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federal register

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FRIDAY, JANUARY 12, 1979

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"THE FEDERAL REGISTER—WHAT IT IS AND HOW TO USE IT"

For workshops in Washington, D.C., see notice on inside front cover.

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(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

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NOTE: There were no items eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

List of Public Laws

NOTE: A complete listing of all public laws from the second session of the 95th Congress was published as Part II of the issue of December 4, 1978. (Price: 75 cents. Order by stock number 022-002-00960-4 from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, Telephone 202-275-3030.)

The continuing listing will be resumed upon enactment of the first public law for the first session of the 96th Congress, which will convene on Monday, January 15, 1979.

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Title 3—
The President

Proclamation 4633 of January 10, 1979

American Heart Month, 1979

By the President of the United States of America

A Proclamation

More than 40 million Americans suffer from some form of heart or blood vessel disease. During 1979, these diseases and their complications will claim more than 980,000 lives and partially or completely disable several million other Americans. The total economic cost in disability payments, medical expenses and lost wages and productivity will exceed $50 billion.

The picture would be darker had not the Nation launched a concerted effort against cardiovascular diseases more than thirty years ago. Since 1948, this effort has resulted in greatly increased support for cardiovascular research; for training thousands of new research workers and clinicians; for health education and information programs; and for community service programs concerned with preventing, diagnosing, and relieving cardiovascular diseases. Over this period, we have learned more about the cardiovascular system and its diseases than during all previous medical history. The application of this knowledge has enabled us to decrease the mortality rate for all cardiovascular diseases combined by 30 percent.

Our successes in combatting cardiovascular diseases have accelerated since 1968. I am particularly gratified that the mortality rate of the two major killers among this family of diseases—coronary heart disease and stroke—has decreased nearly 20 and 25 percent respectively.

If present trends continue during 1979, there will be at least 170,000 fewer deaths from cardiovascular disease in the U.S. than if the mortality rates of ten years ago still prevailed.

Two organizations have been in the forefront of the national effort against the cardiovascular diseases: the National Heart, Lung and Blood Institute—a Federal agency—and the American Heart Association, supported by private contributions. But it has been a cooperative effort involving a great many agencies and groups—Federal and private, national and local. Our continued success must rest, as always, on the support and participation of the American people.

Recognizing the need for all Americans to help in the battle against cardiovascular disease, the Congress, by joint resolution approved December 30, 1963 (77 Stat. 843; 26 U.S.C. 169b) has requested the President to issue annually a proclamation designating February as American Heart Month.

NOW THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby proclaim the month of February, 1979, as American Heart Month. I invite the Governors of the States, the appropriate officials of all

other areas subject to the jurisdiction of the United States and the American people to join with me in reaffirming our commitment to the search for new ways to prevent, detect and control cardiovascular disease in all its forms.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of January, in the year of our Lord nineteen hundred seventy-nine, and of the Independence of the United States of America the two hundred and third.

Jimmy Carter

[FR Doc. 79-1366
Filed 1-10-79; 4:59 pm]

Billing Code 3195-01-M

rules and regulations

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

[6325-01-M]

Title 5—Administrative Personnel

CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT

PART 213—EXCEPTED SERVICE

Department of Energy

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment (1) changes the title of certain positions at the Department of Energy from two Private Secretaries to Commissioners, Federal Power Commission to two Private Secretaries to Members of the Commission, Federal Energy Regulatory Commission, and from two Confidential Assistants to Commissioners, Federal Power Commission to two Confidential Assistants to Members of the Commission, Federal Energy Regulatory Commission. These changes reflect the current title of the superiors and reflects an organizational transfer of the positions. These positions formerly existed at the Federal Power Commission and were subsequently transferred to the Department of Energy on September 30, 1977. And (2) revokes a position because it has been vacant for more than 60 days.

EFFECTIVE DATE: December 29, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3331(c)(2) and (7) are amended to read as set out below:

§ 213.3331 Department of Energy.

* * * * *

(c) *Federal Energy Regulatory Commission.* * * *

(2) Four Private Secretaries, one to each Member of the Commission.

* * * * *

(7) Four Confidential Assistants, one to each Member of the Commission.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218)

Office of Personnel Management.

JAMES C. SPRY,
Special Assistant to the Director.

[FR Doc. 79-1190 Filed 1-11-79; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

Overseas Private Investment Corporation

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment (1) revokes a position at the Overseas Private Investment Corporation because the need for the position no longer exists and the position has been abolished and (2) excepts under Schedule C a position at the Overseas Private Investment Corporation because it is confidential in nature. Appointments may be made to this position without examination by the Office of Personnel Management.

EFFECTIVE DATE: December 29, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3317(c) is revoked and (g) is added as set out below:

§ 213.3317 Overseas Private Investment Corporation.

* * * * *

(c) [Revoked].

* * * * *

(g) One Administrative Assistant to the Vice President/General Counsel.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218)

Office of Personnel Management.

JAMES C. SPRY,
Special Assistant to the Director.

[FR Doc. 79-1265 Filed 1-11-79; 8:45 am]

[1505-01-M]

CHAPTER I—CIVIL SERVICE COMMISSION

PART 550—PAY ADMINISTRATION (GENERAL)

Income Tax Withholding

Correction

In FR Doc. 78-36353 appearing at page 60857 in the issue for Friday, December 29, 1978, the final paragraph in the middle column, beginning "The payment of city * * *" should be preceded by "(b)".

[3410-11-M]

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Delegations for Renewable Resource Research and Cooperative Forestry Assistance

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority to the Assistant Secretary of Conservation, Research, and Education and to the Chief of the Forest Service due to the passage of the Cooperative Forestry Assistance Act of 1978 (Pub. L. 95-313; 16 U.S.C. 2101-2111) and the Forest and Rangeland Renewable Resources Research Act of 1978 (Pub. L. 95-307;

16 U.S.C. 1641-1647). It also makes minor additional changes.

EFFECTIVE DATE: January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Robert G. Rippey, Administrative Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013, 202-447-9133.

In accordance with exceptions to rulemaking procedures in 5 U.S.C. 553 and Department of Agriculture policy (36 FR 13804), it has been determined that advance notice and public participation are unnecessary.

Accordingly, Part 2, Subtitle A, Title 7 of the Code of Federal Regulations is amended as follows:

Subpart C—Delegations of Authority to the Deputy Secretary, Assistant Secretaries, the Director of Economics, Policy Analysis and Budget, and the Director, Office of Government and Public Affairs

1. Section 2.19 is amended by revising paragraphs (d)(3), (4), (5), (9), (11) and by combining paragraphs (d)(19) and (20) into a new paragraph (d)(19) as follows:

§ 2.19 Delegations of authority to the Assistant Secretary for Conservation, Research, and Education.

* * * * *

(d) *Related to Forest Service.* * * *

(3) Conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas in the United States and foreign countries. The activities conducted, supported, or cooperated in shall include, but not be limited to: renewable resource management research, renewable resource environmental research, renewable resource protection research, renewable resource utilization research, and renewable resource assessment research (16 U.S.C. 1641-1647). Use authorities and means available to disseminate the knowledge and technology developed from forestry research. Coordinate activities with other agencies in the Department, other Federal and State agencies; forestry schools, and private entities and individuals (16 U.S.C. 2101-2111).

(4) Administer programs of cooperative forestry assistance in the protection, conservation, and multiple resource management of forests and related resources in both rural and urban areas. Provide assistance to States in forest resources planning. Conduct a program of technology implementation for State forestry personnel, private forest landowners and managers, vendors, forest operators, public agencies, and individuals (16 U.S.C. 2101-2111).

(5) Administer forest insect, disease, and other pest control and eradication programs.

* * * * *

(9) Provide assistance to the Agricultural Stabilization and Conservation Service in connection with the agricultural conservation program, the naval stores conservation program, and the cropland conversion program (16 U.S.C. 590g-590q). Jointly administer the Forestry Incentives Program with the Agricultural Stabilization and Conservation Service, in consultation with State Foresters (16 U.S.C. 2103).

* * * * *

(11) Enter into contracts, grants, and coopertative agreements, for the support of scientific research in forestry activities (7 U.S.C. 427i(a) and 1624; and 16 U.S.C. 1643-1645).

* * * * *

(19) Administer rural fire protection and control programs (16 U.S.C. 2106).

* * * * *

Subpart G—Delegations of Authority by the Assistant Secretary for Conservation, Research, and Education

2. Section 2.60 is amended by revising paragraphs (a)(3), (4), (5), (9), (11); combining paragraphs (a)(18) and (19) into a new paragraph (a)(18); redesignating paragraph (a)(20) as (a)(19); and by revising paragraph (b)(9) to read as follows:

§ 2.60 Chief, Forest Service.

(a) *Delegations.* * * *

(3) Conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas in the United States and foreign countries. The activities conducted, supported, or cooperated in shall include, but not be limited to: renewable resource management research, renewable resource environmental research, renewable resource protection research, renewable resource utilization research, and renewable resource assessment research (16 U.S.C. 1641-1647). Use authorities and means available to disseminate the knowledge and technology developed from forestry research. Coordinate activities with other agencies in the Department, other Federal and State agencies; forestry schools, and private entities and individuals (16 U.S.C. 2101-2111).

(4) Administer programs of cooperative forestry assistance in the protection, conservation, and multiple resource management of forests and related resources in both rural and urban areas. Provide assistance to States in forest resources planning. Conduct a program of technology implementation for State forestry personnel, private forest landowners and managers, vendors, forest operators, public agencies, and individuals (16 U.S.C. 2101-2111).

(5) Administer forest insect, disease, and other pest control and eradication programs (16 U.S.C. 2104), except as reserved to the Assistant Secretary in paragraph (b)(9) of this section.

* * * * *

(9) Provide assistance to the Agricultural Stabilization and Conservation Service in connection with the agricultural conservation program, the naval stores conservation program, and the cropland conversion program (16 U.S.C. 590g-590q). Jointly administer the Forestry Incentives Program with the Agricultural Stabilization and Conservation Service, in consultation with State Foresters (16 U.S.C. 2103).

* * * * *

(11) Enter into contracts, grants, and cooperative agreements for the support of scientific research in forestry activities (7 U.S.C. 427i(a) and 1624; and 16 U.S.C. 1643-1645).

* * * * *

(18) Administer rural fire protection and control programs (16 U.S.C. 2106).

(19) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.) relating to forests and forest products, rural fire defense, and forestry research.

(b) *Reservations.* The following authorities are reserved to the Assistant Secretary of Agriculture for Conservation, Research, and Education: * * *

(9) Approving the use of 2, 4, 5-T, Silvex, and any other dioxin-contaminated herbicides on the National Forests. Approving the use of chemicals or other preventive practices for control of outbreaks of insects and diseases in wilderness areas within the National Forests (16 U.S.C. 2104).

(5 U.S.C 301 and Reorganization Plan No. 2 of 1953).

Dated: January 8, 1979.

BOB BERGLAND,
Secretary.

[FR Doc. 79-1081 Filed 1-11-79; 8:45 am]

[3410-05-M]

CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 722—COTTON

Subpart—1979 Crop of Extra Long Staple Cotton; Acreage Allotments and Marketing Quotas

AGENCY: Agricultural Stabilization and Conservation Service, Department of Agriculture.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to proclaim the result of the national marketing quota referendum with respect to the 1979 crop of extra long staple cotton held during the period December 4-8, 1978, each inclusive. The Agricultural Adjustment Act of 1938, as amended, requires that the result of the referendum be proclaimed within thrity days after the referendum. This rule is needed to satisfy this statutory requirement.

EFFECTIVE DATE: January 8, 1979.

ADDRESS: Production Adjustment Division, ASCS, USDA, 3630 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Charles V. Cunningham (ASCS) (202) 447-7873.

SUPPLEMENTARY INFORMATION: In accordance with section 343 of the Agricultural Adjustment Act of 1938, as amended, a referendum with respect to marketing quotas for extra long staple (ELS) cotton was conducted by the Agricultural Stabilization and Conservation Service (ASCS) on December 4-8, 1978, to determine whether farmers were in favor of or opposed to the marketing quota proclaimed by the Secretary of Agriculture for the 1979 crop of ELS cotton. It is essential that this rule be made effective as soon as possible since the proclamation of the result of the referendum is required by section 313 of the 1938 Act to be made not later than thirty days after the referendum. Accordingly, it is hereby found and determined that compliance with any further rulemaking requirements of 5 U.S.C. 553 is impracticable and contrary to the public interest. Therefore, this amendment to 7 CFR §722.564 shall be effective upon filing this document with the Director, Office of the Federal Register. The material previously appearing in this section remains in full force and effect as to the crop to which it was applicable. Accordingly, 17 CFR §722.564 and the title of the subpart preceding 7 CFR §722.564 are amended to read as follows:

FINAL RULE

Subpart—1979 Crop of Extra Long Staple Cotton: Acreage Allotments and Marketing Quotas

§722.564 Result of the national marketing quota referendum for the 1979 crop of extra long staple cotton.

(a) *Referendum period.* The national marketing quota referendum for the 1979 crop of extra long staple cotton was held by mail ballot during the period December 4 to 8, 1978, each inclusive, in accordance with §722.561 (43 FR 48990) and Part 717 of this chapter.

(b) *Farmers voting.* A total of 974 farmers engaged in the production of the 1978 crop of extra long staple cotton voted in the referendum. Of those voting, 879 farmers, or 90.2 percent, favored the 1979 national marketing quota, and 95 farmers, or 9.8 percent, opposed the 1979 national marketing quota.

(c) *1979 National marketing quota continues in effect.* The national marketing quota for the 1979 crop of extra long staple cotton of 137,000 bales proclaimed in §722.558 (43 FR 48990) shall continue in effect since two-thirds or more of the extra long staple cotton farmers voting in the referendum favored the quota.

(Sec. 343, 63 Stat. 670, as amended (7 U.S.C. 1343).)

NOTE: An approved impact analysis statement is available from Charles V. Cunningham (ASCS), (202) 447-7873.

NOTE: The ASCS, to meet the requirements of the National Environmental Policy Act (Pub. L. 91-190, 42 U.S.C. 4321 et seq.) has determined that the impact of the marketing quota and allotment for ELS cotton on the human environment is not significant. Therefore, no environmental impact statement is needed.

Signed at Washington, D.C. on January 8, 1979.

RAY FITZGERALD,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 79-1014 Filed 1-8-79; 3:55 pm]

[3410-05-M]

SUBCHAPTER D—PROVISIONS COMMON TO MORE THAN ONE PERSON

PART 795—PAYMENT LIMITATION

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Correction of authority.

SUMMARY: In F.R. Doc. 43-9784 appearing at page 9784 in the FEDERAL REGISTER of March 10, 1978, the authority is corrected by deleting Pub. L. 93-86, 87 Stat. 221 and inserting Pub. L. 95-113, 91 Stat. 917.

Signed at Washington, D.C., December 27, 1978.

RAY FITZGERALD,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 79-846 Filed 1-11-79; 8:45 am]

[3410-02-M]

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Lemon Regulation 181]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period January 14-20, 1979. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: January 14, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), reg-

ulating the handling of lemons grown in California and Arizona, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, and upon other information, it is found that the limitation of handling of lemons, as hereafter provided, will tend to effectuate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on January 9, 1979, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons has improved.

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

§ 910.481 Lemon Regulation 181.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period January 14, 1979, through January 20, 1979, is established at 200,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

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

Dated: January 10, 1979.

CHARLES R. BRADER,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-1459 Filed 1-11-79; 11:43 am]

[3410-34-M]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Finland Declared To Be Free of Hog Cholera

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of these amendments is to add Finland to the list of countries declared to be free of hog cholera in §§ 94.9(a) and 94.10 of the regulations. This action is taken because data furnished to the Department establishes the fact that Finland qualifies for this status. The effect of this action is to relieve certain restrictions on the importation of pork, pork products, and live swine from Finland.

EFFECTIVE DATE: January 4, 1979.

FOR FURTHER INFORMATION CONTACT:

Dr. J. D. Roswurm, USDA, APHIS, VS, Federal Building, Room 819, Hyattsville, MD 20782, 301-436-8499.

SUPPLEMENTARY INFORMATION: Veterinary Services has reviewed pertinent technical information and documents submitted by the authorities of Finland in support of their position that Finland is free of hog cholera. Additionally, a meeting between officials of the Government of Finland and a representative of this Department was held in Finland to further review the existing situation. As a result, it has been concluded that Finland qualifies for listing as a country declared to be free of hog cholera. Accordingly, the regulations are amended to add Finland to the list of countries, appearing in §§ 94.9(a) and 94.10 of the regulations (9 CFR 94.9 and 94.10), which are declared to be free of hog cholera. Therefore, pork, pork products, and live swine from Finland may now be imported into the United States if they otherwise qualify for importation.

Accordingly, Part 94, Title 9, Code of Federal Regulations, is amended in the following respects:

§ 94.9 [Amended]

1. § 94.9(a) is amended by inserting into both lists of countries therein "Finland," immediately after "Denmark,".

§ 94.10 [Amended]

2. § 94.10 is amended by inserting into the list of countries therein "Finland," immediately after "Denmark,".

(Sec. 2, 32 Stat. 792, as amended; secs. 2, 3, 4, and 11, 76 Stat. 129, 130, 132; 21 U.S.C. 111, 134a, 134b, 134c, 134f; 37 FR 28464, 28477; 38 FR 19141.)

Insofar as the amendments relieve certain restrictions presently imposed but no longer deemed necessary to prevent the introduction and dissemination of the contagion of hog cholera, they should be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, it is found upon good cause, under the administrative procedure provisions in 5 U.S.C. 553, that further notice and other public procedure with respect to the amendments are unnecessary and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 4th day of January 1979.

NOTE.—This final rulemaking has been reviewed under the USDA criteria established to implement E.O. 12044, "Improving Government Regulations." While this action has not been designated "significant" under those criteria, an approved Final Impact Analysis Statement has been prepared and is available from Program Services Staff, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301-436-8695.

PIERRE A. CHALOUX,
Deputy Administrator, Veterinary Services.

[FR Doc. 79-845 Filed 1-11-79; 8:45 am]

[7590-01-M]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

Miscellaneous Amendments

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: This rule changes the telephone number for the Commission's Inspection and Enforcement Regional Office V listed in Parts 20, 21,

and 73 of the Commission's regulations.

EFFECTIVE DATE: January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Gerald L. Hutton, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Tel: 301-492-7086.

SUPPLEMENTARY INFORMATION: Effective December 28, 1978, the commercial telephone number for the Commission's Inspection and Enforcement Regional Office V, Walnut Creek, California, was changed to 415-932-8300. This number will be in effect at all times. The amendments set forth below change the telephone number for Region V as set forth in Parts 20, 21, and 73.

Because these amendments relate solely to corrections and minor matters, the Commission has found that good cause exists for omitting notice of proposed rule making, and public procedure thereon, as unnecessary and for making the amendments effective upon publication in the FEDERAL REGISTER.

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, Parts 20, 21, and 73 are published as a document subject to codification.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. Appendix D of 10 CFR Part 20 is amended by changing the telephone number of NRC Regional Office V to (415) 932-8300.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

2. Footnote 1 to § 21.2 of 10 CFR Part 21 is amended by changing the telephone number of NRC Regional Office V to (415) 932-8300.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

3. Appendix A of 10 CFR Part 73 is amended by changing the telephone number of NRC Regional Office V to (415) 932-8300.

(Sec. 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242 (42 U.S.C. 5841).)

Dated at Bethesda, Md., this 5th day of January 1979.

For the Nuclear Regulatory Commission.

LEE V. GOSSICK,
Executive Director for Operations.

[FR Doc. 79-1204 Filed 1-11-79; 8:45 am]

[6750-01-M]

Title 16—Commerical Practices

CHAPTER I—FEDERAL TRADE COMMISSION

PART 456—ADVERTISING OF OPHTHALMIC GOODS AND SERVICES

Interpretation of Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Interpretation of Trade Regulation Rule.

SUMMARY: The Federal Trade Commission has issued an interpretation of its trade regulation rule concerning the Advertising of Ophthalmic Goods and Services (16 CFR Part 456). The interpretation states that a refractionist need not release a visual prescription to a patient after an eye examination unless the refractionist is affirmatively prescribing that corrective lenses be obtained. The interpretation also states that a refractionist must offer a prescription to a patient when the patient's eye examination reveals that ophthalmic goods are necessary even if the eyeglasses or contact lenses needed are the same as those currently worn by the patient.

EFFECTIVE DATE: January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Gary D. Hailey, Scott P. Klurfeld, or Christine Latsey, Room 281, Federal Trade Commission, 6th and Pennsylvania Avenue, NW, Washington, D.C. 20580, 202-523-3426.

FEDERAL TRADE COMMISSION INTERPRETATIONS OF 16 CFR Part 456

In § 456.7 of the Commission's rule on the Advertising of Ophthalmic Goods and Services (16 CFR Part 456), the Federal Trade Commission defined the failure of a refractionist to "give to the buyer a copy of the buyer's prescription immediately after [an] eye examination" to be an unfair act or practice in violation of Section 5 of the Federal Trade Commission Act. A question has arisen whether an optometrist or ophthalmologist must give a prescription to his or her patient where he or she has determined that refractive error of the patient's eyes, but is not prescribing eyeglasses or contact lenses to correct that error.

Section 456.1(g) of the rule defines a "prescription" as the "written specifications for ophthalmic lenses which are derived from an eye examination * * * to permit the buyer to obtain the *necessary* ophthalmic goods." [emphasis supplied]

In adopting this trade regulation rule, the Commission did not intend to interfere with the professional judgment of ophthalomologists and optometrists as to whether ophthalmic goods should be prescribed. Rather, it was the Commission's intention in those instances where it was determined by the examining doctor that ophthalmic goods are necessary that the patient be given a copy of his or her prescription to enable that patient to comparison shop if he or she wished to do so. The rule adopted by the Commission is consistent with that intention. Only where the ophthalomologist or optometrist is affirmatively prescribing ophthalmic goods for a patient need that doctor tender a prescription to the patient.

For example, a patient who is suffering from a medical problem which affects his vision, as undergone surgery, or who is undergoing a course of therapy by an optomertrist or ophthlmologist may, on occasion, be refracted to determine the patient's precise visual function. In the course of such examinations, the refractive status of the patient's eyes may be determined, but the doctor does *not* have to tender a prescription to the patient *unless* the doctor is prescribing that eyeglasses or contact lenses be purchased. Similarly, the refractive status of a patient's eyes may, on occasion, be determined during a routine physical examination or during an insurance examination. The standard is the same: only if the examining doctor is prescribing ophthalmic goods need a prescription be tendered.

A related question has been raised as to whether a refractionist must tender a prescription to his or her patient when the eye examination reveals that ophthalmic goods are necessary, but the eyeglasses or contact lenses needed are the same as those currently worn by the patient. In this case the refractionist *must* tender a prescription to his or her patient unless the wearing of new corrective lenses would be medically or optometrically inadvisable. Unlike the case where the doctor has made a determination that ophthalmic goods should not be prescribed, in this instance the doctor has determined that ophthalmic goods are necessary for the patient. Thus, the prescription must be given to the patient.

Some optometrists and ophthalmologists have argued that releasing prescriptions to patients who require eyeglasses or contact lenses, but who do

not require any change in their existing eyeglasses or contact lenses, will result in unnecessary purchases of ophthalmic products—especially by the elderly.

In this case, the rule does not interfere with the professional judgment of the optometrist or ophthalmologist. The threshold determination as to whether ophthalmic goods are necessary rests with the doctor. However, once the doctor has determined that specific ophthalmic goods must be worn by a patient a prescription for those goods must be offered to the patient.

As the record in the rulemaking proceeding on this matter demonstrated, the consumer may need to purchase the prescribed ophthalmic goods at virtually any time or place because of breakage or loss, or the patient may simply want to replace his or her existing eyeglasses for comestic reasons. The rule does not prevent a refractionist from emphasizing either verbally, or in writing on the prescription itself, that because the patient's visual needs have not changed, new lenses are not required. Once the patient has received this explanation, he or she has the option of purchasing or obtaining a second pair of eyeglasses.

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-1264 Filed 1-11-79; 8:45 am]

[4810-22-M]

Title 19—Customs Duties

CHAPTER 1—UNITED STATES CUSTOMS SERVICE

PART 159—LIQUIDATION OF DUTIES

[T.D. 79-13]

Countervailing Duties; Bicycle Tires and Tubes

REPUBLIC OF KOREA

AGENCY: Customs Service, Treasury Department.

ACTION: Final Countervailing Duty Determination.

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in a determination that the Government of the Republic of Korea has given benefits with respect to one manufacturer which constitute bounties or grants under the countervailing duty law on the manufacture, production, or exportation of bicycle tires and tubes from the Republic of Korea. Consequently, additional duties in the amount of these benefits will be collected along with regular Customs duties on shipments.

EFFECTIVE DATE: January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Holly Kuga, Operations Officer, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 ((202) 566-4592).

SUPPLEMENTARY INFORMATION: On July 28, 1978, a "Preliminary Countervailing Duty Determination" was published in the FEDERAL REGISTER (43 FR 32910). The notice stated that it had been determined preliminarily that benefits had been bestowed by the Government of Korea on the manufacture, production or exportation of bicycle tires and tubes which constituted bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to in this notice as the "Act").

For purpose of this notice, the term "bicycle tires and tubes" means pneumatic bicycle tires and tubes, of rubber or plastic, whether such tires and tubes are sold together as units or separately. Bicycle tires and tubes are covered under items 772.48 and 772.57, respectively, of the Tariff Schedules of the United States (TSUS).

The above-noted preliminary determination indicated that there are three programs utilized by Korean firms exporting bicycle tires and tubes to the United States which confer benefits constituting bounties or grants within the meaning of the Act. The countervailable programs are: (1) The Foreign Capital Inducement Law (FCIL); (2) The accelerated depreciation provision of Article 51 of the Enforcement Decree to the Corporation Tax Law; and (3) Short-term preferential financing. Only one firm, however, Korea Inoue Kasei, Co., Ltd. (Inoue), was noted as receiving benefits whose aggregate *ad valorem* effect was greater than *de minimis.*

The notice stated further that before a final determination would be made in the proceeding, consideration would be given to any relevant data, views, or arguments submitted in writing and received by the Commissioner of Customs not later than August 28, 1978.

After consideration of all information received subsequent to the preliminary determination, it is hereby determined that Korea Inoue Kasei (Inoue) receives bounties or grants within the meaning of section 303 of the Act in an amount considered to be more than *de minimis.* The net amount of the bounty or grant has been ascertained and determined to be 0.5 percent of the f.o.b. price for export to the United States of bicycle tires and tubes from the Republic of Korea produced by Inoue. The other Korean manufacturers/exporters investigated received aggregate *ad valorem* benefits of no greater than 0.34 percent, which are considered *de minimis.*

The preliminary notice indicated that certain practices by the Korean government, alleged to be countervailable, were determined on their face not to constitute bounties or grants. They are as follows:

1. Exemption for Export-Oriented Businesses From Business Tax
2. Exemption From Commodity Tax and Customs Duties on Imported Material
3. Wastage Allowance for Imported Raw Materials

The notice also determined that several other programs, alleged to be bounties or grants, were either not utilized by or not available to manufacturers or exporters of bicycle tires and tubes. They are as follows:

1. Accelerated Depreciation for Firms Located in "Industrial Development Districts"
2. Miscellaneous Tax Benefits
3. Industrial Estates
4. Free Export Zones
5. Government Asssumption of Quality Control on Exports
6. Railway Freight and Electric Power Discounts
7. Export-Import "Link System"
8. Medium and Long-Term Preferential Financing

Since no additional information has been received with respect to any of the programs enumerated above which dictates a change in the conclusions about them reached in the preliminary determination, those conclusions remain unchanged and it is determined that no bounty or grant is being paid with respect to these programs.

Counsel for Inoue contended that the benefits received by Inoue under the FCIL, which provides benefits to companies that are wholly or partially foreign-owned, should be treated by Treasury as offsets for "dislocation costs". The "dislocation costs" claimed allegedly result from the difficulty in converting and repatriating Korean currency and from the problems faced in investing in a war-threatened country. Information was submitted showing that these costs, such as extra expenses incurred in locating and maintaining management personnel in Korea, insurance costs for capital investment, and losses from converting and repatriating Korean currency more than offset the benefits received by Inoue under the FCIL. However, Treasury has never applied the concept of "dislocation costs" to any situation other than that of cost differences between regions within a coun-

try. The claim made in this case is with respect to a program that is not limited to a particular region within the Republic of Korea. Because of the fact that this program is national in scope, the claim made for offsets arising from dislocation costs cannot be accepted. To recognize them in such circumstances would be contrary to one of the principal purposes of the countervailing duty law, namely, to discourage governments from subsidizing the production of goods in situations that lack comparative advantage in the absence of such subsidies.

Accordingly, notice is hereby given that bicycle tires and tubes produced by Inoue which are imported directly or indirectly from Korea, if entered, or withdrawn from warehouse, for consumption on or after January 12, 1979, will be subject to the payment of countervailing duties equal to the net amount of the bounty or grant determined to have been paid or bestowed.

In accordance with section 303 of the Act, until further notice the net amount of such bounties or grants has been determined to be five-tenths of one percent (0.5 percent) of the export price.

Effective on or after January 12, 1979, and until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such dutiable bicycle tires and tubes produced by Inoue imported directly or indirectly from the Republic of Korea, which benefit from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount determined in accordance with the above declaration. To the extent that it can be established to the satisfaction of the Commissioner of Customs that imports of bicycle tires and tubes from the Republic of Korea produced by Inoue are subject to a bounty or grant smaller than the amount which otherwise would be applicable under the above declaration, the smaller amount so established shall be assessed and collected.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production or exportation of bicycle tires and tubes, produced by Inoue, from the Republic of Korea.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry for the Republic of Korea the words "bicycle tires and tubes produced by Korea Inoue Kasei, Co., Ltd.", in the column headed "Commodity", the number of this Treasury Decision in the column headed "Treasury Decision", and the words "Bounty Declared-Rate" in the column "Action".

(R.S. 251, as amended, secs. 303, 624; 46 Stat. 687, as amended, 759, 88 Stat. 2051, 2052; (19 U.S.C. 66, 1303), as amended, 1624).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 (Revision 15) March 16, 1978, the provisions of Treasury Department Order 165, revised November 2, 1954, and section 159.47(d) of the Customs Regulations (19 CFR 159.47(d)), insofar as they pertain to the issuance of a countervailing duty order by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

JANUARY 8, 1979.

[FR Doc. 79-1209 Filed 1-11-79; 8:45 am]

[4110-03-M]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER A—GENERAL

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

Dentrifice and Dental Care Drug Products Panel

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) announces the termination of the Panel on Review of Dentrifrice and Dental Care Drug Products and amends the regulations to delete it from the list of standing advisory committees. The Panel was terminated because it had completed its work.

EFFECTIVE DATE: October 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. Saul Bader, Bureau of Drugs (HFD-510), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4871.

SUPPLEMENTARY INFORMATION: The Panel's functions were to review the data and information submitted as part of the over-the-counter (OTC) drug review under § 330.10 (21 CFR 330.10) on OTC products containing dentifrice or dental care active ingredients for human use. The Panel has submitted its conclusions and recommendations on the safety, effectiveness, and labeling of these products to the Commissioner of Food and Drugs. These conclusions and recommendations will be published in the FEDERAL REGISTER in the near future.

Accordingly, the purpose of the Panel has been served, and the Panel is no longer needed. On October 2, 1978, the Secretary of Health, Education, and Welfare terminated the Committee's charter.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 14 is amended in § 14.100 *List of standing advisory committees* by deleting paragraph (c)(20)(i)(*g*) *Dentrifrice and Dental Care Panel* and marking it reserved.

Effective date. Because this is a technical conforming amendment to Part 14, the Commissioner finds that there is good cause for the rule to be effective immediately upon publication in the FEDERAL REGISTER, January 12, 1979.

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

Dated: January 5, 1979.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc 79-1067 Filed 1-11-79; 8:45 am]

[4210-01-M]

Title 24—Housing and Urban Development

CHAPTER VIII—LOW INCOME HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-78-517]

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

Fair Market Rents for New Construction and Substantial Rehabilitation; Correction

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Correction of Final Rule.

SUMMARY: In FR Doc. No. R-78-28304 appearing at page 46529 in the FEDERAL REGISTER of October 10, 1978, the Schedule A Fair Market Rents for the New York, N.Y. market area ap-

pearing on page 46530 is corrected by adding Fair Market Rents of "900" for 3 bedroom and "990" for 4 bedroom dwelling units in 5+ story elevator structures.

FOR FURTHER INFORMATION CONTACT:

Henry F. P. Cassagne, 202-472-4810.

Dated: October 23, 1978.

MORTON A. BARUCH,
Deputy Assistant Secretary for Housing—Federal Housing Commissioner

[FR Doc. 79-1203 Filed 1-11-79; 8:45 am]

[4210-01-M]

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI 4898]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the National Flood Insurance Program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), administered by the Federal Insurance Administration, enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (24 CFR Part 1909 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date subsidized flood insurance is no longer available in the community.

In addition, the Federal Insurance Administration has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elapsed since publication of a flood insurance map. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community.

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

§ 1914.6 List of Suspended Communities.

State	County	Location	Community Number	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Special Flood Hazard Area Identified	Date[1]
California	Merced	Unincorporated Areas	060188	August 23, 1974, Emergency, January 3, 1979, Regular, January 17, 1979, Suspended.	Aug. 23, 1974	Jan. 17, 1979.
Do	Santa Clara	Monte Sereno, City of	060345-A	August 7, 1975, Emergency, January 3, 1979, Regular, January 17, 1979, Suspended.	May 24, 1974 Mar. 7, 1975	Do.
Do	Alameda	Newark, City of	060009-A	April 22, 1974, Emergency, December 1, 1978, Regular, January 17, 1979, Suspended.	Feb. 22, 1974 Jan. 16, 1976	Do.
Do	San Bernardino	Redlands, City of	060279-A	April 12, 1974, Emergency, January 3, 1979, Regular, January 17, 1979, Suspended.	May 17, 1974 Nov. 21, 1975	Do.
Colorado	Archuleta	Unincorporated Areas	080273	July 23, 1975, Emergency, January 3, 1979, Regular, January 17, 1979, Suspended.	Jul. 25, 1977	Do.
Do	Weld	Erie, Town of	080181-B	July 22, 1975, Emergency, October 17, 1978, Regular, January 17, 1979, Suspended.	Jun. 28, 1974 Nov. 28, 1975	Do.
Do	Larimer	Estes Park, Town of	080193	May 22, 1975, Emergency, January 17, 1979, Regular, January 17, 1979, Suspended.	Sept. 19, 1975	Do.
Connecticut	Hartford	Glastonbury, Town of	090124-B	December 15, 1972, Emergency, June 15, 1978, Regular, January 17, 1979, Suspended.	Apr. 20, 1973 Nov. 19, 1976	Do.
Do	New Haven	West Haven, City of	090092	October 6, 1972, Emergency, January 17, 1979, Regular, January 17, 1979, Suspended.	May 31, 1974	Do.
Delaware	Kent	Little Creek, Town of	100015-A	July 30, 1975, Emergency, January 17, 1979, Regular, January 17, 1979, Suspended.	Aug. 9, 1974 Dec. 12, 1975	Do.
Florida	Orange	Eatonville, Town of	120182-A	March 31, 1975, Emergency, December 1, 1978, Regular, January 17, 1979, Suspended.	July 19, 1974 May 14, 1976	Do.

State	County	Location	Community Number	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Special Flood Hazard Area Identified	Date[1]
Georgia	Clarke	Unincorporated Areas	130243	March 5, 1974, Emergency, December 15, 1978, Regular, January 17, 1979, Suspended.	Mar. 21, 1975 Oct. 3, 1975	Do.
Do	Cobb	do	130052	June 12, 1973, Emergency, January 3, 1979, Regular, January 17, 1979, Suspended.	Oct. 3, 1975	Do.
Do	Rockdale	Conyers, City of	130213-A	May 23, 1975, Emergency, December 1, 1978, Regular, January 17, 1979, Suspended.	June 28, 1974 Oct. 22, 1976	Do.
Do	Troup	LaGrange, City of	130177	February 5, 1974, Emergency, December 1, 1978, Regular, January 17, 1979, Suspended.	Apr. 2, 1976	Do.
Do	Houston	Warner Robins, City of	130111-A	January 15, 1974, Emergency, December 1, 1978, Regular, January 17, 1979, Suspended.	June 14, 1974 Mar. 26, 1976	Do.
Illinois	Jo Daviess	Galena, City of	175.J8-A	August 27, 1971, Emergency, July 20, 1973, Regular, January 17, 1979, Suspended.	July 20, 1973	Do.
Do	Cook	Northbrook, Village of	170132	December 12, 1973, Emergency, January 17, 1979, Regular, January 17, 1979, Suspended.	Feb. 22, 1974 Aug. 13, 1976	Do.
Indiana	Lake	Highland, Town of	185176-B	May 21, 1971, Emergency, May 19, 1972, Regular, January 17, 1979, Suspended.	May 19, 1972	Do.
Do	Brown	Nashville, Town of	180018-B	October 22, 1971, Emergency, January 24, 1976, Regular, January 17, 1979, Suspended.	Do.	
Kansas	Wyandotte	Bonner Springs, City of	200361	June 6, 1975, Emergency, January 3, 1979, Regular, January 17, 1979, Suspended.	Dec. 28, 1973	Do.
Kentucky	Boyd	Catlettsburg, City of	210018	August 21, 1975, Emergency, January 3, 1979, Regular, January 17, 1979, Suspended.	May 3, 1974 Feb. 20, 1976	Do.
Do	Harlan	Harlan, City of	210102-A	October 29, 1971, Emergency, January 17, 1979, Regular, January 17, 1979, Suspended.	Mar. 16, 1973	Do.
Michigan	Kent	Grand Rapids, City of	260106	April 13, 1973, Emergency, January 17, 1979, Regular, January 17, 1979, Suspended.	Apr. 13, 1973	Do.
Do	Saginaw	Zilwaukee, Township of	260286	January 21, 1974, Emergency, January 17, 1979, Regular, January 17, 1979, Suspended.	July 19, 1974	Do.
Minnesota	Carver	Carver, City of	275234	March 19, 1971, Emergency, September 8, 1972, Regular, January 17, 1979, Suspended.	Sept. 12, 1972	Do.
Do	Clay	Unincorporated Areas	275235	August 7, 1970, Emergency, May 5, 1972, Regular, January 17, 1979, Suspended.		
Missouri	Madison	Fredericktown, City of	290221	September 17, 1973, Emergency, January 3, 1979, Regular, January 17, 1979, Suspended.	June 14, 1974	Do.
Do	Jackson	Greenwood, City of	290711	October 11, 1977 Emergency, January 3, 1979, Regular, January 17, 1979, Suspended.	June 4, 1976	Do.
Do	do	Sugar Creek, City of	290178-A	January 25, 1977, Emergency, January 3, 1979, Regular, January 17, 1979, Suspended.	Dec. 17, 1976	Do.
North Carolina	Durham	Durham, City of	370086-A	July 13, 1973, Emergency, January 17, 1979, Regular, January 17, 1979, Suspended.	Feb. 1, 1974 Aug. 13, 1976	Do.
New York	Tompkins	Dryden, Village of	360847-A	March 30, 1973, Emergency, January 3, 1979, Regular, January 17, 1979, Suspended.	June 7, 1974 May 28, 1976	Do.
Do	Cattaraugus	Hinsdale, Town of	360077-A	July 22, 1975, Emergency, January 17, 1979, Regular, January 17, 1979, Suspended.	Oct. 15, 1976	Do.
Do	Westchester	Pelham Manor, Village	360926-A	November 11, 1974, Emergency, January 17, 1979, Regular, January 17, 1979, Suspended.	May 10, 1974 Jan. 16, 1976	Do.
Do	Onondaga	Pompey, Town of	360590-A	April 20, 1973, Emergency, January 3, 1979, Regular, January 17, 1979, Suspended.	May 31, 1974 July 30, 1976	Do.
Ohio	Sandusky	Unincorporated Areas	390486	November 13, 1974, Emergency, January 17, 1979, Regular, January 17, 1979, Suspended.	Jan. 13, 1978	Do.
Pennsylvania	Montgomery	Bridgeport, Borough of	420948-A	October 4, 1973, Emergency, January 3, 1979, Regular, January 17, 1979, Suspended.	Jan. 16, 1974	Do.
South Carolina	Greenville	Mauldin, City of	450198-B	August 16, 1978, Emergency, September 29, 1978, Regular, January 17, 1979, Suspended.	Aug. 16, 1974 Aug. 6, 1976	Do.
Do	do	Simpsonville, City of	450092-B	January 23, 1974, Emergency, September 29, 1978, Regular, January 17, 1979, Suspended.	May 17, 1974	Do.

