin-containing preparations as contraindicated in treatment of influenza or chickenpox "should be delayed until more conclusive evidence of the association of aspirin administration and Reye's Syndrome is shown by further investigation" (Ref. 85). Subsequently, on November 19, 1982, the American Academy of Pediatrics stated that it "continues to be concerned about the possible association of aspirin and Reye's Syndrome and has alerted physicians to use caution in recommending aspirin for treatment of influenza and chickenpox symptoms" (Ref. 86). The American Academy of Pediatrics added that it believed "the current labeling [on aspirin] which includes 'flu' among those conditions which may be treated with aspirin is inappropriate" and recommended deletion of the language from the labeling of children's aspirin-containing products (Ref. 86). These and other comments raise questions about the quality of data which should exist to support regulatory actions. The comments also raise questions about the differences between two types of agency actions—advice to the public and labeling requirements. These questions are discussed in the following section.

F. Regulatory Evaluation

The agency has statutory authority to undertake various kinds of activities to protect the public health, including initiating public educational campaigns and requiring labeling warnings on drug products.

FDA has evaluated the recent reports on the relationship between salicylate use and RS and has considered the potential risks to the public health suggested by those reports in considering which related activities to initiate.

Section 310(b) of the Public Health Service Act, 42 U.S.C. 2420(b), directs the Secretary of HHS to issue "information related to public health, in the form of publications or otherwise, for the use of the public" and to publish "other pertinent health information for the use of persons and institutions concerned with health services." Section 311(a) of the Public Health Service Act, 42 U.S.C. 243(a), directs the Secretary to "advise the several States on matters relating to the preservation and improvement of the public health." Functions of the Secretary under these sections that relate to the responsibilities of FDA have been delegated to the Commissioner of Food and Drugs. See 21 CFR 5.10 (a)(2), (19).

Section 703(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 375(b), authorizes the Secretary to disseminate information regarding drugs "in situations involving, in the opinion of the Secretary, imminent danger to health or gross deviation from consumer safety..." The magnitude of the potential danger need not be estimated, however, because section 705(b) is not a limitation upon the authority of the Secretary. It has been held that "even in the absence of this statute there would be nothing to prevent the [Federal officials] from disseminating information to the public. The [Federal officials] are performing a public duty when they are urging the use of certain treatments or warning the public against the use of certain treatments." Hoxsey Cancer Clinic v. Folsom, 153 F. Supp. 378, 376 (D.D.C. 1957). See United States v. An Article of Device ... Disguise Mfg. Corp., 262 F. Supp. 728 (D. Conn. 1967). The functions of the Secretary under the Federal Food, Drug, and Cosmetic Act have also been delegated to the Commissioner of Food and Drugs. See 21 CFR 5.10(a)(1).

As discussed above, several groups and numerous individuals have suggested that, until the relationship between salicylate use and RS is clarified, physicians and the public should be advised of the possible risks of using salicylates to treat certain viral illnesses in children. Case-control studies are inherently limited by possible distortions resulting from interviewer bias, recall bias, or imperfect matching of cases and controls. However, the data which first indicate potential health risks are often flawed or equivocal. In some cases, it may be years before data are available to establish definitively that a serious health risk accompanies the use of a particular product.

With rare diseases, such as RS, the agency has no option except to rely on case-control studies, because prospective studies of a population at risk for a disease that may occur, as here, at an annual rate of less than 5 cases per 100,000 population under 16 years of age would require an enormous number of subjects. The four State studies are consistent in their results. Collectively, the result of the studies on their face would appear to establish an association between salicylate ingestion and RS—nearly every child who developed RS had taken salicylates (137 of 141); while far fewer of the control group (151 of 247) had taken salicylates. Moreover, the Ohio and Michigan studies appear to establish a reverse association with the administration of acetaminophen (a nonsalicylate antipyretic and analgesic), in that control subjects were much more likely to have received this drug than were the cases.

A statistical association as reported by the four State studies might reflect a causative role for salicylates in the development of RS, or it might be associated with other factors. Although RS is a rare disease, the mortality rate is high. Until the relationship between salicylates and RS has been clarified, FDA believes that the interests of the public health require that physicians and the public be advised of the possible risks of administering salicylates containing medication to children with flu or chickenpox. This position is consistent with the views expressed in a recent editorial in the August 13, 1982 edition of the Journal of the American Medical Association (Ref. 70).