State	County	Location	Community Number	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Special Flood Hazard Area Identified	Date[1]
Vermont	Windsor	Woodstock, Town of	500160	April 30, 1974, Emergency, December 15, 1978, Regular, January 17, 1979, Suspended.	Aug. 9, 1974	Do.
Virginia		Covington, City of	510040-A	March 13, 1974, Emergency, January 3, 1979, Regular, January 17, 1979, Suspended.	May 17, 1974 Apr. 16, 1976	Do.
Do	Dinwiddie	Unincorporated Areas	510187	January 16, 1974, Emergency, January 17, 1979, Regular, January 17, 1979, Suspended.	Nov. 15, 1974	Do.
Wisconsin	Buffalo	Alma, City of	555540-B	May 21, 1971, Emergency, August 8, 1972, Regular, January 17, 1979, Suspended.	Dec. 12, 1972	Do.

[1]Date certain Federal assistance no longer available in special flood hazard area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 2, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-859 Filed 1-11-79; 8:45 am]

[4210-01-M]

[Docket No. FI 4899]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

AGENCY: Federal Insurance Administration; HUD.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth column of the table.

ADDRESSES: The addresses where flood insurance policies can be obtained are published at 24 CFR 1912.7.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance; (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93-234), amended, requires the purchase of flood insurance as a condition of Federal financial assistance of insurable property if such assistance is:

(1) For acquisition and construction purposes as defined in Part 1909 of Title 24 of the Code of Federal Regulations and

(2) For property located in a special flood hazard area identified by the Secretary of Housing and Urban Development.

The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction except as authorized by section 202(a) of the Act unless the community has entered the program. Accordingly, for communities listed under this Part no such restriction exists, although insurance, if required, must be purchased.

Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association (NFIA) servicing company for the State.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

§ 1914.6 List of eligible communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area Identified	Community Number
Texas	Young	Unincorporated Areas	October 25, 1978, Emergency.	Feb. 7, 1978	480684-A
Alabama	Shelby	Helena, Town of	October 30, 1978, Emergency.	Jan. 10, 1975 and Feb. 13, 1976.	010294-A
Do	Monroe	Unincorporated Areas	do	Aug. 18, 1978	010325-A
Maryland	Frederick	Middletown, Town of	do	Jan. 14, 1977	240162-A
North Carolina	Harnett	Unincorporated Areas	do	Aug. 18, 1978	370328-A

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area Identified	Community Number
*	*	*	*	*	*
Florida	Palm Beach	Atlantis, City of	November 1, 1978, Suspension Withdrawnn.	Dec. 6, 1974	120193-A
Do	do	Lake Clarke Shores, Town of.	do	Jan. 9, 1974 and October 24, 1975.	120211-B
Illinois	Cook	East Chicago Heights, Village of.	do	Apr. 5, 1974 and June 11, 1976.	170084-B
Kansas	Pratt	Pratt, City of	do	Apr. 5, 1975 and Oct. 24, 1975.	200278-B
Louisiana	Calcasieu	Unincorporated Areas	do	Sept. 13, 1974	220037-A
Maryland	Prince Georges	Laurel, City of	do	Aug. 9, 1974 and Dec. 19, 1975.	240053-C
Minnesota	Winona	Elba, City of	do	Aug. 9, 1974 and June 11, 1976.	270527-C
Do	Rice	Faribault, City of	do	Jan. 21, 1977	270404-C
Do	Itasca	Unincorporated Areas	do	Nov. 1, 1978	270200-A
Do	Kanabec	do	do	Nov. 1, 1978	270214-A
Do	Scott & LeSeur	New Prague, City of	do	May 10, 1974 and Mar. 26, 1976.	270249-B
Do	Carver	Watertown City of	do	Nov. 5, 1976	270056-A
Missouri	Pemiscot	Hayti, City of	do	Apr. 12, 1974 and June 25, 1976.	290276-B
New York	Allegany	Bolivar, Village of	do	Jan. 7, 1977	360026-B
Do	Orleans	Carlton, Town of	do	Aug. 2, 1974 and Dec. 19, 1975.	360542-B
Do	Livingston	Dansville, Village of	do	Oct. 22, 1976	360383-A
Do	Suffolk	Huntington Town of	do	Aug. 2, 1974 and Feb. 20, 1976.	360796-B
Do	Monroe	Rochester City of	do	June 28, 1974 and Aug. 27, 1976.	360431-B
North Carolina	Wake	Fuquay-Varina, Town of	do	Apr. 11, 1975	370239-A
Ohio	Mahoning	Canfield, City of	do	May 17, 1974 and Apr. 23, 1976.	390369-B
Oregon	Douglas	Canyonville, City of	do	June 7, 1974 and Feb. 6, 1976.	410060-B
Pennsylvania	Lackawanna	Dalton, Borough of	do	June 28, 1974 and May 14, 1976.	420998-B
Tennessee	Anderson	Lake City, Town of	do	Feb. 26, 1971	475436-B
Texas	Bandera	Unincorporated Areas	do	June 18, 1976	480020-A
Missouri	Johnson & Clay	Kansas City, City of	do	Nov. 8, 1974	290173

(National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 3, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR. Doc. 79-860 Filed 1-11-79; 8:45 am]

[6735-01-M]

Title 29—Labor

CHAPTER XXV—FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

PART 2701—GOVERNMENT IN THE SUNSHINE ACT REGULATIONS

Implementation Rules

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Adoption of rules implementing the Government in the Sunshine Act.

SUMMARY: On November 16, 1978, the Commission proposed the adoption of regulations implementing the Government in the Sunshine Act, 5 U.S.C. 552b, and invited comments from interested persons. 43 FR 53470. No comments were received.

The Commission has decided to adopt the proposed rules with only one minor change. The Commission changed the number of copies of a request to open or close a meeting required by § 2701.4 from seven to two. The rules contemplate that most meetings of the Commission, including those at which the Commission carries out adjucation responsibilities, will be open to the public.

DATES: Part 2701 is effective January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Donald Terry, Executive Director, (202) 653-5644.

Dated: January 5, 1979.

JEROME R. WALDIE,
Chairman, Federal Mine Safety and Health Review Commission.

Under the authority of section 113 of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-165 (30 U.S.C. 823), the Commission amends Title 29 of the Code of Federal Regulations by adding a new Part 2701, to read as follows:

PART 2701—GOVERNMENT IN THE SUNSHINE ACT REGULATIONS

Sec.
2701.1 Purpose and scope.
2701.2 Open meetings policy: Closure of meetings.
2701.3 Announcement of meetings.
2701.4 Request to open or close meeting.
2701.5 Petition for review.
2701.6 Discussions during open meetings.
2701.7. Expedited closing procedure.

AUTHORITY.—Sec. 113, Federal Mine Safety and Health Act of 1977, Pub. L. 95-165 (30 U.S.C. 823).

§ 2701.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to implement the Government in

the Sunshine Act, 5 U.S.C. 552b. The rules in this part are intended to open, to the extent practicable, the meetings of the Commission to public observation while preserving the Commission's ability to fulfill its responsibilities and respect the interests of persons in confidential consideration of sensitive matters.

(b) *Scope.* This part applies to all meetings of the Commission. A "meeting of the Commission" means a joint deliberation in person or by conference telephone call of at least a majority of either the members of the Commission or of a panel of three or more Commissioners that determines or results in the joint conduct or disposition of official Commission business, but does not include (1) deliberations regarding a decision to open or close a meeting, to withhold information about a meeting, and the circumstances of meetings, such as their time, place, and subject matter, and (2) the individual deliberations of Commission members of matters considered upon circulated documents or other notation procedure.

§ 2701.2 Open meetings policy; closure of meetings.

(a) *Policy.* Commission meetings will generally be open to public observation, including meetings concerning the disposition by the Commission of a formal adjudication. See 5 U.S.C. 522b(c)(10).

(b) *Closure.* Meetings may be closed, or certain information about a meeting may not be disclosed under the circumstances contemplated by 5 U.S.C. 522b(c)(1)-(10), and under the procedures specified by 5 U.S.C. 552b (d) and (f). Commission employees may attend closed meetings of the commission unless the notice of a closed meeting states otherwise.

§ 2701.3 Announcement of meetings.

(a) *Generally.* The Commission shall publicly announce and submit to the FEDERAL REGISTER at least 7 days before a meeting, the time, place, subject matter of a meeting, whether it is to be open or closed, and the name and phone number of the Commission employee who will respond to requests for information about the meeting. The description of the subject matter of a meeting at which the Commission will consider adjudicatory matters, shall include the names and docket numbers of the cases to be considered. The Commission shall also contact, by phone or mail, the parties to the cases to be considered at the meeting, shall post a copy of a notice of the meeting at the Office of Public Information, shall mail notices to persons who have requested inclusion of their names on a meeting mailing list, and may issue press releases.

(b) *Shorter notice.* If a majority of the members of the Commission or a panel of three or more Commissioners determines by a recorded vote that pressing Commission business requires that a meeting be called in less than 7 days, the announcement required by paragraph (a) of this section shall be made at the earliest practicable time.

(c) *Changes in time, place, subject matter, and decision whether to open or close after public announcement of meeting.* If the time or place of a meeting publicly announced is changed, or an item to be considered at such a meeting is to be deleted, the change or deletion shall be publicly announced without a recorded vote at the earliest practicable time in the manner required by paragraph (a) of this section. The subject matter of a meeting publicly announced shall not be expanded and the decision to open or close such a meeting shall not be changed unless a majority of the members of the Commission or if a panel of three or more Commissioners determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible; the Commission shall publicly announce such a change and the vote of each member upon the change at the earliest practicable time.

§ 2701.4 Request to open or close meeting.

Any person may request that the Commission open a meeting that it has earlier decided to close. Any person whose interest may be directly affected by the opening of a meeting may request that the meeting be closed. Two copies of a request shall be filed in writing with the Executive Director of the Commission at the earliest practicable time, and no later than one hour before the meeting. A request to close shall state the interest of the person that may be adversely affected. The Commission shall take a recorded vote on the request if one member desires that it do so. The Executive Director shall inform the requesting person of whether a vote was taken, and, if so, its outcome. Requests shall be addressed as follows: Sunshine Act Request, Office of the Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street NW., Washington, D.C. 20006.

§ 2701.5 Petition for review.

Any person may petition the Commission to review any action he alleges to be in violation of this part or 5 U.S.C. 552b that was taken by any employee or member of the Commission. The petition shall be in writing and shall be filed with the Executive Director within 30 days of the alleged violation. The Commission shall consider and rule upon the petition with expedition.

§ 2701.6 Discussion during open meetings.

Deliberations, discussions, comments, statements, or observations made during the course of an open meeting do not constitute actions of the Commission, nor do they necessarily represent the basis for any Commission action. Comments made by a Commissioner or an employee of the Commission may be advanced for purposes of discussion or argument, or as an aside, and may not reflect the views or ultimate position of that Commissioner or employee. Reasons for decisions stated by a Commissioner at an open meeting may be later changed by that Commissioner, as may a Commissioner's vote. For these reasons, persons who choose to act on the basis of discussions at open meetings do so entirely at their own risk and without any assurance that the Commission's final decisions will be reflective of the discussions or initial vote.

§ 2701.7 Expedited closing procedure.

(a) *Policy.* Although it is the general policy of the Commission to open to the public meetings that may be subject to closure, including meetings concerning adjudication of cases, the Commission may find it necessary in the public interest to close meetings. The purpose of this section is to provide an expedited closing procedure under 5 U.S.C. 552b(d)(4). The Commission has determined that, inasmuch as the Commission's responsibilities are almost entirely adjudicatory, a majority of its meetings may properly be closed under 5 U.S.C. 552b(c)(10). Although the Commission has to date held few meetings, those that have been held concerned the adjudication of cases and could properly have been closed.

(b) *Procedure.* A meeting may be closed if a majority of either the members of the Commission or of a panel of three or more Commissioners votes by recorded vote at the beginning of such a meeting to close it to the public. The record of the vote shall reflect the vote of each voting member and shall be made available to the public. A public announcement of the time, place, and subject matter of the meeting shall be made at the earliest practicable time, except to the extent that such information is exempt from disclosure under 5 U.S.C. 552b(c). Section 2701.3 does not apply to meetings closed under this section.

[FR Doc. 79-1068 Filed 1-11-79; 8:45 am]

[4310-70-M]

Title 36—Parks, Forests, and Public Property

CHAPTER I—NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

PART 21—HOT SPRINGS NATIONAL PARK: BATHHOUSE REGULATIONS

AGENCY: National Park Service, Interior.

ACTION: Final Rulemaking.

SUMMARY: On August 8, 1978, the National Park Service, Department of the Interior published in the FEDERAL REGISTER (43 FR 153) as a proposed rule a complete revision of 36 CFR Part 21, which contained regulations pertaining to the operation of bathhouses within Hot Springs National Park. The revision deleted references to two advisory boards which were recently terminated, as well as regulations on subjects which were sufficiently covered in other ways, such as concession contract language. These items were not dealt with in the bathhouse regulations. An addition to the regulations was proposed that would allow management to expand the use of thermal water for other than traditional therapeutic tub bathing, thereby permitting recreational pool bathing in and out of the park in accordance with an approved Statement for Management. A penalty section was also added to correct a deficiency in the current regulations.

The proposal was made available for public review and comment for a period of 30 days after publication in the FEDERAL REGISTER, ending officially on September 8, 1978.

As of September 8, 1978, only one comment was received. This comment was from an individual who recommended rewording 36 CFR to permit persons who are not undergoing medical treatment to walk in a thermal pool for exercise and to receive whirlpool baths without presenting a prescription from a registered physician. Since the services at the Libbey Memorial Physical Medicine Center have recently been revised to allow the above, the National Park Service recommends that the wording of 36 CFR 21.6 be changed to permit continuation of the services now offered. Accordingly, the wording has been changed in this section.

The National Park Service also made minor editorial changes to §§ 21.5, 21.7, 21.8, 21.11 and 21.12 to correct typographical errors and clarify the intent of the sections.

EFFECTIVE DATE: February 12, 1979.

ADDRESS: Mail comments to Regional Director, Southwest Region, National Park Service, P.O. Box 728, Santa Fe, New Mexico 87501.

FOR FURTHER INFORMATION CONTACT:

Richard Maeder, Superintendent, Hot Springs National Park. (501) 624-3383.

SUPPLEMENTARY INFORMATION: The proposed regulations reduce the scope of Part 21 from 30 existing sections to 12 revised sections. This reduction is due, in large part, to the termination of the park's two advisory boards by the Secretary of the Interior on June 30, 1977, as recommended by the Office of Management and Budget on December 7, 1976. These boards were the Hot Springs National Park Federal Registration Board and the Examining Board for Technicians. The termination of the boards makes it possible to eliminate all or portions of existing §§ 21.4 through 21.16 of Part 21, as well as allowing the simplification of the number of other sections.

In reviewing the present regulations in order to remove material made obsolete by termination of the advisory boards, it was found that certain other material was no longer necessary. The Language of present concession contracts and directives issued by the park adequately covers these subjects. Accordingly, these regulations would be deleted from the new Part 21.

Existing regulations prohibit the use of the park's hot mineral waters for other than bathing or other therapeutic purposes.

With the decline in therapeutic use of these waters which has taken place in recent years, it is no longer necessary to be as restrictive with their use. Therefore, the new regulations would merely limit use of the waters to those purposes authorized by the Superintendent.

One management objective of the park is "To make available opportunities for recreational and therapeutic bathing and associated activities in a manner that is appropriate to present day public interests and that ensures high quality visitor experience". Another objective is "to encourage a broadened recreational bathing use concept as a future bathhouse service". The adoption of the proposed regulations will give the Superintendent authority to permit adaptive uses of the park's thermal water in accordance with the above stated management objectives which were approved on June 1, 1977.

The penalties which would be established by the new § 21.2 are authorized by the Act of April 20, 1904, Chapter 1400, as amended (16 U.S.C. 374).

AUTHORITY: Sec. 3, Act of August 25, 1916, 39 Stat. 535, as amended (16 U.S.C. 3); (16 U.S.C. 361 et seq.); and 245 DM-1 (42 FR 12931).

DRAFTING INFORMATION

The following persons are principally responsible for the preparation of these proposed regulations: Hugh L. Crenshaw, Bernard Goodman, and Benson Holmes, National Park Service.

IMPACT ANALYSIS

Although the changes in this notice are numerous, they result in minimal changes in the management of park areas or in the activities of visitors to these areas. Therefore, these revisions are not considered to be a major Federal action significantly affecting the quality of the human environment and no environmental impact statement has been prepared; nor is it a major Federal action requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: December 26, 1978.

DANIEL J. TOBIN, Jr.,
Acting Director,
National Park Service.

Part 21 of Title 36, Code of Federal Regulations, is revised in its entirety to read as follows:

PART 21—HOT SPRINGS NATIONAL PARK: BATHHOUSE REGULATIONS

Sec.
21.1 Definitions.
21.2 Penalties.
21.3 Use of thermal water.
21.4 Registration of physicians.
21.5 Therapeutic bathing requirements.
21.6 Use of therapeutic pools.
21.7 Health examinations.
21.8 Employee certification.
21.9 Solicitation by employees.
21.10 Losses.
21.11 Redemption of bath tickets.
21.12 Loss of bath tickets.

AUTHORITY: Sec. 3, Act of August 25, 1916, 39 Stat. 535, as amended (16 U.S.C. 3); sec. 3, Act of March 3, 1891, 26 Stat. 842, as amended (16 U.S.C. 363).

§ 21.1 Definitions.

When used in the regulations in this part:

(a) The term "Superintendent" means the Superintendent of Hot Springs National Park, Arkansas.

(b) The term "physician" means doctor of medicine or osteopathy who is licensed to practice by a State or territory of the United States.

(c) The term "registered physician" means a physician registered at the office of the Superintendent as authorized to prescribe the waters of Hot Springs National Park.

(d) The term "employee" means any person licensed or certified by a State or territory of the United States in his or her specialty, or who is certified by the Superintendent to perform or render special services in a bathhouse.

(e) The term "bathhouse" means any facility which is operated by an individual, trustee, partnership, corporation, or business entity and which receives thermal water from Hot Springs National Park.

§ 21.2 Penalties.

Any person convicted of violating any provision of the regulations contained in this part, or as the same may be amended or supplemented, shall be punished by a fine not exceeding $100 and shall be adjudged to pay all costs of the proceedings.

§ 21.3 Use of thermal water.

(a) The use of the thermal waters of Hot Springs National Park, for purposes other than those authorized by the Superintendent, is prohibited.

(b) The heating, reheating, or otherwise increasing the temperature of the thermal waters of Hot Springs National Park is prohibited.

(c) The introduction of any substance, chemical, or other material or solution into the thermal waters of Hot Springs National Park, except as may be prescribed by a physician for a bather or as may be directed by the Superintendent, is prohibited.

§ 21.4 Registration of physicians.

Physicians desiring to prescribe the thermal waters of Hot Springs National Park must first be registered at the office of the Superintendent. Any physician may make application for registration to the Superintendent. To maintain registered status, reapplication is required triannually.

§ 21.5 Therapeutic bathing requirements.

Baths shall be administered to persons having a prescription from a registered physician with prescription instructions therein. Baths shall be administered to person who do not have prescriptions from registered physicians only if the bath is administered in accordance with the bath directions prescribed by the Superintendent, the violation of which is not subject to the penalty provisions of § 21.2.

§ 21.6 Use of therapeutic pools.

Persons undergoing medical treatment may use the therapeutic pools only upon presenting a prescription describing the treatment from a registered physician. Persons with acute or infectious diseases or discharges of the body, or who lack complete control of their bodily functions, are prohibited from using the therapeutic pools.

§ 21.7 Health examinations.

No employee who comes in direct personal contact with bathers or pool users will be permitted to enter duty without first undergoing a health examination, or remain in such employment without undergoing periodic health examinations, as required by the Superintendent, and being found free from any infectious or communicable disease.

CROSS REFERENCE: For a list of communicable diseases included in the regulations of the United States Public Health Service, see 21 CFR 1240.54.

§ 21.8 Employee certification.

(a) Employees engaged as physical therapists must be licensed or certified by a State or territory of the United States to practice

(b) Employees engaged as physical therapy aids or physical therapy technicians will be certified by the Superintendent upon completion of an examination.

(c) Employees engaged as masseurs or masseuses must be licensed or certified by a State or territory of the United States, or be certified by the Superintendent upon the completion of an examination.

(d) Employees engaged as bath attendants will be certified by the Superintendent upon completion of an apprenticeship and an examination.

§ 21.9 Solicitation by employees.

Soliciting by employees for any purpose, including soliciting for gratuities, commonly called "tips," is prohibited in all bathhouses.

§ 21.10 Losses.

A bathhouse receiving deposits of jewelry, money, or other valuables from patrons shall provide means for the safekeeping thereof, satisfactory to the Superintendent. It is understood, however, that the Government assumes no responsibility for such valuables kept on the premises. All losses must be reported promptly to the Superintendent by the bathhouse manager.

§ 21.11 Redemption of bath tickets.

Unused tickets may be redeemed by the purchaser within one year from the date of purchase, according to the redemption scale approved by the Superintendent.

§ 21.12 Lost bath tickets.

A patron who loses his ticket may continue to receive service, without additional charge, for the number of units remaining in the ticket. Records of lost tickets, and of service given thereunder, shall be maintained as required by the Superintendent. Lost tickets shall have no redemption value.

[FR Doc. 79-1210 Filed 1-11-79; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 1012-2]

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Appendix A—Reference Method 16

AGENCY: Environmental Protection Agency.

ACTION: Amendment.

SUMMARY: This action amends Reference Method 16 for determining total reduced sulfur emissions from stationary sources. The amendment corrects several typographical errors and improves the reference method by requiring the use of a scrubber to prevent potential interference from high SO_2 concentrations. These changes assure more accurate measurement of total reduced sulfur (TRS) emissions but do not substantially change the reference method.

SUPPLEMENTARY INFORMATION: On Februrary 23, 1978 (43 FR 7575), Appendix A—Reference Method 16 appeared with several typographical errors or omissions. Subsequent comments noted these and also suggested that the problem of high SO_2 concentrations could be corrected by using a scrubber to remove these high concentrations. This amendment corrects the errors of the original publication and slightly modifies Reference Method 16 by requiring the use of a scrubber to prevent potential interference from high SO_2 concentrations.

Reference Method 16 is the reference method specified for use in determining compliance with the promulgated standards of performance for kraft pulp mills. The data base used to develop the standards for kraft pulp mills has been examined and this additional requirement to use a scrubber to prevent potential interference from high SO_2 concentrations does not require any change to these standards of performance. The data used to develop these standards was not gathered from kraft pulp mills with high SO_2 concentrations; thus, the problem of SO_2 interference was not present in the data base. The use of a scrubber to prevent this potential interference in the future, therefore, is completely consistent with this data base and the promulgated standards.

The increase in the cost of determining compliance with the standards of performance for kraft pulp mills, as a result of this additional requirement to use a scrubber in Reference Method 16, is negligible. At most, this additional requirement could increase the cost of a performance test by about 50 dollars.

Because these corrections and additions to Reference Method 16 are minor in nature, impose no additional substantive requirements, or do not require a change in the promulgated standards of performance for kraft pulp mills, these amendments are promulgated directly.

EFFECTIVE DATE: January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Don R. Goodwin, Director, Emission Standards and Engineering Division, (MD-13) Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number 919-541-5271.

Dated: January 2, 1979.

DOUGLAS M. COSTLE,
Administrator.

Part 60 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

APPENDIX A—REFERENCE METHODS

In Method 16 of Appendix A, Sections 3.4, 4.1, 4.3, 5, 5.5.2, 6, 8.3, 9.2, 10.3, 11.3, 12.1, 12.1.1.3, 12.1.3.1, 12.1.3.1.2, 12.1.3.2, 12.1.3.2.3, and 12.2 are amended as follows:

1. In subsection 3.4, at the end of the first paragraph, add: "In the example system, SO_2 is removed by a citrate buffer solution prior to GC injection. This scrubber will be used when SO_2 levels are high enough to prevent baseline separation from the reduced sulfur compounds."

2. In subsection 4.1, change "± 3 percent" to "± 5 percent."

3. In subsection 4.3, delete both sentences and replace with the following: "Losses through the sample transport system must be measured and a correction factor developed to adjust the calibration accuracy to 100 percent."

4. After Section 5 and before subsection 5.1.1 insert "5.1. Sampling."

5. In Section 5, add the following subsection: "5.3 SO_2 Scrubber. The SO_2 scrubber is a midget impinger packed with glass wool to eliminate entrained mist and charged with potassium citrate-citric acid buffer." Then increase all numbers from 5.3 up to and including 5.5.4 by 0.1, e.g., change 5.3 to 5.4, etc.

6. In subsection 5.5.2, the word "lowest" in the fourth sentence is replaced with "lower."

7. In Section 6, add the following subsection: "6.6 Citrate Buffer. Dissolve 300 grams of potassium citrate and 41 grams of anhydrous citric acid in 1 liter of deionized water. 284 grams of sodium citrate may be substituted for the potassium citrate."

8. In subsection 8.3, in the second sentence, after "Bypassing the dilution system," insert "but using the SO_2 scrubber," before finishing the sentence.

9. In subsection 9.2, replace sentence with the following: "Aliquots of diluted sample pass through the SO_2 scrubber, and then are injected into the GC/FPD analyzer for analysis."

10. In subsection 10.3, "paragraph" in the second sentence is corrected with "subsection."

11. In subsection 11.3 under B_{wo} definition, insert "Reference" before "Method 4."

12. In subsection 12.1.1.3 "(12.2.4 below)" is corrected to "(12.1.2.4 below)."

13. In subsection 12.1, add the following subsection: "12.1.3 SO_2 Scrubber. Midget impinger with 15 ml of potassium citrate buffer to absorb SO_2 in the sample." Then renumber existing section 12.1.3 and following subsections through and including 12.1.4.3 as 12.1.4 through 12.1.5.3.

14. The second subsection listed as "12.1.3.1" (before corrected in above amendment) should be "12.1.4.1.1."

15. In subsection 12.1.3.1 (amended above to 12.1.4.1) correct "GC/FPD-1 to "GC/FPD-I."

16. In subsection 12.1.3.1.2 (amended above to 12.1.4.1.2) omit "Packed as in 5.3.1." and put a period after "tubing."

17. In subsection 12.1.3.2 (amended above to 12.1.4.2) correct "GC/FPD-11" to "GC/FPD-II."

18. In subsection 12.1.3.2.3 (amended above to 12.1.4.2.3) the phrase "12.1.3.1.4. to 12.1.3.1.10" is corrected to read "12.1.4.1.5 to 12.1.4.1.10."

19. In subsection 12.2, add the following subsection: "12.2.7 Citrate Buffer. Dissolve 300 grams of potassium citrate and 41 grams of anhydrous citric acid in 1 liter of deionized water. 284 grams of sodium citrate may be substituted for the potassium citrate."

(Sec. 111, 301(a) of the Clean Air Act as amended (42 U.S.C. 7411, 7601 (a))).

[FR Doc. 79-1047 Filed 1-11-79; 8:45 am]

[6560-01-M]

[FRL 1023-7]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for Bowling Green University

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: By this rule, the Administrator of U.S. EPA issues a Delayed Compliance Order to Bowling Green University. The Order requires the Bowling Green University to bring air emissions from its boiler house at Bowling Green, Ohio, into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP). Bowling Green University's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered in the Order.

DATES: This rule takes effect January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Michael Smith, Attorney, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone (312) 353-2082.

SUPPLEMENTARY INFORMATION: On September 5, 1978, the Acting Regional Administrator of U.S. EPA's Region V Office published in the FEDERAL REGISTER (43 FR 39397) a notice setting out the provisions of a proposed Federal Delayed Compliance Order for Bowling Green University. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order.

No public comments and no request for a public hearing were received in response to the proposed notice.

Therefore, a Delayed Compliance Order effective this date is issued to Bowling Green University by the Administrator of U.S. EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Bowling Green University on a schedule to bring its boiler house at Bowling Green, Ohio, into compliance as expeditiously as practicable with Regulation AP-3-11, a part of the federally approved Ohio State Implementation Plan. Bowling Green University is unable to immediately comply with this regulation. The Order also imposes interim requirements with meet Sections 113(d)(1)(C) and 133(d)(7) of

the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Bowling Green University to delay compliance with the SIP regulation covered by the Order until July 1, 1979.

Compliance with the Order by Bowling Green University will preclude Federal enforcement action under Section 113 of the Act for violations of the SIP regulation covered by the Order. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the Order, and for violations of the regulation covered by the Order which occurred before the Order was issued by U.S. EPA or after the Order is terminated. If the Administrator determines that Bowling Green University is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

U.S. EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place Bowling Green University on a schedule for compliance with the Ohio State Implementation Plan.

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

Dated: January 2, 1979.

DOUGLAS M. COSTLE,
Administrator.

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

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding an entry to the table in § 65.400 to read as follows:

§ 65.400 Federal delayed compliance orders issued under section 113(d)(1), (3), and (4) of the act.

Source	Location	Order No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
Bowling Green University.....	Bowling Green, Ohio	EPA-5-79-A-6	9/5/78	AP-3-11	7/1/79

[FR Doc. 79-1056 Filed 1-11-79; 8:45 am]

[6560-01-M]

[FRL 1025-6]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for Longview State Hospital and Ohio Department of Mental Health and Mental Retardation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of U.S. EPA approves a Delayed Compliance Order to Longview State Hospital and Ohio Department of Mental Health and Mental Retardation. The Order requires the Hospital to bring air emissions from its three coal-fired boilers at Cincinnati, Ohio into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP). The Hospital's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (Act) for violations of the SIP regulations covered in the Order.

DATE: This Rule takes effect January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Deborah Garber, Attorney, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, telephone 312-353-2086.

SUPPLEMENTARY INFORMATION: On September 27, 1978, the Acting Regional Administrator of U.S. EPA's Region V Office published in the FEDERAL REGISTER (43 FR 43736) a notice setting out the provisions of a proposed State Delayed Compliance Order for Longview State Hospital and Ohio Department of Mental Health and Mental Retardation. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments and no request for a public hearing were received in response to the notice.

Therefore, a Delayed Compliance Order effective this date is approved to the Longview State Hospital and Ohio Department of Mental Health and Mental Retardation by the Administrator of U.S. EPA pursuant to the authority of Section 113(d)(2) of the Act, 42 U.S.C. 7413(d)(2). The Order places the Hospital on a schedule to bring three coal-fired boilers at Cincinnati, Ohio into compliance as expeditiously as practicable with Regulation OAC 3745-17-10, a part of the federally approved Ohio State Implementation Plan. The Hospital is unable to immediately comply with this regulation. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit the Hospital to delay compliance with the SIP regulation covered by the Order until July 1, 1979.

Compliance with the Order by the Longview State Hospital will preclude Federal enforcement action under Section 113 of the Act for violations of the SIP regulation covered by the Order. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the Order, and for violations of the regulation covered by the Order which occurred before the Order was issued by U.S. EPA or after the Order is terminated. If the Administrator determines that the Hospital is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

U.S. EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place the Longview State Hospital on a schedule for compliance with the Ohio State Implementation Plan.

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

Dated: January 2, 1979.

DOUGLAS M. COSTLE,
Administrator.

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

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding an entry to the table in § 65.401 to read as follows:

§ 65.401 U.S. EPA Approval of State Delayed Compliance Orders issued to major stationary sources.

The State Order identified below has been approved by the Administrator in accordance with Section 113(d)(2) of the Act and with this Part. With regard to each Order, the Administrator has made all the determinations and findings which are necessary for approval of the Order under Section 113(d) of the Act.

Source: Ohio Department of Mental Health and Mental Retardation, Longview State Hospital; Location: Cincinnati, Ohio; Date of FR Proposal: September 27, 1978; SIP Regulation Involved: OAC 3745-17-10; Final Compliance Date: July 1, 1979.

[FR Doc. 79-1057 Filed 1-11-79; 8:45 am]

[6560-01-M]

[FRL 1023-1]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for Steel Containers Inc.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of U.S. EPA approves a Delayed Compliance Order to Steel Containers Inc., d.b.a. Calumet Containers. The Order requires the company to bring air emissions from its drum reclamation incinerator at Hammond, Indiana, into compliance with certain regulations contained in the federally approved Indiana State Implementation Plan (SIP). Steel Containers Inc., d.b.a. Calumet Containers' compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered in the Order.

DATE: This rule takes effect January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Anne Swofford, Attorney, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, telephone 312-353-2082.

SUPPLEMENTARY INFORMATION: On September 11, 1978, the Acting Regional Administrator of U.S. EPA's Region V Office published in the FEDERAL REGISTER (43 FR 40248) a notice setting out the provisions of a proposed State Delayed Compliance Order for Steel Containers Inc., d.b.a. Calumet Containers. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order.

No public comments and no request for a public hearing were received in response to the notice.

Therefore, a Delayed Compliance Order effective this date is approved to Steel Containers Inc., d.b.a. Calumet Containers by the Administrator of U.S. EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Steel Containers Inc., d.b.a. Calumet Containers on a schedule to bring its drum reclamation incinerator at Hammond, Indiana, into compliance as expeditiously as practicable with Regulations APC-7 and APC-16, a part of the federally approved Indiana State Implementation Plan. Steel Containers Inc., d.b.a. Calumet Containers is unable to immediately comply with these regulations. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Steel Containers Inc., d.b.a. Calumet Containers to delay compliance with the SIP regulations covered by the Order until October 30, 1978.

Compliance with the Order by Steel Containers Inc., d.b.a. Calumet Containers will preclude Federal enforcement action under Section 113 of the Act for violations of the SIP regulations covered by the Order. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the Order, and for violations of the regulations covered by the Order which occurred before the Order was issued by U.S. EPA or after the Order is terminated. If the Administrator determines that Steel Containers Inc., d.b.a. Calumet Containers is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

U.S. EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place Steel Containers Inc., d.b.a. Calumet Containers on a schedule for compliance with the Indiana State Implementation Plan.

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

Dated: January 3, 1979.

DOUGLAS M. COSTLE,
Administrator.

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

PART 65—DELAYED COMPLIANCE ORDERS

I. By adding an entry to the table in § 65.191 to read as follows:

§ 65.191 U.S. EPA Approval of State Delayed Compliance Orders Issued to major stationary sources.

The State Order identified below has been approved by the Administrator in accordance with Section 113(d)(2) of the Act and with this Part. With regard to this Order, the Administrator has made all the determinations and findings which are necessary for approval of the Order under Section 113(d) of the Act.

Source: Steel Containers Inc., d.b.a. Calumet Containers; Location: Hammond, Indiana; Date of FR Proposal: September 11, 1978; SIP Regulation Involved: APC-7, APC-16; Final Compliance Date: October 30, 1978.

[FR Doc. 79-1058 Filed 1-11-79; 8:45 am]

[6560-01-M]

[FRL 1026-4]

PART 65—DELAYED COMPLIANCE ORDERS

Approval of a Delayed Compliance Order Issued by the The Commonwealth of Kentucky, Department for Natural Resources and Environmental Protection, to United States Department of the Army Headquarters U.S. Army Armor Center and Fort Knox

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Commonwealth of Kentucky to the United States Department of the Army, Headquarters U.S. Army Armor Center and Fort Knox (hereinafter referred to as "Fort Knox"). The Order requires Fort Knox to bring air emissions from its asphalt plant and quarrying operations at Fort Knox, Kentucky, into compliance with certain regulations contained in the federally-approved Kentucky State Implementation Plan (SIP). Because of the Administrator's approval, Fort Knox's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Richard S. DuBose, Air Enforcement Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30308, telephone number: 404-881-4298.

ADDRESSES: A copy of the Delayed Compliance Order, any supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing approval of the Order are available for public inspection and copying during normal business hours at:

U.S. Environmental Protection Agency, Region IV, Air Enforcement Branch, 345 Courtland Street, NE., Atlanta, Georgia 30308.

SUPPLEMENTARY INFORMATION: On September 15, 1978, the Regional Administrator of EPA's Region IV Office published in the FEDERAL REGISTER, 43 FR 41239 (1978), a notice proposing approval of a delayed compliance order issued by the Commonwealth of Kentucky to Fort Knox. The notice asked for public comments by October 16, 1978, on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice.

Therefore, the delayed compliance order issued to Fort Knox is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Fort Knox on a schedule to bring its asphalt plant and quarrying operations at Fort Knox, Kentucky, into compliance as expeditiously as practicable with Kentucky Air Pollution Control Regulation 401 KAR 3:060, Section 14(2), a part of the federally-approved Kentucky State Implementation Plan. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Fort Knox to delay compliance with the SIP regulations covered by the Order until March 31, 1979. The facilities are unable to immediately comply with these regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the need to immediately place Fort Knox on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) of the Kentucky State Implementation Plan.

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

Dated: January 2, 1979.

DOUGLAS M. COSTLE,
Administrator.