On June 4, 1982, the Secretary of Health and Human Services announced that "medical experts have concluded that the use of salicylates such as aspirin in children with influenza and chickenpox and certain other viral infections has been sufficiently associated with Reye Syndrome to warrant warning physicians and parents" (Ref. 48). The Secretary announced that he had directed FDA to undertake an educational campaign aimed at medical care personnel, pharmacists, and parents. In addition, the Secretary directed the Surgeon General of the U.S. Public Health Service to issue an advisory. On September 20, 1982, the Secretary announced the details of the educational campaign that had been undertaken. These initiatives are explained in detail below.

As discussed in detail above, the four State studies reporting an association between salicylate use and RS have been extensively criticized. In addition to comments pointing out the inherent limitations of case-control studies, specific questions about the design, execution, and analyses of these particular studies have been raised. Certain individuals, as well as the Executive Board of the American Academy of Pediatrics, have maintained that a labeling warning statement concerning salicylate use and RS would be premature at this time. On November 18, 1982, the Department of Health and Human Services announced that the American Academy of Pediatrics Executive Board's statement of November 8, 1982 (Ref. 85) is the first time that concerns have been raised by an independent scientific body and that it is critical that they be resolved. The announcement advised that the Secretary has decided that new
government-supported studies are necessary to help resolve the scientific dispute over the reported association between RS and salicylate-containing drugs. The announcement also advised that the Secretary has directed the Public Health Service to make recommendations to him for new research to help resolve the scientific dispute. [A protocol for a new study had been submitted earlier by industry representatives (Ref. 87)]. The announcement pointed out, however, that a significant body of qualified opinion believes that the available scientific evidence sufficiently establishes an association that the public should be informed. Accordingly, the announcement advised that the Secretary has decided to continue the previously initiated public educational campaign to warn parents and professionals of the need for caution. The continuation of the public educational campaign is consistent with the statement of the American Academy of Pediatrics that was issued on November 19, 1982 (Ref. 86).

Recognizing the controversy over whether the results of the four State studies justify requiring label warnings at this time, the Secretary on November 18, 1982, also announced that this advance notice would set forth the available information and invite comments on whether label warnings should be required. Evidence of a potential public health risk may be sufficient to make public education appropriate but may not necessarily justify requiring revised product labeling.

Any proposed rule concerning an RS-salicylate labeling warning would be promulgated under the authority of sections 201(n), 502(a) and (f), and 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(n), 522(a) and (f), and 371(a)). If warranted by new scientific information or by the response to this advance notice, the possible labeling warnings announced in this notice may be required through an interim final rule (i.e., one with immediate effect). The possible label warnings and other labeling revisions under consideration are discussed in detail below.

II. Educational Activities

A. Departmental initiatives—1. Surgeon General's advisory. The Surgeon General of the U.S. Public Health Service issued a Surgeon General's advisory in the Morbidity and Mortality Weekly Report of June 11, 1982 (Ref. 49). That advisory recommended against the use of salicylates and salicylate-containing medications for children with influenza and chickenpox. The association of salicylates with RS, the Surgeon General states, "is based upon evidence from epidemiologic studies that are sufficiently strong to justify this warning to parents and health care personnel."

2. FDA Drug Bulletin. FDA issued an article in the August 1982 FDA Drug Bulletin which was distributed to over one million health care professionals, including physicians, pharmacists, and nurses (Ref. 88). The article reviews the data generally and advises caution in the use of salicylates in those viral illnesses particularly associated with the development of RS.

3. FDA Consumer. FDA also included an article on RS in the October issue of its publication, FDA Consumer (Ref. 89). This article reviewed the information on RS in terms understandable to the lay public and pointed out that aspirin and other salicylates may be associated with RS. Reprints of the article were sent to all consumer affairs offices of FDA for distribution to the public.

4. Surgeon General's newspaper column. The Surgeon General issued a newspaper column that discussed the suspected relationship between aspirin and RS and advised against giving aspirin to children with chickenpox, influenza, or a flu-like illness (Ref. 90). Approximately 8,000 copies of the newspaper column were distributed in early October.