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

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding an entry to the table in § 65.221 to read as follows:

§ 65.221 EPA. Approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source: Fort Knox; Loctaion: Fort Knox, Kentucky; Order No.: DCO-78-26; SIP regulation(s) involved: 401 KAR 3:060, Section 14(2); Date of FR proposal: September 15, 1978; Final Compliance Date: March 31, 1979.

[FR Doc. 79-1059 Filed 1-11-79; 8:45 am]

[6560-01-M]

CHAPTER 1—ENVIRONMENTAL PROTECTION AGENCY

[FRL 1026-3]

PART 65—DELAYED COMPLIANCE ORDERS

Approval of a Delayed Compliance Order Issued by the Commonwealth of Kentucky, Department for Natural Resources and Environmental Protection, to United States Department of Energy

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Commonwealth of Kentucky to the Paducah Gaseous Diffusion Plant of the United States Department of Energy. The Order requires the facility to bring air emissions from its indirect heat exchangers, reverberatory and sweat furnaces, and induction smelter in Paducah, Kentucky, into compliance with certain regulations contained in the federally-approved Kentucky State Implementation Plan (SIP). Because of the Administrator's approval, the United States Department of Energy's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATE: This rule takes effect on January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Richard S. DuBose, Air Enforcement Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE, Atlanta, Georgia 30308, telephone number: (404) 881-4298.

ADDRESS: A copy of the Delayed Compliance Order, any supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing approval of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region IV, Air Enforcement Branch, 345 Courtland Street, NE, Atlanta, Georgia 30308.

SUPPLEMENTARY INFORMATION: On August 4, 1978, the Regional Administrator of EPA's Region IV Office published in the FEDERAL REGISTER, 43 FR 34506 (1978), a notice proposing approval of a delayed compliance order issued by the Commonwealth of Kentucky to the Paducah Gaseous Diffusion Plant of the United States Department of Energy. The notice asked for public comments by September 5, 1978, on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice.

Therefore, the delayed compliance order issued to the United States Department of Energy is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places the Paducah Gaseous Diffusion Plant of the United States Department of Energy in Paducah, Kentucky, on a schedule to bring (1) its indirect heat exchangers into compliance as expeditiously as practicable with Kentucky Air Pollution Control Regulation 401 KAR 3:060, Sections 3(3) and 3(4), and (2) its reverberatory and sweat furnaces and induction smelter into compliance as expeditiously as practicable with Kentucky Air Pollution Control Regulation 401 KAR 3:060, Section 4(3). The Order also cites the facility as being in violation of Kentucky Air Pollution Control Regulation 401 KAR 3:020, Section 4(8). The previously cited regulations are part of the federally-approved Kentucky State Implementation Plan. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. Since the issuance of this Order by the Commonwealth of Kentucky, the facility has demonstrated that its indirect heat exchangers are in compliance with Kentucky Air Pollution Control Regula-

tion 401 KAR 3:060, Section 3(4), and that its reverberatory and sweat furnaces and induction smelter are in compliance with Kentucky Air Pollution Control Regulation 401 KAR 3:060, Section 4(3). If the remaining conditions of the Order are met, it will permit the Paducah Gaseous Diffusion Plant of the United States Department of Energy to delay compliance with the applicable SIP regulations covered by the Order until March 1, 1979. The facility is unable to immediately comply with these regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the need to immediately place the Paducah Gaseous Diffusion Plant of the United States Department of Energy on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) on the Kentucky State Implementation Plan.

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

Dated: January 2, 1979.

DOUGLAS M. COSTLE,
Administrator.

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

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding an entry to the table in § 65.221 to read as follows:

§ 65.221 EPA Approval of State delayed compliance orders issued to major stationary sources.

Source	Location	Order No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
*	*	*	*	*	*
U.S. Department of Energy.	Paducah, Ky	DCO-78-9	401 KAR 3:020 Section 4(8); 401 KAR 3:060 Sections 3(3), 3(4), and 4(3).	Aug. 4, 1978	Mar. 1, 1979

[FR Doc. 79-1053 Filed 1-11-79; 8:45 am]

[6560-01-M]

[FRL 1023-2]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for Steel Containers, Inc., d.b.a. Calumet Containers, Hammond, Ind.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of U.S. EPA approves a Delayed Compliance Order to Steel Containers, Inc., d.b.a. Calumet Containers. The Order requires the Company to bring air emissions from its pail reclamation incinerator at Hammond, Indiana, into compliance with certain regulations contained in the federally approved Indiana State Implementation Plan (SIP). Steel Containers, Inc., d.b.a. Calumet Containers' compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered in the Order.

DATES: This rule takes effect on January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Anne Swofford, Attorney, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone: (312) 353-2082.

SUPPLEMENTARY INFORMATION: On August 18, 1978, the Acting Regional Administrator of U.S. EPA's Region V Office published in the FEDERAL REGISTER (43 FR 36652) a notice setting out the provisions of a proposed State Delayed Compliance Order for Steel Containers, Inc., d.b.a. Calumet Containers. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments and no request for a public hearing were received in reponse to the notice.

Therefore, a Delayed Compliance Order effective this date is approved to Steel Containers, Inc., d.b.a. Calumet Containers, by the Administrator of U.S. EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places the Company on a schedule to bring its pail reclamation incinerator at Hammond, Indiana, into compliance as expeditiously as practicable with Regulations APC-7 and APC-16, part of the federally approved Indiana State Implementation Plan. Steel Containers, Inc., d.b.a. Calumet Containers, is unable to immediately comply with these regulations. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit the Company to delay compliance with the SIP regulations covered by the Order until December 31, 1978.

Compliance with the Order by Steel Containers, Inc., d.b.a. Calumet Containers, will preclude Federal enforcement action under Section 113 of the Act for violations of the SIP regulations covered by the Order. Citizens suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the Order, and for violations of the regulations covered by the Order which occurred before the Order was issued by U.S. EPA or after the Order is terminated. If the Administrator determines that Steel Containers, Inc., d.b.a. Calumet Containers, is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

U.S. EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place Steel Containers, Inc., d.b.a. Calumet Containers, on a schedule for compliance with the Indiana State Implementation Plan.

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

Dated: January 2, 1979.

DOUGLAS M. COSTLE,
Administrator.

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

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding an entry to the table in § 65.191 to read as follows:

§ 65.191 U.S. EPA Approval of State Delayed Compliance Orders issued to major stationary sources.

The State Order identified below has been approved by the Administrator in accordance with Section 113(d)(2) of the Act and with this Part. With regard to this order, the Administrator has made all the determinations and findings which are necessary for approval of the Order under Section 113(d) of the Act.

Source	Location	Date of FR proposal	SIP regulation involved	Final compliance date
* * *	*	*	*	*
Steel Containers, Inc., d.b.a. Calumet Containers.	Hammond, Ind.	Aug. 18, 1978.	APC-7, APC-16.	Dec. 13, 1978

[FR Doc. 79-1054 Filed 1-11-79; 8:45 am]

[6560-01-M]

[FRL 1028-2]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for Phillips Petroleum Co., Kansas City, Kans.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby issues a Delayed Compliance Order to the Phillips Petroleum Company (Phillips). The Order requires the company to bring air emissions from its Fluid Catalytic Cracking Unit at Kansas City, Kansas into compliance with certain regulations contained in the federally-approved Kansas State Implementation Plan (SIP). Phillips' compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Henry F. Rompage, Environmental Protection Agency, Region VII, 1735 Baltimore, Kansas City, Missouri 64108, telephone 816-374-2576.

ADDRESSES: The Delayed Compliance Order, supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing issuance of the Order are available for public inspection and copying during normal business hours at: Environmental Protection Agency, Region VII, Enforcement Division, 1735 Baltimore, Kansas City, Missouri 64108.

SUPPLEMENTARY INFORMATION: On October 27, 1978, the Regional Administrator of EPA's Region VII Office published in the FEDERAL REGISTER, 43 FR 50223, a notice setting out the provisions of a proposed delayed compliance order for Phillips. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments or requests for a public hearing were received in response to the proposal notice.

Therefore, a delayed compliance order effective this date is issued to Phillips by the Administrator of EPA pursuant to the authority of Section 113(d)(1) of the Clean Air Act, 42 U.S.C. 7413(d)(1). The Order places Phillips on a schedule to bring its Fluid Catalytic Cracking Unit at Kansas City, Kansas into compliance as expeditiously as practicable with Kansas Air Pollution Emission Control Regulation 28-19-20, Particulate emissions, and 28-19-50, Opacity requirements, part of the federally-approved Kansas State Implementation Plan. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Phillips to delay compliance with the SIP regulations covered by the Order until July 1, 1979. The company is unable to immediately comply with these regulations.

Compliance with the order by Phillips will preclude federal enforcement action under Section 113 of the Act for violations of the SIP regulations covered by the Order during the period the Order is in effect. Citizen suits under Section 304 of the Act are similarly precluded. If the Administrator determines that Phillips is in violation of a requirement contained in the Order, one or more of the actions required by Section 113 (d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final agency action for the purposes of judicial review under Section 307(b) of the Act.

EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place Phillips on a schedule for compliance with the applicable requirement(s) of the Kansas State Implementation Plan.

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

Dated: January 2, 1979.

DOUGLAS M. COSTLE,
Administrator.

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

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.210 to read as follows:

§ 65.210 Federal delayed compliance orders issued under section 113(d) (1), (3), and (4) of the Act.

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
* * *	*	*	*	*	*
Phillips Petroleum Company.	Kansas City, Kans.	VII-78-DCO-13	Oct. 27, 1978.	28-19-20, 28-19-50.	July 1, 1979

[FR Doc. 79-1055 Filed 1-11-79; 8:45 am]

[6560-01-M]

[FRL 1024-1]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Orders for Toledo Edison Co., Acme Station and Bay Shore Station

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of U.S. EPA issues two Delayed Compliance Orders to Toledo Edison Company. The Orders require the Company, to bring air emissions from Boilers 16, 91, and 92 at the Acme Station and Boilers 1 and 2 at the Bay Shore Station into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP). Toledo Edison Company's compliance with the Orders will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (Act) for violations of the SIP regulations covered in the Order.

DATE: This rule takes effect January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Linda M. Buell, Attorney, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone (312) 353-2082.

SUPPLEMENTARY INFORMATION: On October 2, 1978, the Acting Regional Administrator of U.S. EPA's Region V Office published in the FEDERAL REGISTER (43 FR 45408) a notice setting out the provisions of two proposed Federal Delayed Compliance Orders for Toledo Edison Company. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments and no request for a public hearing were received in response to the proposed notice. Because a line was omitted from the Bay Shore Station Order in the proposed issuance notice, this Order is being reprinted.

Therefore, two Delayed Compliance Orders effective this date are issued to Toledo Edison Company by the Administrator of U.S. EPA pursuant to the authority of Section 113(d)(1) of the Clean Air Act, 42 U.S.C. 7413(d)(1). The Orders place Toledo Edison Company on schedules to bring its Boilers 16, 91, and 92 at Acme Station located at Toledo, Ohio, and Boilers 1 and 2 at Bay Shore Station, located at Oregon, Ohio, into compliance as expeditiously as practicable with Regulations AP-3-07 and AP-3-11, a part of the federally approved Ohio State Implementation Plan. Toledo Edison Company is unable to immediately comply with these regulations. The Orders also impose interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Orders are met, they will permit Toledo Edison Company to delay compliance with the SIP regulations covered by the Orders until April 15, 1980.

Compliance with the Orders by Toledo Edison Company will preclude Federal enforcement action under Section 113 of the Act for violations of the SIP regulations covered by the Orders. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the Orders, and for violations of the regulations covered by the Orders which occurred before the Orders were issued by U.S. EPA or after the Orders are terminated. If the Administrator determines that Toledo Edison Company is in violation of a requirement contained in the Orders, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

U.S. EPA has determined that the Orders shall be effective upon publication of this notice because of the need to immediately place Toledo Edison Company on a schedule for compliance with the Ohio State Implementation Plan. (Authority: 42 U.S.C. 7413(d), 7601.)

Dated: January 2, 1979.

DOUGLAS M. COSTLE,
Administrator.

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

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding an entry to the table in § 65.400 to read as follows:

§ 65.400 Federal Delayed Compliance Orders issued under Section 113(d)(1), (3), and (4) of the Act.

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
•	•	•	•	•	•
Toledo Edison Company, Acme Station.	Toledo, Ohio	EPA-5-79-A-4	Oct. 2, 1978	AP-3-07, AP-3-11	Apr. 15, 1980
Toledo Edison Company, Bay Shore Station.	Oregon, Ohio	EPA-5-79-A-5	Oct. 2, 1978	AP-3-07, AP-3-11	Apr. 15, 1980

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of Toledo Edison Company, Bay Shore Station, Oregon, Ohio. Proceeding Under Sections 113(a), (d) and 114, Clean Air Act, as Amended; Order No. EPA-5-79-A-5.

ORDER

The following ORDER is issued this date pursuant to Sections 113(a), (d) and 114 of the Clean Air Act, as amended, 42 U.S.C. Section 7401 *et seq.*, (hereinafter referred to as "the Act"). The ORDER contains a compliance schedule with increments of progress, interim emission reduction requirements, and emission monitoring and reporting conditions. Final compliance is required as expeditiously as practicable, but no later than April 15, 1980. Public notice, opportunity for a public hearing and notice to the State of Ohio have been provided pursuant to Section 113(d)(1) of the Act.

On May 25, 1977, James O. McDonald, Director, Enforcement Division, Region V, United States Environmental Protection Agency (hereinafter referred to as "U.S. EPA"), pursuant to authority duly delegated to him by the Administrator of U.S. EPA, issued a Notice of Violation to Toledo Edison Company (hereinafter referred to as "the Company") stating that the Company's Bay Shore Station, located in Oregon, Ohio, was found to be in violation of the applicable Ohio Implementation Plan, as defined in Section 110(d) of the Act. The Notice cited the Company's Boilers #1 and #2 and Stacks #1 and #2 for violation of Ohio Regulations AP-3-07 and AP-3-11. A copy of said Notice was sent to the State of Ohio Environmental Protection Agency.

Pursuant to Section 113(a)(4) of the Act, opportunity to confer with the Administrator's delegates was duly given to the Company. On June 20, 1977, a conference was held in Chicago, Illinois, to discuss the May 25, 1977, Notice of Violation mentioned above.

U.S. EPA has determined that said violations have continued beyond the 30th day after the date of the Enforcement Director's notification and that the Company is unable to comply with the applicable implementation plan at this time.

After a review of information submitted at the conference and a thorough investigation

of all relevant facts, including public comment, it has been determined that the schedule hereinafter set forth requires compliance as expeditiously as practicable, and that the terms of this ORDER comply with 113(d) of the Act.

Therefore, it is hereby ORDERED that:

I. The Company shall achieve compliance with Ohio Regulations AP-3-07 and AP-3-11 in accordance with the following schedule:

Increment	*Date*
Begin on-site construction	Achieved
Begin tie-in outage for Unit #2	Nov. 15, 1979
Start-up of Unit #2	Jan. 1, 1980
Begin tie-in outage for Unit #1	Jan. 1, 1980
Start-up of Unit #1	Feb. 15, 1980
Complete testing of Unit #2	Feb. 15, 1980
Complete testing of Unit #1	Apr. 1, 1980
Achieve compliance with Ohio Regulations AP-3-07 and AP-3-11.	Apr. 15, 1980

II. Nothing herein shall affect the responsibility of the Company to comply with other Federal, State or local regulations.

III. No later than 15 days after any date for achievement of an incremental step for final compliance specified in this ORDER, the Company shall notify U.S. EPA in writing of its compliance, or noncompliance and reasons therefore, with the requirement. If delay is anticipated in meeting any requirement of this ORDER, the Company shall immediately notify U.S. EPA in writing of the anticipated delay, reasons therefore, and the estimated length of the delay.

The Company shall submit quarterly reports to U.S. EPA detailing progress made with respect to each requirement of this ORDER. In addition, photographs shall be submitted along with these reports, showing progress made since the previous quarter. U.S. EPA personnel shall be admitted to the facility at any reasonable time for the purpose of viewing the construction progress.

IV. Nothing herein shall be construed to be a waiver by the Administrator of any rights or remedies under the Clean Air Act, including, but not limited to, Section 303 of the Act, 42 U.S.C. Section 7503.

V. Pursuant to Section 113(d)(7) of the Act, during the period of this ORDER, until completion of the program set out in Paragraph 1 herein, the Company shall use the best practicable systems of emission reduction so as to maximize the reliability and efficiency of the exsting controls on Unit #1 and Unit #2, minimize paticulate matter emissions, avoid any imminent and substantial endangerment to the public health, and comply with the requirement of the applicable implementation plan as it is able to.

Written operating and maintenance procedures for the existing controls shall be submitted to U.S. EPA for approval within one month from the effective date of this ORDER. These procedures shall provide for maximizing reliability and efficiency, malfunction reporting, record keeping, and corporate reviewing. Failure to submit or comply with the procedures will constitute a violation of this ORDER.

VI. A continuous opacity monitoring system for the stack which is being constructed to service Units #1 through #4 shall be installed, calibrated, maintained and operated in accordance with the procedures set forth in Appendix B of 40 CFR Part 60 no later than April 15, 1980. Pursuant to Section 114, monitor data shall be retained by the Company for at least two years subsequent to recording. On a quarterly basis, the Company shall report all 6-minute data averages from the monitor [reduced as specified in 40 CFR Section 60.13(b)] in excess of 20 percent.

VII. The Company is hereby notified that failure to achieve final compliance by July 1, 1979, will result in a requirement to pay a noncompliance penalty unless exempted under Section 120 of the Act. In the event of such failure, the Company will be formally notified pursuant to Section 120(b)(3) and any regulations promulgated thereunder, of its noncompliance.

VIII. Nothing herein shall be construed to be a waiver by the Company of its right to challenge the reasonableness, legality or constitutionality of the imposition of noncompliance penalties on the Company.

IX. The Company hereby waives its right to file a petition for review of this ORDER pursuant to Section 307(b)(1) of the Act.

X. All submissions and notifications to U.S. EPA, pursuant to this ORDER, shall be made to the Air Compliance Section, Enforcement Division, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-2090. A copy of all submissions and notifications shall be made to the Toledo Pollution Control Agency, 26 Main Street, Toledo, Ohio 43605.

Dated: January 2, 1979.

DOUGLAS M. COSTLE,
Administrator.

Toledo Edison Company has reviewed this ORDER, consents to the requirements set forth in this ORDER, and believes it to be a reasonable means by which the Bay Shore Station can achieve final compliance with Ohio Regulations AP-3-07 and AP-3-11. The Company denies the existence of any past or present violation of the Ohio Implementation Plan at its Bay Shore Station, but for purposes of settlement consents to the abatement program set forth herein.

Dated: November 15, 1978.

LOWELL E. ROE,
Vice President, Facilities Development, Toledo Edision Company.

[FR Doc. 79-1060 Filed 1-11-79; 8:45 am]

[6560-01-M]

SUBCHAPTER N—EFFLUENT GUIDELINES AND STANDARDS

[FRL 1036-7]

PART 434—COAL MINING POINT SOURCE CATEGORY

Standards of Performance for New Sources

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On September 19, 1977, the Environmental Protection Agency (EPA) proposed regulations setting forth limitations on the discharge of pollutants into navigable waters from new source coal mines and coal preparation plants, as required by the Federal Water Pollution Control Act. The rules promulgated today establish final standards of performance for new sources in the coal mining point source category. Changes and clarifications in response to comments received on the proposed regulations are included in the rules promulgated today. These standards of performance will be incorporated in National Pollutant Discharge Elimination System permits issued by EPA or by States with approved programs.

EFFECTIVE DATE: February 12, 1979.

FOR FURTHER INFORMATION CONTACT:

William Telliard, Effluent Guidelines Division (WH-552), Environmental Protection agency, 401 M Street, S.W., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: On October 17, 1975, EPA proposed regulations adding Part 434 to Title 40 of the Code of Federal Regulations (40 FR 48830). Those regulations, with subsequent amendments, established effluent limitations guidelines based on use of the best practicable control technology currently available (BPT) for existing sources in the coal mining point source category. These were followed, on April 26, 1977, with final BPT effluent limitations guidelines for this category (42 FR 21380).

On September 19, 1977, the Agency published proposed standards of performance for new sources (NSPS) within this category based on application of the best available demonstrated control technology (42 FR 46932). Many comments were received concerning these proposed standards. After consideration of these comments, and incorporation of certain adjustments, the Agency today promulgates final standards of performance for new sources in the coal mining point source category.

The Agency is not at this time promulgating pretreatment standards for new sources in this category, nor does it intend to promulgate such standards in the future, because there are no known situations in which such standards would be applicable. Nor is the Agency at this time promulgating final regulations establishing effluent limitations reflecting best available technology economically achievable (BAT) which were proposed on May 13, 1976 (41 FR 19841). The Agency intends to promulgate BAT regulations in 1980 after careful consideration of the discharge of certain "priority pollutants" from mines and preparation plants in the coal mining point source category. This review complies with the settlement agreement approved by the U.S. District Court for the District of Columbia in *Natural Resources Defense Council, et al* v. *Train*, 8 ERC 2120 (D.C.D.C., 1976). During that

review, these new source standards will be reconsidered.

LEGAL AUTHORITY

These standards of performance are authorized by Section 306 of the Federal Water Pollution Control Act ("Act"), as amended in 1977 by the Clean Water Act, Pub. L. 95-217. This section requires the achievement by new sources of a Federal standard of performance determined by the Administrator to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

Section 403(c) of the Act requires the Administrator to issue to States and appropriate water pollution control agencies information on the processes, procedures or operating methods which result in the elimination or reduction of the discharge of pollutants in accordance with Section 306. The "Development Document" referred to below fulfills these requirements.

Finally, section 501(a) authorizes the Agency to prescribe regulations as necessary to carry out its functions under the Act.

SUMMARY AND BASIS OF EFFLUENT LIMITATIONS GUIDELINES

The report entitled "Development Document for Performance Standards for the Coal Mining Point Source Category, May 1976," details the analyses undertaken in support of these regulations and is available for inspection at the EPA Public Information Reference Unit, Room 2404, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460, at all EPA regional offices, and at State Water Pollution Control Offices. The report on the potential economic effects of these regulations is also available for inspection at these locations. Persons wishing to obtain copies may write to the National Technical Information Service, Springfield, Virginia 22151.

At the time of proposal of performance standards on September 19, 1977 (42 FR 46932), interested persons were asked to submit written comments to the Agency by November 18, 1977. Copies of all public comments which were received are available for inspection at the EPA Public Information Reference Unit, Room 2922 (EPA Library), Waterside Mall, 401 M Street, S.W., Washington, D.C.

The regulations promulgated today incorporate several adjustments to the proposed standards of performance. In large part, these changes reflect EPA's consideration of the substantial number of comments received from industrial and environmental groups. The comments are addressed in detail in Appendix A to the preamble; major issues and changes in the proposed regulations are summarized below.

SUMMARY AND OUTLINE OF ISSUES AND MAJOR CHANGES

The definition of "new source coal mine" used in these regulations is tied closely to an identification number system implemented by the Mining Safety and Health Administration of the Department of Labor ("MSHA"), formerly the Mining Enforcement and Safety Administration of the Department of the Interior. MSHA requires every coal mine operator to file a Notification of Legal Identity, which provides information relating to mine ownership and location (30 CFR Part 82). Upon reciept of these Notices, it assigns identification numbers to the mines on a routine, first come-first serve basis.

This identification system offers EPA a convenient vehicle for identifying new source coal mines. If a mine has received an MSHA number before the promulgation date of these regulations, it will be considered an existing source and, therefore, will not be required to meet the standards of this Part. Conversely, if a mine receives a number after the promulgation date of these regulations, the mine constitutes a new source and must satisfy the requirements of this Part.

It should be noted that in the proposed NSPS (September 19, 1977), the date for determining a "new source coal mine" was the date the regulation was proposed. However, in that promulgation of the regulation was delayed past one hundred and twenty days after the date of proposal because the Agency needed additional time to address the substantial number of comments received on the proposed regulation, the date for determining a "new source coal mine" in this final rule is the date this rule is promulgated.

In some instances, however, the MSHA identification system might not yield a fair result. It is possible, for example, that some delay in registration could occur; in that event, a mine which was in existence when these regulations were promulgated could be classified as a new source. To avoid this possibility, the regulations offer an option. If a mine owner or operator can demonstrate that contractual obligations to purchase unique facilities or equipment (as defined in 40 CFR Part 6, Appendix A) existed before the promulgation date of these regulations, his mine will be considered existing rather than new. To carry his burden of proof, the owner or operator must show that substantial contractual obligations existed. A building contract would qualify, for example, but not options to purchase or contracts terminable at little or no loss. Similarly, the "facilities" or "equipment" for which contracts are let must constitute items of significant value, the purchase of which represents a substantial commitment to go forward with the commercial endeavor. Such items include structures, structural materials unique to a particular site, and machinery, process equipment or construction equipment for use at a particular site.

Furthermore, a mine presently categorized as existing may subsequently be reclassified as new if it undergoes a "major alteration." Changes which are substantial enough to create, in effect, a new source would fall under the term. However, normal expansion of mining operations would not be considered a major alteration and would, therefore, not bring a site under these regulations. Of course, determining whether a particular change constitutes a simple modification or a major alteration can be accomplished fairly only on a case-by-case basis. This the Agency will do, taking into account a range of factors relating to mine operation and capital investment (see Section 434.11(i)(2) of the regulations). A factor that will not be determinative of whether a "major alteration" has occurred is the acquisition of additional land or mineral rights. The Agency has deleted this criterion from the proposed regulations because simple legal transactions do not necessarily translate into creation of new point sources. Nor do they indicate a present intention to increase mining activity.

COAL PREPARATION PLANTS AND ASSOCIATED AREAS

Although recycling is a common practice, the Agency has deleted the requirement that process water in preparation plants be reused. There are several reasons for this change. First, reuse of process water is essentially a function of the economics of operation of a preparation plant: sensible operators will strive to achieve recycle quite apart from the pollution control aspect.

More importantly, most preparation plants are surrounded by associated areas. Common settling ponds service the coal preparation plant and associated area. Discharges from the preparation plants often are channeled to the common ponds rather than directly to navigable waterways. The discharges from those ponds to navigable waters, of course, are covered by these effluent limitations guidelines. But since those limitations are expressed in concentration terms, it is often impossible to apportion the pollution coming from the preparation plant discharges. Thus, there would be little practical difference between regulations containing a recycle provision

and those that do not. And it appears that the recycle language would have caused substantial confusion for those involved in the permit drafting process.

LIMITATIONS ON IRON

Among the effluent limitations imposed in these new source performance standards are maximum concentration limits on iron. When these regulations were proposed, the daily maximum limitation for total iron was set at 3.5 mg/l. This figure provoked several objections from the industry to the effect that a daily maximum of only 1.17 times the 30 day average (set at 3 mg/l in the proposed regulations) was unrealistic. In response to these objections, EPA reviewed its data and has determined that it fails to substantiate the 3.5 limitation. Therefore, in that other effluent limitations for the coal mining point source category have been based on long term data indicating that a daily maximum of twice the 30 day average can be maintained, final limitations promulgated for total iron are 3.0 mg/l as a 30 day average and 6.0 mg/l as a daily maximum.

WESTERN COAL MINES SUBCATEGORY

In the proposed new source performance standards for the coal mining point source category, the Agency established a separate Subpart for Western Coal Mines (Subpart F). That approach was based on data indicating that many Western coal mines are able to discharge pollutants in lower concentrations than Eastern coal mines. Factors offered to explain this difference included the relatively more even topography of Western mines, the emphasis on conserving scarce water supplies, and the lower concentration of pollutants in the geologic formations being exploited. Proposed standards of performance for this subcategory were founded upon data gathered from reports on NPDES permits and from sampling and analysis at certain Western mines.

This proposed approach prompted comments from the mining industry. These comments pointed out that although many Western mines, defined as those mines located west of the 100 meridian, West Longitude, are located in more even topography, still others are situated in areas topographically similar to Eastern coal fields.

EPA has reviewed this information and believes that insufficient data presently exists to justify a regionally based imposition of standards of performance with respect to all pollutant parameters covered by these regulations. However, such data may be forthcoming in the future. For example, it is clear that many mines in certain Western states are achieving total suspended solids (TSS) limitations more stringent than those applicable to Eastern mines. See the preamble for proposed Standards of Performance for New Sources (42 FR 46933, September 19, 1977) and for BPT Effluent Limitations and Guidelines (42 FR 21380, April 26, 1977).

If, in the future, available information justifies separate consideration for Western mines, this Subpart will be amended.

Therefore, EPA today reserves Subpart F for that purpose. As an immediate measure, the Agency today excepts from national regulations with respect to TSS those States in which mines have demonstrated an ability to discharge TSS in lower concentrations than the effluent limitations established in these regulations. This exception means that persons initiating mining activity in those States will receive TSS limitations based on the best engineering judgment of the State or Federal permitting authority pursuant to Section 402(a)(1).

EXEMPTION FOR DISCHARGE RESULTING FROM EXTRAORDINARY VOLUMES DUE TO PRECIPITATION EVENTS

A number of coal mining companies and environmental groups requested clarification of the overflow exemption contained in the proposed standards of performance.

While the language, in an attempt to clarify, does differ slightly from the exemption in the BPT regulation, the intent is the same. Simply put, each discharger should design, construct and properly maintain his containment or treatment facilities. The treatment facilities should be constructed to include the volume which would result from a "10-year/24-hour precipitation event" at the mine or preparation plant. A 10-year/24-hour precipitation event is a measurement of precipitation in inches of water which can be found from the isoploval maps in "Rainfall Frequency Atlas of the U.S.," a publication of the U.S. Department of Commerce. For example, using the "10-year/24-hour precipitation event" for Charleston, West Virginia, a treatment facility should be constructed to include the volume of water that would result from 4 inches of rain over the mine or preparation plant area covered by the regulation. Should a 10-year/24-hour precipitation event or a snow melt of equivalent volume cause an overflow or discharge of effluent that is not within the effluent limitations, that amount of overflow or discharge caused by the precipitation event will be allowed, provided that the treatment facility has been constructed, operated and maintained to meet the stated design. The soundness and justification for the specific design, construction, operation and maintenance of the waste water treatment facility is left to the operator or owner of the mine or preparation plant.

A change has been made in the provision to emphasize that the burden is on the discharger to show that the exemption is warranted. A technical correction will be made to the regulation based on best practicable technology currently available to clarify that that meaning applies to those regulations also.

For a detailed discussion of this exemption, see the preamble to the BPT Effluent Limitations Guidelines (42 FR 21381-21382, April 26, 1977).

AREAS UNDER RECLAMATION

The proposed regulations added Subpart E-Areas Under Reclamation, but imposed no standards of performance due to on-going data collection and analysis. The addition of this Subpart occasioned numerous comments. Environmental groups urged the Agency, for example, to promulgate standards of performance for Subpart E because "areas under reclamation" could use the same technology to comply with standards of performance as are used for mine drainage originating from an "active mine area." Others suggested that Subpart E should address post-mining discharges from closed, abandoned or orphaned mines. Still others requested clear delineation of EPA FWPCA authority and that of the Department of the Interior pursuant to the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87). It was further maintained that specific effluent limitations for discharges from areas under reclamation would be inappropriate.

After close consideration of these comments, the Agency has chosen to add Subpart E as originally proposed because there is insufficient information to justify imposition of standards of performance at this time for inactive mines and areas under reclamation.

EPA intends to propose BAT regulations and revised new source performance standards in 1979. As part of this review, EPA will continue to gather and analyze information with respect to water pollution originating in surface mines undergoing reclamation and, if warranted, may at the time it proposes the revised BAT limitations, propose standards of performance for Subpart E.

ENVIRONMENTAL REVIEW OF NEW SOURCE MINES PERMITS

General regulations governing the application of NEPA to new source permits were promulgated on January 11, 1977, (40 CFR Part 6 (42 FR 2450)). EPA expanded these general regulations by issuing a separate policy

memorandum on the applicability of NEPA to new source coal mines. (A summary of this guidance was included in 42 FR 46932). The Agency received a number of comments on this summary. Many comments requested that NEPA review be extended to all underground drift mines operating in seams which have a potential for producing acid mine drainage. They further maintained that the adverse potential of post-mining discharge was sufficiently high to warrant automatic NEPA review of all mines. Other comments took a different view, arguing that NEPA review be contingent upon factors relating to down-stream water use.

As the Agency explained in the policy memorandum, environmental assessments of new source coal mines should be based upon mine size (design annual tonnage) and mining method (surface or underground). If the assessment suggested that a site may pose a significant risk of major environmental impact to the environment (in accordance with 40 CFR 2450 et seq.), an EIS would be prepared. This review could be triggered by appropriate evidence relating to any of the following: archaeological sites, sensitive ecosystems, habitats of endangered species, historical sites, wild and scenic rivers, wetlands, prime agricultural lands, significant surface water or ground water pollution, recreational land uses, air quality, noise level, community integrity and quality of life, mining in a saturated zone, presence of overburden with a potential for producing acid mine drainage, steep slope mines (over 25 percent), mining in an alluvial valley floor, and other criteria based on characteristics of particular regions.

The Agency believes that this approach is sound and fully comports with all legal requirements.

A number of comments were received addressing the EPA draft document "Best Practices for New Source Surface and Underground Coal Mines." They requested that this draft document be reappraised in light of the regulations required by the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87). EPA agrees and will continue to work closely with the Department of Interior's Office of Surface Mining in those areas where these regulations affect the same activities. When final regulations are promulgated by the Department of the Interior, EPA will review the regulations and will issue, as appropriate, further guidance to Regional Administrators regarding the continued applicability of "best practice procedures."

ECONOMIC IMPACT ANALYSIS

The report, "Economic Impacts of Effluent Guidelines, Coal Mining" which supports these regulations, concludes that these new source performance standards should not significantly affect prices, production, employment, or balance of trade. The standards are predicted to cause 1985 raw coal prices to increase up to 32 cents per ton; this represents an average cost increase of no more than 1.6 percent. The economic analysis indicated that the higher price is expected to reduce 1985 demand from 897 to 894 million tons, a decrease of 0.3 percent. Assuming 12000 BTU per pound of coal, this annual reduction would approximate 72×10^{12} BTU. These estimates which were based upon an earlier analysis done for the Agency, differ from current Administration estimates of approximately 1.2 billion tons of coal demanded in 1985. However, the price and proportionate production impacts are expected to be similar.

The proposed preparation plant standards of performance were predicted to increase the cost of prepared coal up to seven cents per ton. This increase was approximately 3.5 percent of the $2.00 per ton charge for coal cleaning and proportionally less of the cost of prepared coal. No significant change in the demand for cleaned coal was expected to result from the regulation.

These promulgated regulations remain substantially unchanged from the proposed regulations; thus, the economic analysis remains applicable. However, these promulgated regulations have removed the requirement for preparation plants to recycle their waste streams. This could to some small extent ease economic impacts of the regulations.

For both coal mines and preparation plants, capital requirements through 1985 will total approximately $126 to $161 million. This is less than 2 percent of the eight to eleven billion dollars which the coal industry is expected to spend for capital expansion during this period.

The requirement to prepare Regulatory Analyses is governed by Executive Order 12044. EPA adopted guidelines to implement this policy. Although not necessary, the economic analysis prepared in support of this regulation fulfills the requirements of the executive order.

MONITORING

Raw process waste water or raw mine drainage at some mines and preparation plants may contain a pollutant controlled by this Part in undetectable or insubstantial quantities, or at substantially lower concentrations than allowed by the standard of performance. If that is the case, the Agency may allow by permit less frequent monitoring of those parameters than is required for other pollutants in the discharge (see 40 CFR Part 125.27). A less frequent schedule in some circumstances may still be sufficient to assure that no change in concentrations is occurring. Such modifications in monitoring requirements will be considered on a case-by-case basis.

SMALL BUSINESS ADMINISTRATION LOANS

Section 8 of the FWPCA authorizes the Small Business Administration, through its economic disaster loan program, to make loans to assist certain small business concerns in effecting additions or alterations to their equipment, facilities, or methods of operation so as to meet water pollution control requirements under the FWPCA. These loans exist to aid concerns likely to suffer substantial economic injury without such assistance.

For further details on this Federal loan program, write to EPA, Office of Analysis and Evaluation (WH-586), 401 M Street, S.W., Washington, D.C. 20460.

Dated: December 20, 1978.

DOUGLAS M. COSTLE,
Administrator.

Part 434 is amended as follows:

Subpart A—General Definitions

1. In § 434.11, paragraph (i) is added as follows:

§ 434.11 General Definitions.

* * * * *

(i) The term "new source coal mine" shall mean a coal mine which:

(1) was not assigned the applicable Mining Safety and Health Administration (MSHA) identification number under 30 CFR Part 82 prior to the promulgation date of these new source performance standards and which, at such date, had no contractual obligation to purchase unique facilities or equipment as defined in Appendix A of 40 CFR Part 6, Guidance on Determining a New Source, or

(2) is determined by the Regional Administrator to constitute a "major alteration" in accordance with 40 CFR Part 6 Appendix A (even if the applicable MSHA identification number is assigned prior to the promulgation date of new source performance standards). In making this determination, the Regional Administrator shall take into account the occurrence of one or more of the following events, in connection with the mine for which the NPDES permit is being considered, after the date of promulgation of ap-

plicable new source performace standards:

(i) A mine operation initiates extraction of a coal seam not previously extracted by that mine;

(ii) a mine operation discharges into a drainage area not previously affected by waste water discharges from the mine;

(iii) a mine operation causes extensive new surface disruption;

(iv) a mine operation initiates construction of a new shaft, slope, or drift;

(v) a mine operation makes significant capital investment in additional equipment or additional facilities;

(vi) such other factors as the Regional Administrator deems relevant.

Subpart B—Coal Preparation Plants and Associated Areas

2. Section 434.25 is added as follows:

§ 434.25 Standards of performance for new sources.

(a) The following limitations establish the concentrations of pollutants which may be discharged by a point source subject to the provisions of this subpart after application of the best available demonstrated control technology:

(1) Discharge of pollutants shall not exceed the following limitations, if discharges from that point source normally are acidic prior to treatment:

Effluent characteristics	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
	Milligrams per liter	
TSS	70.0	35.0
Iron, total	6.0	3.0
Manganese, total	4.0	2.0
pH	within the range of 6 to 9	

(2) Discharge of pollutants shall not exceed the following limitations, if discharges from that point source normally are alkaline prior to treatment:

Effluent characteristics	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
	Milligrams per liter	
TSS	70.0	35.0
Iron, total	6.0	3.0
pH	within the range of 6 to 9	

(b) Upon satisfactory demonstration by the discharger, any overflow, increase in volume of a discharge, or discharge from a bypass system, resulting from a 10-year/24-hour or larger precipitation event or from a snow melt of equivalent volume, from facilities designed, constructed, and maintained to contain or treat the volume of water which would result from a 10-year/24-hour precipitation event, shall not be subject to the limitations set forth in paragraph (a) of this section.