5. Radio public service announcements. The Surgeon General also made recordings explaining that there may be an association between Reyes syndrome and aspirin and cautioning parents not to give aspirin when their children have flu or chickenpox (Ref. 91). Approximately 8,000 copies of these radio announcements were sent to radio stations on October 8, 1982.

6. Question-and-answer brochures. An RS information brochure in question-and-answer format has been made available on request to pharmacies and primary care physicians (Ref. 92). Approximately 673,000 copies of the brochure have been supplied for distribution.

7. Dear Consumer letter. A "Dear Consumer" letter offering copies of the question-and-answer brochure was mailed October 8, 1982, to approximately 13,000 consumers (Ref. 93).

8. FDA continues to work with health professional groups, including physicians (particularly pediatricians), and all other related organizations to transmit relevant information.

9. FDA continues to work with consumer and other organizations to transmit relevant information.

III. Possible Labeling Requirements Under Consideration

Having reviewed the four State studies in light of the questions concerning the studies recognized by its own staff as well as the questions raised by industry representatives, consumer representatives, and health professionals, FDA is considering proposing a rule that would require the labeling of certain OTC and prescription salicylate-containing products to bear a warning against use in persons under 16 with flu or chickenpox. In order to assist the agency in determining whether to propose an RS-salicylate warning, FDA is in this advance notice requesting comments on the available data—e.g., on the design, execution, and analysis of the relevant studies and on the quality and strength of any demonstrated RS-salicylate association. FDA has suggested above some possible responses to questions concerning the studies that have already been raised; comments on these tentative responses are also invited.

On September 20, 1982, the Secretary announced the texts of warning
statements that the agency is considering proposing to be required on the labeling of salicylate-containing products. For over-the-counter (OTC) drugs, a proposed warning might read: "Warning: This product contains a salicylate. Do not use in persons under 16 years of age with flu or chicken pox unless directed by your doctor. The use of salicylates to treat these conditions has been reported to be associated with a rare but serious childhood disease called Reyes syndrome." The agency believes that the term "flu" is commonly understood to include influenza and a variety of other viral illnesses. Thus, flu and chicken pox would cover the viral illnesses that have been associated with RS. For prescription drugs, a proposed warning might read: "Drugs of this class, salicylates, have been reported to be associated with the development of Reyes syndrome in children under 16 years of age. Because chicken pox, influenza, and influenza-like infections." In addition to comments concerning the data on the relationship between salicylates and RS, the agency invites comments on the specific wording of any RS warnings that might be proposed for salicylate-containing products.

The agency also invites comments on the appropriate scope of any proposed RS warnings for salicylate-containing products. FDA is considering proposing that RS warning statements appear in the labeling of all systemically absorbed salicylate-containing prescription drugs for human use that are administered orally, rectally, or parenterally and of all systemically absorbed salicylate-containing OTC drugs for human use that are administered orally or rectally. The salicylate in the product may be present either as a single ingredient or in combination with one or more other ingredients. Thus, a proposed rule would apply not only to products that contain aspirin, but also to drug products that contain other salicylates, such as aminosalicylic acid, sodium salicylate, sodium aminosalicylate, magnesium salicylate, choline salicylate, bismuth subsalicylate, aluminum aspirin, and calcium carbaspisin. Salicylate-containing drug products that would not be included would be those that are administered topically, and those that are used as mouthwashes.

Salicylate-containing drug products are probably the most widely used OTC drug products on the market. Salicylates are commonly used in analgesic drug products for the temporary relief of occasional minor aches, pains and headache and in antipyretic products for the reduction of fever. Salicylates are also often combined with OTC cold, cough, and allergy drug products for their analgesic and antipyretic effect. Although these classes of products constitute the largest use of salicylates, salicylates are also used in other categories of drug products, such as antidiarrheals.

Salicylates are usually used in prescription drug products in combination with other active ingredients, although some salicylates, such as aminosalicylic acid, may be used as a single active ingredient. Many prescription drug products containing a salicylate, either as the other active ingredients with which they are combined or because of the specific indication of a particular salicylate, would not be used in children or adolescents under 16 years of age to treat flu or chickenpox. For example, the indications for products containing aminosalicylic acid or sodium aminosalicylate are for use as an antitubercular product. It is also possible, however, that such a product could be administered to an individual under 16 years of age during the flu season, and that this might put that individual at risk. And there are other prescription combination salicylate-containing products that, although not administered for treating flu or chickenpox, could also be administered during the flu season to a child or adolescent. For this reason, the agency is considering proposing a rule that would require that all systemically absorbed salicylate-containing prescription drug products for human use administered orally, rectally, or parenterally carry an appropriate warning in their labeling.

The location of an RS warning statement on OTC drug product labeling is another issue on which the agency invites comment. The agency is considering proposing that all OTC drug products subject to the rule bear the required warning statement on all accompanying labeling, such as the outside container or wrapper label, and on the package insert. If the immediate container label contains warnings, that label would also be required to bear the required warning statement. The warning statement would be required to appear on the first warning under the heading "Warning" on all labels and labeling on which it would be required to appear. The agency is also considering proposing that, for prescription drug products subject to the proposed rule, the warning be required to appear in the "Warnings" section of the prescription drug labeling described in § 201.100(d) (21 CFR 201.100(d)).

The agency also in contemplating proposing to amend § 201.104 to require that the labeling for OTC and prescription salicylate-containing drug products subject to the proposed rule packaged only for use in children (pediatric products) not be permitted to recommend the product for use in flu or chickenpox.

The labeling of OTC salicylate-containing drug products subject to the proposed rule under consideration and packaged only for use in adults or that include directions for use in both children and adults would be permitted to continue to include a recommendation that the product be used for the symptomatic relief of flu or chickenpox. Because an adult product could be used in adolescents under 16 years of age, however, any recommendation for use in flu or chickenpox would be required to be followed immediately by the statement, "See salicylate warning."

Recognizing that not all consumers read the warnings contained in the labeling of OTC drugs that they have purchased frequently, the agency might propose to require a statement to be added to the "Directions" section of the immediate container label of OTC drug products, if such label bears such information, and in the "Directions" section of all accompanying labeling. The "Directions" section of the labeling is the section that includes information on how much of the product to take and how often to take it. This section is probably the most widely read section of OTC labeling. The statement that might be proposed to be required in the "Directions" section is as follows: "For persons under 16 years of age see warning against use of salicylate for flu or chickenpox." The agency invites comments on this approach or on alternative ways to bring this information to the attention of the consumer.

The agency also requests information on how rapidly industry would be able to comply with a labeling warning requirement for salicylate-containing OTC and prescription products. FDA believes that it could be feasible to require revised labeling to appear on salicylate-containing products within 90 days of the date a final rule was published in the Federal Register. The agency is considering proposing that any product subject to the rule that does not bear the required labeling statements and that is initially introduced or initially delivered for introduction into interstate commerce 90 days after publication of the final rule would be considered misbranded and, therefore, subject to regulatory action.
FDA is not now contemplating an immediate market withdrawal of all salicylate-containing products upon the effective date of a final rule. A withdrawal of the labeling of all salicylate-containing drug products already shipped in interstate commerce that would take effect soon after a final regulation was published would be impracticable and extremely difficult to monitor or enforce. Most salicylate-containing products subject to the proposed rule under consideration are OTC products, with aspirin-containing products being the most widely sold and available. Aspirin, as well as many other OTC salicylate-containing products, are available not only in pharmacies, but in various types of other retail outlets, including grocery and convenience stores.

FDA does not now possess sufficient information about the effects that market withdrawal of salicylate-containing products would have on the supply of needed medications to suggest a suitable exemption period. The agency invites comment on an appropriate period of time to allow for exhaustion of supplies of salicylate-containing products initially introduced or initially delivered for introduction into interstate commerce before the effective date of a final rule.

IV. Economic and Environmental Impact

FDA has preliminarily examined the Regulatory Flexibility Act. The agency estimates that a proposed rule like that being considered would impose direct one-time costs totaling approximately $15-17 million, of which $12-$13 million corresponds to direct expenses of label modifications to be accomplished within a relatively short compliance period. The other one-time costs would be for possible product reformulations and/or new product marketing expenses. The agency also estimates indirect impacts on consumer expenditures as a result of shifts of purchases from aspirin-containing to higher prices acetaminophen-containing products in response to label warnings. This expenditure increment would be estimated initially at $40-$60 million per year but would be expected to decline as product proliferation increases price competition in markets for acetaminophen products. These impacts taken together are below the thresholds for a major rule as defined in Executive Order 12291.