(c) Where the application of neutralization and sedimentation treatment technology results in an inability to comply with the manganese limitation set forth in paragraph (a) of this section, the permit issuer may allow the pH level in the final effluent to be exceeded to a small extent in order that the manganese limitation in paragraph (a) of this section will be achieved.

Subpart C—Acid or Ferruginous Mine Drainage Subcategory.

3. Section 434.35 is added as follows:

§ 434.35 Standards of performance for new sources.

(a) The following limitations establish the concentrations of pollutants which may be discharged by a point source subject to the provisions of this subpart after application of the best available demonstrated control technology:

Effluent characteristics	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
	Milligrams per liter	
TSS	[1]70.0	[1]35.0
Iron, total	6.0	3.0
Manganese, total	4.0	2.0
pH	within the range of 6 to 9	

[1]These TSS limitations shall not apply to discharges from coal mines located in the following States: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. In these States, TSS limitations shall be determined on a case-by-case basis.

(b) Upon satisfactory demonstration by the discharger, any overflow, increase in volume of a discharge, or discharge from a bypass system, resulting from a 10-year/24-hour or larger precipitation event or from a snow melt of equivalent volume, from facilities designed, constructed, and maintained to contain or treat the volume of water which would result from a 10-year/24-hour precipitation event, shall not be subject to the limitations set forth in paragraph (a) of this section.

(c) Drainage which is not from an active mining area shall not be required to meet the limitations set forth in paragraph (a) of this section as long as such drainage is not commingled with untreated mine drainage which is subject to the limitations in paragraph (a) of this section.

(d) Where the application of neutralization and sedimentation treatment technology results in an inability to comply with the manganese limitation set forth in paragraph (a) of this section, the permit issuer may allow the pH level in the final effluent to be exceeded to a small extent in order that the manganese limitation in paragraph (a) of this section will be achieved.

Subpart D—Alkaline Mine Drainage Subcategory

4. Section 434.45 is added as follows:

§ 434.45 Standards of performance for new sources.

(a) The following limitations establish the concentrations of pollutants which may be discharged by a point source subject to the provisions of this subpart after application of the best available demonstrated control technology:

Effluent characteristics	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
	Milligrams per liter	
TSS	[1]70.0	[1]35.0
Iron, total	6.0	3.0
pH	within the range of 6 to 9	

[1]These TSS limitations shall not apply to discharges from coal mines located in the following States: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. In these States, TSS limitations shall be determined on a case-by-case basis.

(b) Upon satisfactory demonstration by the discharger, any overflow, increase in volume of a discharge, or discharge from a bypass system, resulting from a 10-year/24-hour or larger precipitation event or from a snow melt of equivalent volume, from facilities designed, constructed, and maintained to contain or treat the volume of water which would result from a 10-year/24-hour precipitation event, shall not be subject to the limitations set forth in paragraph (a) of this section.

(c) Drainage which is not from an active mining area shall not be required to meet the limitations set forth in paragraph (a) of this section as long as such drainage is not commingled with untreated mine drainage which is subject to the limitations in paragraph (a) of this section.

5. Subpart E is added as follows:

Subpart E—Areas Under Reclamation Subcategory

§ 434.50 Applicability; description of the areas under reclamation subcategory.
§ 434.55 [Reserved]

§ 434.50 Applicability; description of the areas under reclamation subcategory.

The provisions of this subpart are applicable to discharges from surface mining areas where grading has been completed and the area of land is bonded by an appropriate reclamation bond.

§ 434.55 [Reserved]

6. Subpart F is added as follows:

Subpart F—Western Coal Mines Subcategory

§ 434.60 Applicability; description of the Western coal mines subcategory.
§ 434.65 [Reserved]

§ 434.60 Applicability; description of the western coal mines subcategory.

The provisions of this subpart are applicable to mine drainage resulting from the mining of coal of any rank including but not limited to bituminous, lignite, and anthracite from mines located west of the 100-degree meridian.

§ 434.65 [Reserved]

APPENDIX A

SUMMARY OF PUBLIC PARTICIPATION

Prior to this publication, the Environmental Protection Agency set forth in substantial detail factual determinations supporting the promulgation of these regulations. These appeared in the Notice of Final Rulemaking for existing sources (BPT) in the Coal Mining Point Source Category, published April 26, 1977 (42 FR 21380) and in the notice of Public Review Procedures, published October 6, 1973 (38 FR 21202). Moreover, the Development Document for Final Effluent Limitations Guidelines and New Source Performance Standards for the Coal Mining Point Source Category and the document entitled Economic Impact of Interim Final Effluent Guidelines on the U.S. Coal Mining Industry support these regulations. The public had opportunity to review these studies (42 FR 46932).

The following parties submitted written comments: West Virginia Citizen Action Group Salt River Project; Dechert, Price and Rhoads (for Westmoreland Resources); A.T. Massey Coal Company; Peter Kiewit Sons' Company; Island Creek Coal Company; Consolidation Coal Company; United States Steel Corporation; AMAX Coal Company; State of West Virginia, Office of the Attorney General; State of West Virginia, Department of Natural Resources; Kentucky Coal Association Incorporated; Pennsylvania Power and Light Company; Jack McCormack and Associates; National Coal Association; State of Utah, Office of the Governor; The North American Coal Corporation; The State of North Dakota; Commonwealth of Pennsylvania, Department of Environmental Resources; Duquesne Light; Trout Unlimited; The Pittsburgh and Midway Coal Mining Company; the United States Environmental Protection Agency, Region VIII; Utah Power and Light Company; Ashland Coal Company Incorporated; Dow Chemical, U.S.A.; Texas Utilities Generating Company; CF & I Steel Corporation; Peabody Coal Company; Knife River Coal Mining Company; Save Our Cumberland Mountains; East Tennessee Research Corporation; Utah International Incorporated; Bethlehem Steel Corporation; The Pittston Company Coal Group; The West Virginia Highlands Conservancy; National Mines Corporation; United States Department of the Interior; and the Honorable Robert H. Molihan, House of Representatives.

(1) The Agency received comments questioning exemptions for discharges of extraordinary volume due to precipitation events. Some of these requested that EPA employ the same language that it used in the BPT regulations. EPA has decided to modify that language but only to clarify the earlier statement. For a full discussion of this provision, see the preamble to these regulations.

(2) EPA received numerous comments concerning its definition of "new source coal mine." The majority of comments agree with the Agency decision to ground the determination upon the identification number system of the Mining Safety and Health Administration of the Department of Labor ("MSHA"). One comment maintained, however, that, as the MSHA identification system deals with mine operation, its use here would violate Section 306(a)(2) of the Clean Water Act, which ties the definition of "new source" to time of construction. The Agency agrees that commencement of construction is critical in this regard. Consequently, the regulations allow a mine owner or operator to demonstrate that construction occurred prior to the promulgation date of these regulations. A successful demonstration would rebut the presumption created by the time of issuance of the MSHA number.

Other comments requested a definition for "existing" sources. This definition is not necessary because any source which is not "new" is, by implication, "existing."

EPA also received comments concerning "major alterations" of coal mines. One argued that the guidance criteria established in the regulations is too vague, but failed to offer any specific alternative language. EPA has decided to retain these criteria because it believes them to be sufficient. They provide specific guidance to Regional Administrators who must make these case-by-case decisions, and also put owners and operators on notice in this regard. These criteria allow needed discretion and maintain a national uniformity in decision making.

Another comment suggested that "major alterations" be linked to degradation of water quality. Although in a given case, degradation alone could prompt a decision that a major alteration has occurred, EPA disagrees that this, or any other single criterion, should exclusively govern the determination. There are too many factors which indicate major operational change to exclusively rely on one.

(3) Numerous comments were received concerning Subpart E—Areas under Reclamation. Many of these comments asked EPA to include standards of performance for discharges from deep mines after closure and cessation of mining activity. The Agency declines to do so because it has insufficient data at this time to impose limitations on inactive mine discharges. BAT limitations, however, may impose effluent limitations for discharges from areas under reclamation.

Other commenters noted that these regulations set forth no clear distinction between EPA control of coal mine discharges and that of the Office of Surface Mining of the Department of the Interior. EPA and the Department of the Interior are working together to ensure that these new source performance standards will neither jeopardize the efforts of the agencies nor unfairly burden the industry.

Finally, some commenters prefer regulation of discharges from areas under reclamation by other than effluent limitations. Once again, the lack of sufficient data precludes adoption of this suggestion. This possibility will receive attention during BAT review.

(4) With respect to the proposed maximum daily limitations for total iron, commenters complained that the 3.5 mg/l figure was too stringent. In these regulations, EPA has amended that standard to 6.0 mg/l. For a discussion of its reasons, see the preamble to these regulations.

(5) EPA received comments on Subpart F—Western Coal Mines. They requested deletion of the category or, in the alternative, the imposition of total suspended solid limitations identical to those imposed in the rest of the Nation. In response, EPA has removed the TSS limitations set forth in the proposed new source performance standards. The effect is that TSS limitations for western mines will reflect best engineering judgment on a case-by-case basis. For a fuller discussion, see the preamble to these regulations.

(6) Industry commented that the TSS limitations are too stringent. The Agency carefully considered this objection; it believes that these standards reflect the best available demonstrated control technology in the industry.

Another comment suggested that EPA base TSS limitations on ambient total solids in the receiving stream. Because new source performance standards are technology-based, it would be inappropriate to key the regulations to receiving water quality.

Finally, one comment asserted that EPA should prepare a cost-benefit analysis focusing solely on removal of total suspended solids. EPA believes that its more broad economic analysis is both appropriate and adequate.

(7) Certain comments questioned the pH limitation with respect to manganese. In the proposed new source performance standards, EPA authorized exceedance of the upper pH limit to 9.5 when necessary to meet the manganese limitation. Comments asked EPA to abandon the 9.5 ceiling and to adopt in its place the approach contained in the BPT regulation. That regulation allows exceedance "to a small extent." Upon consolidation, EPA has reinstated the BPT language, in order to maximize discretion in the permit issuing authority.

(8) EPA received numerous comments concerning its recycling proposal. Specifically, these comments requested guidance on the amount of process waste water that must be returned to the process. Because EPA has decided not to require recycling, these inquiries require no response.

(9) State officials commented that EPA's decision to forego regulation of post-mining

discharges at this time will unfairly burden their regulatory programs. They also maintained that the continuation of non-uniform state standards would influence the location of new industry.

Although these allegations may be true, EPA cannot impose effluent limitations in the absence of sufficient data. The Agency will study the post-mining discharge problem and promulgate standards, as appropriate, in conjunction with its BAT review of this point source category.

(10) One comment asked EPA to conduct specific economic impact analyses on individual mining districts. EPA believes that its nationwide analysis adequately considers regional impacts of the regulations.

(11) Several commenters contended that discharges from preparation plant associated areas are not point source discharges and that, therefore, these regulations should not apply. EPA's study of the industry reveals the contrary: most discharges are from point sources. Consequently, we decline to remove coal preparation plant associated areas from coverage. Of course, only point sources as defined in the Act are covered.

(12) EPA received comments from numerous private interests regarding the procedures for environmental review of new source coal mine permits. Although not a part of these regulations, EPA had discussed these procedures in the preamble to the proposed new source performance standards for this point source category (42 FR 46932). At that time, it outlined a method which expands upon the general NEPA regulations by using screening procedures to identify coal mines that are most likely to have significant impact on the environment. Under that scheme, EPA would use two criteria, the rate of production and the mining method, as preliminary indicators of environmental impact, and, thus, of the need for an environmental impact statement.

Some of the comments preferred to this approach a full NEPA review of all underground drift mines operated in pitching seams, due to the risk of acid mine drainage. Others wanted NEPA review if a mine could significantly affect a watershed. After consideration of these comments, EPA has decided to retain the procedures. First, the Agency believes that the propriety of environmental review should not be determined on narrow grounds. This method carefully avoids that consequence. Second, this administratively expedient procedure will help to shorten the time required to determine whether full NEPA review is warranted; other suggested procedures would extend this time unnecessarily.

Finally, commenters noted that EPA's draft document, "Best Practice for New Source Surface and Underground Coal Mines," overlapped regulations established under the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87). EPA is aware of the Department of the Interior's parallel role in regulating coal mines; consequently, the Agency will continue to work closely with the Office of Surface Mining of that Department to ensure that mutual regulatory efforts are neither duplicative nor conflicting.

[FR Doc. 79-1048 Filed 1-11-79; 8:45 am]

[4110-35-M]

Title 42—Public Health

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER B—MEDICARE PROGRAM

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Payment Under Medicare for Items and Services Furnished by Indian Health Service Hospitals and Skilled Nursing Facilities

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Final Rule.

SUMMARY: These amendments permit payment for items and services furnished Medicare beneficiaries by hospitals and skilled nursing facilities of the Indian Health Service (IHS). The amendments implement Section 1880(a) of the Social Security Act, which was added by Section 401 of the Indian Health Care Improvement Act (Pub. L. 94-437). With certain exceptions, Medicare payment could not previously be made for these services because of the general statutory prohibition against Medicare payment for services furnished by Federal providers.

DATE: Effective January 12, 1979.

FOR FURTHER INFORMATION, CONTACT:

Mr. John B. Russell, Medicare Bureau, Health Care Financing Administration, Room 1H-5 East Low Rise Building, Baltimore, Maryland 21235 (301) 594-8260.

SUPPLEMENTARY INFORMATION: Section 401 of the Indian Health Care Improvement Act (Pub. L. 94-437), enacted on September 30, 1976, authorized Medicare payment for services furnished by IHS hospitals and skilled nursing facilities to Medicare beneficiaries. (See Section 1880 of the Social Security Act, 42 U.S.C. 1395qq.)

The Medicare statute (title XVIII of the Social Security Act) generally prohibits payment (other than for emergency services) (1) to any Federal provider of services, except those providing services to the general public as community institutions or agencies, (2) to any provider for items or services which the provider is obligated under a law of the United States or contract with the United States to furnish at public expense, and (3) for items or services which are paid for directly or indirectly by a governmental entity, whether or not the Medicare beneficiary was otherwise entitled to free care. (See Sections 1814(c), 1835(d), and 1862(a)(3) of the Act.) Therefore, prior to enactment of Pub. L. 94-437, payment could not be made under Medicare for services (other than emergency services) furnished by IHS hospitals and skilled nursing facilities (SNFs), except in the case of certain hospitals in Alaska that had been determined to be serving the general public as community institutions. Now Medicare payment can be made for services furnished by an IHS hospital or SNF, whether or not the Medicare beneficiary who receives the services is otherwise entitled to free care from the IHS.

A Notice of Proposed Rulemaking (NPRM) was published in the FEDERAL REGISTER on August 8, 1977 (42 FR 39995). The NPRM proposed to extend Medicare coverage also to certain services furnished in Veterans Administration (VA) hospitals under section 115(a) of the Veterans Omnibus Health Care Act (Pub. L. 94-581). However, these provisions cannot be implemented until a number of administrative issues are resolved by the VA and the Department of Health, Education, and Welfare, as provided by section 115(a) of Pub. L. 94-581. We are concerned that, under these circumstances, amending the regulations would be misleading or confusing. For this reason, the proposed extension to VA hospitals has been omitted from these final regulations. When agreement on these administrative questions is reached between the Department and the VA, implementing regulations will be published in a new NPRM.

COMMENTS RECEIVED AND RESPONSES

Nine comments were received with regard to the NPRM. A summary of the comments and the Department's responses follow:

1. One group of comments related to the proposed amendments on VA facility coverage. Since those amendments have been deferred for publication in a future NPRM, these comments will be considered in the redraft of that NPRM.

2. Another group endorsed the proposed amendments related to IHS hospital and extended care coverage, expressing the view that they would result in improved utilization of medical services.

3. One commenter objected to one Federal agency (HCFA) reimbursing another Federal agency (IHS) for services the latter is required to furnish without charge.

Since the reimbursement for these services is required by Section 1880 of

the Social Security Act, we have no discretion to withhold it.

4. Another commenter objected to (a) Medicare reimbursement to IHS facilities that do not meet Medicare conditions of participation, and (b) use of Medicare funds, instead of IHS funds, to upgrade the facilities.

Those provisions did not appear in the NPRM but are required by Section 1880. Section 1880(b), added by Pub. L. 94-437, provided that IHS facilities not in compliance with the existing Medicare standards for participation and payment could submit a plan prior to March 31, 1977, for achieving compliance. Upon acceptance of the plan, a facility would be eligible for payments without regard to the extent of its actual compliance during the first 12 months after the month the plan was submitted. In addition, section 1880(c) of the Act requires that Medicare payments owed to IHS facilities be used exclusively to upgrade IHS facilities, until substantially all the facilities meet Medicare health and safety standards.

5. Another commenter urged that the availability of Medicare reimbursement to IHS facilities not result in decreased Departmental funding of IHS health care activities.

This comment is dealt with by section 401(c) of Pub. L. 94-437, which states: "Any payments received for services provided to beneficiaries hereunder shall not be considered in determining appropriations for health care and services to Indians."

EFFECTIVE DATE

Section 401 of the Indian Health Care Improvement Act was effective September 30, 1976. All facilities wishing to participate in the Medicare program submitted a plan for compliance with Medicare standards and were approved for participation beginning March 31, 1977. Since all planning, staff training, instructions and other activities needed to begin Medicare payments for services furnished by IHS facilities have been completed, good cause exists for not having a delayed effective date, and, therefore, these regulations are effective upon publication (January 12, 1979).

42 CFR Part 405 is amended as set forth below:

1. Section 405.101 is amended by revising the material in paragraph (a) which precedes paragraph (a)(1) to read as follows:

§ 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, limitations, and exclusions set out in this part and in the Act for:

* * * * *

2. Sections 405.154 and 405.155 are vacated and reserved.

§ 405.154 [Reserved]

§ 405.155 [Reserved]

3. Section 405.252 is amended by revising the material preceding paragraph (a) and by vacating and reserving paragraphs (b) and (c) to read as follows:

§ 405.252 Conditions prohibiting payment of benefits.

In addition to any other limitation, condition, or exclusion set out in this part or in the Act, payment of supplementary medical insurance benefits may not be made under the following circumstances:

* * * * *

(b) [Reserved]
(c) [Reserved]

* * * * *

4. Sections 405.311a and 405.311b are added to read as follows:

§ 405.311a Nonreimbursable expenses; items or services furnished by a Federal provider of services or other Federal agency.

Payment may not be made for expenses incurred for any items or services that are furnished by a Federal provider of services or other Federal agency, except that:

(a) Payment may be made for emergency hospital services if the conditions in § 405.152 or § 405.249 are met;

(b) Payment may be made to a participating Federal provider which has been determined by the Secretary to be providing services to the public generally as a community institution or agency; and

(c) Payment may be made for items and services furnished by participating hospitals and skilled nursing facilities of the Indian Health Service, notwithstanding § 405.311.

§ 405.311b Nonreimbursable expenses; items or services which a provider or other person is obligated to furnish at public expense under a law of, or contract with, the United States.

Payment may not be made for items or services that a provider of services or other person (other than a hospital or skilled nursing facility of the Indian Health Service) is obligated by a law of, or contract with, the United States to furnish at public expense.

5. Section 405.312 is amended by revising paragraph (e) to read as follows:

§ 405.312 Nonreimbursable expenses; items or services paid for by governmental entity.

* * * * *

(e) Payment may be made for items and services furnished by participating hospitals and skilled nursing facilities of the Indian Health Service.

* * * * *

(Secs. 1102, 1814(c), (d), 1835(d), 1862(a), 1871, and 1880 of the Social Security Act; (42 U.S.C. 1302, 1395f(c), (d), 1395n(d), 1395y(a)(3), 1395hh, 1395qq).)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance.)

Dated: October 30, 1978.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

Approved: January 3, 1979.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 79-1205 Filed 1-11-79; 8:45 am]

[4110-35-M]

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Clinical Laboratory Proficiency Examination

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Final Rule.

SUMMARY: These amendments allow us to continue to administer a Public Health Service proficiency examination by which an individual may qualify as a clinical laboratory technologist or cytotechnologist. Current regulations authorize the use of these examinations only until December 31, 1977. These amendments delete that expiration date and provide continued opportunity for a person who lacks the required academic qualifications to qualify as a technologist by passing a proficiency examination. The intent is to increase the availability of competent laboratory personnel available to provide services for patients whose care is funded under Medicare.

DATE: January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Martha Chestem—(301/594-7930).

SUPPLEMENTARY INFORMATION: On August 1, 1978, a Notice of Pro-

posed Rulemaking (NPRM) was published in the FEDERAL REGISTER proposing a continuance of the Public Health Service proficiency examinations for clinical laboratory technologists and cytotechnologists. Current Medicare regulations provide that an individual not meeting specified academic requirements can qualify as a technologist or cytotechnologist by passing a Public Health Service proficiency examination given on or before December 31, 1977.

As stated in the NPRM, the statutory requirement for the examination program (Section 1123 of the Act) expired on December 31, 1977. However, Sections 1861(s)(11) and 1871 of the Act authorize us to extend the program. Our experience with the proficiency examination has been a positive one. HCFA believes that continuation of the examination will benefit the Medicare program and protect the health and safety of Medicare beneficiaries by increasing the availability of competent clinical laboratory personnel.

DISCUSSION OF MAJOR COMMENTS

There were 467 responses to the NPRM. Seventy percent (327) of the respondents favored continuance of the examinations without change. Below is a categorization of the other major comments received, and our response to these comments.

(1) LINK BETWEEN PASSING EXAMINATION AND JOB PERFORMANCE

A number of commenters stated that no validation study has been conducted to correlate test performance and job performance. At present, there is a validation study underway by Public Health Service to relate the test and job performance of individuals who previously passed the technologist examination. However, it will be at least 9 to 12 months before findings of the study are known. In the meantime, our observation is that people who previously passed the examination are doing a competent job as technologists and cytotechnologists.

(2) AWAIT LEGISLATION TO ALLOW CONTINUANCE OF THE EXAMINATION

Some commenters said that legislation should provide the guidance for future proficiency examinations. House (H.R. 10909) and Senate (S. 705) bills introduced in the 95th Congress contained provisions for proficiency examinations for clinical laboratory technologists. (H.R. 10909 was not voted on before adjournment; S. 705 passed the Senate on July 28, 1977.)

In our view, the failure of the Congress to pass this legislation did not constitute a rejection of the use of proficiency examinations. Rather, we view the introduction of these bills, and passage by the Senate, as support for the examination. Since we have current statutory authority for this measure, and since we favor these examinations, we see no reason to wait for a further legislative mandate to make them available.

(3) EDUCATION

Finally, there were respondents who stated that only 4-year college graduates with degrees in medical technology should be recognized as technologists in the regulations. We believe this proposal is too restrictive. Current regulations for independent laboratories participating in Medicare and for laboratories licensed under the Clinical Laboratory Improvement Act (CLIA) of 1967 (42 U.S.C. § 263a) recognize as technologists individuals who have at least 90 semester hours in pertinent science subjects and clinical laboratory experience, even though they have not received a degree in medical technology. It is our experience that these individuals are functioning well.

As explained in the NPRM, we are developing a comprehensive NPRM setting uniform personnel standards for laboratories participating in Medicare and laboratories licensed under CLIA. We hope to publish that NPRM soon.

42 CFR Part 405 § 405.1315 is amended by revising paragraph (b)(6) and (c)(3) to read as follows:

§ 405.1315 Conditions—clinical laboratory; technical personnel.

* * * * *

(b) Standard; technologists—qualifications.

* * * * *

(6) Achieves a satisfactory grade in a proficiency examination approved by the Secretary.

(c) Standard; cytotechnologists—qualifications.

* * * * *

(3) Achieves a satisfactory grade in a proficiency examination approved by the Secretary.

(Sections 1102, 1861(s)(11), 1871 of the Social Security Act; (42 U.S.C. 1302, 139x(s)(11) and 1395hh).)

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare Hospital Insurance.)

Dated: December 8, 1978.

LEONARD D. SCHAEFFER,
Administrator, Health Care Financing Administration.

Approved: January 6, 1979.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 79-1206 Filed 1-11-79; 8:45 am]

[4110-35-M]

PART 460—PROFESSIONAL STANDARDS REVIEW

Redesignation of PSRO Areas in Illinois

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Final Regulation.

SUMMARY: This regulation redesignates PSRO areas in Illinois in order to transfer Madison and Clinton Counties (currently in Area VIII) and McDonough County (currently in Area V), to Area VII. As a result of the redesignations, PSRO Area VII will better coincide with the existing boundaries of the local medical review organization.

DATES: The amendment is effective on January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Ann Flurry (301) 443-1794.

SUPPLEMENTARY INFORMATION: Professional Standards Review Organizations are independent physician organizations mandated under Title XI, Part B of the Social Security Act to review the medical necessity, appropriateness, and quality of health care and services funded through the Medicare, Medicaid, and Maternal and Child Health programs. Specific PSRO areas must be designated before review activities can be undertaken.

On March 18, 1974, regulations were published in the FEDERAL REGISTER (39 FR 10204) designating eight PSRO areas within Illinois. On September 26, 1978, we published a Notice (43 FR 43475) proposing to redesignate Illinois PSRO Areas V, VII, and VIII so that three counties, Madison and Clinton (currently in Area VIII) and McDonough (currently in Area V), are transferred to Area VII. This transfer will make the boundaries of Area VII more congruent with the existing boundaries of the local medical review organization, the Western Illinois Foundation for Medical Care (the Foundation). Only one response was received during the 60 day comment period. This response supported the proposed redesignation.

The Western Illinois Foundation for Medical Care is a local medical review organization responsible under the Hospital Admission and Surveillance Program (HASP) for review of care provided to Medicaid patients. The Foundation's review area currently includes thirteen of the eighteen counties in Area VII as well as the counties

of Madison, Clinton, McDonough and Bond. In order to make the boundaries of Area VII more congruent with the Foundation's review area, the counties of Madison, Clinton, and McDonough are being transferred to Area VII.

The Foundation is ready and willing to enter into an agreement for designation as a PSRO for the redesignated Area VII. The redesignation will thus facilitate the implementation of PSRO activity in the only area in Illinois where PSRO review has not yet been initiated.

42 CFR 460.17 is amended by revising the designation of PSRO Area V, Area VII and Area VIII as follows:

§ 460.17 Illinois.

Eight Professional Standards Review Organization areas are designated in Illinois, composed of the following counties:

AREA I

Jo Daviess	Ogle
Stephenson	De Kalb
Winnebago	Whiteside
Boone	Lee
Carroll	

AREA II

McHenry	Kane
Lake	Du Page

AREA III

Cook

AREA IV

Kendall	Grundy
Will	Kankakee

AREA V

Rock Island	Knox
Mercer	Stark
Henry	Marshall
Bureau	Fulton
Putnam	Peoria
La Salle	Tazewell
Warren	Woodford
Henderson	

AREA VI

Livingston	Macon
Ford	Moultrie
Iroquois	Douglas
McLean	Edgar
De Witt	Shelby
Piatt	Coles
Champaign	Cumberland
Vermilion	Clark

AREA VII

Adams	McDonough
Schuyler	Morgan
Brown	Sangamon
Cass	Christian
Mason	Calhoun
Menard	Greene
Logan	Jersey
Pike	Macoupin
Scott	Montgomery
Clinton	Hancock
Madison	

AREA VIII

Bond	Richland
Fayette	Williamson
Effingham	Saline
Jasper	Gallatin
Crawford	Union
Randolph	Johnson
Perry	Lawrence
Franklin	Washington
Hamilton	Jefferson
White	Wayne
Jackson	Edwards
Monroe	Wabash
St. Clair	Pope
Marion	Hardin
Clay	Alexander
Pulaski	Massac

(Section 1152 of the Social Security Act, 42 U.S.C. 1302c-1; Section 1102 of the Social Security Act, 42 U.S.C. 1302.)

Dated: December 8, 1978.

LEONARD D. SCHAEFFER,
Administrator, Health Care Financing Administration.

Approved: January 6, 1979.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 79-1207 Filed 1-11-79; 8:45 am]

[6730-01-M]

Title 46—Shipping

CHAPTER IV—FEDERAL MARITIME COMMISSION

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES

PART 530—INTERPRETATIONS AND STATEMENTS OF POLICY

AGENCY: Federal Maritime Commission.

ACTION: Adoption of Statement of Policy; Correction.

SUMMARY: In the Commission's adoption of statement of policy published December 28, 1978, 43 FR 60471, the new section should be designated "530.10" instead of "530.9".

EFFECTIVE DATE: January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Francis C. Hurney, Secretary, 1100 L Street, N.W., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: None.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 79-1247 Filed 1-11-79; 8:45 am]

[7035-01-M]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Ex Parte No. MC-19 (Sub-No. 16(a))]

PART 1056—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

Transportation of Household Goods [1]

(Use of Charge Cards)

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Interstate Commerce Commission has modified its regulations governing the participation of household goods carriers in charge card plans. As modified, these regulations permit carriers of household goods to offer household goods shippers an opportunity to pay for interstate transportation costs by use of a charge card. Generally, the regulations permit participation in plans which include chargeback provisions percentage service fees, and discounts to cash shippers. The regulations contain relaxed reporting requirements. Published at 43 FR 17004, April 21, 1978.

DATES: Effective January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Michael Erenberg (202) 275-7292.

SUPPLEMENTARY INFORMATION: As set forth below, the Commission has modified its regulations governing the participation of household goods carriers in charge card plans, 49 CFR 1056.25 and 1322.1 *et. seq.* As modified, these regulations permit carriers of household goods to extend a charge card payment option to shippers of household goods as defined in 49 CFR 1056.1(a). Prior approval of such plans must be obtained from the Commission.

Generally, plans which discriminate against other carriers of household goods or which are otherwise contrary to the public interest will be disapproved. The regulations also reserve to the Commission the right to withdraw approval of plans which are later shown to be disconsonant with the national transportation policy. Approval of plans will be given informally by letter.

[1] Formerly entitled Practices of Motor Common Carriers of Household Goods (Use of Credit Card Systems)

The regulations in the appendix also permit carriers to enter plans in which the contract between the carrier and the merchant provides for chargebacks to a carrier's account and a percentage service fee. Carriers will be able to assess surcharges to card customers and to offer discounts to cash customers to the extent the Truth in Lending Act (15 U.S.C. § 1601 *et. seq.*) permits these practices, provided that their tariffs are amended to reflect the terms and conditions of any such pricing provisions and the discounts are shown to be reasonable.

Reporting requirements have been retained on a relaxed basis. For the first full year of the operation of a plan, carriers must make quarterly reports to the Commission. Thereafter, reports will not be required.

If Commission approval of a plan is withdrawn, carriers will have a 30-day period in which to terminate their contract with the participating financial institution. Charge card plans are exempt from the Commission's credit regulations (49 CFR 1322.1 *et. seq.*) except in the instance where transactions are reversed and carriers are forced involuntarily to extend credit to shippers.

A copy of the Commission report, which contains a discussion of the issues considered in the development of the final regulations and a list of the participants, is available upon request. Requests should be sent to: Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

Accordingly, the rules set forth below are adopted. These rules are issued under the authority of part II of the Interstate Commerce Act and 5 U.S.C. §§ 552, 553, and 559 (the Administrative Procedure Act).

Issued in Washington, D.C., on December 11, 1978.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

RULE CHANGE

(1) 49 CFR 1056 is amended by deleting present §§ 1056.4, 1056.21(d), and 1056.25 and by substituting therefor the following same-numbered sections:

§ 1056.4 Discounts prohibited; rates based on prepayment of charges prohibited.

No discounts shall be authorized, by tariff provision or otherwise, by any common carrier of household goods, except as permitted by § 1056.25(f) of this chapter. No rates or charges shall be based on prepayment of charges.

§ 1056.21 Uniform rates for identical services.

* * * * *

(d) The regulations in (a), (b), and (c) above shall not apply to rates applicable to the transportation of shipments of machinery which, because of its unusual nature or value, requires the specialized handling and equipment usually employed in the moving industry, nor shall the above sections apply to rates established in accordance with § 1056.25(g) of this chapter.

§ 1056.25 Charge card plans.

(a) *Approval required.* Each motor common carrier of household goods shall obtain approval from the Commission before offering shippers of household goods the option of paying transportation charges with a charge card.

(b) *Application.* (1) Each such carrier shall make application for approval to participate in a charge card plan by submitting to the Commission a copy of its proposed agreement with the financial institution offering participation in the plan.

(2) Each application shall include the name and principal office location of the carrier seeking approval, the name and address of the carrier's authorized representative (if any), the name and address of the financial institution offering participation in the plan, and a summary of the plan.

(c) *Approval of application.* (1) Approval of a charge card plan shall be given informally by the Commission by sending an appropriate letter to the applying carrier. (2) Approval of a charge card plan shall be denied where the plan is being offered in a manner or on terms which unreasonably discriminate against other carriers which may seek to participate in a charge card plan. Approval shall also be denied when a plan contains terms or conditions contrary to the provisions in paragraphs (e) and (f) of this section or when it is contrary to the public interest.

(d) *Chargeback permitted.* The inclusion in a charge card agreement of reasonable provisions permitting the participating financial institution to charge back a carrier's account shall not result in automatic disapproval of a charge card plan.

(e) *Percentage service charges.* A carrier seeking to participate in a charge card plan may contract with the participating financial institution for payment of a percentage service charge to the financial institution provided that the amount of such service charge is reasonably related to the services performed by the financial institution in conjunction with the operation of such plan. Reasonable variances in the rates of service charges extended to individual carriers shall not alone result in a rate being deemed unrelated to the services provided by the institution.

(f) *Discounts and surcharges.* A motor common carrier of household goods which participates in charge card plan may offer discounts to cash shippers of household goods and assess charge card shippers with surcharges to the extent permitted by 15 U.S.C. § 1666(f), when such carrier has in effect, as part of its tariff, a rule which specifically sets forth (1) the amount of such discount or surcharge, and (2) the class of shipper to which a discount is offered or against which a surcharge is assessed.

(g) *Reporting.* During the first full year of its participation in a charge card plan, each motor common carrier of household goods shall file with the Commission quarterly reports showing (1) each shipment transported for which a charge card was used by the shipper (by bill of lading number and date), (2) the total charges for each such shipment, (3) the charge plan used for each such transaction, (4) the name of the financial institution through which the carrier participates in the charge card plan, and (5) the quarterly totals for items (1) and (2). No reports shall be required after the first full year of participation in a plan.

(h) *Withdrawal of approval.* The Commission expressly reserves the right to withdraw its approval of a charge card plan and to forbid a carrier or carriers from further participation in the plan should such action prove necessary to the protection of the public interest and the National Transportation Policy. In the event a plan or plans are disapproved, each participating carrier shall have a period of 30 days within which to settle its accounts with the participating financial institution and within which to terminate its contractual relationship with that institution.

(i) *Cross reference.* No practices authorized by this section shall be considered violative of any of the provisions of Part 1322 of this chapter as provided in § 1322.6.

(2) 49 CFR 1322 is amended by adding thereto the following § 1322.6:

§ 1322.6. Charge card plans not included.

The provisions of this Part shall not apply to payments of interstate transportation charges by use of charge cards when a carrier offering charge card payment service(s) has obtained approval for such charge card plan(s) as provided in § 1056.25 of this chapter and when the shipper of household goods does not force an involuntary extension of credit by the carrier by causing the charge card issuer to reverse the charge transaction and charge payments back to the carrier's account.

[FR Doc. 79-1258 Filed 1-11-79; 8:45 am]

[4310-55-M]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, BARTER, EXPORTATION, AND IMPORTATION OF WILDLIFE AND PLANTS

PART 18—MARINE MAMMALS

State Laws and Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Rule amendments.

SUMMARY: The date for receiving a State's annual report on its approved marine mammal laws, regulations, and conservation program is amended to extend the due date from 60 to 120 days following the close of the reporting period and to include the calendar year, as well as the fiscal year, as recognized report periods. States may have difficulty in meeting reporting obligations because the current submittal deadline of 60 days after the close of the fiscal year may coincide with a period of heavy research and management activities; by allowing additional time after the close of the report period in which to submit their reports and also by giving States the option of reporting on a calendar-year basis, these changes will help them meet reporting requirements. A State's obligation to notify the Service when a certain percentage of the maximum annual retrieved taking quota is reached for mammals whose management has been returned is also modified to lower the percentage from 90 to 80 percent. This change will help the Service take appropriate emergency steps to notify the public and to meet its responsibility for insuring that waiver quotas, especially small ones, are not exceeded.

EFFECTIVE DATE: February 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Rupert R. Bonner, Marine Mammal Coordinator, Office of Wildlife Assistance, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone: 202-632-2202.

SUPPLEMENTARY INFORMATION: The regulations in revised Subpart F of 50 CFR Part 18, published in the FEDERAL REGISTER on October 2, 1978 (43 FR 45370-45374), established procedures for States to follow in requesting review and approval of their marine mammal laws and regulations. They also set forth procedures, standards, and criteria that the Service will use in reviewing, approving, and monitoring the State provisions and in superseding them should that become necessary.

Under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the Service is obligated to continuously monitor and review approved State laws and regulations (16 U.S.C. 1379(a)(3)). To meet part of this obligation, the Service requires in § 18.56(b) of its revised Subpart F that each State with approved laws, regulations and conservation programs submit an annual report on them not later than 60 days after the close of its first full fiscal year following the effective date on which the Director approved them, and annually on that date thereafter. Because this requirement may place a severe reporting burden on States when their research and management activities are greatest, the Service is changing the due date for receiving the annual report from 60 to 120 days after the close of the reporting period and is including the calendar year, as well as the fiscal year, as an approved reporting period. These changes will assist States in meeting their reporting obligations; they will not adversely affect States' organizational, procedural, or operational frameworks, nor will they eliminate States' responsibilities to satisfy all reporting requirements.

Even after management of a species or population stock has been returned to a State under a waiver, the Service remains responsible for insuring that retrieved taking of involved marine mammals does not exceed the maximum number permitted by the waiver. To meet this responsibility, § 18.57 of the revised Subpart F requires a State to notify the Service when 90 percent of the maximum annual quota for a species or stock has been taken. As soon as practicable after receiving such a notification, the Service must publish an appropriate notice in the FEDERAL REGISTER and may initiate steps to prevent taking beyond the quota. Because it may be hard for the Service to take effective action by the time 90 percent of the quota has been taken, particularly when the quota is small, the notification level in 50 CFR 18.57 is being changed to 80 percent. This change will help the Service insure that a small-quota taking limit is not exceeded, but, like the changes in State reporting requirements, it will not adversely affect States because it does not alter their obligations to continuously monitor takings and notify the Service when a given taking level is reached.

Since this regulation merely clarifies the times when certain State reports and notifications are due and imposed no new requirements on States, organizations, or persons, the Director finds, pursuant to 5 U.S.C. 553 (b)(B), that notice and public procedure on this regulation are impracticable, unnecessary, and contrary to the public interest.