The impacts on small business are also believed to be insufficient to warrant a Regulatory Flexibility Analysis. Most of the direct relabeling costs would be expected to be incurred by the larger firms that dominate total sales of affected products. Impacts on small firms of sales shifts from aspirin-containing to acetaminophen-containing would not be expected to be significant because data in the Census of Manufacturers strongly suggest that only a few small firms sell solely or largely aspirin-containing products. The agency requests that interested persons submit any information that would aid FDA in assessing the economic impact of a proposed rule on salicylate-containing product labeling.

The agency also believes that the action under consideration is of a type that would not individually or cumulatively have a significant impact on the human environment. FDA invites comments on any potential environmental consequences of the action discussed in this advance notice of proposed rulemaking.

List of Subjects in 21 CFR Part 201

Drugs, Labeling.

V. References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 8 a.m. to 4 p.m. Monday through Friday.


92. Letter from Dr. Brandt to Dear Colleague dated October 8, 1982 enclosing a brochure entitled Reye Syndrome.

93. Letter from Mr. Grant to Dear Consumer dated October 8, 1982 concerning Reye Syndrome.


99. Letter from Stanley Temko to Juan del Real dated June 28, 1982 enclosing one newspaper article and four journal articles that are of interest in connection with review of Reye Syndrome.

100. Letter from Dr. White to Secretary Schweiker dated November 24, 1982 offering assistance and cooperation in designing a study on Reye Syndrome.


102. Memorandum from Dr. William Jordan to Influenza Program Officer dated July 26, 1982 concerning "Reye Syndrome in Japan".

103. Memorandum from Dr. Thomas Hayes to Mr. Paul Fehnel dated November 24, 1982 concerning "BRI Review of Report on Reye's Syndrome".

104. Letter from Bruce Celb to Secretary Schweiker dated September 7, 1982 and response dated November 18, 1982.

105. HHS press release on Reye Syndrome dated November 18, 1982.

106. Memorandum from Dr. Eileen Barker to Paul Fehnel dated November 23, 1982 concerning "BRI Report and Agency Response".

107. Memorandum from Division of Biometrics to Stanley Edlavitch dated November 22, 1982, concerning "Analysis of the Reye Syndrome Data Used in the Phase I Report by Biometrics Research Institute, Inc.".


111. Case report forms from 2-year Ohio Study.

112. Computer printouts of FDA working group's multiple conditional logistic analyses of data from second year of 2-year Ohio Study.

Interested persons may, on or before February 28, 1983 submit to the Dockets Management Branch (address above) written comments regarding this advance notice of proposed rulemaking. 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.

Arthur Hull Hayes, Jr.,
Commissioner of Food and Drugs.

Richard S. Schweiker,
Secretary of Health and Human Services.

Dated: December 20, 1982.

[FR Doc. 82-35065 Filed 12-27-82; 8:45 am]
BILLING CODE 4160-01-M
Part V

Department of Commerce

National Oceanic and Atmospheric Administration

Deep Seabed Mining; Regulations for Commercial Recovery; Advanced Notice of Proposed Rulemaking
DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
15 CFR Part 971
[Docket No. 21123-235]
Deep Seabed Mining; Regulations for Commercial Recovery; Advance Notice of Proposed Rulemaking

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Public Law No. 96-283, the Deep Seabed Hard Mineral Resources Act (The Act), authorizes the Administrator of the National Oceanic and Atmospheric Administration (NOAA) to issue to eligible United States citizens licenses for exploration for and permits for the commercial recovery of deep seabed hard mineral resources. The Act also requires that NOAA issue regulations with respect to deep seabed mining licenses and permits.

This advance notice of proposed rulemaking pertaining to deep seabed mining activities is issued to provide interested persons with an early opportunity to contribute to the development of regulations for commercial recovery. Interested persons are invited to submit such written data and views as they may desire.

DATE: Comments should be received by March 28, 1983.