This document was prepared by Jackson E. Lewis, Marine Biologist, Office of Wildlife Assistance.

NOTE.—The Department has determined that this document is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044.

Accordingly, Subchapter B of Chapter I, Title 50, Code of Federal Regulations, is amended as shown below:

§ 18.56 [Amended]

1. The first paragraph of § 18.56(b) is amended to read as follows:

* * * * * *

(b) In order to facilitate such a review, each State having approved laws and regulations must submit an annual report, which must be received not later than 120 days after the close of such State's first full fiscal or calendar year following the effective date of the Director's approval of the State laws and regulations and at the same time each following year. The report shall contain the following information current for each reporting period:

* * * * * *

§ 18.57 [Amended]

2. Additionally, line 4 of § 18.57 is amended by deleting the words "90 percent" and inserting in their place "80 percent."

Dated: January 3, 1979.

LYNN A. GREENWALT,
Director,
Fish and Wildlife Service.

[FR Doc. 79-1266 Filed 1-11-79; 8:45 am]

[4310-55-M]

PART 20—MIGRATORY BIRD HUNTING

Possession of Shotshells Loaded With Material Other Than Steel Shot While Taking Waterfowl in Non-toxic Shot Zones

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule establishes restrictions on the use of toxic shot for waterfowl hunting in certain designated zones beginning September 1, 1979. Currently, steel shot is the only approved non-toxic shot. The rule postpones the previously proposed restric-

tion on toxic shot for all gauges of guns until September 1, 1980, but continues the restriction on possession of 12-gauge shotshells loaded with toxic shot until that date. This postponement for gauges other than 12-gauge has been determined necessary as a result of recent legislation, and the non-availability of steel shot in gauges other than 12-gauge.

EFFECTIVE DATE: September 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Robert I. Smith, Special Projects Coordinator, Office of Migratory Bird Management, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. 202-254-3207.

SUPPLEMENTARY INFORMATION: On July 28, 1976, the Fish and Wildlife Service published a final rule restricting the taking of waterfowl with shotshells loaded with shot that has not been approved as non-toxic (41 FR 31388). This rule, codified in 50 CFR 20.21(j), related to the taking of ducks, geese, swans, and coots in areas designated as non-toxic shot zones in 50 CFR 20.108.

On August 2, 1977, in recognition of the fact that approved non-toxic shot was manufactured in 12-gauge shells only, the Service published a ruling which prohibited the possession of toxic shot in 12-gauge shells while waterfowl hunting in non-toxic shot zones during the 1977-78 season (42 FR 39106). This amendment permitted the possession and use of shotshells containing lead or other metals in or outside of such zones in guns bored for ammunition other than 12-gauge.

On June 29, 1978, the Service published an amendment to § 20.21(j) which changed the rule published on August 2, 1977 to include waterfowl hunting seasons commencing in 1978 and terminating in 1979 (43 FR 28205-28206). Also, on June 29, 1978, the Service published a proposed amendment to § 20.21(j) (43 FR 28217-28218), to eliminate the exception to the non-toxic shot rule permitting toxic shot for gauges of guns other than 12-gauge for waterfowl hunting seasons commencing in 1979. The proposed ruling would have required that hunting of waterfowl within designated non-toxic shot zones occur only with shotshells approved as non-toxic, regardless of gauge of gun.

Public comment on the proposed rule for 1979 was received until November 9, 1978. Fifty-nine letters were received which expressed opposition to all regulations requiring that non-toxic shot be used. In addition, a petition was received which expressed similar opposition to all regulations relating to non-toxic shot. This petition contained the names of 531 people, most of whom reside in the State of Missouri. Fourteen letters were received which dealt specifically with the proposed amendment. Seven of these letters requested that the ruling requiring non-toxic shot in all gauges of guns in 1979 be delayed. Four letters stated opposition to the proposal without suggesting an alternative. Three letters expressed approval of the proposal.

Two letters were received from manufacturers of shotshells. One of these letters requested a delay in implementation of the proposal. The other letter made no specific request to alter the proposal.

Requests for delays in implementing the proposed amendment in 1979 generally referred to the lack of factory-loaded steel shot in 20- and 16-gauge shells and to the lack of components for hand-loading steel shot. Both letters from manufacturers of shotshells indicated that steel loads in gauges other than 12-gauge will not be available as factory-loaded products in 1979. Since components for hand-loading steel shot were not generally available in 1978, it cannot be assumed that they will be available for hand-loading in 1979.

In 1974, the Service contacted by mail a sample of duck stamp purchasers from throughout the United States. One question asked in this survey related to the gauge of gun normally used when hunting waterfowl. Eighty-four percent of the 3,628 respondents indicated that they normally used a 12-gauge gun for waterfowl hunting. Eight percent of the respondents indicated that they used a 20-gauge gun and 6.6 percent used a 16-gauge gun. Waterfowl hunters under 16 years of age were not included in this sample, since their names were not available from a sample of duck stamp purchasers. The estimate of smaller gauged guns used for waterfowl hunting would have been higher had this group been included in the sample. Hunters less than 16 years old make up about 5 percent of the total waterfowl-hunter population, based on a national survey conducted in 1970. An unknown proportion of these hunters use 20-gauge guns for waterfowl hunting, but it is reasonable to assume that the 20-gauge is popular among this age group. Therefore, the proportion of waterfowl hunters who use guns other than 12-gauge is estimated to be about 20 percent.

Following the implementation of non-toxic shot regulations applied to users of 12-gauge guns in 1976 and 1977, surveys were conducted to determine changes in the use of various gauges of guns for waterfowl hunting. A study conducted in Wisconsin indicated that 92 percent of the waterfowl hunters used 12-gauge guns prior to non-toxic shot regulations and 61 percent used 12-gauge guns in areas where the regulations had been implemented. In 1977 a survey by State wildlife law enforcement officers in the Mississippi Flyway indicated that a pronounced shift had occurred in gauge of gun preference when steel shot was first required in 12-gauge guns. The magnitude of the shift could not be determined with accuracy, and it appeared to vary widely from one location to another. A survey by Fish and Wildlife Service law enforcement agents in both the Atlantic and Mississippi Flyways in 1977 gave additional estimates of the proportion of hunters switching to gauges other than 12-gauge. These estimates ranged from no switching to as high as 80 percent of the hunters contacted.

Appropriated funds for the Department of the Interior (Pub. L. 95-465) for the fiscal year 1979 were restricted in their use by the following provision regarding non-toxic shot regulations:

> No funds appropriated by this Act shall be available for the implementation or enforcement of any rule or regulation of the United States Fish and Wildlife Service, Department of the Interior, requiring the use of steel shot in connection with the hunting of waterfowl in any State of the United States unless the appropriate State regulatory authority approves such implementation.

This congressional action took place at the time of the opening of waterfowl hunting seasons or a few days prior to such openings. Certain non-toxic shot zones in 13 States were identified as areas where non-toxic shot regulations would not be enforced in the 1978-79 waterfowl hunting season due to the refusal of these States to approve such enforcement in part or in total. These States were Arkansas, Idaho, Louisiana, Nevada, North Carolina, Utah, Arizona, Oklahoma, California, Iowa, Ohio, Oregon, and Washington. Twenty-five States approved the enforcement of the regulations.

One of the consequences of the aforementioned action by Congress was to create uncertainty regarding future federal regulatory requirements, and hence demand for shotshells loaded with either toxic or non-toxic shot. Store owners could become reluctant to stock shotshell supplies for waterfowl hunting in 1979. A change in regulations in 1979 with respect to gauge of gun would further complicate this situation, and could result in circumstances in which neither lead nor steel waterfowl loads would be available to the waterfowl hunter in ample amounts in 1979.

The final decision regarding regulations for 1979 included consideration of problems related to the availability of and demand for both toxic and non-toxic shotshells. After weighing these

factors, the Service has decided to postpone the restrictions on use of lead shot in gauges other than 12-gauge until September 1, 1980.

Accordingly, 50 CFR Part 20 is amended by deleting the present (j) under § 20.21(j) and replacing it with the following:

§ 20.21 Hunting methods.

* * * * * *

(j) While possessing shotshells loaded with shot other than steel shot or such shot approved as non-toxic by the Director pursuant to procedures set forth in § 20.134. *Provided*, That:

(1) This restriction applies only to the taking of ducks, geese, swans, and coots (*Fulica americana*) in areas described in § 20.108 as non-toxic shot zones; and

(2) Prior to September 1, 1980, this restriction applies only to 12-gauge shotshells.

This amendment was authored by Robert I. Smith, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, 202-254-3207.

NOTE.—The Department has determined that this rule is not a significant rule and does not require preparation of a regulatory analysis. An Environmental Assessment was prepared and a negative declaration filed.

Dated: January 3, 1979.

LYNN A. GREENWALT,
Director, United States Fish and Wildlife Service.

[FR Doc. 79-942 Filed 1-11-79; 8:45 am]

proposed rules

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.

[3410-34-M]

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[9 CFR Part 91]

INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

Proposed Rulemaking

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed Rulemaking.

SUMMARY: This document proposes to add the port of Los Angeles, California, and to delete the port of San Francisco, California, from the lists of airports and ocean ports designated as ports of embarkation for animals. It is proposed to delete the port of San Francisco, California, from these lists because it no longer has export inspection facilities for animals which satisfy the required standards.

The intended effect of this action is to update the list of ports of embarkation through which animals may be exported.

DATE: Comments on or before March 13, 1979.

ADDRESS: Comments to Deputy Administrator, USDA, APHIS, VS, Room 826, Federal Building, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT:

Dr. H. A. Waters, USDA, APHIS, VS, Room 826, Federal Building, Hyattsville, Maryland 20782, 301-436-8383.

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that pursuant to sections 4, 5, and 11 of the Act of May 29, 1884, as amended; section 10 of the Act of August 30, 1890, as amended; sections 1 and 2 of the Act of March 3, 1891, as amended; section 1 of the Act of February 2, 1903, as amended; sections 12, 13, 14, and 18 of the Act of March 4, 1907, as amended; and sections 3 and 11 of the Act of July 2, 1962, (21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f; 612, 613, 614, 618; 46 U.S.C. 466a, 466b); 37 FR 28464, 28477, and 38 FR 19141, the Animal and Plant Health Inspection Service proposes to amend Part 91, Title 9, Code of Federal Regulations.

The export inspection facilities at the port of Los Angeles were inspected by a representative of Veterinary Services, were found to comply with the standards for approved export inspection facilities in § 91.3(c) of the regulations, and were approved by the Deputy Administrator pursuant to § 91.3(d) of the regulations. Therefore, it is proposed that the port of Los Angeles, California, be designated as a port of embarkation for animals under § 91.3(a) of the regulations, and would be added to the lists of airports and ocean ports appearing respectively in §§ 91.3 (a)(1)(i) and (a)(2)(i) of the regulations.

The export inspection facilities at the port of San Francisco were inspected by a representative of Veterinary Services and were found not to be in compliance with the standards for approved export inspection facilities designated in § 91.3(c) and approval of these facilities was revoked pursuant to section 91.3(d). Therefore, designation of the port of San Francisco as a port of embarkation would be revoked, and the port of San Francisco, California, would be deleted from the lists of airports and ocean ports appearing respectively in §§ 91.3 (a)(1)(i) and (a)(2)(i) of the regulations.

Accordingly, § 91.3, paragraphs (a)(1)(i) and (a)(2)(i) would be amended to read as follows:

§ 91.3 Ports of embarkation and export inspection facilities.

(a) * * *

(1) *Airports.* (i) Chicago, Illinois; Harrisburg, Pennsylvania; Helena, Montana; Richmond, Virginia; Miami, Tampa, and St. Petersburg, Florida; New Iberia, Louisiana; Brownsville and Houston, Texas; Los Angeles, California; Moses Lake, Washington; and Newburgh, New York. * * *

(2) *Ocean ports.* (i) Richmond, Virginia; Miami and Tampa, Florida; Brownsville and Houston, Texas; and Los Angeles, California.

* * * * *

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, Room 826, 6505 Belcrest Road, Hyattsville, Maryland 20782, during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue of the FEDERAL REGISTER.

Done at Washington, D.C., this 9th day of January 1979.

NOTE.—This proposal has been reviewed under the USDA criteria established to implement E. O. 12044, "Improving Government Regulations," and has been designated "significant." An approved Draft Impact Analysis Statement has been prepared and is available from Program Services Staff, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782. 301-436-8695.

PIERRE A. CHALOUX,
Deputy Administrator,
Veterinary Services.

[FR Doc. 79-1082 Filed 1-11-79; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 762 3096]

ALUMINUM CO. OF AMERICA, ET AL.

Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement, among other things, would require a Pittsburgh, Pa. producer of aluminum building products and its subsidiary, Alcoa Building Products, Inc., to cease disseminating or participating in the dissemination of advertisements which contain fuel reduction, heat loss reduction, energy savings or thermal insulation representations regarding residential aluminum siding. The order would also require that the R-value for insulating material be disclosed in advertisements which merely use the term "insulated aluminum siding" for descriptive purposes.

DATE: Comments must be received on or before March 12, 1979.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and

Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Paul R. Peterson, Director, 4R, Cleveland Regional Office, Federal Trade Commission, 1339 Federal Office Bldg., 1240 East Ninth St., Cleveland, Ohio. 44199. (216) 522-4207.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

[File No. 762-3096]

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

ALUMINUM COMPANY OF AMERICA AND ALCOA BUILDING PRODUCTS, INC.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Aluminum Company of American, a corporation, and of Alcoa Building Products, Inc., a corporation, and it now appearing that the Aluminum Company of America, a corporation, and Alcoa Building Products, Inc., a corporation, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

IT IS HEREBY AGREED by and between the Aluminum Company of America, by its duly authorized officer, and its attorney, and by Alcoa Building Products, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

(1) Aluminum Company of America is a corporation organized, existing and doing business under and by virtue of the Laws of the Commonwealth of Pennsylvania with its office and principal place of business located at 1501 Alcoa Building, Pittsburgh, Pennsylvania 15219.

Alcoa Building Products, Inc., is a corporation organized, existing and doing business under and by virtue of the Laws of the Commonwealth of Pennsylvania, with its offices and principal place of business located at 1200 Two Allegheny Center, Pittsburgh, Pennsylvania 15212.

(2) Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

(3) Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

(4) This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby and related material pursuant to Rule 2.34, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

(5) This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

(6) This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

(7) Proposed respondents have read the proposed complaint and order contemplated hereby, and they understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order, and that they may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

ORDER

For purposes of this Order, the following definitions shall apply:

"Advertisement" means any written or verbal statement, illustration or depiction, whether the same appears in a television or radio broadcast, newspaper or newspaper supplement, magazine or magazine supplement, label, brochure, leaflet, circular, mailer, book insert, journal, catalog, sales promotion material, other periodical literature, billboard, public transit card, point of purchase display, or in any other media.

"Representation" means any direct or indirect statement, suggestion or implication.

"R Value" is the numerical measure of the degree of thermal resistance of a particular material.

For the purpose of this order the disclosed R Value shall be the R Value, expressed to the nearest tenth, of the thickness of respondents' product as packaged and shall be determined by actual tests of respondents' product. The tests shall be based on competent, widely accepted, scientific engineering criteria, applicable to a retrofit situation.

It is ordered, That respondents Aluminum Company of America, a corporation, and Alcoa Building Products, Inc., a corporation, their successors and assigns, and respondents' officers, agents, representatives and employees (hereinafter "respondents"), directly or through any corporation, subsidiary, division or other device shall forthwith cease and desist from disseminating, causing to be disseminated, paying in whole or in part for, or supplying information used in developing any advertisements in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which make any fuel reduction, heat loss reduction, energy savings, fuel savings, or thermal insulation representations for residential aluminum siding whether "insulated" or not.

In advertisements which merely describe respondents' products without any special emphasis on insulated aluminum siding, the term "insulated aluminum siding" may be used to describe aluminum siding which has insulating material added to it during the manufacturing or installing process so long as a specific R-value for the insulating material so added is disclosed in conjunction with the term "insulated aluminum siding."

It is further ordered, That respondents deliver a copy of this order to all present and future personnel or agents of respondents responsible for the design or creation of advertising materials promoting Alcoa residential aluminum siding.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form within which they have complied with this order.

ANALYSIS OF THE PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Aluminum Company of America, Inc., and its subsidiary, Alcoa Building Products, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested parties and the public. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide

whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that respondents used deceptive advertising in order to induce people to purchase Alcoa residential aluminum siding. Certain Alcoa advertisements have misrepresented the thermal insulating value of Alcoa's several types of aluminum siding products, and the resultant fuel savings advantages to consumers. Specifically, certain advertisements have:

(1) Overstated the insulating benefits of aluminum siding;

(2) Implied that aluminum siding provides insulating benefits comparable to other traditional methods of insulating;

(3) Failed to distinguish the very minimal benefits of the plain aluminum siding from the more substantial, but still relatively insignificant, insulating benefits of the so-called "insulated" siding; and

(4) Failed, in conjunction with a representation of insulating benefits, to disclose an R-value for the material thus represented so that a comparison to other forms of insulating materials could be made.

The proposed order forbids any further thermal insulating, energy savings, fuel reduction, etc., claims for Alcoa residential aluminum siding. While the order permits use of the term "insulated aluminum siding" for descriptive purposes only, and without any special emphasis, use of that term triggers and R-value disclosure requirement. The Commission is particularly interested in receiving public comment on:

(1) The advisability of an R-value disclosure requirement for a product with only marginal insulating value;

(2) Whether in this case it is in the public interest to require an R-value disclosure without also requiring an R-value definition statement; and

(3) Whether other disclosures are necessary to make the R-value not misleading in the context in which it appears.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-1262 Filed 1-11-79; 8:45 am]

[6750-01-M]

[16 CFR Part 461]

CHILDREN'S ADVERTISING

Revised Schedule for Public Hearing and Submission Dates on Proposed Trade Regulation Rulemaking

AGENCY: Federal Trade Commission.

ACTION: Dates changed for Washington, D.C. legislative hearing and submission of proposed disputed issues.

SUMMARY: On April 27, 1978, the Commission published in the FEDERAL REGISTER its initial notice of proposed rulemaking regarding children's advertising. The public hearing and submission dates were subsequently rescheduled by the Presiding Officer and published in the FEDERAL REGISTER on August 22, 1978. This notice announces a new schedule for the Washington, D.C. legislative hearing and the submission of proposed disputed issues.

DATES AND SCHEDULE: The San Francisco legislative hearing in this proceeding will commence on January 15, 1979 and will continue through January 26, 1979. After a short recess, the legislative hearing will resume in Washington, D.C. on March 5, 1979 and will end on March 30, 1979. Proposed disputed issues of fact that are material and necessary to resolve at a disputed issues hearing, requests to cross-examine at a disputed issues hearing witnesses who appeared at the legislative hearing, and requests to present oral rebuttal at a disputed issues hearing must be received on or before April 30, 1979. Specific dates for the remainder of the rulemaking proceeding will be announced at a later date, although the procedures to be followed will be those contained in the nitial notice of April 27, 1978.

ADDRESS: The legislative hearing in Washington, D.C. will begin at 9 a.m., March 5, 1979, in Room 332, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C.

Proposed disputed issues of fact, requests to cross-examine witnesses at a disputed issues hearing, and requests to resent oral rebuttal at a disputed issues hearing should be submitted in five copies, when feasible, to Morton Needelman, Presiding Officer, Children's Advertising, Federal Trade Commission, Washington, D.C. 20580. These documents will be available for public inspection in Room 130 of the Public Reference Branch, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Morton Needelman, Presiding Officer Children's Advertising, Federal Trade Commission, Washington, D.C. 20580, 202-254-7667, or William P. Golden, Assistant to the Presiding Officer, Children's Advertising, Federal Trade Commission, Washington, D.C. 20580, 202-254-7657.

SUPPLEMENTARY INFORMATION: On April 27, 1978, the Commission published in the FEDERAL REGISTER a notice of proposed rulemaking to consider certain restrictions regarding television advertising directed toward children (43 FR 17967). This notice announced special procedures which the Commission, pursuant to 16 CFR § 1.20, determined to employ in the proceeding and contained a schedule for the various stages of the proceeding, including dates for public hearings. In response to a petition from the Association of National Advertisers and other participants, the Presiding Officer extended the filing and hearing dates for the proceeding (Presiding Officer's Order No. 19, August 4, 1978, Public record 215-60) and published a notice of a revised schedule in the FEDERAL REGISTER on August 22, 1978 (43 FR 37203) which set January 29, 1979 as the start of the Washington phase of the legislative-type hearings.

Under Section D(1) of the Commission's initial notice of proposed rulemaking, the Presiding Officer has the primary responsibility for asking questions of witnesses at the legislative hearing. In order to facilitate his preparation for this task, the Presiding Officer has determined that there should be a brief recess between the San Francisco and Washington legislative hearings, which were originally scheduled to run consecutively. Accordingly, the beginning of the Washington, D.C. legislative hearing has been postponed 35 days until March 5, 1979. *See* Presiding Officer's Order No. 41, December 27, 1978 (Public Record 215-60). During this recess, interested persons are encouraged to submit to the Presiding Officer proposed questions or lines of questioning for witnesses scheduled to appear at the Washington, D.C. legislative hearing.

Although the remainder of the rulemaking proceeding will adhere closely to the sequence established by the Commission, the Presiding Officer has decided that the setting of specific dates beyond the deadline for the submission of proposed disputed issues of fact and requests to cross examine and to present oral rebuttal at a disputed issues hearing will be deferred.

Issued: January 9, 1979.

MORTON NEEDELMAN,
Presiding Officer.

[FR Doc. 79-1263 Filed 1-11-79; 8:45 am]

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[LR-278-76]

INCOME TAX

Distributions of Electing Small Business Corporation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to distributions of undistributed taxable income previously taxed to

shareholders of small business corporations. Changes to the applicable tax law were made by the Tax Reform Act of 1976. These regulations would provide the public with the guidance needed to comply with certain of the changes to the law relating to small business corporation made by the Act.

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 13, 1979. The amendments are proposed to be effective in the case of taxable years beginning after December 31, 1975.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Walter H. Woo of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3734).

SUPPLEMENTARY INFORMATION: This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 1377 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 902(b) and 1901(b)(32)(iv) of the Tax Reform Act of 1976 (90 Stat. 1608, 1800) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

The Tax Reform Act amended section 1377 (relating to special rules applicable to earnings and profits of electing small business corporation) by adding a new subsection (d). Section 1.1377-4 (relating to distributions of undistributed taxable income previously taxed to shareholders) states the rule under section 1377(d) that current year earnings and profits are computed without regard to section 312 (k)(relating to effect of depreciation on earnings and profits) but only for purposes of determining whether a distribution by an electing small business corporation is considered to be a distribution of previously taxed income and provides an example illustrating the application of the rule.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the FEDERAL REGISTER.

DRAFTING INFORMATION

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

PROPOSED AMENDMENTS TO THE REGULATIONS

The proposed amendments to the Income Tax Regulations (26 CFR Part 1) are as follows:

§ 1.1377 [Deleted]

PARAGRAPH 1. Section 1.1377 is deleted.

PAR. 2. There is added immediately after § 1.1377-3 the following new section:

§ 1.1377-4 Distributions of undistributed taxable income previously taxed to shareholders.

(a) *Undistributed taxable income previously taxed.* Under section 1377(d) the current year earnings and profits of an electing small business corporation are computed without regard to section 312(k) (formerly designated as section 312(m) for taxable years beginning before 1977). This rule applies solely for purposes of determining whether a distribution constitutes a distribution of the corporation's undistributed taxable income previously taxed to shareholders (to which section 1375(d) applies). Section 1377(d) and this section apply to taxable years of an electing small business corporation beginning after December 31, 1975.

(b) *Example.* The application of this section may be illustrated by the following example:

Example. Corporation M, an electing small business corporation, in 1977 has $100 of taxable income, $120 of current earnings and profits (the $20 difference between taxable income and current earnings and profits representing the accelerated portion of depreciation which is not deducted for purposes of determining current earnings and profits as a result of section 312(k)), and $10 of undistributed taxable income previously taxed to shareholders in a prior year. During the taxable year, the corporation distributes $120 to its shareholders. Solely for purposes of determining whether the corporation has distributed previously taxed income, the corporation's current earnings and profits are considered to be $100. Accordingly, $10 of the amount distributed is treated as a distribution of previously taxed income, and $110 of the amount distributed is treated as a distribution of current earnings and profits (determined with regard to section 312(k)) and is taxable as a dividend. The remaining $10 of undistributed current earnings and profits increases accumulated earnings and profits.

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 79-1261 Filed 1-11-79; 8:45 am]

[4810-31-M]

Bureau of Alcohol, Tobacco, and Firearms

[27 CFR Parts 4, 5, and 7]

[Notice No. 313]

ADVERTISING REGULATIONS UNDER THE FEDERAL ALCOHOL ADMINISTRATION ACT

Extension of Comment Period to the Advance Notice of Proposed Rulemaking

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

ACTION: Extension of comment period.

SUMMARY: This advance notice extends the comment period an additional 60 days to the advance notice of proposed rulemaking, published on November 21, 1978, on alcoholic beverage advertising practices.

DATE: Comment period is extended from January 22, 1979, to March 23, 1979. All comments must be received on or before March 23, 1979.

ADDRESS: Comments must be submitted to the Director, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044 (Attention: Chief, Regulations and Procedures Division).

SUPPLEMENTARY INFORMATION: On November 21, 1978, the Bureau of Alcohol, Tobacco and Firearms published an advance notice of proposed rulemaking (43 FR 54266) to obtain input on contemplated revisions to 27 CFR Part 4, Subpart G (Advertising of Wine); Part 5, Subpart H (Advertising of Distilled Spirits); and Part 7, Subpart F (Advertising of Malt Beverages). Due to the impact of advertising practices on the consumer and the historical fact that the regulations on the advertisement of these products (under 27 CFR Part 4, Subpart G; Part 5, Subpart H; and Part 7, Subpart F) have basically remained unchanged since the mid-1930's, ATF has decided to extend the comment period from January 22, 1979 to March 23, 1979.

DISCLOSURE OF COMMENTS

Written comments or suggestions may be inspected by any person at the ATF Reading Room, Office of Public Affairs, Room 4408, Federal Building,

12th and Pennsylvania Avenue, NW., Washington, DC, during normal business hours.

After considerations of all comments and suggestions, ATF may issue a notice of proposed rulemaking. The proposals discussed in this advance notice may be modified due to the comments and suggestions received.

DRAFTING INFORMATION

The principal author of this document is Thomas B. Busey of the Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the Bureau and of the Treasury Department have participated in the preparation of this document, both in matters of substance and style.

AUTHORITY

This advance notice of proposed rulemaking is issued under the authority contained in section 5 of the Federal Alcohol Administration Act, 49 Stat. 981, as amended (27 U.S.C. 205).

Signed: January 5, 1979.

JOHN G. KROGMAN,
Acting Director.

[FR Doc. 79-1066 Filed 1-11-79; 8:45 am]

[4510-26-M]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[29 CFR Part 1910]

[Docket No. H-005]

BERYLLIUM

Reopening of Rulemaking Record

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Reopening of rulemaking record to introduce certain documents and to allow opportunity for written comments.

SUMMARY: This document reopens the rulemaking record on occupational exposure to beryllium in order to introduce new documents into the record. It also invites interested persons to submit written comments concerning these documents.

DATES: Comments on the new document and related correspondence must be received by February 12, 1979.

ADDRESS: Comments should be sent to: Docket Officer, Docket No. H-005, Room S6212, U.S. Department of Labor, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert A. Manware, Occupational Safety and Health Administration, Room N-3660, U.S. Department of Labor, Washington, D.C. 20210, (202) 523-7183.

SUPPLEMENTARY INFORMATION: The Occupational Safety and Health Administration (OSHA) published a proposed standard for occupational exposure to beryllium in the FEDERAL REGISTER on October 17, 1975 (40 FR 48814). Pursuant to that notice and to a notice of hearing published June 7, 1977 (42 FR 29021), OSHA held public hearings in Washington, D.C. from August 16, 1977, to September 12, 1977. The Administrative Law Judge who presided at the public hearing allowed time after the close of the oral hearing for the submission of posthearing evidence, comments, briefs, and arguments. The record of the public hearing in this matter was closed on February 22, 1978 and was certified by the Administrative Law Judge to the Assistant Secretary of Labor for Occupational Safety and Health on March 14, 1978.

After the close of the hearing record, on March 8, 1978, the Assistant Secretary of Labor for Occupational Safety and Health requested the Assistant Secretary for Health, Department of Health, Education and Welfare (DHEW) to review certain parts of the public record pertaining to the epidemiological studies on the carcinogenicity of beryllium. The Assistant Secretary made this request as an aid to OSHA in making final determinations on a final standard for occupational exposure to beryllium.

The request for review and recommendations culminated in a final report from DHEW with attachments by independent experts, transmitted to the Assistant Secretary for Occupational Safety and Health on November 7, 1978. This report and related correspondence have now been placed in the beryllium rulemaking record. They are available for inspection and copying at the address below.

It seems appropriate to allow public written comments on the additional material relating to beryllium that has been generated subsequent to the certification of this record. The Assistant Secretary of Labor for Occupational Safety and Health is giving the public a period of 30 days to submit written comments relating to the DHEW Report and certain correspondence. This additional period for comments based on the new material is consistent with the intent and spirit of 29 CFR Part 1911, and OSHA's commitment to provide for public participation concerning all materials upon which the final occupational safety and health standard for beryllium will be based.

PUBLIC PARTICIPATION

Interested persons are invited to submit written comments with respect to the new document and other material mentioned above. These comments must be received by February 12, 1979, and submitted in quadruplicate to the Docket Office, Docket No. H-005, Room S6212, U.S. Department of Labor, Washington, D.C. 20210.

The comments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

AUTHORITY

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C. 20210.

Accordingly, under section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593; 29 U.S.C. 655), Secretary of Labor's Order No. 8-76 (41 FR 25059), and 29 CFR Part 1911, the record in the rulemaking proceeding on an occupational safety and health standard for beryllium is reopened for the limited purposes of introducing certain new documents and allowing written submissions relating to these documents.

Signed to Washington, D.C., this 9th day of January 1979.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 79-1249 Filed 1-11-79; 8:45 am]

[4510-43-M]

Mine Safety and Health Administration

[30 CFR Parts 55, 56, 57]

EXPLOSIVES

Proposed Safety and Health Standards

AGENCY: Mine Safety and Health Administration, Department of Labor.

ACTION: Proposed Rule.

SUMMARY: This proposed rule would prohibit the loading of explosives into blastholes through drill steel or other devices which would be withdrawn from the hole after loading. Recently developed devices such as fiber tubes, which would not be removed prior to firing, would be permissible.

DATE: Comments must be received by March 13, 1979.

ADDRESS: Send comments to Frank A. White, Office of Standards, Regulations and Variances, Room 631, Ballston Tower #3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT:

Roy L. Bernard, Chief, Division of Safety, Metal and Nonmetal Mine Safety and Health, Room 717, Ball-

ston Tower #3, 4015 Wilson Boulevard, Arlington, Virginia 22203, phone: 703-235-8646.

SUPPLEMENTARY INFORMATION:

BACKGROUND INFORMATION

In March 1976, following its similar recommendations in 1974, the Federal Metal and Nonmetal Mine Safety Advisory Committee (MNMSAC) recommended that the Secretary of Interior adopt a standard which would forbid the loading of explosives into blastholes through drill stem equipment. Further rulemaking activity was postponed pending the development of an acceptable alternative method of loading.

Pub. L. 95-164, the Federal Mine Safety and Health Amendments Act of 1977 (Amendments Act) amended the Federal Coal Mine Health and Safety Act, Pub. L. 91-173, and repealed the Federal Metal and Nonmetallic Mine Safety Act, Pub. L. 89-577.

The resulting law, the Federal Mine Safety and Health Act of 1977, applies to all coal and other (metal and nonmetal) mines. With regard to rulemaking proceedings which had begun but were not completed prior to March 9, 1978, the effective date of the Amendments Act, section 301(c)(3) of that Act provides the Secretary of Labor with the authority to continue the proceedings and promulgate such rules under the rulemaking authority of the Federal Mine Safety and Health Act.

In order to ensure early and effective public participation in the rulemaking process, a draft of the proposed rule was sent to interested persons for comment on July 25, 1978, and 22 days were allowed for the receipt of comments. The major comments are addressed below.

DISCUSSION OF THE PROPOSED RULE

Loading explosives through hollow drill steel (Kelly Bar) is standard procedure for placing charges in blastholes in Southern Florida. Blastholes do not remain open after the drill steel is removed because of high water tables and the character of the conglomerate rock formations. Often loose sand and rock collapse into the blasthole and prevent open hole loading.

In Kelly Bar loading, holes are drilled with hollow drill stems and open-end bits. After reaching the desired depth, rotation and flushing of the drill is stopped, the upper end of the drill stem is opened and explosive charges are inserted. On larger diameter boreholes, a core breaker is used to keep the Kelly Bar free of cuttings and debris. After the hole is drilled to depth, the core breaker is withdrawn and the exposives are loaded into the hollow drill stem. The core breaker is repositioned over the Kelly Bar and the Kelly Bar is withdrawn, leaving the explosives in the hole.

There are two primary hazards associated with this loading method. First, a hazardous condition can exist when explosives are loaded into a Kelly Bar which has become blocked. While use of the core breaker has minimized this risk, it has been neither uniformly effective nor consistently used. When the Kelly Bar is withdrawn, the charge may remain in the Kelly Bar. Attempts to remove the charge have resulted in a number of accidents. Second, it is not always possible to pull the Kelly Bar from the hole with a straight pull after loading. Binding of the Kelly Bar by sand or rock, or a twisted hole, often requires that the bar be rotated to free it. This must be done while explosives and detonators remain in the bar. Rotation may cause heat or impact, or both, against pieces of rock which may cause the detonation of the charge.

Accident records for South Florida show that Kelly Bar loading resulted in three deaths in one accident in 1964, four deaths and three serious injuries in three accidents in 1971, and two injuries in an accident in 1974. On construction work at the Panama Canel in 1975, the same loading practice caused five deaths and at least one serious injury in one accident. These accidents might have been avoided if a viable alternative method of loading blastholes had been used.

Following the recommendations of MNMSAC in October 1974 to prohibit Kelly Bar loading, a great deal of experimentation was undertaken to develop alternatives. As the result of a Bureau of Mines research contract completed in March 1978, it has been demonstrated that expendable paper-based tubes can be conveniently placed through suitably modified Kelly Bar drills and left in place once the Kelly Bar is retracted. Packaged charges or dynamite or water gel explosives can then be loaded into the expendable tubes and fired to produce blasts which are equal to, or better than those produced by the current method. It was concluded that this method is a viable alternative to the Kelly Bar method of loading explosives.

DISCUSSION OF COMMENTS ON DRAFT PROPOSED RULE

Several commenters were concerned that the draft proposed rule could be interpreted to restrict the use of loading hose used in bulk loading of explosive materials. Generally, the proposed rule is intended to apply to any pipe, tubing or casing which may be part of a drilling unit, through which explosives are loaded, and which could be removed from the drill hole while still containing enough explosives to detonate. The rule is not intended to apply to hose used in connection with pneumatic loading or pump machines which are used as part of a loading function, as opposed to a drilling function. In addition, the rule is not intended to restrict the use of collar pipe, which can be removed from a drill hole with only a small residue of explosive remaining. The proposed rule is also not intended to prohibit slurry loading.

DRAFTING INFORMATION

The principal persons responsible for drafting the proposed rule are: Frank A. White and John F. Honecker, Office of Standards, Regulations and Variances, MSHA, Department of Labor.

REGULATORY ANALYSIS

NOTE.—It has been determined that this proposed rule would not have major economic consequences requiring the preparation of a regulatory analysis under Executive Order 12044 or the Department of Labor's proposed guidelines for implementing the Executive Order (43 FR 22915, May 26, 1978).

Dated: December 18, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine and Health.

In consideration of the foregoing, it is proposed to amend 30 CFR Chapter I, Parts 55, 56 and 57 as follows:

PART 55—HEALTH AND SAFETY STANDARDS—METAL AND NONMETALLIC OPEN PIT MINES

1. It is proposed to add a new mandatory standard § 55.6-141 as follows:

§ 55.6-141 *Mandatory.* Explosives or blasting agents shall not be loaded into boreholes through or with drill stem equipment or other tubing or casing which could be extracted while containing explosives or blasting agents.

PART 56—HEALTH AND SAFETY STANDARDS—SAND, GRAVEL AND CRUSHED STONE OPERATIONS

2. It is proposed to add a new mandatory standard § 56.6-141 as follows:

§ 56.6-141 *Mandatory.* Explosives or blasting agents shall not be loaded into boreholes through or with drill stem equipment or other tubing or casing which could be extracted while containing explosives or blasting agents.

PART 57—HEALTH AND SAFETY STANDARDS—METAL AND NONMETALLIC UNDERGROUND MINES

3. It is proposed to add a new mandatory standard § 57.6-141 as follows:

§ 57.6-141 *Mandatory.* Explosives or blasting agents shall not be loaded into boreholes through or with drill stem equipment

or other tubing or casing which could be extracted while containing explosives or blasting agents.

[FR Doc. 79-1248 Filed 1-11-79; 8:45 am]

[1505-01-M]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 110]

[CGD 77-028]

ANCHORAGE GROUNDS; MISSISSIPPI RIVER BELOW BATON ROUGE, LA., INCLUDING SOUTH AND SOUTHWEST PASSES

Correction

In FR Doc. 78-35519, appearing at page 59521 in the issue of Thursday, December 21, 1978, the fifth line of § 110.195(a)(14); column two, page 54523, should read, "mile 90.9 to mile 91.6 above Head of".

[3410-11-M]

DEPARTMENT OF AGRICULTURE

Forest Service

[36 CFR Part 219]

NATIONAL FOREST SYSTEM LAND AND RESOURCE MANAGEMENT PLANNING

Meeting

AGENCY: Forest Service, USDA.

ACTION: A Committee of Scientists meeting on proposed rules to guide land and resource management planning on the National Forest System.

SUMMARY: A Committee of Scientists meeting will be held regarding the proposed rules published August 31, 1978 (FEDERAL REGISTER, Volume 43, No. 170, pages 39046-39059), by the Department of Agriculture pursuant to Section 6 of the National Forest Management Act.

DATES: Committee of Scientists Meeting: January 26-27, 1979—9:00 a.m.

ADDRESS: Meeting location: Department of Agriculture, South Agriculture Bldg., Room 3846.

FOR FURTHER INFORMATION CONTACT:

Charles R. Hartgraves, Director, Land Management Planning, P.O. Box 2417, Washington, D.C. 20013, 202-447-6697.