SUPPLEMENTARY INFORMATION: During 1980 and 1981 NOAA engaged in a rulemaking process to implement the Act and thus put in place the U.S. legal regime to facilitate continued efforts by U.S. citizens to develop deep seabed hard mineral resources (i.e., manganese nodules). The implementing regulations, most of which were issued in final form on September 15, 1981 (46 FR 58890), apply to exploration activities only. Pursuant to the Act and those regulations, NOAA is authorized to issue licenses for exploration for deep seabed hard minerals. In early 1982 NOAA received exploration license applications from four consortia which had been pursuing seabed mining activities prior to enactment of the Act. NOAA anticipates the completion of processing of these applications in 1983. Meanwhile, as pre-enactment explorers, these consortia are authorized to continue with exploration activities.

In order for U.S. pioneer consortia to proceed with their efforts toward commercial recovery, which under the Act is not authorized to begin before January 1, 1988, NOAA realizes that they soon will be faced with the decision as to whether to commit significant new levels of resources to further technology development. In addition, other U.S. citizens may be considering the possibility of entering the field of deep seabed mining. In order to make these major financial decisions, these persons will need to be able to assess the framework of the legal regime for commercial recovery under which U.S. citizens would operate. NOAA also recognizes that deep seabed hard minerals may be critical to the United States and should furnish his or her name, address, affiliation, and phone number.

The following discussion identifies general issue areas and sets forth questions in each. Currently foreseeable issues include the following:

Rights of Licensees and Non-licensees to a Permit. Under 15 CFR 970.102(c), a license which is otherwise eligible under the requirements of the Act and implementing regulations is entitled to a permit for commercial recovery from an area covered by its license. The Act suggests that Congress expected that a permit applicant will be a licensee. However, there are conceivable situations where this may not be the case.

1. Should any special requirements for commercial recovery or conditions be attached to the entitlement referenced above?

2. May an applicant who has not secured a licensee apply or a permit without establishing a priority of right through a license? Or may a permit application carry with it a priority of right to an unlicensed site? If not, should an applicant be permitted to file both a license and a permit at the same time? In order to confirm a priority of right, is there any authority or need for NOAA to make substantial or full compliance determinations for permit applications?

Financial Responsibility. In order to certify a permit application pursuant to Section 105(c)(1) of the Act, the Administrator must find that the applicant will be financially responsible to meet all obligations which may be required to engage in the commercial recovery proposed in the application. An
applicant must establish that he will be financially responsible to meet all obligations which may be required to carry out his plan for commercial recovery. This can be demonstrated in various ways, but ultimately NOAA must be able to relate the applicant's resources to his proposed expenditures.

- What evidence should NOAA require concerning resources provided by the applicant, its member companies, lenders, or equity investors?
- Must these resources by legally committed, at the time of application, or can a plan demonstrate the source of financing and the applicant's reason to expect that these resources will be committed, including what legal entity will be responsible for meeting this expectation?
- Should documentation such as cash flow analyses be required, to show that the operation once started will continue to be funded?

**Technological Capability.** In order to certify a permit application as called for by Section 103(c)(2) of the Act, the Administrator must find that the "applicant will have the technological capability to engage in commercial recovery."

- Must an applicant demonstrate in its permit application that it has proven technological capability, through complete systems tests of recovery equipment at sea, transportation, processing and waste disposal technology, prior to submitting its permit application? Or would an application be acceptable if it presents analogous experience or sub-system demonstration of equipment, or other theoretical demonstration of ability to build and operate the system, with a plan to test after receiving the permit?
- NOAA will need documentation that the applicant will have personnel and support contractors, properly qualified and trained, to recover nodules, transport them to shore, process them, and dispose of wastes. What level of detail will be necessary? For example, is it necessary to list specific people, or is a description of necessary qualifications, training programs, and appropriate credentials sufficient?
- Assuming that recovery technology evolves during the permit term, should the applicant be required to apprise NOAA of each incremental improvement?
- Section 109(b) of the Act states that NOAA is to require use of best available technologies (BAT) to protect safety, health, and the environment where commercial recovery activities have a significant effect on these areas, unless incremental benefits are clearly insufficient to justify the incremental costs. Since no such significant effects have as yet been identified, what criteria for or evidence of significance might be required? What criteria should NOAA use to balance these costs and benefits? If such effects were significant, how should NOAA determine what are the best available technologies? Under what circumstances is it appropriate to require BAT regarding activities under previously issued permits?

**Resources Assessment.** Section 103 of the Act requires that an applicant's commercial recovery plan include a resource assessment and that the area applied for be a logical mining unit. Thus documentation of resources must be provided.

- With respect to resource assessment, what level of detail and what factors are appropriate to the resource assessment which must accompany the recovery plan under section 103(a)(2)(C) of the Act?

To what extent and with what documentation should the applicant be required to justify, based upon license phase (and earlier) findings, a certain size logical mining unit?

**Conservation of Resources.** The Act in Section 110 stresses "prevention of waste" and "regard for the future opportunity for the commercial recovery of the unrecovered balance of the hard mineral resources" as two goals to be considered in developing terms, conditions and restrictions (TCR). It further notes "national need" for hard mineral resources and several other factors to be taken into account in establishing TCR. Within this framework, NOAA intends to encourage the wise use of the deep seabed manganese nodule resource so as to insure that its role as a resource for the future is not precluded by first generation mining.

As one option, NOAA could require the applicant to justify the logic of its proposed mining plan with regard to the timing of mining rich zones (see PEIS, page 137).

Should NOAA specify mining patterns in order to enhance the opportunity for second generation mining (PEIS, page 136)?

- Should the applicant's proposed nodule recovery efficiency (presumably estimated during license phase mining system tests) have to fall above some threshold value, below which mining might be judged excessively inefficient?

Although the Act's concern for conservation (Section 110) makes it clear that a NOAA TCR should not affect, except incidentally, the decision of which minerals or metals are to be recovered, it may be appropriate to require that waste disposal be conducted in such a manner that manganese is not rendered "unavailable" for the future (PEIS, pages 137-139). In this regard, should NOAA require or otherwise provide for the retention of manganese-rich tailings from an operation which does not plan to recover manganese during processing, rather than allowing it to be disposed of, perhaps permanently through ocean disposal? What approaches may be appropriate to provide for the long term availability for use in the U.S. of manganese, which may not be needed in the current market?

What criteria are appropriate to consider, if necessary, to prevent unwarranted generation of waste, as well as preparation of contingency plans to recover these wastes?

**Environmental Effects and Safeguards.** In order to prevent significant harm to the marine environment, Section 106(b) of the Act requires NOAA to issue appropriate TCR, including in certain cases use of BAT (see above). The PEIS discusses exploration activities as well as commercial recovery using anticipated "first generation" systems and procedures.

- Until more is learned during research about benthic repopulation, it might be advisable to provide for avoiding a linear alignment of commercial mining sites, possibly by providing for limited areas to be left unmined to act as "bridges" to facilitate repopulation of mined areas (PEIS, pages 132-134). If this approach were taken, what factors would be appropriate to determine when such a linear alignment should not be permitted?

Although under the Act, Section 106(f), "stable reference areas" are not to be established unilaterally by the U.S., NOAA is proceeding with an examination of criteria for potential site selection for such areas, as part of its broader consideration of benthic impacts (PEIS, pages 134-135). If such areas were to be established in the future, what relationship should there be between these areas and mineable areas? What procedure should be used if stable reference areas were to be established?

With respect to the Act's requirement that a permittee monitor its activities, should NOAA state performance or prescriptive measures with respect to monitoring? Are other approaches more appropriate?

To what extent should the permittees be responsible for monitoring long-term, farfield, cumulative effects of all nodule
mining activities in the North Equatorial
Pacific?