SUPPLEMENTARY INFORMATION:

NOTICE OF MEETING

There will be a Committee of Scientists meeting in Washington, D.C., to finalize the Committee's report to the Secretary of Agriculture regarding the scientific and technical adequacy of proposed regulations prepared by the Forest Service pursuant to Section 6 of the National Forest Management Act. The meeting will be held at the Department of Agriculture, room 3846, South Agriculture Building, 12th and Independence Avenue, S.W., Washington, D.C.

This is primarily a working session for the purpose of finalizing the Committee's report to the Secretary, and therefore the Committee will not engage in extensive public discussion.

This meeting is subject to cancellation depending upon the results of the Committee of Scientists meeting in Houston, Texas, January 8-9, 1979, notice of which was published in the December 15, 1978 FEDERAL REGISTER, Volume 43, page 58593.

Dated: January 5, 1979.

GLENN P. HANEY,
Acting Deputy Chief.

[FR Doc. 79-1083 Filed 1-11-79; 8:45 am]

[7715-01-M]

POSTAL RATE COMMISSION

[39 CFR Part 3001]

IMPROVING GOVERNMENT REGULATIONS

Implementation of Executive Order No. 12044; Final Report and Advance Notice of Proposed Rulemaking

AGENCY: Postal Rate Commission.

ACTION: Final Report and Advance Notice of Proposed Rulemaking.

SUMMARY: The Postal Rate Commission's preliminary report on its plan for voluntarily implementing Executive Order No. 12044 (43 FR 12661, March 24, 1978) was published in the FEDERAL REGISTER on July 5, 1978 (43 FR 29045) for public comment. Two comments were received, one of which requires a minor change in our plan. Simultaneously with the issuance of our final report we are issuing an Advance Notice of Proposed Rulemaking instituting the first annual review of our rules of practice following the procedures adopted in our plan for implementing Executive Order 12044. The Advance Notice of Proposed Rulemaking includes proposed rules relating to *in camera* orders and proposes certain technical amendments to our rules of practice.

DATES: The procedures established by the plan are in effect for all actions initiated after the date of this final report. Comments responsive to our Advance Notice of Proposed Rulemaking should be submitted by January 22, 1979.

ADDRESS: Comments should be directed to David F. Harris, Secretary; Postal Rate Commission, Suite 500, 2000 L Street, NW., Washington, D.C. 20268.

FOR FURTHER INFORMATION CONTACT:

David F. Stover, Assistant General Counsel (Regulation), Suite 500, 2000 L Street, N.W., Washington, D.C. 20268; telephone 202-254-3830.Q04

DAVID F. HARRIS,
Secretary.

FINAL REPORT

A. BACKGROUND AND SUMMARY

Our final report sets forth the plan adopted by the Postal Rate Commission for periodic review and improvement of its rules of practice, pursuant to Executive Order 12044. Section 6(b)(5) of that order exempts independent regulatory agencies, including the Postal Rate Commission, from its coverage. But the President has requested that such agencies voluntarily implement the principles of E.O. 12044, and the Commission has chosen to do so. The coverage of the plan is limited to the Commission's rules of practice, all other rules being of an internal, administrative nature. Our final report explains the effect of the Commission's substantive duties and the effect of its other mechanisms for amending its rules on the plan adopted. Pursuant to E.O. 12044, the plan adopted contains a timetable for the annual review of the Commission's rules that provides for public comment at the formative stage of our rulemaking deliberations.

Our final plan differs only slightly from our proposed plan previously published for comment in the FEDERAL REGISTER (43 FR 29054). In response to comments by the Justice Department, the policy section of the plan has been revised to include a commitment to remove inappropriate gender-based distinctions from our rules.

B. EVALUATION OF COMMENTS

Two comments upon our preliminary plan were received. The Justice Department's Task Force on Sex Discrimination recommended that the language "or remove sex-based criteria" be added to item "D." in the list of policy considerations in § IV of the plan. This we have done.

The Magazine Publishers Association (MPA) urges that we include in our plan our recommended decisions issued pursuant to Subchapters II and IV of Title 39 of the United States Code. It argues that the spirit of E.O. 12044 requires that the regulations contained in our recommended decisions be reviewed for need, for meaningful alternatives, for their compliance costs and for their effect on competition. We agree that it is important that these factors be considered in arriving at our recommended decisions. We disagree, however, that subjecting

our recommended decisions to the additional procedures established in our plan would improve upon our consideration of factors such as those mentioned by MPA. Our recommended decisions issued pursuant to Subchapters II and IV must, by statutory command, be based upon evidence adduced according to the elaborate procedural safeguards of 5 U.S.C. 556 and 557. These procedures ensure full opportunity to explore all relevant factors on the record, including those mentioned by MPA, and to have those factors evaluated in a reasoned opinion by the Commission. Moreover, the factors mentioned by MPA closely parallel the lists of factors in 39 U.S.C. 3622(b) and 3623(c), which the Postal Reorganization Act requires us to consider in reaching our recommended decisions. E.O. 12044 specifically excludes from its coverage regulations promulgated in accord with 5 U.S.C. 556 and 557 procedures, clearly implying that for such regulations E.O. 12044 procedures are not needed. Accordingly, we have declined to modify our final plan in the manner that MPA recommends. Our program for improving the Commission's rules appears below.

OUTLINE OF PROGRAM FOR IMPROVING POSTAL RATE COMMISSION RULES

I. INTRODUCTION

On March 24, 1978, Executive Order 12044, Improving Government Regulations, was published in the FEDERAL REGISTER. This Executive order embodied procedures designed by the Administration to increase the efficiency and intelligibility of rules issued by the Federal Government and reduce the burden of compliance with them. The Executive order recognizes that independent regulatory agencies, including this Commission, should not be made subject to its mandatory provisions, but urges that such agencies voluntarily adopt its principles in reviewing their rules and regulations. The Postal Rate Commission has done so, and is adopting the following procedural plan for the future improvement of its rules of practice.

II. COVERAGE OF THE PLAN

This plan affects the Commission's rules of practice (39 CFR Part 3001). The Commission's other rules—i.e., standards of employee conduct, statement of organization, and Privacy Act rules—are either concerned entirely with internal administrative matters or are governed by statutory standards (in the case of the Privacy Act), and are not amenable to the methods proposed in Executive Order 12044.

III. STATUS OF THE PLAN

The plan is intended by the Commission to provide the principal mechanism for periodic review and improvement of the rules of practice. It must be recognized that, on occasion, the demands of the Commission's substantive workload may require postponement or adjustment of the dates set forth in the plan for the various procedural steps. Nevertheless, it is the Commission's intention that review under the plan will be conducted annually. When it is necessary to depart by more than a few days from the schedule given in the plan, the Commission will publish notice of the fact, setting forth the reasons for the departure. The fact that, in any year, review under the plan does not take place in accordance with the schedule given therein shall not affect the validity or applicability of any existing rule. The Commission of course reserves the right to make other changes in the rules of practice, using generally applicable rulemaking standards, at any time such action appears necessary.

IV. POLICY CONSIDERATIONS

The following policy considerations to be observed in the revision of rules under the plan are suggested in part by Executive Order 12044 and in part by our independent consideration of the needs of the Commission, the public, and the parties and counsel appearing before us.

A. Continued need for the regulation.

B. Type and number of complaints or suggestions received.

C. Burdens imposed on those affected by the rule.

D. Need to clarify or simplify language or remove sex-based criteria.

E. Need to eliminate overlapping or duplicative rules.

F. Changed conditions (including economic conditions, technological developments including data processing techniques, or other relevant factors) when such changes can be shown to have occurred.

G. Need for stability in procedural rules.

H. Need for expedition in Commission cases.

I. Standards of sections 556 and 557 of the Administrative Procedure Act (5 U.S.C. 556, 557).

J. Ability of the Officer of the Commission effectively to represent the interests of the public [see 39 U.S.C. 3624(a)].

K. Need to preserve and promote both the appearance and the reality of fairness and impartiality in Commission proceedings.

L. Need for a full and complete evidentiary record.

M. Need to explore alternatives not advocated by a party [see *Scenic Hudson Preservation Conf. v. FPC*, 354 F. 2d 608 (2d Cir., 1965)].

N. Such other factors as the Commission may find to be relevant in a particular case.

V. PROCEDURAL TIMETABLE

The annual review contemplated by the plan would follow the timetable set out below, subject to the qualifications expressed in section III:

A. Advance Notice of Proposed Rulemaking—December 1. The advance notice of proposed rulemaking would (a) invite suggestions and proposals for improvements in the rules of practice, and (b) describe any amendments the Commission was at that time contemplating.

B. Deadline for Filing Responsive Comments to Advance Notice of Proposed Rulemaking—January 15.

C. Completion of Commission Analysis of Comments—February 15.

This analysis would include the preparation of draft language for any change the Commission contemplated adopting.

D. Notice of Proposed Rulemaking—February 20.

E. Deadline for Filing Responsive Comments on Notice of Proposed Rulemaking—March 31.

F. Commission's Final Rulemaking Order—April 20.

If an issue of extraordinary complexity should arise in the notice and comment process, the Commission contemplates severing that issue for further study and later disposition, rather than extending the procedural schedule as a whole to accommodate it.

ADVANCE NOTICE OF PROPOSED RULEMAKING

PROPOSALS BY THE PUBLIC

Pursuant to our program implementing Executive Order 12044, the Postal Rate Commission invites the public to submit suggestions and proposals for improving our rules of practice. Proposals relating to any of our rules of practice will be considered with the exception of 39 CFR 54 and 64. Because the matters governed by these rules are currently the subject of litigation in *National Association of Greeting Card Publishers v. United States Postal Service*, D.C. Cir. No. 78-1448 *et al.*, it would be premature for the Commission to undertake review of these rules at this time.

PROPOSALS BY THE COMMISSION

(1) SUGGESTED RULES FOR IN CAMERA PROCEEDINGS

The Commission contemplates including in its rules of practice rules establishing procedures for conducting *in camera* review of materials. These procedures are modeled after the rules of the Federal Trade Commission gov-

erning *in camera* orders, found in 16 CFR 3.45 (1978).

A. Part 3001 of 39 CFR is proposed to be amended by adding the following new section:

§ 3001.31a In camera orders.

(a) *Definition.* Except as hereinafter provided, documents and testimony made subject to *in camera* orders are not made a part of the public record, but are kept confidential, and only authorized parties, their counsel, authorized Commission personnel, and court personnel concerned with judicial review shall have access thereto. The right of the presiding officer, the Commission, and reviewing courts to disclose *in camera* data to the extent necessary for the proper disposition of the proceeding is specifically reserved.

(b) *In camera treatment of documents and testimony.* Presiding officers shall have authority, but only in those unusual and exceptional circumstances when good cause is found on the record, to order documents or oral testimony offered in evidence whether admitted or rejected, to be placed *in camera.* The order shall specify the date on which *in camera* treatment expires and shall include: (1) A description of the documents and testimony; (2) a full statement of the reasons for granting *in camera* treatment; and (3) a full statement of the reasons for the date on which *in camera* treatment expires. Any party desiring, for the preparation and presentation of the case, to disclose *in camera* documents or testimony to experts, consultants, prospective witnesses, or witnesses, shall make application to the presiding officer setting forth the justification therefor. The presiding officer, in granting such application for good cause found, shall enter an order protecting the rights of the affected parties and preventing unnecessary disclosure of information. *In camera* documents and the transcript of testimony subject to an *in camera* order shall be segregated from the public record and filed in a sealed envelope, bearing the title and docket number of the proceeding, the notation "*In Camera* Record under § 3001.31a," and the date on which *in camera* treatment expires.

(c) *Release of in camera information. In camera* documents and testimony shall construe a part of the confidential records of the Commission and shall be subject to the provisions of § 3001.42 of this chapter. However, the Commission, on its own motion without notice to any affected party, may make *in camera* documents and testimony available for inspection, copying, or use by any other governmental agency.

(d) *Briefing of in camera information.* In the submittal of proposed findings, briefs, or other papers, counsel for all parties shall make a good faith attempt to refrain from disclosing the specific details of *in camera* documents and testimony. This shall not preclude references in such proposed findings, briefs, or other papers to such documents or testimony including generalized statements based on their contents. To the extent that counsel consider it necessary to include specific details of *in camera* data in their presentations, such data shall be incorporated in separate proposed findings, briefs, or other papers marked "confidential," which shall be placed *in camera* and become a part of the *in camera* record.

B. The first sentence of paragraph (b) of § 3001.42 is proposed to be amended to read as follows:

§ 3001.42 Public information and requests.

* * * * *

(b) *Public records.* Except as provided in § 3001.31a of this chapter, the public records of the Commission include:

* * * * *

(2) TECHNICAL CONFORMING CHANGES

(a) Prior to the enactment of Pub. L. 94-421, 39 U.S.C. 3604(a) provided that "[a]ll final acts of the Commissioners shall be by a vote of an absolute majority thereof." This requirement was deleted from 39 U.S.C. 3604(a) by section 4 of Pub. L. 94-421, enacted September 24, 1976 (90 Stat. 1305). The corresponding provision in our rules has not, however, been amended to conform to this change effected by Pub. L. 94-421. Currently, 39 CFR 3002.2(a) provides in part

> Three members of the Commission constitute a quorum for the transaction of business, but all final acts of the Commission shall be by a vote of an absolute majority of the Commissioners.

We propose to delete from the above-quoted sentence the language following "business," to bring 39 CFR 3002.2(a) into conformity with current 39 U.S.C. 3604(a). Since current 39 U.S.C. 3604(a) is silent regarding the requisite vote for final acts of the Commission, the effect of our proposed conforming amendment to 39 CFR 3002.2(a) would be to subject this aspect of the Commission's operation to the common law rule stated in *FTC v. Flotill Products,* 389 U.S. 179, 183-84 (1967) that

> * * * in the absence of a contrary statutory provision, a majority of a quorum constituted of a simple majority of a collective body is empowered to act for the body. Where the enabling statute is silent on the question, the body is justified in adhering to that common-law rule.

In § 3002.2(a), the third sentence is proposed to be revised to read as follows:

§ 3002.2 The Commission and its offices.

(a) * * * Three members of the Commission constitute a quorum for the transaction of business.

* * * * *

§ 3001.102 [Amended]

(b) 39 CFR 3001.102 specifies the contents of certain reports by the United States Postal Service that are to be filed periodically with the Commission. Section 3001.102, 3001.102(a)(2) currently specifies the "Incremental Cost Analysis" as one of the reports required to be filed. In lieu of the "Incremental Cost Analysis" report, the United States Postal Service has filed a more detailed document entitled "Cost Segments and Components." We have reviewed this document and find it to be an appropriate replacement for the "Incremental Cost Analysis" report. Accordingly, we propose that § 3001.102(a)(2) be amended to read "Cost Segments and Components."

[FR Doc. 79-1089 Filed 1-11-79; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 51]

[FRL 981-2]

1977 CLEAN AIR ACT AMENDMENTS FOR STACK HEIGHTS

Proposed Regulatory Revisions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: The Clean Air Act Amendments of 1977 (Pub. L. 95-95) signed, August 7, 1977, require the Administrator to promulgate regulations to assure that the degree of emission limitation required for control of any pollutant under an applicable State Implementation Plan (SIP) not be affected by a stack height which exceeds good engineering practice (GEP) or any other dispersion technique.

This action incorporates this intent into the Agency's requirements for the development of State Implementation Plans, rescinds EPA's Stack Height Increase Guideline published on February 18, 1976 (41 FR 7450), and requires that State Implementation Plans incorporate and implement specific procedures necessary to carry out the stack height provisions contained in Section 123 of the Clean Air Act.

DATES: Comments must be received no later than March 13, 1979.

ADDRESS: All comments should be sent to: Environmental Protection Agency, Control Programs Development Division (MD-15), Research Triangle Park, N.C. 27711, Attn: Mr. Darryl D. Tyler.

Comments received on this proposal will be available for public inspection and copying at the Public Information Reference Unit (EPA Library), Room 2922, 401 M Street, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Darryl D. Tyler, Chief, Standards Implementation Branch, Control Programs Development Division, Office of Air Quality Planning and Standards, Office of Air, Noise, and Radiation, Environmental Protection Agency, (MD-15), Research Triangle Park, N.C. 27711 (919-541-5497).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Under Title I of the Clean Air Act, national ambient air quality standards for certain criteria pollutants are to be met through the establishement of State Implementation Plans governing emission sources of these pollutants. Effects of pollutant emissions from stationary sources can be mitigated in either of two ways: constant emission reduction or dispersion techniques. Constant emission reduction involves the use of technologies that prevent pollutants from being generated or that remove pollutants from waste gas on a continuous basis.

Dispersion techniques do not reduce total emissions into the atmosphere on a continuous basis. Rather, the rate of emission is varied according to atmospheric conditions by use of a supplementary or intermittent control system (SCS or ICS), or emissions are dispersed over a wider geographic area by use of a stack. A stack that is higher than that required by GEP [1] is known as a tall stack. Although ambient concentrations of a pollutant may be reduced in the vicinity of a source, the amount of pollution entering the atmosphere is not reduced by use of a tall stack and is reduced only on an intermittent basis by use of SCS or ICS.

On February 18, 1976 (41 FR 7450), EPA published the Stack Heights Increase Guideline which provided (1) a legal analysis of the litigation affecting the use of tall stacks and dispersion technology and (2) guidance for implementing the principles established by court cases.

While Congress was aware of the Agency's Stack Heights Increase Guideline, it rejected much of the Guideline in the 1977 Amendments and adopted new requirements limiting use of dispersion technology to a greater extent than either the Guideline or the court decisions.

The House Committee's proposals on dispersion technology were adopted in Sections 110, 123, and 302 of the amended Act. Under Section 110(a)(2)(B), a State Implementation Plan must include emission limitations and such other measures as are necessary to assure attainment and maintenance of standards. Section 302(k) defines an emission limitation as requiring continuous emission reduction technology. Pursuant to Section 123, the degree of emission limitation, or constant control, required of any source in a plan under Section 110 may not be reduced to any extent by the use of any dispersion technique. [2] Taken together, these Sections, in sharp contrast to the earlier Guideline, wholly prohibit the use of dispersion techniques in SIPs to meet ambient standards. Consequently, dispersion techniques cannot be included in a control strategy demonstration submitted as part of the SIP pursuant to 40 CFR 52.12.[3] The House Committee Report affirms this conclusion:

"By defining the terms 'emission limitation,' 'emission standards,' and 'standard of performance,' the committee has made clear that constant or continuous means of reducing emissions must be used to meet these requirements." [4]

However, in narrowly defined circumstances, Congress explicitly provided for use of dispersion technology by certain sources. Section 123 permits sources currently using dispersion techniques to receive full credit for their dispersive effects in determining the required degree of emission limitation, if the stack height was in existence or the dispersion technique implemented prior to the passage of the Clean Air Act of 1970.[5]

In addition, in Sections 113(d) and 119, Congress permitted limited temporary use of dispersion techniques by specific classes of sources for purposes of attaining and maintaining ambient standards, but not as a means of complying with SIP emission limitations. Administrative enforcement orders issued under Section 113(d) may provide for use of dispersion as an interim control measure if a source is unable to comply with SIP requirements, is notified that it is to subject noncompliance penalties after July 1, 1979, and meets the other conditions of Section 113(d). Section 119 permits a nonferrous smelter to use a tall stack in excess of GEP and/or an SCS as interim control measures if the smelter can demonstrate that it is eligible for a primary nonferrous smelter order.

Thus, apart from the limited circumstances of Sections 113(d) and 119, and the narrow exceptions of Section 123, dispersion technology cannot be employed in lieu of constant controls for any purpose under the Act. Implementation plans submitted under the Act must provide that the necessary degree of emission limitations be achieved solely by constant control measures. Under *Union Electric* v. *EPA*, 427 US 246 (1976), this requirement exists regardless of the possibility that adequate continuous emission controls may be technologically or economically infeasible at the time the SIP is adopted.[6] However, this in no

[1] House Report No. 95-294, 95th Cong., 1st Sess. (hereafter 1977 House Report) described the effect of dispersion techniques at p. 81. GEP is discussed elsewhere in this preamble.

[2] Section 123 defines dispersion technique as a stack height which exceeds GEP or any intermittent or supplemental control of air pollutants varying with atmospheric conditions.

[3] In early litigation, it had been argued by sources that the phrase "such other measures" in Section 110(a)(2)(B) should be interpreted to permit use of dispersion techniques as an alternative to constant controls. This argument was rejected in *Big Rivers, et al., v. EPA*, 523 F.2d 16, 21-22 (6th Cir., 1975) *cert. denied* 425 U.S. 934 (1976). As discussed in the text, Sections 302, 110, and 123 ratify and expand this result. Since Congress has specifically defined in Sections 113(d), 119, and 123 the situations in which use of dispersion is permissible, there is now even less justification for reading the phrase "such other measures" to include dispersion technology. Rather, the term may only be read as referring to the type of environmental planning techniques listed in § 110(a)(2)(B).

[4] 1977 House Report, p. 92.

[5] An exception is also available if the source is a coal-fired steam electric generating unit which is subject to the provisions of Section 118, and which commenced operation before July 1, 1975. In that case, the effect of the entire height of stacks for which a construction contract was awarded before Feburary 8, 1974 may be considered.

[6] In *Kennecott Copper Corporation* v. *EPA* (Kennecott II), 572 F. 2d 1349 (9th Cir. 1978), the U.S. Court of Appeals for the Ninth Circuit consisered a proposed SIP revision for a copper smelter. As to such a plan, the Court held that the Administrator was not bound by a finding of the State the constant controls were infeasible. In dicta, however, the Court suggested that, while not bound by State findings, the Administrator was obligated to assess the constant control requirements that might be imposed on the smelter. To the extent the opinion suggests that the Administrator must evaluate the technological or economic feasibility of an emission limitation for a particular source, the Administrator believes it is in conflict with the holding of *Union Electric*, and the requirements of Sections 110, 123, and 302 as previously discussed. The Administrator has determined not to appeal the decision, however, since (i) the disputed challenge is dicta and unnecessary to the Court's decision and (ii) he believes that new Section 119, primary nonferrous smelter orders, governs the problems which concerned the Ninth Circuit.

way means that a State may not consider economic and technological feasibility in developing its SIP. EPA encourages States to consider the cost and technological feasibility of alternative compliance strategies as well as the social, energy and economic impacts of their strategies. See 40 CFR 51.2(b) and (d). Nevertheless, except as noted above, a State does not have the authority to propose use of a dispersion technique, even if continuous controls are thought to be economically or technologically infeasible. In addition, EPA does not have the authority to reject on grounds of economic or technological infeasibility a State plan which is predicated on the use of constant controls.

THE REGULATION

The proposed Stack Heights Regulation implements the requirements of the Stack Heights Amendment through changes to Sections 51.1, 51.12, and 51.18 of Title 40, Part 51 of the Code of Federal Regulations.

Definitions are offered in paragraphs 51.1(z), 51.1(ff), 51.1(gg), and 51.1(hh) defining "emission limitation" and "emission standard," "stack," "in existence," and "dispersion technique" respectively; these definitions are offered to clarify the intent and applicabiltiy of the Stack Heights Regulation.

Definitions in paragraphs 51.1(ii), 51.1(jj), and 51.1(kk) for "good engineering practice stack height," "nearby," and "excessive concentrations," respectively, are proposed to provide implementation guidance for the Regulation.

Finally, in accordance with the mandate that State Implementation Plan emission limitations be met through constant control measures, paragraphs 51.12(j) and 51.18(j), respectively prohibit the inclusion of dispersion techniques in control strategy demonstrations for the SIPs or in new source reviews. Paragraph 51.12(k) establishes the exceptions to these prohibitions as required by the Clean Air Act.

IMPLEMENTATION OF THE STACK HEIGHTS AMENDMENT

The guidance provided by Congress establishes the framework for a program to assure that stack heights and other dispersion techniques are not used in lieu of constant emission controls. Implementation of that objective is advanced by establishing GEP stack height as the maximum creditable stack height which a source may use in establishing its applicable State Implementation Plan emission limitation and by defining "dispersion technique" and limiting its use in State Implementation Plans.

The GEP stack height criteria is premised on the observed phenomenon that in the immediate vicinity of a structure or terrain obstacle, atmospheric flow is adversely disrupted by aerodynamic forces and that some minimal stack height is necessary to prevent adverse air flow situations. The criteria thus defines that stack height for each source at which excessive concentrations due to adverse aerodynamic effects are not expected to occur.

Although the scientific literature in general indicates that a detailed case specific review employing fluid modeling or field study would be integral to determined more precisely the specific stack height necessary, for avoiding aerodynamic downwash effects in the immediate vicinity of a given source, the literature also identifies generalized formulations which when applied to specific sources may be used to predict the minimum stack heights needed to prevent this phenomenon.

As a general rule, the evaluation of a source's GEP stack height will be accomplished in accordance with the empirical equation provided in this Regulation. However, EPA along with State and local agencies reserves the authority to require fluid modeling or field studies where the empirical equation may be determined to be inappropriate for a particular GEP determination. In the specific case of existing sources with stack heights less than GEP, as determined by the equation, which seek to raise their stacks to the GEP height, the Administrator may require a field study or fluid modeling demonstration of an air quality problem attributable to downwash, wakes, or eddies affecting such sources as justification for the use of the equation based GEP height.

THE EMPIRICAL EQUATION FOR GEP

The Administrator proposes that the following empirical equation be used in determining the GEP stack height needed by a source to avoid excessive concentrations of air pollutants due to adverse downwash effects caused by nearby structures. The equation thus establishes, for source stacks uninfluenced by terrain features, the maximum stack height creditable under the proposed Regulation for establishing source emission limitation requirements. The equation is as follows:

Where:

$H_G = H + 1.5L$

H_G = GEP stack height

H = Height of the structure or nearby structure

L = Lesser dimension (height or width) of the structure or nearby structure

Both the height and width of the structure are determined from the frontal area of the structure projected onto a plane perpendicular to the direction of the wind. If the projected area of a structure is determined for an asymmetrical structure or for a group of structures, the GEP stack height is based on their projections upwind of the source. The plane projections may have a multitude of height and width combinations. The GEP stack height is then determined by that combination of projected structure height, H, and lesser dimension, L, which results in the greatest estimated stack height according to the equation. Procedures for determining the GEP stack height for varied structure configurations are found in the technical support document for this Regulation.

This document is available for inspection and copying at the Public Information Reference Unit (EPA Library) Room 2922, 401 M Street, S.W., Washington, D.C. It is also available for distribution to the public upon request from the U.S. Environmental Protection Agency, Library, Research Triangle Park, North Carolina 27711. Telephone; (919) 541-2777. When requesting the document, please ask for: "Technical Support Document for Determination of Good Engineering Practice Stack Height," Draft, July 1978.

The above empirical formula for determining GEP stack heights can only be used to assess what stack heights would be needed to avoid excessive concentrations due to adverse downwash, wakes, and eddy effects of structures but not terrain features.

Nearby Structures—Technical information indicates that for all structures that have a maximum width less than ten times their height, adverse downwash effects amy be expected to extend downwind to a distance of five time the height or width of the structure, whichever is less. Structures with a maximum widths greater than ten times their height may have significant adverse effects extending farther downwind.

For the purposes of implementation of the Stack Heights Regulation, the Administrator purposes that the above scale effect, viz, the five times the height or width of a structure, be used to define when a structure is "nearby" a stack. However, in response to expressions of Congressional intent, the Administrator proposes to limit consideration of "nearby" structures, consistent with the technically based (5 times) scale effect, to those features which are within one-half mile (0.8 km) of an affected source stack. EPA proposes to define the term "nearby" in the same fashion for terrain features. EPA interprets the Congressional guidance as a criterion to indirectly establish a reasonable upper limit on GEP stack heights. The Agency is especially interested in receiving information on the extent to which structures and terrain features that are

more than half a mile from the source can and do cause significant adverse downwash, wake, and eddy effects. The Agency solicits suggestions on how to evaluate the impacts of structures and terrain features that are beyond one-half mile away. Comments on the relative impacts of different definitions of "nearby" are sought.

FLUID MODELING DETERMINATION OF GEP

In cases where a source wishes to consider the downwash, wakes, and eddy effects of a nearby terrain feature, the GEP stack height determination must be calculated on case-by-case basis through the use of appropriate field studies or fluid modeling demonstrations.

Field studies or fluid modeling may also be used, at a source's option, for determining GEP stack heights in those situations where nearby structures are the source of aerodynamic downwash, wakes, and eddies. The owner or operator of a source is provided the opportunity to demonstrate that a greater height than determined by the empirical equation is needed to prevent excessive concentrations in the immediate vicinity of the source resulting from adverse downwash, wakes, and eddy effects. In those situations where a source demonstrates the need for a stack height in excess of two-and-a-half times the height of the source and such determination is the basis for a SIP revision or new source permit approval, the State will notify the public of the availability of the demonstration for review and will provide opportunity for a public hearing on the demonstration.

As in the case of GEP determinations using the empirical equation, the definition of "nearby" is intergral to determine the extent to which structures or terrain features may reasonably influence the fluid modeling or field study based GEP determination. Thus, comment on the appropriateness of considering the downwash effects of only those structures or terrian features within one-half mile (0.8 km) of the stack in the fluid modeled or field study determination of GEP is soliciated.

The Administrator proposes to evaluate on a case-by-case basis the adequacy of the field or fluid modeling demonstrations provided by sources to determine GEP stack heights. The review of fluid modeling and field studies will be guided by evaluation criteria currently being developed by EPA. In addition to providing minimum criteria for fluid modeling purposes, the guidance will also provide criteria for the modeling of specific terrain types and establish a basis, through the definition of excessive concentration, upon which estimates of GEP stack heights may be made.

In order to evaluate fluid modeling demonstrations, there is the need for explicit guidance as to the degree and kind of "excessive" concentration which is to be avoided. Therefore, EPA is proposing, for the purposes of determining GEP stack heights from fluid modeling studies that excessive concentration be defined as the maximum concentration anticipated in excess of a national ambient air quality standard and which is at least 40 percent in excess of the maximum concentration experienced in the absence of the downwash, wakes, and eddy effects produced by nearby structures or terrain features. For sources subject to the Prevention of Significant Deterioration (PSD) program (40 CFR 51.24 and 52.21), an excessive concentration is the maximum concentration which is greater than that permitted by an applicable remaining increment and which is at least 40 percent in excess of the maximum concentration experienced in the absence of the downwash, wakes, and eddy effects produced by nearby structures or terrian features. The rationale for employing the 40 percent or greater criteria is to establish a reasonable upper bound for creditable stack heights. Section 2.3 of the technicial support document explains the relationship of percent impact effects and stack heights to building height ratios for selected structure types. EPA solicits comments on the proposed definition of excessive concentration, especially with respect to the use of the 40 percent impact criteria.

In summary, the prerequisites for increased stack height credit are (1) the documentation of downwash, wakes, and eddy effects from nearby structures or terrain and (2) the documentation of a resulting modeled or monitored exceedence of the air quality standards or PSD increments.

IMPLEMENTATION ISSUES

During the course of development of the proposed Stack Heights Regulation, certain issues have been raised concerning the intent and implementation of the Regulation. The following discussion focuses on some of the implementation issues associated with the Regulation.

APPLICABILITY OF THE REGULATION

Two major issues arise regarding the applicability of the Stack Heights Regulation.

(1) What is the meaning of the phrase "stack height in existence before the date of enactment of the Clean Air Act Amendments of 1970" in Section 123(a) of the Clean Air Act?

(2) Which facilities may receive credit for emissions venting through a stack that is determined to be "in existence" for purposes of Section 123?

In the 1977 Amendments, Congress employed two concepts to describe the status of source construction: facilities on which construction had commenced and facilities in existence. The distinction suggests that the terms were intended to have different meanings.

The phrase "in existence" is used in provisions applicable to PSD and visibility protection, as well as in Section 123. In Section 165(b) Congress exempted from certain PSD requirements expansions or modification of major emitting facilities "in existence" on the date of enactment of the Amendments, if their allowable emissions will be less than 50 tons per year and will not cause or contribute to exceedences of national secondary ambient air standards for SO_2 and particulates. For visibility protection, Section 169A(b)(2)(A) mandates a SIP requirement that each major stationary source "in existence" on the date of enactment of the Amendments, but which has not been in operation for more than fifteen years as of that date, use best available retrofit technology to control visibility impairment.

In contrast to these provisions for sources "in existence," a source on which construction has "commenced" for PSD purposes under Section 169(2)(A) means a source that has obtained all necessary preconstruction permits and either begun physical onsite construction or entered into binding contractual agreements, which cannot be cancelled without substantial loss to the source.

Since Congress in 1977 defined "commenced construction" to include the acquisition of permits, the beginning of actual construction or the entering into binding contracts, EPA believes the term "in existence" must mean something more. For purposes of Section 123, "in existence" is thus taken to mean physically constructed.

Section 123 was proposed by the House Committee. In discussing the grandfathering provision of Section 123, the 1977 House Report indicates that the exemption for "stack heights in existence" was to shield sources that had in good faith raised their stacks.[7]

Thus sources which raised their stacks or constructed tall stacks before December 31, 1970, are entitled to credit those tall stacks and sources which raised their stacks or constructed tall stacks on or after that date are not eligible for credit.

The view that some credit should be given for partial stack construction, that is, actual stack heights existing before December 31, 1970, is supported by the statute which explicitly provides credit for "stack heights" rather than "stacks."[8] Unless the term is

[7] 1977 House Report, p. 93.

[8] In its description of the grandfather provision of the House bill, the Conference

Footnotes continued on next page

read to grandfather whatever portion of a stack existed before December 31, 1970, the word "heights" becomes meaningless.

As to how high a stack must be to receive the grandfathering credit, the legislative history indicates that the Administrator is allowed to credit stacks which were in existence prior to enactment of the 1970 Act and whose actual stack height, whether the stack was completed or not, exceeded the GEP stack height.

Reading the statutory language and legislative history together, EPA believes the most supportable interpretation is that Congress intended credit to be given for the actual stack height partially or fully constructed before December 31, 1970.[9]

A corollary question is, "Which facilities should receive the full benefit of the stack height credit?" The statute states only that the degree of emission limitation required for control of an air pollutant may be affected by stack heights in existence before the date of enactment of the 1970 Amendments; it does not indicate which facilities should benefit from the credit. The issue is not discussed in the legislative history.

In the absence of clear-cut Congressional guidance, the Agency proposes to adopt a policy we believe consistent with the stack heights provision. We believe the Congressional purpose in restricting stack height credit is best served by giving credit only for emissions from facilities that before December 31, 1970 were committed to tie into a stack in existence as defined in this Regulation. Commitment to tie into the stack would be evidenced by having commenced construction, as defined in Section 169(2)(a), on the facility before December 31, 1970.

This approach is consistent with the purpose of Section 123 especially with regard to the grandfathering provision. Stack height credit will be available only for emissions from facilities which commenced construction prior to December 31, 1970, provided that the facility was intended to use a stack height "in existence" for purposes of Section 123. An approach which requires a commitment by the end of 1970 to tie into the stack ensures that no credit will be given for emissions from units that now use the stack, but which commenced construction after the 1970 cut-off date. By using this test, rather than one which credits all emissions venting through a grandfathered stack, the Congressional intent both to honor financial commitments made prior to the end of 1970, and restrict atmospheric loading through dispersion, is realized.

Another question associated with the applicability of the Regulation is whether sources which have used elevated releases such as flares for health, safety, and economic reasons were meant to be subject to the stack heights limitation. The EPA believes that these sources were intended to be covered by the stack heights limitation. The proposed rulemaking in paragraph 51.1(ff) defines "stack" to make this point explicit and offers in subparagraph 51.1(ii)(1) a minimum GEP stack height of 30 meters which would generally be applicable to isolated flaring or uncontrolled or noxious emission releases by a source. This is provided to acknowledge the existence of a reasonable stack height needed to minimize the impact of natural adverse atmospheric phenomena.

CIRCUMVENTION OF THE REGULATION

The Stack Heights Regulation promotes and supports the use of constant control technology. The Regulation prohibits the use of dispersion techniques in the State Implementation Plans to meet air quality standards and limits the creditable stack height which a source may use in determining its State Implementation Plan emission limitations.

The major concern regarding circumvention of the Stack Heights Regulation has been the problem of dealing with the plume rise component of the effective stack height for a source. Effective stack height is the height from which atmospheric dispersion of emissions from a source are modeled in the vertical, lateral, and downwind directions. The significance of plume rise is that by a source's selective adjusting of various stack parameters other than physical stack height (which must be limited to GEP as prescribed in the Regulation), a source may increase the plume rise component of the effective stack height and thereby possibly circumvent the intent of the Regulation. Accordingly, the term "dispersion technique" is defined in the regulation to include the manipulation of source process parameters, exhaust gas parameters, stack parameters other than height, or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

New sources also have the capability to promote enhanced plume rise through certain stack design parameters and operating characteristics. Thus, the Administrator believes that comparative analysis of stack parameters for sources within source categories should be a review element in the modeling to establish an emission limitation. Additionally, the use of selective siting of stacks or associated structures or modification of physical designs will also be reviewed for consistency with the intent of this Regulation.

AIR QUALITY AND ECONOMIC IMPACTS

The air quality and economic impact of the Stack Heights Regulation is directly related to the degree that actual stack heights conform to GEP stack heights. Thus in general when the Regulation is applied to tall stack facilities, i.e., those with stack heights greater than GEP, it will have the potential for producing positive air quality impacts (emission reductions) and negative economic (increased control cost) impacts. Impacts upon short stack facilities, if permitted to raise their stacks, are expected to be the converse.

A preliminary evaluation of the potential air quality impacts and a cost analysis of the Regulation was performed on a sample of the potentially affected sources. The impacts identified have been established in isolation of other regulatory requirements. For example, for sources affected by new source performance standards (NSPS) in 40 CFR, Part 60, the degree of emission reduction required by such standards may greatly exceed the degree of emission reduction determined as needed for the source when it is modeled with a GEP stack height. In this example, the Stack Heights Regulation impacts are clearly hypothetical ones and would only have a quantifiable effect if the NSPS did not exist. As can be seen from Table 1, an average reduction in emissions of approximately 34% will be required by each source currently using a tall stack credit. This percent reduction would represent approximately a 2.6% increase in annualized costs for 1980 and a 1.7% increase in annualized costs for 1985.

Table 1 summarizes the expected potential impact of the proposed Stack Heights Regulation on the coal-fired power plant community.[10]

In general, the implementation of the Stack Heights Regulation should:

1. Provide for air quality and emissions benefits. Although there is an indication that a significant number of sources may have the potential for emission limitation relaxations, potential emission reductions more than offset potential emission increases.

Footnotes continued from last page

Report refers to "stack height" not "stack." H.R. Rep. No. 564, 95th Cong., 1st Sess. 143 (1977).

[9] The burden will be on the source to show how much of the stack was built by December 31, 1970, since it must demonstrate eligibility under the grandfathering clause to avoid being subject to the general restriction of Section 123(a)(1).

[10] The Nation's coal-fired power plant population, approximately 400 plants, was the basis for the impact study. This source category is significant because of its representativeness of a wide range of stack height uses, the large emissions contributions from the category, and the wide geographic distribution of the sources nationally.

TABLE 1.—*Summary of Impacts* [a]

Total number of coal-burning plants	439
Number of plants with stack heights greater than GEP stack heights	54
Average stack height for the 54 plants	212 meters (695 ft.)
Average potential stack height reduction needed	38%
Average potential reduction in emissions needed	34%
National estimate of the potential emission reductions required for the 54 plants	973,000 tons/year
Potential reduction to total coal-burning power plant emissions	5%
Number of plants with stack heights less than GEP stack heights	145
Average stack height for the 145 plants	52 meters (169 ft.)
Average potential stack height increase allowable	86%
Average potential increase in emissions	28%
National estimate of the potential emissions increase allowable for the 145 plants.	421,000 tons/year
Potential increase to total coal-burning power plant emissions	2%

[a] "Impact Assessment Report for the Proposed Stack Heights Regulation," Draft, July 1978, available at the Public Information Reference Unit (EPA Library), Room 2922, 401 M Street, S.W., Washington, D.C.

2. Not produce significant adverse economic cost effects on affected source categories. This belief is premised on the fact that this effect was not found for the coal-fired power plant community, a category of sources which has made significant use of "tall stacks" and hence would be potentially subject to the greatest degree of emission reduction.

The above anticipated impacts represent a preliminary assessment of the proposed Regulation. Additional documentation regarding (1) the existence of unavoidable terrain impaction problems, (2) significant air quality (ambient standards or significant deterioration increments) problems, and (3) the limitations of available control technology is solicited to assist EPA in developing specific procedures to implement the final Stack Heights Regulation.

STATE IMPLEMENTATION OF STACK HEIGHT REVIEWS

States must develop programs, pursuant to the Clean Air Act Amendments of 1977, PL 95-95 (August 7, 1977), to review sources in order to implement the Stack Heights requirements as expeditiously as practicable. Extensive State and Federal effort will be necessary to review, in detail, all emission sources in accordance with the Stack Heights requirements.

In accordance with Section 406(d)(2)(B) of the Act, revisions to SIPs that are required by the Stack Heights Regulation must be submitted within nine months after promulgation of the Regulation. States which are currently revising SIPs for nonattainment areas, as required by Section 110(a)(2)(I) and Part D of the Act, are encouraged to enhance the effectiveness of their resource expenditures by incorporating, where possible, stack height reviews and necessary revisions into the nonattainment plan revision process. State programs for the preconstruction review of new sources should incorporate the revised stack height criteria immediately in order to avoid the necessity for revision of emission limitations at a later date.

CALL FOR COMMENTS AND INFORMATION

EPA solicits comment on its proposed Regulation and on the Technical Support Document which accompanies the Regulation.[11] The Agency, in addition, wishes to solicit for review and consideration any information which the public feels may be relevant to the development of the Stack Heights Regulation. In an effort to ensure the proper and expeditious consideration of comments and submitted information, the following topical divisions are offered to the public for its use in formatting its response to this call: (1) Intent and Purpose of the Regulation, (2) Applicability and Grandfathering, (3) Technical Definition of GEP Stack Height, including the definition of "excessive concentration," (4) Definition of "Nearby": Technical Aspects and Policy Implications, (5) Air Quality Impacts: Costs and Benefits of the Regulation, (6) Environmental Impacts: Costs and Benefits of the Regulation, including economic and energy impacts, (7) Case-Specific Impacts for Consideration in Implementation Guidance Development, including identification of hardship cases, and (8) Air Pollution Control Agency Priorities and Stack Heights Reviews: Resources Scheduling and Program Coordination.

Executive Order 12044, dated March 24, 1978, whose objective is to improve Government regulations, requires executive branch agencies to prepare regulatory analyses for regulations that may have major economic consequences. Prior to March 24, 1978, Executive Orders 11821 and 11949 were applicable to pending rulemaking proceedings.

Because this Regulation and its support documentation was initiated and was substantively developed before the March 24, 1978 issuance of Executive Order 12044, the Impact Assessment Report for the Proposed Stack Heights Regulation does not and is not required to reflect consistency with that order. The impact assessment does, however, reflect a consistency with EPA's procedures responsive to the previously effective executive orders. The "Impact Assessment Report for the Proposed Stack Heights Regulation" is available for inspection and copying at the Public Information Reference Unit (EPA Library), Room 2922, 401 M Street, S.W., Washington, D.C.

(Sections 110(a)(2)(B), 301(a), and 123 of the Clean Air Act as amended (42 USC 7410, 7601(a), and 7423.)

Dated: December 29, 1978.

DOUGLAS M. COSTLE,
Administrator.

It is proposed to amend Part 51 of Chapter I, Title 40 of the Code of Federal Regulations as follows:

1. Section 51.1 is amended by revising paragraph (z) and by adding paragraphs (ff), (gg), (hh), (ii), (jj), and (kk), as follows:

§ 51.1 Definitions.

* * * * *

(z) "Emission limitation" and "emission standard" mean a requirement established by a State, local government, or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement which limits the level of opacity, prescribes equipment or fuel specifications, or relates to the operation or maintenance of a source to assure continuous emission reduction.

* * * * *

(ff) "Stack" means any point in a source, designed to emit solids, liquids, or gases into the air, including a pipe, duct, or flare.

(gg) "In existence", as used within Section 51.12(k) of this part, means that stack height (of a stack) which has been constructed.

(hh) "Dispersion technique" means any method which attempts to affect the concentration of a pollutant in the ambient air by (1) use of that portion of a stack which exceeds good engineering practice stack height, (2) varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant, or (3) the manipulation of source process parameters, exhaust gas pa-

[11] "Technical Support Document for Determination of Good Engineering Practice Stack Height," Draft, July 1978.

rameters, stack parameters other than height, or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. The preceding sentence does not include the reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.

(ii) "Good engineering practice stack height" means that stack height necessary to ensure that emissions from the stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source as a result of atmospheric downwash, wakes, or eddy effects which may be created by the source itself, nearby structures, or nearby terrain obstacles and shall not exceed as appropriate:

(1) 30 meters, for stacks unifluenced by structures or terrain;

(2) $H_G = H + 1.5\ L$

where

H_G = good engineering practice stack height
H = height of structure or nearby structure
L = lesser dimension (height or width) of the structure or nearby structures,

provided that the cognizant State or local control agency or the U. S. Environmental Protection Agency may require that a field study or fluid model be used (1) to determine the good engineering practice stack height for the source, or (2) for existing sources with stack heights less than good engineering practice, as determined by the equation, to demonstrate the existence of an air quality problem, attributable to downwash, wakes, or eddy effects on such source as justification for use of the equation based good engineering practice stack height.

(3) such height as an owner or operator of a source demonstrates through the use of a field study or fluid model is necesary to ensure that emissions from the stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source.

(jj) "Nearby" as used in Section 51.1(ii) of this part, is defined for a specific structure or terrain feature, and means that distance equal to five times the lesser of the height or width dimension of a strueture or terrain feature not greater than one-half mile (0.8 km).

(kk) "Excessive concentrations" for the purpose of determining good engineering practice stack heights in fluid modeling studies means a maximum concentration greater than an ambient air quality standard, due in part or whole to downwash, wakes, or eddy effects and which concentrations is at least 40 percent in excess of the maximum concentration experienced in the absence of downwash, wakes, or eddy effects produced by nearby structures or terrain. For sources subject to the Prevention of Significant Deterioration program (40 CFR 51.24 and 52.21) an "excessive concentration" is a maximum concentration greater than that permitted by an applicable remaining prevention of significant deterioration increment and which concentration is at least 40 percent in excess of the maximum concentrations experienced in the absence of the downwash, wakes, and eddy effects produced by nearby structures of terrain features.

2. Section 51.12 is amended by adding paragraphs (j) and (k) as follows:

§ 51.12 Control strategy: General.

* * * * *

(j) The plan shall provide for any source whose stack emissions are required to be controlled in order to attain and maintain any national ambient air quality standard or to prevent significant deterioration of the air quality, that such control shall be accomplished through emission limitation alone. The degree of emission limitation required of any source for control of any air pollutant shall not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in Section 51.12(k) of this part, even when the degree of emission limitation required may be economically or technologically infeasible to attain. The plan shall provide that before a State submits to EPA a plan or plan revision that is based on a stack height determined under Subparagraph 51.1(ii)(3) of this part which exceeds two-and-a-half times the height of the source, the State shall notify the public of the availability of the source's demonstration and shall provide oppotunity for public hearing on the demonstration.

(k) The provisions of Sections 51.12(j) and 51.18(j) of this part shall not apply to: (i) stack heights in existence, or dispersion techniques implemented, prior to December 31, 1970, or (ii) coal-fired steam electric generating units, subject to the provisions of Section 118 of the Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

3. Section 51.18 is amended by adding paragraph (j) as follows:

§ 51.18 Review of new sources and modifications.

* * * * *

(j) Such procedures shall provide for any source whose stack emissions are controlled in order to attain and maintain any national ambient air quality standard, or to prevent the significant deterioration of air quality, that such control shall be accomplished through emission limitation alone. The degree of emission limitation required of any source for control of any air pollutant shall not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in Section 51.12(k) of this part, even where the degree of emission limitation required may be economically or technologically infeasible to attain. Such procedures shall provide that before a State issues a permit to a source based on a stack height determined under Subparagraph 51.1(ii)(3) of this part which exceeds two-and-a-half times the height of the source, the State shall notify the public of the availability of the source's demonstration and shall provide opportunity for public hearing on the demonstration.

[FR Doc. 79-1049 Filed 1-11-79; 8:45 am]

[6560-01-M]

[40 CFR Part 52]

[FRL 1037-1]

MAINE

Approval and Promulgation of Implementation Plans; Proposed Rulemaking: Maine Regulations for Air Quality Surveillance and New Source Review

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes approval of revisions to the Maine State Implementation Plan (SIP) for Air Quality Control by amending Chapter 5, *Air Quality Surveillance*, which updates the ambient air monitoring network, and Chapter 6, *Review of New Sources and Modifications*, which establishes a category of "Lesser Sources" which will be licensed on a 5-year basis. The air monitoring network will be considered an interim measure until such time as further revisions are required.

No action will be taken at this time on Chapter 2, *Control Strategies*, and Chapter 9, *Intergovernmental Cooperation* since the state is to submit additional information.

DATES: Comments must be received on or before February 12, 1979.

ADDRESSES: Copies of the Maine submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M

Street, S.W., Washington, D.C 20460; and Maine Department of Environmental Protection.

Comments should be submitted to the Regional Administrator, Region I, Environmental Protection Agency, Room 2203, JFK Federal Building, Boston, Massachusetts 02203.

FOR FURTHER INFORMATION CONTACT:

Ruth Leabman, Air Branch, EPA Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-5609.

SUPPLEMENTARY INFORMATION: On March 10, 1978, the Governor of Maine submitted a revision to the State Implementation Plan (SIP). The revision includes amendments to Chapters 5, and 6 of the Air Quality Control Plan which are summarized as follows:

CHAPTER 5—STATE IMPLEMENTATION PLAN AIR QUALITY SURVEILLANCE

The revisions to Chapter 5 update the air monitoring network to reflect the present configuration. However, the network will be an interim measure since it does not meet all the requirements of EPA monitoring strategies which were proposed in the FEDERAL REGISTER on August 7, 1978 (43 FR 34982) and are to be promulgated in the near future.

The revision deletes original equipment specifications existing at the time the monitoring network was established, incorporating conformance with EPA requirements and operated in accordance with the Maine Department of Environmental Protection (the Department) quality assurance program. Analytical technique will conform to Federally designated methods.

The Regional Administrator proposes approval of the revision to Chapter 5 until such time as a modified SIP network may be required by EPA under its Air Quality Surveillance and Data Reporting Regulations, and stipulates that any further changes or proposed relocations of monitoring instruments be approved by EPA.

CHAPTER 6—REVIEW OF NEW SOURCES AND MODIFICATIONS

This revision establishes a category of "Lesser Sources" which is licensed on a five-year basis rather than every two years required for all other sources. The same change is also applied to the Department's Emission License regulation (100.8). "Lesser Sources" are those less than 50 million Btu/hour and consume less than 500,000 gallons of fuel per year. The sources remain subject to all applicable rules, regulations, orders, emission and ambient air standards.

The proposed revision to Chapter 6 is administrative in nature and will not interfere with the attainment or maintenance of the National Ambient Air Quality Standards.

This submittal also included revisions to Chapter 2, Control Strategies, and Chapter 9, Intergovernmental Cooperation.

Chapter 2 consolidated related sections dealing with control strategies for CO, HC, O_x and NO_2 and other transportation control strategies. A new section 9.3 under Chapter 9 provided for review of transportation plans for consistency between transportation plans of urbanized areas with statewide plans and programs contained in SIP. No action will be taken on these regulations at this time since additional information required under the Clean Air Act Amendments, and the Joint EPA-DOT Transportation Air Quality Planning Guidelines (June 1978) will be submitted including additional provisions and plans.

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirement of Sections 110(a)(2)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. This revision is being proposed pursuant to Sections 110(a) and 301 of the Clean Air Act, as amended (42 U.S.C. 7401 and 7601).

Dated: January 3, 1979.

WILLIAM R. ADAMS, Jr.,
Regional Administrator,
Region I.

[FR Doc 79-1050 Filed 1-11-79; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[FRL 998]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMETATION PLAN REQUIREMENTS

Proposed Delayed Compliance Order for Nassau Recyle Corp., Staten Island, N.Y.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue an administrative Order to the Nassau Recycle Corporation. The Order requires the company to bring air emissions from several emission points at its Staten Island, New York facility into compliance with certain regulations contained in the federally-approved New York Implementation Plan ("SIP"). Because the company is unable to comply with these regulations at this time, the proposed Order would establish an expeditious schedule requiring final compliance by no later than May 15, 1979. Source compliance with the terms of the Order would preclude suits under the federal enforcement and citizen suit provisions to the Clean Air Act for violation of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on EPA's proposed issuance of the Order.

DATES: Written comments must be received on or before February 12, 1979, and requests for a public hearing must be received on or before January 29, 1979. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after twenty-one days prior notice of the date, time and place of the hearing has been given in this publication.

ADDRESSES: Comments and requests for a public hearing should be submitted to Meyer Scolnick, Director, Enforcement Division, EPA Region II, 26 Federal Plaza, New York, New York 10007. Material supporting the Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Walter E. Mugdan, Attorney, General Enforcement Branch, Enforcement Division, EPA Region II, 26 Federal Plaza, New York, New York 10007, (212) 264-4434.

SUPPLEMENTARY INFORMATION: The Nassau Recyle Corporation operates a facility for the recovery of copper and other metals from scrap, in Staten Island, New York. The proposed Order addresses emissions from the De-Tin Furnace and System Kettles #1 through #5, and several other points. These emission points are subject to the requirements of Title 6, Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR"), Parts 201 and 212. Part 201 requires that each source of air pollution in New York must have a valid Certificate to Operate issued by the State Department of Environmental Conservation ("DEC"); Part 212 limits the permissible emission rates for particulates from processes and exhaust and/or ventilation systems. The regulations are part of the federally-approved New York State Implementation Plan. The Order requires

Nassau Recyle to be in final compliance with the regulations by no later than May 15, 1979. The source has, furthermore, agreed to meet the Order's increments of progress during the period of this informal rulemaking.

The proposed Order satisfies the applicable requirements of Section 113(d) of the Clean Air Act ("the Act"). If the Order is issued, source compliance with its terms would preclude further EPA enforcement action under Section 113 of the Act against it for violations of the regulations covered by the Order during the period it is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similary precluded.

The provisions of 40 CFR Part 65 will be promulgated by EPA in the near future, and will contain the procedure for Agency issuance, approval, and disapproval of an Order under Section 113(d) of the Act. In addition, Part 65 will contain sections summarizing Orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for Part 65, published at 40 FR 14876 (April 2, 1975), will be withdrawn, and replaced by a notice promulgating these new regulations.

(Authority: 42 U.S.C. §§ 7413, 7601.)

Date: October 19, 1978.

ECKARDT C. BECK,
Regional Administrator,
Region II.

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter 1, § 65.370, to reflect approved of the following order:

§ 65.370 [Amended]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION II

CONSENT ORDER, INDEX NO. 80230

In the Matter of NASSAU RECYCLE CORPORATION (Staten Island, New York).

FINDINGS

On March 2, 1978, the United States Environmental Protection Agency ("EPA") performed a complete inspection of the Nassau Recycle Corporation's Staten Island, New York facility, for the purpose of determining the facility's compliance with applicable air pollution regulations. As a result of this inspection, the Nassau Recycle Corporation ("Nassau") was verbally informed by representatives of the EPA that it had found what the Agency considered to be a number of violations existing at that facility. Specifically, the source operates a number of emission points subject to the provisions of Title 6, Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR"), Parts 201 and 212. Part 201 requires that all sources of air pollution emissions in New York have a valid Certificate to Operate issued by the State Department of Environmental Conservation ("DEC"); Part 212 limits the permissible emissions rates for particulates from processes and exhaust and/or ventilation systems. The regulations are part of the federally-approved New York State Implementation Plan ("SIP") for the Air Quality Control Region in which Nassau's Staten Island facility is located.

The EPA inspection revealed the following:

1. Nassau's Emission Point "A" (including System Kettles #1, #2, and #5, two Sleeve Presses and several other processes) does not have a valid certificate to operate issued by the DEC.

2. Emission Point "S" (including System Kettles #3 and #4) does not have a valid certificate to operate issued by the DEC.

3. Nassau's De-tin Furnace at Emission Point "A" did not have a certificate to operate but EPA was informed that Nassau ceased operation and discontinued the use of this furnace.

4. Nassau maintains three acid storage tanks and EPA was informed that Nassau is about to construct a 5,000 gallon acid storage tank all of which do not have certificates to operate.

At a meeting held on April 13, 1978 between representatives of Nassau and the EPA, Nassau admitted Points 1 and 2 above. However, it is recognized by the EPA that there were certain mitigating circumstances which contributed to the company's failure to obtain certificates to operate. Nassau waives any formal notification requirements of Section 113(a)(1) of the Act.

Nassau also agreed to physically disconnect the De-tin furnace and, as required by DEC regulations, to apply for a certificate to operate the three acid storage tanks, and a permit to construct and certificate to operate the additional 5,000 gallon storage tank.

The EPA has determined that Nassau acted in good faith; that Nassau commenced performance to enable it to obtain the required certificates and that Nassau can, by meeting the terms of this Order, be in final compliance with applicable air pollution control regulations prior to July 1, 1979. The EPA has determined that the schedule contained herein will provide for such compliance by Nassau as expeditiously as practicable.

The EPA has determined that there exist no interim control measures which are practicably available to Nassau to minimize air pollution emissions during the period of delayed compliance at its Staten Island facility permitted by the terms of this Order.

Public notice, opportunity for a public hearing, and thirty days notice to the State of New York have been provided.

ORDER

Based on the foregoing, and pursuant to Section 113(d) of the Clean Air Act, it is hereby ordered:

That the Nassau Recycle Corporation (Nassau) take the following actions on or before the dates specified at its Staten Island facility.

I. A. On or before July 1, 1978, Nassau shall submit to EPA preliminary design and specifications for the installation of a baghouse to control the particulate emission from its System Kettles #1 through 5.

B. On or before August 1, 1978, Nassau shall solicit bids for the construction and installation of such baghouse.

C. On or before August 15, 1978, Nassau shall review the proposals and submit to EPA the proposed final design and specifications, and apply to the New York DEC for appropriate permits to construct and certificates to operate such baghouse.

D. On or before August 30, 1978, EPA shall acknowledge its acceptance or disapproval with comments, of the final designs submitted by Nassau.

E. On or before October 1, 1978, Nassau shall award the contract for the construction and installation of the baghouse.

F. On or before January 1, 1979, necessary construction and installation of the baghouse facilities shall commence.

G. On or before April 1, 1979, construction and installation of the baghouse shall have been completed.

H. On or before May 15, 1979, Nassau shall submit to the EPA the results of a stack test demonstrating that emission from its System Kettles #1 through 5 are in compliance with all applicable air pollution control regulations.

II. On or before July 1, 1978, Nassau shall:

A. to the extent required by 6 NYCRR Part 201, make application to the DEC for certificates to operate its three acid storage tanks; and

B. to the extent required by 6 NYCRR Part 201, make application to construct and operate its proposed 5,000 gallon acid storage tank.

III. On or before August 1, 1978, Nassau shall by physical means disconnect the De-tin furnace from Emission Point "A".

IV. On or before July 1, 1978, Nassau shall make application to the DEC for issuance of a permit to construct and certificate to operate its Sleeve Press Line.

V. Nassau shall comply with the following reporting requirements:

A. No later than five business days after any date specified in Paragraphs I through IV of this Order, for achievement of any incremental step (including final compliance), Nassau shall notify the EPA in writing of its status of compliance with respect to said incremental step. If compliance with any incremental step is not achieved by the specified dates, the notification required by this Paragraph shall provide a full explanation for the failure or expected failure to so comply. Notwithstanding any explanation for a delay or expected delay, any failure to meet the incremental step by the date specified herein shall be deemed a violation of this Order and may subject Nassau to the remedies described in Paragraph VI, below. Any failure to meet one of the schedules contained in Paragraphs I through IV shall only be deemed a violation of that schedule, and shall not affect the requirements of the remaining portions of this Order.

B. All submissions, notifications and reports to the EPA, pursuant to the terms of this Order, shall be made to Mr. Kenneth Eng, Chief, Air and Environmental Applications Section, Status of Compliance Branch, Enforcement Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10007.

VI. Violation of any requirement of this Order may result in one or more of the following:

A. Enforcement of such requirement pursuant to Section 113 (a), (b), or (c) of the Act, including possible judicial action for an injunction and civil penalties, or criminal prosecution.

B. Revocation of this Order, after notice and opportunity for a public hearing, and subsequent enforcement of 6 NYCRR Parts 201 and 212, in accordance with the preceding paragraph.

C. If such violation continues beyond July 1, 1979, notice of noncompliance and subsequent action pursuant to Section 120 of the Act.

D. Nassau shall not be in violation of this Order if the failure to meet any of the schedules arise out of causes entirely beyond the control and without the fault or negligence of Nassau.

So ordered, effective immediately.

Dated: December 6, 1978.

DOUGLAS COSTLE,
Administrator, U.S. Environmental Protection Agency.

CONSENT

The undersigned, having full authority to represent the Nassau Recycle Corporation, has read the foregoing Order, believes it to be reasonable, and therefore consents to both its issuance and to its terms. The undersigned waives any formal notification requirements of Section 113(a)(1) of the Act. The undersigned recognizes that Nassau is subject to all remedies provided in Section 113 of the Act for failure to comply with the terms of the foregoing Order, and explicitly waives any and all rights under any provision of law to challenge this Order.

Dated: August 7, 1978.

For: Nassau Recycle Corporation Vice President

ANDREW M. LAURENCE.

[FR Doc. 79-1051 Filed 1-11-79; 8:45 am]

[6560-01-M]

[FRL 1036-2]

[40 CFR Part 81]

AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES

Attainment Status Designations: Florida and North Carolina

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: The Clean Air Act Amendments of 1977 required that the Environmental Protection Agency (EPA) designate the attainment status of all areas within the states on a state-by-state, pollutant-by-pollutant basis. This was done on March 3, 1978 (43 FR 8962). Either the state or EPA can initiate changes in these designations, and such changes, if approved, will replace extant designations. This has been done previously for certain areas in EPA's Region IV (43 FR 40412, September 11, 1978).

Review of the air quality data from states in Region IV has shown that "nonattainment" designations for some areas were based on invalid data. The purpose of this notice is to solicit comment on the proposal to change the designation for areas in Florida and North Carolina to "attainment or unclassifiable" until such time as valid data can be collected to confirm or reject this classification.

DATES: Written public comment should be submitted to the person listed below and must be received on or before February 12, 1979, to be considered.

FOR FURTHER INFORMATION CONTACT:

Mr. John Eagles, Air Programs Branch, EPA Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308, 404-881-2864.

SUPPLEMENTARY INFORMATION: It is proposed to change the designation for oxidants for Buncombe County, North Carolina, from "nonattainment" to "attainment or unclassifiable." Review of the air quality data on which the present designation is based has shown that the data are not of sufficient quality, primarily because of a lack of proper monitor calibration procedures, to be a basis for designating an area as nonattainment. Quality assurance procedures for the data cannot be verified, and anamalous recorder operation has been observed. The instrument will continue to operate, but under approved quality assurance procedures, and if subsequent data indicate nonattainment, the designation will be changed accordingly.

It is proposed to change the designation for particulate matter for Seminole County, Florida, from "nonattainment for secondary standards" to "unclassifiable." This is based on an on-site review of the monitor in violation. This review shows that the monitor is improperly sited in light of EPA siting criteria, and is not collecting valid, representative data, primarily because siting is improper in several respects and because the quality control of the sample measurement was inadequate.

The monitor is being relocated and will continue to operate. When sufficient valid data have been collected to change the designation from "unclassifiable," the designation will be changed.

It is proposed to change the designation for oxidants for Leon County, Florida, from "nonattainment" to "attainment or unclassifiable." This is the result of a data audit conducted by EPA which showed inadequate calibration of the monitor indicating nonattainment. The instrument will continue to operate, but under approved quality assurance procedures, and if subsequent data indicate nonattainment, designation will be changed accordingly.

Background materials stating in more detail the reasons for unreliability of the data for these three counties may be obtained by contacting Mr. Eagles, whose address and telephone number appear above.

(Sec. 107(d), 171(2), 301(a) of the Clean Air Act as amended (42 U.S.C. 7407(d), 7501(2), 7601(a)).)

Dated: January 5, 1979.

JOHN C. WHITE,
Regional Administrator, Region IV.

(1) In §81.310, the attainment status designation table is amended as follows:

§81.310 Florida.

FLORIDA—TSP

Designated area	Does not meet primary standard	Does not meet secondary standards	Cannot be classified	Better than national standards
The Downtown Jacksonville Area Located Just North and West of the St. Johns River & East of I-95.		X**		
Seminole County			X**	
Polk County			X**	
That Portion of Hillsborough County which falls within the area of the circle having a centerpoint at the intersection of US 41 & State Road 60 and a radius of 12 km.		X**		
Rest of State				X**

FLORIDA—O_x

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Duval County	X**	
Broward County	X**	
Dade County	X**	
Palm Beach County	X**	
Escambia County	X**	
Orange County	X**	
Hillsborough County	X**	
Pinellas County	X**	
Rest of State		X**

* * * * * * *

(2) In § 81.334, the attainment status designation table is amended as follows:

§ 81.334 North Carolina

* * * * * * *

NORTH CAROLINA—O_x

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Mecklenburg County	X	
Rest of State		X

** EPA designation only.

[FR Doc. 79-913 Filed 1-11-79; 8:45 am]

[4110-35-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

[42 CFR Part 405]

MEDICARE PROGRAM

Payments for Inpatient Services of Foreign Hospitals

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Proposed Rule.

SUMMARY: The proposed amendments provide for payment based on 100 percent of customary charges for covered inpatient hospital services furnished by foreign hospitals that elect to receive payment directly from the Medicare program. If the foreign hospital does not elect to receive payment directly, the Medicare beneficiary will be reimbursed based upon the hospital's reasonable charges, upon submitting an itemized bill to the program. The purpose of the proposed amendments is to encourage foreign hospitals to bill the Medicare program directly for services rendered to Medicare beneficiaries. The amendments also will simplify the administrative requirements for processing claims for reimbursement from foreign hospitals.

DATES: Consideration will be given to written comments or suggestions received on or before March 13, 1979.

ADDRESS: Address comments to: Administrator, Health Care Financing Administration, Department of Health, Education, and Welfare, P.O. Box 2372, Washington, D.C. 20013.

In commenting, please refer to MAB-36-P. Comments will be available for public inspection beginning approximately 2 weeks after publication, in room 5231 of the Department offices at 330 C Street, S.W., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (telephone 202-245-0950).

FOR FURTHER INFORMATION, CONTACT:

Mr. Hugh McConville, Medicare Bureau, Health Care Financing Administration, Room 412, East High Rise Building, Baltimore, Maryland 21235, (301) 594-9430.

SUPPLEMENTARY INFORMATION: Section 1814(f) of the Social Security Act provides Medicare payment for covered care furnished by foreign hospitals in two specific instances:

1. Emergency inpatient hospital services if the beneficiary is inside the United States (or the beneficiary is in Canada while traveling to or from Alaska without unreasonable delay by the most direct route) when the medical necessity occurs and the foreign hospital is closer or substantially more accessible to the site of the emergency than the nearest United States hospital which is adequately equipped and available to treat the emergency; and

2. Inpatient hospital services if the foreign hospital is closer or substantially more accessible to the beneficiary's United States residence than the nearest United States hospital which is equipped and available to treat the beneficiary's illness or injury.

The restrictions imposed by section 1814(f) regarding the foreign hospital being closer to, or substantially more accessible than, the nearest hospital in the United States, have the result that services furnished in any foreign country other than Canada or Mexico could not qualify for reimbursement.

The Medicare program presently pays foreign hospitals, subject to deductible and coinsurance amounts, the lesser of (1) 90 percent of the hospital's average inpatient per diem cost of all patients as determined by third-party nongovernmental payers, or (2) 85 percent of the hospital's customary charge for the services rendered.

Canadian hospitals are reluctant to accept reimbursement from the Medicare program on less than 100 percent of their average per diem charges. Based on information furnished by officials of the Canadian Department of Health and Welfare, HCFA determined that the average per diem rate charged by the Canadian hospitals is, in fact, the same as their average per diem costs. HCFA also determined that their per diem costs are less than the costs reimbursable by the Medicare program since their costs do not include certain items, such as mortgage interest and medical education salaries, which are included by Medicare in the determination of "reimbursable cost" for domestic providers. Canadian officials state that acceptance of payments based on less than 100 percent of their average per diem charges would constitute a Canadian subsidy of hospital services furnished to U.S. residents. The officials also object to the submission of cost reports in order to receive full reimbursement from the Medicare program for their costs, because the time and cost necessary to prepare these reports would not be justified for the relatively few services rendered to Medicare beneficiaries.

Section 1814(f) provides two methods for reimbursing foreign hospitals, which are essentially the same two methods applicable to payments for domestic emergency hospital services. If the foreign hospital elects to claim payment from the Medicare program for all covered services furnished during a calendar year, and agrees to comply with certain payment proce-

dures prescribed in section 1866(a) of the Act, it may be reimbursed on the basis of its reasonable cost or customary charges, whichever is less. If the foreign hospital does not elect to claim payment from the Medicare program directly, beneficiaries will be reimbursed based upon the hospital's reasonable charges upon submitting an itemized bill.

A hospital's reasonable cost is determined in accordance with section 1861(v)(1)(A) of the Act, which authorizes the Secretary to develop regulations which "may provide for the use of charges or a percentage of charges where this method reasonably reflects the costs."

As discussed above, information obtained from the Canadian Department of Health and Welfare disclosed that the charges imposed by Canadian hospitals (which render the vast majority of services described in Section 1814(f) of the Act) are, in fact, equal to their necessary costs in the efficient delivery of needed health services. This is true for all the provinces in Canada. Further, costs as determined in Canadian hospitals are less than the costs reimbursable by the Medicare program to domestic providers. HCFA believes these differences adequately justify the proposed determination that "reasonable costs", as applied to Canadian hospitals, are 100 percent of their customary charges.

Medicare payments are rarely made for services furnished by Mexican hospitals because the criteria in the law for establishing the proximity of Mexican hospitals to the site of an emergency that occurred in the United States or to the Medicare beneficiary's residence is rarely met. Additionally, HCFA has determined that charges imposed and the costs incurred by Mexican hospitals are also less than those of domestic providers. As with Canadian hospitals, HCFA believes these differences justify the proposed determination of "reasonable costs" as applied to Mexican hospitals.

Accordingly, under the authority of section 1861(v)(1)(A), the proposed amendments would provide for payment to foreign hospitals, for admissions after December 31, 1979, based on 100 percent of the hospitals' customary charges subject to applicable deductible and coinsurance amounts, for covered hospital services furnished to Medicare beneficiaries by foreign hospitals which elect to receive payment from the Medicare program directly. The hospital must establish its customary charges for the service by submitting an itemized bill with each claim it files. This would preclude the necessity of foreign hospitals filing cost reports to receive full reimbursement of their costs. If the foreign hospital does not elect to claim payment, beneficiaries may be reimbursed based on the hospital's reasonable charges, in accordance with section 405.153(c)(2) of the regulations, upon submitting an itemized bill.

However, the objective of the proposed amendment is to encourage foreign hospitals to elect to bill the Medicare program directly. The amendments also will simplify the administrative requirements for processing claims for reimbursement from foreign hospitals. This would be accomplished, for example, by the adoption of a single reimbursement procedure and the opportunity for HCFA to deal directly with each electing hospital.

Additionally, by encouraging foreign hospitals to bill the Medicare program directly, the proposed regulation would be advantageous to Medicare beneficiaries in two ways: (1) the beneficiary will not have to submit a bill; and (2) the beneficiary will only be liable for the applicable deductible and coinsurance amounts. If the beneficiary submits a bill, the beneficiary is statutorily liable for the applicable deductible and coinsurance amounts and a percentage of the hospital's reasonable charges (see section 405.153(c)(2) of the proposed rule, and sections 1814(d)(3) and (f)(4) of the Act).

42 CFR Part 405 is amended as set forth below:

1. Section 405.153 is amended by revising paragraph (c) to read as follows:

§ 405.153 Payment for services; hospitals outside the United States.

* * * * *

(c) *Payments.* (1) Payment to a Canadian or Mexican hospital for inpatient services specified in paragraphs (a) and (b) of this section and furnished either directly by the hospital or under arrangements made by the hospital, shall be made in the amount specified in § 405.454-1, if:

(i) Payment would be made if a provider agreement were in effect with the hospital;

(ii) The hospital files a statement of election to claim payment for all covered services furnished during a calendar year (see § 405.658); and

(iii) The hospital agrees to comply with those terms of a provider agreement that relate to charges and refunds to patients, as specified in § 405.607.

(2) If the foreign hospital does not file an election to claim direct payment from the Medicare program for covered inpatient services furnished to a Medicare beneficiary, payment will be made to the beneficiary based on an itemized bill of the hospital. In accordance with sections 1814(d)(3) and 1814(f)(4) of the Act, the payment amount, which is subject to the applicable deductible and coinsurance amounts, shall be equal to the following:

(i) If the hospital makes separate charges for routine and ancillary services, 60 percent of the hospital's reasonable charges for routine services furnished in the accommodations occupied by the Medicare beneficiary or in semiprivate accommodations, whichever is less, and 80 percent of the reasonable charges for ancillary services for covered days in the benefit period.

(ii) If the hospital does not make separate charges for routine and ancillary services, two-thirds of the hospital's reasonable charges for all covered services furnished, but not to exceed charges based on semiprivate accommodations.

2. A new § 405.454-1 is added to read as follows:

§ 405.454-1 Payment to a foreign hospital.

(a) Section 1814(f) of the Act provides for the payment of emergency and nonemergency inpatient hospital services furnished by foreign hospitals to Medicare beneficiaries. Section 405.153, together with this section, specifies the conditions for payment. These conditions, when applied, result in payments only to Canadian and Mexican hospitals.

(b) *Amount of payment.* Effective with admissions after December 31, 1979, the reasonable cost for services covered under the Medicare program furnished to beneficiaries by a foreign hospital shall be equal to 100 percent of the hospital's customary charges (as defined in § 405.455(b)) for the services.

(c) *Submittal of claims.* The hospital must establish its customary charges for the services by submitting an itemized bill with each claim it files in accordance with its election under § 405.658.

(d) *Exchange rate.* Payment to the hospital will be subject to the official exchange rate on the date the patient is discharged and to the applicable deductible and coinsurance amounts described in §§ 405.113—405.115.

3. Section 405.658 is revised to read as follows:

§ 405.658 Hospital election to receive health insurance payments.

(a) *General.* The provisions of this section apply to hospitals (both domestic and foreign) which qualify under § 405.152 or § 405.153 to elect to claim payment for all covered hospital services furnished either directly by the hospital or under arrangement with the hospital during a calendar year. To be eligible to file an election for a calendar year, the hospital must not have previously charged a beneficiary or any other person on his behalf for covered hospital services

furnished in that calendar year. The hospital's statement of election must be filed on a form designated by the Health Care Financing Administration (HCFA).

(b) *Statement of election.* Under the provisions of the statement of election, the hospital agrees for the calendar year of election:

(1) To comply with the provisons of §§ 405.607—405.610 relating to charges for items and services the hospital may make to the beneficiary, or any other person on his behalf.

(2) To comply with the provisions of §§ 405.618—405.621 relating to proper disposition of moneys incorrectly collected from, or on behalf of, a beneficiary; and

(3) To request payment under the Medicare program based on amounts provided under § 405.454-1.

(c) *Filing of statement of election.* (1) The hospital's statement of election must be signed by an authorized official of the hospital and must be submitted to HCFA before the close of the calendar year of election.

(2) An election is submitted to HCFA before the close of a calendar year only if postmarked or received by HCFA before the close of the calendar year of election.

(3) If accepted by HCFA, the effective date of the election shall be the earliest day in the calendar year of election for which HCFA determines that the hospital has been in continuous compliance with the requirements of section 1814(d) of the Act.

(d) *Notification of failure to continue to comply.* HCFA will give the hospital at least 5 days notice of its determination that the hospital does not qualify to claim reimbursement because of its failure to continue to be in compliance with the elements of its election, or of its failure to continue to be a hospital. The notice will:

(1) State the calendar year to which the determination applies;

(2) State the effective date of the determination;

(3) State that the determination applies to claims filed by the hospital for services furnished in the applicable calendar year to beneficiaries who are accepted as patients (inpatients and outpatients) on or after the effective date of the determination; and

(4) Inform the hospital of its right to appeal the determination.

(e) *Appeal by institution.* Any institution dissatisfied with a determination that it does not qualify to claim reimbursement shall be entitled to appeal the determination as provided in Subpart O of this part.

4. Section 405.659 is revised to read as follows:

§ 405.659 Reinstatement of hospital after notice of failure to continue to comply.

If a hospital is notified by HCFA of its ineligibility to receive reimbursement for a calendar year (see § 405.658(d)), the hospital may not file another election to claim payment from the Medicare program until HCFA finds that:

(a) The reason for its ineligibility has been removed; and

(b) There is reasonable assurance that it will not recur.

(Sections 1102, 1814(b), (d), and (f), 1861(v), and 1871 of the Social Security Act; 42 U.S.C. 1302, 1395f(b), (d), and (f), 1395x(v), and 1395hh.)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance.)

Dated: December 1, 1978.