- NOAA is mindful of the potential
risk that a permittee might be required
under the Act to cease operation upon
discovery of a significant adverse
environmental impact (e.g., a miner
impact). To help assure that
potentially significant adverse
environmental impacts listed in the PEIS
may be mitigated, if they occur, by the
imposition of corrective measures,
should applicants be required to submit
test plans describing how they
would modify activities if it became
necessary to mitigate such impacts?
Alternatively, should NOAA not require
such contingency plans in applications,
but instead let the permittee assume the
risk of a NOAA order to cease
operations or to implement government-
prescribed corrective measures?
Examples of mitigation could include
reducing the effects of the surface
discharge (e.g., through discharge at
some depth below the surface) or of the
benthic plume (e.g., through discharge
of the plume). For example, Sections
103(a)(2)(D)(ii) and 106(c) of the Act).
- What documentation, if any, should
be provided with permit applications
which could be used in obtaining from
the Environmental Protection Agency a
National Pollutant Discharge
Elimination System (NPDES) permit, as
required by Section 109(e) of the Act?
- Following receipt of an application
for a permit, NOAA intends to
supplement the site-specific EIS
prepared during the license process,
which may already have been
supplemented to address testing of
mining systems. Should NOAA
prescribe that, by the time of permit
application or a year prior to testing
under a permit for recovery, detailed
environmental data for the mine site
shall have been submitted?
- NOAA Actions Relating to Onshore
Activities. Offshore, environmental
impacts occur from the port,
transportation, processing, and waste
disposal facilities. Authority to control
those facilities is vested in Federal,
state, and local agencies. NOAA intends
to act as lead agency for preparation of
an environmental impact statement
relating to a commercial recovery
permit, and thus to facilitate the onshore
process with appropriate Federal, state
and local agencies which would be
responsible for issuing other permits.
- In this role, what information will
NOAA need and should the applicant
provide on issues such as alternative
locations, compliance with Federal,
state, and local laws, regulations, and
permitting processes, and waste
disposal requirements (see Technical
Guidance Document, Section 3.5)?
- NOAA could complete its actions on
a permit application significantly before
other agencies could complete their
actions on related permits. The Act
gives guidance on the timing of NOAA
actions on a permit application, but
generally allows the Administrator to
extend the time periods if the
Administrator finds that is good reason
do so. Because factors the
Administrator considered in his
decision-making could change
significantly based on the actions of
other agencies, should he withhold final
action on a permit application until
other agencies complete their actions?
Should the regulation address what
NOAA should do if it processed the
permit application to expedite issuance,
and then a post-issuance action by
another agency caused a major change
in the assumptions upon which the
NOAA permit was issued?
- Processing Outside the U.S. Under
Section 102(c)(5) of the Act, if processing
outside the U.S. is necessary to make
the project economically viable, NOAA
can authorize processing outside the
U.S., but only with assurances that the
processed minerals will be returned to
the U.S. for domestic use if the
Administrator determines that the
national interest so requires. What form
of assurance (written statement, TCR,
surety bond) would be appropriate?
What criteria should NOAA use to
determine the economic viability of the
activity? What factors are relevant in
considering “national interest”? What
information should the applicant
provide? Should environmental
regulations or impacts at the foreign site
be considered? Is economic viability for
processing plants different from the
normal business risks of other heavy
industrial facility located in the
U.S.?
- Other Issues. NOAA invites public
comment on any other issue which
should be considered in developing
these regulations.
If there is sufficient public interest in
or considerations raised with respect to
any of these issues, NOAA will hold one
or more workshops or discussion
sessions to solicit further comment from
interested persons in advance of issuing
a Notice of Proposed Rulemaking. If
appropriate, NOAA may issue a
discussion paper for further comment.
Those who are concerned about specific
issues should identify the areas of their
interest in correspondence to
NOAA so they can be placed on
appropriate mailing lists.
This advance notice of proposed
rulemaking is issued under the authority
List of Subjects in 15 CFR Part 971
Administrative practice and
procedures, Environmental protection,
Marine resources, Marine safety,
Reporting and recordkeeping
requirements, Seabed mining.
John V. Byrnes,
Administrator.
[FR Doc. 82-35152 Filed 12-27-82; 8:45 am]
BILLING CODE 3510-12-M
## Reader Aids

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### CFR PARTS AFFacted DURING DECEMBER

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Listing of Public Laws

Last Listing December 23, 1982

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).


H.R. 5553 / Pub. L. 97-376. To provide for the use and disposition of Miami Indians judgment funds in docket 124-B and 254 before the United States Court of Claims, and for other purposes. (December 21, 1982; 96 Stat. 1829) Price: $1.75.


S. 1444 / Pub. L. 97-380. To authorize the Administrator of General Services to donate to State and local governments certain Federal personal property loaned to them for civil defense use, and for other purposes. (December 22, 1982; 96 Stat.) Price: $1.75.

S. 1681 / Pub. L. 97-381. To designate the southern Nevada water project the "Robert B. Griffith Water Project". (December 22, 1982; 96 Stat.) Price: $1.75.


S. 2034 / Pub. L. 97-383. To designate the lock and dam known as the Jones Bluff Lock and Dam, located on the Alabama River, as the "Robert F. Henry Lock and Dam". (December 22, 1982; 96 Stat.) Price: $1.75.


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