LEONARD D. SCHAEFFER,
Administrator, Health Care Financing Administration.

Approved: January 6, 1979.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 79-1208 Filed 1-11-79; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Parts 2740, 2910]

RECREATION AND PUBLIC PURPOSES ACT

Proposed Rules

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking updates the Recreation and Public Purposes Act regulations to reflect the amendments of that Act made by section 212 of the Federal Land Policy and Management Act.

DATE: Comments by March 13, 1979.

ADDRESS: Send comments to: Director (210), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240. Comments will be available for public review in Room 5555 of the above address from 7:45 a.m.-4:15 p.m., on regular work days.

FOR FURTHER INFORMATION CONTACT:

Mr. Mathew Millenbach (202) 343-8731 or Mr. Robert C. Bruce (202) 343-8735.

SUPPLEMENTARY INFORMATION: Section 212 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) amended the Recreation and Public Purposes Act (43 U.S.C. 869 et seq.) by requiring that certain additional criteria shall be met prior to approving applications, by changing the acreage limitations, and by providing that patents and leases for recreational purposes shall be made without monetary consideration.

In addition to accommodating these changes, the proposed rulemaking changes provisions of the regulations regarding the termination of classifications of lands for which no applications had been filed, the collection of filing fees and the reappraisal of a patent when the patentee applies for a title transfer or change of use.

It is hereby determined that the publication of this document is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044.

The principal author of this proposed rulemaking is Mathew Millenbach of the Division of Lands and Realty, Bureau of Land Management, assisted by the Division of Legislation and Regulatory Management.

Under the authority of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.) it is proposed to revise Part 2740, Group 2700, and Subpart 2912, Part 2910, Group 2900, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations as set forth below:

1. Part 2740 is revised to read as follows:

PART 2740—RECREATION AND PUBLIC PURPOSES ACT

Subpart 2740—Recreation and Public Purposes Act: General

Sec.
2740.0-1 Purpose.
2740.0-2 Objectives.
2740.0-3 Authority.
2740.0-5 Definitions.
2740.0-6 Policy.
2740.0-7 Cross reference.

Subpart 2741—Recreation and Public Purposes Act: Requirements

Sec.
2741.1 Lands subject to disposition.
2741.2 Qualified applicants.
2741.3 Applications.
2741.4 Guidelines for conveyances and leases under the act.
2741.5 Applications for transfer of title or change of use.
2741.6 Acreage limitations and general conditions.
2741.7 Price.
2741.8 Patent provisions.

AUTHORITY: Recreation and Public Purposes Act, as amended (43 U.S.C., 869 et seq.

Subpart 2740—Recreation and Public Purposes Act: General

§ 2740.0-1 Purpose.

These regulations provide guidelines and procedures for transfer of certain public lands under the Recreation and Public Purposes Act as amended (43 U.S.C. 869 et seq.), to States or their political subdivisions, and to nonprofit corporations and associations, for recreational and public purposes.

§ 2740.0-2 Objectives.

The objective is to meet the needs of certain State and local governmental agencies and other qualified organizations for public lands required for recreational and public purposes.

§ 2740.0-3 Authority.

(a) The Act of June 14, 1926, as amended, (43 U.S.C. 869 et seq.), commonly known as the Recreation and Public Purposes Act, authorizes the Secretary of the Interior to lease or convey public lands for recreational and public purposes under specified conditions.

(b) Section 211 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721), authorizes the conveyance to States or their political subdivisions of unsurveyed islands, determined by the Secretary to be public lands of the United States, and "omitted lands" without regard to acreage limitations contained in the Recreation and Public Purposes Act.

§ 2740.0-5 Definitions.

As used in this part, the term:

(a) "Act" means the Recreation and Public Purposes Act as amended by section 212 of the Federal Land Policy and Management Act of 1976.

(b) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(c) "Public lands" means any lands and interest in lands administered by the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts and Eskimos.

§ 2740.0-6 Policy.

(a) To assure development of public lands in accordance with a development plan and compliance with an approved management plan, the authorized officer may require that public lands first be leased under the provisions of subpart 2912 of this title for a period of time prior to issuance of a patent.

(b) Municipal corporations may not secure public lands under this act which are not within convenient access to the municipality and within the same State as the municipality. Other qualified governmental applicants may not secure public lands outside their political boundaries or other area of jurisdiction.

§ 2740.0-7 Cross references.

(a) Requirements and procedures for conveyance of land under the Recreation and Public Purposes Act are contained in Subpart 2741 of this chapter.

(b) Requirements and procedures for leasing of land under the Recreation and Public Purposes Act are contained in Subpart 2915 of this chapter.

(c) Requirements and procedures for conveyance of unsurveyed islands and omitted lands under Section 211 of the Federal Land Policy and Management Act are contained in Subpart 2742 of this chapter.

Subpart 2741—Recreation and Public Purposes Act: Requirements

§ 2741.1 Lands subject to disposition.

(a) The act is applicable to any public lands except (1) lands withdrawn or reserved for national forests, national parks and monuments, and national wildlife refuges, (2) Indian lands and lands set aside or held for use by or for the benefit of Indians, and (3) lands which have been acquired for specific purposes.

(b) Revested Oregon and California Railroad grant lands and reconveyed Coos Bay Wagon Road grant lands may only be leased to States and counties and to State and Federal instrumentalities and political subdivisions and to municipal corporations.

(c) Section 211 of the Federal Land Policy and Management Act of 1976 does not apply to public lands within the National Forest System, defined in the Act of August 17, 1974 (16 U.S.C. 1601), the National Park System, the National Wildlife Refuge System and the National Wild and Scenic Rivers System.

§ 2741.2 Qualified applicants.

Applications for any recreational or public purpose may be filed by States, Federal and State instrumentalities and political subdivisions, including counties and municipalities, and nonprofit associations and nonprofit corporations that, by their articles of incorporation or other authority, are authorize to acquire land.

§ 2741.3 Applications.

(a) Applications shall be submitted on forms approved by the Director.

(b) Each application shall be accompanied by three copies of a statement describing the proposed use of the land. The statement shall show that there is an established or definitely proposed project for such use of the land, present detailed plan and schedule for development of the project and a management plan which includes a description of how any revenues will be used. The provisions of § 1821.2 of this title apply to filings pursuant to this section.

§ 2741.4 Guidelines for conveyances and leases under the act.

(a) Public lands shall be conveyed or leased under the act only for an established or definitely proposed project for which there is a reasonable timetable of development and satisfactory development and management plans.

(b) No public lands having national significance shall be conveyed pursuant to the act.

(c) No more public lands than are reasonably necessary for the proposed use shall be conveyed pursuant to the act.

(d) For proposals involving over 640 acres, public lands shall not be sold or leased pursuant to this act until:

(i) Land use plans and zoning regulations have been adopted by the appropriate State or local authorities.

(ii) The authorized officer has held at least one public meeting on the proposal.

(e) Applications shall not be approved unless and until it has been determined that disposal under the act would serve the national interest following the planning requirements of section 202 of the Federal Land Policy and Management Act (43 U.S.C. 1712).

(f) Public lands may be determined to be suitable for lease or sale under the act by the authorized officer on his own motion as a result of demonstrated public needs for public lands for recreational or public purposes during the planning process described in section 202 of the Federal Land Policy and Management Act. Potential applicants should contact the authorized officer and furnish him with conceptual plans of the proposed use early in the planning process so that he can plan for the proposed use of the public lands.

(g) Lands under the jurisdiction of another agency shall not be determined to be suitable for lease or sale without that agency's approval.

(h) The issuance of a notice that public lands are suitable for sale or lease under the act and are classified as such shall segregate such public lands from all other appropriations, including locations under the mining laws, except as provided in the notice or an amendment thereof. If no application is filed within 18 months after issuance of the notice, the segregation shall be automatically vacated and the

public lands restored to their former status.

(i) Patents shall not be issued for sanitary landfill sites, unless it can be shown that when the usefulness of the lands for landfill purposes ends, the land shall be used for recreation or other public purposes as provided in the approved development plan. The land shall be leased until the sanitary landfill has been filled and the subsequent development has been completed.

(j) The act shall not be used to provide sites for the disposal of permanent or long-term hazardous wastes.

§ 2741.5 Applications for transfer or change of use.

(a) Applications under the act for permission to add to or change the use specified in a patent or applications to transfer title to a third party shall be filed as prescribed in § 2741.2 of this title.

(b) Applications for transfer of title are subject to the acreage limitations as prescribed in § 2741.5(a) of this title.

(c) Prior to approval of an application filed under this section, the public lands may be reappraised in accordance with § 2741.7 of this title and the beneficiary required to make such payments as are found justified by the reappraisal.

§ 2741.6 Acreage limitations and general conditions.

(a) Conveyances under the act to any applicant in any one calendar year shall be limited as follows:

(1) Any State or State agency having jurisdiction over the State park system may acquire not more than 6,400 acres for recreational purposes and such additional acreage as may be needed for small roadside parks and rest sites of 10 acres or less each.

(2) Any State or agency or instrumentality of such State may acquire not more than 640 acres for each of its programs involving public purposes other than recreation.

(3) Any political subdivision of a State may acquire for recreational purposes not more than 6,400 acres, and for public purposes other than recreation an additional 640 acres. In addition, any political subdivision of a State may acquire such additional acreage as may be needed for roadside parks and rest sites of not more than 10 acres each.

(4) If a State or political subdivision has failed in any one calendar year to receive 6,400 acres (not counting public lands for small roadside parks and rest sites) and had an application on file on the last day of that year, the State, State park agency or political subdivision may receive additional public lands to the extent that the conveyances would not have exceeded the limitations for that year.

(5) Any nonprofit corporation or nonprofit association may acquire for recreational purposes not more than 640 acres and for public purposes other than recreation an additional 640 acres.

(6) Acreage limitations described in this section do not apply to conveyances made under section 211 of the Federal Land Policy and Management Act of 1976.

(b) Conveyances within any State shall not exceed 25,600 acres for recreational purposes per calendar year, except that should any State park agency or political subdivision fail in one calendar year to receive 6,400 acres other than small roadside parks and rest sites, additional conveyances may be made thereafter to that State park agency or political subdivision pursuant to any application on file on the last day of said year to the extent that the conveyances would not have exceeded the limitations of said year.

(c) No patents shall be issued under the act unless and until the public lands are officially surveyed. This requirement does not apply to islands patented under the authority of section 211(a) of the Federal Land Policy and Management Act of 1976.

(d) All leases and patents issued under the act shall reserve to the United States all minerals together with the right to mine and remove the same under applicable laws and regulations to be established by the Secretary of the Interior.

§ 2741.7 Price.

(a) Conveyances for recreational or historic-monument purposes to a State, county, or other State or Federal instrumentality or political subdivision shall be issued without monetary consideration.

(b) All other conveyances shall be made at prices established by the Secretary of the Interior through appraisal or otherwise, taking into consideration the purpose for which the land is to be used.

(c) Patents shall be issued only after payment of the full purchase price by a patent applicant.

§ 2741.8 Patent provisions.

(a) All patents under the act shall provide that title shall revert if, without the approval of the authorized officer:

(i) The patentee or its approved successor attempts to transfer title to or control over the lands to another;

(ii) The lands are devoted to a use other than that for which the lands were conveyed;

(iii) The lands are not used for the purpose for which they were conveyed for a 5-year period; or

(iv) The patentee fails to follow the approved development plan or management plan.

(b) Patents shall also provide that the Secretary of the Interior may take action to revest title in the United States if the patentee directly or indirectly permits his agents, employees, contractors, or subcontractors (including without limitation lessees, sublessees, and permittees) to prohibit or restrict the use of any part of the patented lands or any of the facilities thereon by any person because of such person's race, creed, color, or national origin.

PART 2910—LEASES

2. Subpart 2912 is revised to read as follows:

Subpart 2912—Recreation and Public Purposes Act

Sec.
2912.0-7 Cross reference.
2912.1 Nature of Interest.
2912.1-1 Terms and conditions of lease.
2912.2 Renewal of leases.
2912.3 Substitution of new lease.
2912.4 Leases for solid waste disposal sites.
2912.4-1 Requirement.
2912.4-2 Procedures.

AUTHORITY: Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.)

Subpart 2912—Recreation and Public Purposes Act

§ 2912.0-7 Cross reference.

The general requirements and procedures under the Recreation and Public Purposes are contained in part 2740 of this title.

§ 2912.1 Nature of Interest.

§ 2912.1-1 Terms and conditions of lease.

(a) The term of leases under the Recreation and Public Purposes Act, hereafter referred to as "the Act," shall be fixed by the authorized officer but shall not exeed 20 years for nonprofit associations and nonprofit corporations, and 25 years for Federal, State, and local governmental entities. A lease may contain, at the discretion of the authorized officer, a provision giving the lessee the privilege of renewing the lease for a like period.

(b) Leases shall be issued on a form approved by the Director, Bureau of Land Management and shall contain terms and conditions required by law, and public policy, and which the authorized officer considers necessary for the proper development of the land, for the protection of Federal property, and for the protection of the public interest.

(c) Leases shall be terminable by the authorized officer upon failure of the lessee to comply with the terms of the lease, upon a finding that all or part of the land is being devoted to a use other than the use authorized by the

lease, or upon a finding that the land has not been used by the lessee for the purpose specified in the lease for any consecutive period specified by the authorized officer but not more than 5 years or less than 2 years.

(d) Reasonable annual rentals shall be established by the Secretary of the Interior and shall be payable in advance. Upon notification of the amount of the yearly rental, a lease applicant shall be required to pay at least the first year's rental before the lease shall be issued. Upon the voluntary relinquishment of a lease before the expiration of its term, any rental paid for the unexpired portion of the term shall be returned to the lessee upon a proper application for repayment to the extent that the amount paid covers a full lease year or years of the remainder of the term of the original lease.

(e) Leases are not transferable except with the consent of the authorized officer. Transferees shall have all the qualifications of applicants under the Act and shall be subject to all the terms and conditions of the regulations in this part.

(f) A lessee shall not be permitted to cut timber from the leased lands without prior permission from the authorized officer.

(g) All leases shall reserve to the United States all minerals together with the right to mine and remove the same under applicable laws and regulations to be established by the Secretary of the Interior.

§ 2912.2 Renewal of leases.

A lessee with a privilege of renewal must notify the authorized officer that it will exercise the privilege at least 180 days before the end of the lease period.

§ 2912.3 Substitution of a new lease.

A lessee may apply for a new lease at any time. Applications for new leases shall be accompanied by consent of the lessee to cancellation of the existing lease upon the issuance of the new lease and by three copies of a statement showing (a) the need for a new lease and (b) any changes in the use or management of the lands or the terms and conditions of the lease which the applicant desires.

§ 2912.4 Leases for solid waste disposal sites.

§ 2912.4-1 Requirement.

Compliance with *Guidelines for the Thermal Processing of Solid Wastes* (40 CFR Part 240), *Guidelines for the Land Disposal of Solid Waste* (40 CFR Part 241), and *Regulations for the Acceptance of Certain Pesticides and Recommended Procedures for the Disposal and Storage of Pesticides and Pesticide Containers* (40 CFR Part 165), and any other regulations or guidelines promulgated pursuant to the Resource Conservation and Recovery Act of 1976 (43 U.S.C. Chapter 82) is required under leases issued for purposes involving disposal of solid waste.

§ 2912.4-2 Procedures.

(a) All new leases shall contain stipulations requiring compliance with the above-referenced regulations and guidelines. Leases and respective plans of development and management already in existence without such specific stipulations shall be amended to require compliance with the above guidelines by lessees. In all cases, the lease must stipulate that failure to comply with the regulations and guidelines shall constitute sufficient grounds for cancellation of the lease.

(b) Lease applications shall include in the plan of development and management detailed description of the methods and procedures that will be employed to achieve compliance with the above regulations and guidelines. The regulations and guidelines delineate minimum standards of performance that must be followed. The recommended methods and procedures in the guidelines are means whereby the requirements may be met. Alternate methods and procedures may be used in meeting the requirements when approved by the authorized officer.

GARY J. WICKS,
Acting Assistant Secretary of the Interior.

JANUARY 4, 1979.

[FR Doc. 79-981 Filed 1-11-79; 8:45 am]

[4310-84-M]

[43 CFR Part 3800]

MINING CLAIMS UNDER THE GENERAL MINING LAWS

Exploration and Mining—Wilderness Review Program

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking provides for the management and protection of potential and identified wilderness study areas on public lands. The Federal Land Policy and Management Act of 1976 provides that certain public lands be reviewed to determine their suitability for inclusion in the Wilderness System. Mining may continue on wilderness study areas during the review in the same manner and degree as was being conducted on October 21, 1976: *Provided*, That no undue or unnecessary damage is being done to public lands and resources and that environmental protection is afforded. The intended effect is to protect potential and identified wilderness study areas from the loss of wilderness suitability that might result from mining operations.

DATES: Comment date: March 14, 1979.

ADDRESS: Send comments to: Director (210), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

Comments received will be available for public review in room 5555 at the above address from 8:00 a.m. to 4:00 p.m. on regular working days.

FOR FURTHER INFORMATION, CONTACT:

Robert M. Anderson at the above address or phone 202-343-7722 or Robert C. Bruce 202-343-7424.

SUPPLEMENTARY INFORMATION: The principal author of this rulemaking is Billy R. Templeton of the Bureau of Land Magangement, Division of Legislation and Regulatory Management, assisted by Kenneth Lee of the Department of the Interior, Office of the Solicitor.

In providing for wilderness review on public lands, section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782) provides that operations related to mining on roadless areas of 5,000 acres or more and roadless islands may continue in the same manner and degree in which the same was being conducted on the date of approval of the Act (October 21, 1976). Mining operations other than these must be regulated to ensure nonimpairment of wilderness suitability. The section also includes the provision that the Secretary of the Interior by regulation or otherwise shall take any action required to prevent unnecessary or undue degradation of the lands and resources or to afford environmental protection. Provisions of section 603 shall be implemented as follows:

1. One of the stated objectives of the Act is to protect potential wilderness areas from activities that would impair their suitability for inclusion in the wilderness system until those roadless areas of 5,000 acres or more and roadless islands can be reviewed, a recommendation made by the Secretary, and action taken by the Congress on the recommendation.

2. This rulemaking shall apply to any activity related to mining under the general mining laws that may result in impairment of the wilderness suitability of public lands and resources in wilderness study areas.

3. The location of identified wilderness study areas will be made public through the FEDERAL REGISTER, local news media, public meetings, or distribution of maps as necessary to implement the regulations.

4. A plan of operations is required for existing operations that were initiated after October 21, 1976, for the expansion of existing operations, or for new operations. Operations will be monitored through the plan of operations. Provisions are included to make changes in the plan, to expand operations if appropriate, or to transfer a plan to a new owner.

5. The regulatory procedures are set up to provide for the least possible interruption of mining operations during the development and review of plans of operations consistent with the need to manage and protect the potential or identified wilderness study areas.

6. Discretionary bonding, reclamation procedures, environmental protection standards, and appeals procedures are included in the rulemaking.

The number of persons required to assume a Federally imposed paperwork burden has been reduced to the extent possible in keeping with the statutory mandate to avoid impairment of the wilderness suitability of wilderness study areas. A level of operations, based upon the kinds of mining related activities taking place on public lands and the potential impact of these activities, is establised in the draft proposed rulemaking. Only those operations above that level are subject to regulation. The presence of ongoing mining operations served by roads and other ancillary facilities precludes many mineralized areas from consideration as wilderness study areas.

Therefore, the enclosed rulemaking would affect a relatively small segment of the mining industry and a relatively small acreage of public land. For these reasons this proposed rulemaking, as an interim regulation, is not considered a significant regulatory proposal requiring a regulatory analysis under Executive Order 12044. Both a regulatory analysis and environmental statement are being prepared to assess the need for and the impact of regulations for hardrock mining operations on all public lands. Special provisions for the management and protection of wilderness study areas are being analyzed in the context of an overall regulatory proposal for the public lands. It is considered necessary and appropriate to promulgate interim regulations to carry out the intent of the Congress to guard against impairment of the suitability of wilderness study areas for inclusion in the Wilderness System. These regulations provide management capability to accomplish that objective during the time needed to complete the Regulatory Analysis and Environmental Impact Statement analyzing mining regulations for public lands in general.

Subsequent to the completion of the Regulatory Analysis and Environmental Impact Statement, the form and substance of regulatory provisions to replace these interim regulations will be determined and permanent regulations adopted.

Under the authority of section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782), it is proposed to amend Part 3800, Group 3800, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations as set forth below:

1. Part 3800 is amended by adding Subpart 3802 to read as follows:

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

Subpart 3802—Exploration and Mining—Wilderness Review Program

Sec.
3802.0-1 Purpose.
3802.0-2 Objectives.
3802.0-3 Authority.
3802.0-5 Definitions.
3802.0-6 Policy.
3802.0-7 Scope.
3802.1 Plan of operations.
3802.1-1 When required.
3802.1-2 When not required.
3802.1-3 Operations existing on October 21, 1976.
3802.1-4 Contents of plan.
3802.1-5 Plan approval.
3802.1-6 Modification of plan.
3802.1-7 Existing operations.
3802.2 Bond requirements.
3802.3 Environmental protection.
3802.3-1 Environmental assessment.
3802.3-2 Requirements for environmental protection.
3802.4 General provisions.
3802.4-1 Noncompliance.
3802.4-2 Access.
3802.4-3 Multiple-use conflicts.
3802.4-4 Fire prevention and control.
3802.4-5 Maintenance and public safety.
3802.4-6 Inspection.
3802.4-7 Notice of suspension of operations.
3802.4-8 Cessation of operations.
3802.5 Appeals.
3802.6 Public availability of information.

AUTHORITY: 43 U.S.C 1782.

Subpart 3802—Exploration and Mining, Wilderness Review Program

§ 3802.0-1 Purpose.

The purpose of this subpart is to establish procedures to prevent impairment of the suitability of potential and identified wilderness study areas for inclusion in the wilderness system and to prevent unnecessary or undue degradation and provide for environmental protection of the public lands and resources.

§ 3802.0-2 Objectives.

The objectives of this subpart are to:

(a) allow mining claim location, prospecting, and mining operations in potential or identified wilderness study areas pursuant to the United States Mining Laws, but only in a manner that will not impair the suitability of an area for inclusion in the wilderness system, except that operations initiated prior to October 21, 1976 may continue in the same manner and degree as they were being conducted on that date even if impairment is being caused as a necessary part of the operation; and

(b) assure management programs that reflect consistency between the spirit and intent of the United States Mining Laws, and other appropriate statutes.

§ 3802.0-3 Authority.

These regulations are issued under the authority of sections 302, 303, and 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, and 1782).

§ 3802.0-5 Definitions.

As used in this subpart, the term:

(a) "Reclamation as contemporaneously as practicable" means the commencement, conduct, and completion of reclamation as soon after disturbance as feasible, without undue physical interference with ongoing operations, leaving a mininum of land unreclaimed, consistent with the requirements for environmental protection set forth in this subpart.

(b) "Environment" means surface and subsurface resources both tangible and intangible, including air, water, scenic, cultural, paleontological, vegetative, soil, wildlife, fish, and wilderness values.

(c) "Identified Wilderness Study Area" means a roadless area which has been found through the Bureau of Land Management wilderness inventory process to have wilderness characteristics (thus having the potential of being included in the National Wilderness Preservation System), and which will be subjected to intensive analysis through the Bureau's planning system, and through public review to determine wilderness suitability, and is not yet the subject of a Congressional decision regarding its designation as wilderness.

(d) "Impairment of suitability for inclusion in the Wilderness System" means taking actions that cause permanent impacts, i.e. impacts that will not be practically and economically reclaimed within a time period no longer than 5 years after Congressional designation of the area as a unit of the National Wilderness Preservation System. "Reclaimed" means that the effects of the activity shall be rehabilitated to the point of being substantially unnoticeable and damaged environmental systems returned to essentially the condition that existed on the effective date of these regulations or on October 21, 1976, for operations already in motion.

(e) "Mining claim" means any unpatented mining claim, millsite, or tunnel site authorized by the United States mining laws.

(f) "Mining operations" means all functions, work, facilities, and activities in connection with the exploration, development, extraction, and processing of mineral deposits and all uses reasonably incident thereto including the construction and maintenance of roads and other means of access to and across lands subject to these regulations.

(g) "Operator" means a person conducting or proposing to conduct prospecting, exploration, or mining operations.

(h) "Potential Wilderness Study Area" means any area of the public lands for which the wilderness inventory has not been completed pursuant to the Section 603 of the Federal Land Policy and Management Act.

(i) "Reclamation" means:

(1) Reshaping of the land disturbed or affected by mining operations, to its approximate original contour or to an appropriate contour considering the surrounding topography that is consistent with preserving its suitability for inclusion within the wilderness system as determined by the authorized officer;

(2) Restoring such reshaped lands to a stable soil condition consistent with its pre-mining productivity and capable of supporting all practicable uses that the land was capable of supporting at the time of initiation of mining operations as determined by the authorized officer; and

(3) Revegetating the land, to provide a vegetative cover capable of self-regeneration and equal in permanence to its vegetative state at initiation of mining operations.

(j) "Wilderness inventory" means an evaluation conducted under BLM wilderness inventory procedures in the form of a written description and map showing those lands that meet the wilderness criteria established under section 603(a) of the Federal Land Policy and Management Act.

(k) "Manner and degree" means that existing operations will be defined geographically by the area of active development and the logical adjacent (not necessarily contiguous) continuation of the existing activity, and not necessarily by the boundary of a particular, claim or lease. However, the significant measure for these activities is still the impact they are having on the wilderness potential of an area. It is the actual use of the area, and not the existence of an entitlement for use, which is the controlling factor. In other words, an existing activity may continue to be expanded in an area over time so long as the additional impacts caused by the expansion do not cause impairment of wilderness suitability beyond that caused by the existing activity. In determining the manner and degree of existing operations, a rule of reason will be employed.

§ 3802.0-6 Policy.

Under the 1872 Mining Law (30 U.S.C. 22), a person has a statutory right consistent with other laws and Departmental regulations, to go upon the open (unappropriated and unreserved) public lands for the purpose of mineral prospecting, exploration, development, and extraction. The Federal Land Policy and Management Act requires the Secretary to regulate mining activities in potential or identified wilderness study areas to prevent impairment of the suitability of these areas for inclusion in the wilderness system. However, mining activities occurring in the same manner and degree that same were being conducted on October 21, 1976, may continue, even if they are determined to be impairing. Mining activities not exceeding manner and degree shall be regulated only to prevent undue and unnecessary degradation of and to afford environmental protection for public lands and resources.

§ 3802.0-7 Scope.

(a) These regulations apply to prospecting, exploration, and mining operations conducted under the United States mining laws, as they affect the resources and environment of potential or identified wilderness study areas of the public lands that are subject to location under those laws.

(b) These regulations apply to roads and other approved means of access across public land for the purpose of conducting operations under the United States mining laws.

§ 3802.1 Plan of operations.

An approved plan shall include appropriate environmental protection and rehabilitation measures selected by the authorized officer that shall be carried out by the operator. An operator may prepare and submit with a plan measures for the reclamation of the affected area.

§ 3802.1-1 When required.

An approved plan of operations is required for operations within potential or identified wilderness study areas, prior to commencing:

(a) Any mining operations which involve construction of roads, bridges, landing areas for aircraft, or improving or maintaining such access facilities in a way that alters the alignment, width, gradient size, or character of such facilities;

(b) Any mining operations which destroy trees;

(c) Mining operations using tracked vehicles or mechanized earth moving equipment, such as bulldozers or backhoes;

(d) Any operations using motorized vehicles over other than "open use areas and trails" as defined in Subpart 6292 of this title, *off-road vehicles*, unless the use of a motorized vehicle can be covered by a temporary use permit issued under Subpart 8372 of this title;

(e) The construction or placing of any mobile, portable or fixed structure on public land for more than 30 days; or

(f) On mining operations requiring the use of explosives.

§ 3802.1-2 When not required.

A plan of operations under this subpart is not required for—

(a) Searching for and occasionally removing mineral samples or specimens;

(b) Operating motorized vehicles over "open use areas and trails" as defined in 43 CFR Part 6292 so long as the vehicles conform to the operating regulations and vehicle standards contained in that subpart;

(c) Maintaining or making minor improvements of existing access routes, bridges, landing areas for aircraft, or other facilities for access where such improvements or maintenance shall not alter the alignment, width, gradient, size, or character of such facilities; or

(d) Making geological, radiometric, geochemical, geophysical or other tests and measurements using instruments, devices, or drilling equipment which are transported without using mechanized earth moving equipment or tracked vehicles.

§ 3802.1-3 Operations existing on October 21, 1976.

A plan of operations shall not be required for operations that were being conducted on October 31, 1976, unless the operation is undergoing changes that exceed the manner and degree of operations on October 21, 1976. However, if the authorized officer determines that operations in the same manner and degree are causing undue or unnecessary degradation of lands and resources or adverse environmental effects, an approved plan containing protective measures may be required. Any changes planned in an existing operation that would result in operations exceeding the present manner and degree shall be delayed until the plan is processed under provisions of § 3802.1-5.

§ 3802.1-4 Contents of plan of operations.

(a) No special form is required to file a plan of operations.

(b) The plan of operations shall include—

(1) The name and mailing address of both the person for whom the operation will be conducted, and the person who will be in charge of the operation and should be contacted concerning the reclamation or other aspects of the operation (any change in the mailing address shall be reported promptly to the authorized officer);

(2) A map, preferably a topographic map, or sketch showing present road, bridge or aircraft landing area locations, proposed road, bridge or aircraft landing area locations, and size of areas where surface resources will be disturbed;

(3) Information sufficient to describe either the entire operation proposed or reasonably foreseeable operations and how they would be conducted, including the nature and location of proposed structures and facilities;

(4) The type and condition of existing and proposed roads or aircraft landing areas, the means of transportation used or to be used, and the estimated period during which the proposed activity will take place;

(5) If and when applicable, the serial number assigned to the mining claim, mill or tunnel site filed pursuant to Subpart 3833 of this title.

§ 3802.1-5 Plan approval.

(a) The authorized officer shall promptly acknowledge the receipt of a plan of operations and within 30 days act on the plan of operations to determine its acceptability.

(b) The authorized officer shall review the plan of operations to determine if the operations are impairing the suitability of the area for preservation as wilderness. Pending approval of the plan of operations, mining operations may continue in a manner that minimizes environmental impacts as prescribed in § 3802.3. After completing the review of the plan of operations, the authorized officer shall give the operator written notice that: (1) The plan is approved subject to measures that will prevent the impairment of the suitability of the area for preservation as wilderness as determined by the authorized officer; or (2) the anticipated impacts of the mining operations are such that all or part of further operations will impair the suitability of the area for preservation as wilderness, the plan is disapproved and continuance of such operations is not allowed.

(c) Upon receipt of a plan of operations for mining activities commencing after the effective date of these regulations, the authorized officer may notify the operator that:

(1) In a potential wilderness study area where an inventory has not been completed, an operator may agree to operate under a plan of operations that includes terms and conditions that would be applicable in an identified wilderness study area. Without an agreement to this effect, no action may be taken on the plan until a wilderness inventory is completed; or

(2) The area has been inventoried and does not contain wilderness characteristics, and that the mining operations are no longer subject to these regulations; or

(3) The anticipated impacts are such that all or part of the proposed mining operations will impair the suitability of the area for preservation as wilderness, and therefore, the proposed mining operation cannot be allowed.

(d) In addition to paragraphs (a) through (c) of this section, the following general plan approval procedures may also apply. The authorized officer may notify the operator that:

(1) The plan of operations is unacceptable and the reasons therefore; or

(2) Modification of the plan of operations is necessary to meet the requirements of these regulations; or

(3) The plan of operations is being reviewed, but that more time, not to exceed an additional 60 days, is necessary to complete such review, setting forth the reasons why additional time is needed, except in those instances where it is determined that an Environmental Statement or compliance with section 106 of the National Historic Preservation Act (NHPA) is needed. Periods during which the area of operations is inaccessible for inspection due to climatic conditions, fire hazards or other physical conditions or legal impediments, shall not be included when counting the 60 calendar day period.

(e) If the authorized officer does not act on the plan of operations within the 30-day period, or the 60-day extension, or notify the operator of the need for an Environmental Statement or compliance with section 106 of NHPA, operations under the plan may begin. However, if the authorized officer at a later date finds that operations under the plan are impairing wilderness suitability, the authorized officer shall notify the operator that the operations are not in compliance with these regulations and what changes are needed, and shall require the operator to submit a modified plan of operations, within a time specified in the notice. If the operator is notified of the need for an Environmental Statement, the plan of operations shall not be approved before 30 days after final statement is prepared and filed with the Environmental Protection Agency. If the operator is notified of the need for compliance with section 106 of the NHPA, the plan of operations shall not be approved until the compliance responsibilities of the Bureau of Land Management are satisfied.

(f) If cultural resource properties listed on or eligible for listing on the National Register of Historic Places are within the area of operations, no operations which would affect those resources shall be approved until compliance with section 106 of the National Historic Preservation Act is accomplished. The operator is not required to do or to pay for an inventory. The responsibility and cost of the cultural resource mitigation included in an approved plan of operation shall be the operator's.

(g) Pending final approval of the plan of operations, the authorized officer shall approve any operations that may be necessary for timely compliance with requirements of Federal and State laws. Such operations shall be conducted so as to prevent impairment of wilderness suitability and to minimize environmental impacts as prescribed by the authorized officer in accordance with the standards contained in § 3802.3 of this title.

§ 3802.1-6 Modification of plan.

(a) If the development of a plan for an entire operation is not possible, the operator shall file an initial plan setting forth this proposed operation to the degree reasonably foreseeable at that time. Thereafter, he shall file a supplemental plan or plans prior to undertaking any operations not covered by the initial plan.

(b) At any time during operations under an approved plan of operations, the authorized officer or the operator may initiate a modification of the plan detailing any necessary changes that were unforeseen at the time of filing of the plan of operations. If the operator does not furnish a proposed modification within a time considered reasonable by the authorized officer, the authorized officer may recommend to the State Director that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth the supporting facts and reasons for his recommendations. In acting upon such recommendation, except in the case of a modification under § 3802.1-5(e) the State Director shall determine (1) whether all reasonable measures were taken by the authorized officer to predict the environmental impacts of the proposed operations; (2) whether the disturbance is or may become of such significance as to require modification of the plan of operations in order to meet the requirement for environmental protection specified in § 3802.3-2 of this title, and (3) whether the disturbance can be minimized using reasonable means.

Lacking such a determination by the State Director, an operator is not required to submit a proposed modification of an approved plan of operations. Operations may continue in accordance with the approved plan of operations until a modified plan is approved, unless the State Director determines that the operations are causing impairment or unnecessary or undue degradation to surface resources. He shall advise the operator of those measures needed to avoid such damage and the operator shall immediately take all necessary steps to implement measures recommended by the State Director.

(c) A supplemental plan of operations or a modification of an approved plan of operations shall be approved by the authorized officer in the same manner as the initial plan of operations.

§ 3802.1-7 Existing operations.

(a) Persons conducting mining operations on the effective date of these regulations, who would be required to submit a plan of operations under § 3802.1-2 of this title, may continue operations but shall, within 60 days after the effective date of these regulations, submit a plan of operations. Upon a showing of good cause, the authorized officer shall grant an extension of time to submit a plan of operations not to exceed an additional 180 days.

(b) Operations may continue according to the submitted plan of operations during its review unless the operator is notified otherwise by the authorized officer.

(c) Upon approval of a plan of operations, mining operations shall be conducted in accordance with the approved plan.

§ 3802.2 Bond requirements.

(a) Any operator who conducts mining operations under an approved plan of operations shall, if required to do so by the authorized officer, furnish a bond in an amount determined by the authorized officer. The authorized officer may determine not to require a bond where mining operations would cause nominal environmental damage, or the operator has an excellent past record for reclamation. In determining the amount of the bond, the authorized officer shall consider the estimated cost of stabilizing rehabilitating and reclaiming all areas disturbed by the operations consistent with § 3802.3-2(h) of this title.

(b) In lieu of a bond, the operator may deposit and maintain in a Federal depository account of the United States Treasury, as directed by the authorized officer, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having a face and market value at the time of deposit of not less than the required dollar amount of the bond.

(c) In place of the individual bond on each separate operation, a blanket bond covering hardrock mining operations may be furnished, at the option of the operator, if the terms and conditions as determined by the authorized officer are sufficient to comply with these regulations.

(d) In the event that an approved plan of operations is modified in accordance with § 3802.1-5 of this title, the authorized officer shall review the initial bond for adequacy and, if necessary, shall require that the amount of bond be adjusted to conform to the plan of operations, as modified.

(e) When a mining claim is patented, the authorized officer shall release the operator from that portion of the performance bond and plan of operations which applies to operations within the boundaries of the patented land. The authorized officer shall release the operator from the remainder of the performance bond and plan of operations (covering approved means of access outside the boundaries of the mining claim) when the operator has either completed reclamation in accordance with paragraph (f) of this section or those requirements are waived by the authorized officer.

(f)(1) When all or any portion of the reclamation has been completed in accordance with paragraphs (i) of § 3802.3-2) of this title, the operator shall notify the authorized officer who shall promptly make a joint inspection with the operator. The authorized officer shall then notify the operator whether the performance under the plan of operations is accepted. When the authorized officer has accepted as completed any portion of the reclamation, he shall reduce proportionally the amount of bond with respect to the remaining reclamation. The authorized officer may continue the bond as it relates to revegetation for only the amount necessary for revegetation of each planting area for a period not to exceed 5 years after the date of the first planting. The financial liability incurred by the operator as a result of the continuation of the bond shall not exceed an amount directly proportional to the probability of successful revegetation.

(2) When, during any extended period of the bond, the authorized officer determines that revegetation is likely to be successful before the end of such period, or that natural conditions shall preclude successful revegetation, he may releae the operator from liability under the bond for revegetation of the planting area.

§ 3802.3 Environmental protection.

§ 3802.3-1 Environmental assessment.

(a) When a plan of operations or significant modification is filed, the authorized officer shall make an environmental assessment to identify the impact of the proposed mining operations upon the environment and to determine whether the proposed activity will impair the suitability of the area for preservation as wilderness and whether an environmental impact statement is required.

(b) Following completion of the environmental assesment or the environmental statement, the authorized officer shall develop measures to be included in the plan of operations that will prevent impairment of wilderness suitability and undue or unnecessary degradation of land and resources.

(c) If as a result of the environment assessment, the authorized officer determines that there is substantial public interest in the proposed mining operations, he may notify the operator that an additional period of time is required to consider public comments. The period shall not exceed the additional 60 days provided for approval of a plan in § 3802.1-4 of this title except as provided for cases requiring an environmental inpact statement or a cultural resource inventory.

(d) If the surface resources of the lands involved are administered by an agency other than the Bureau of Land Management, that agency shall be responsible for the environmental assessment. In cases of mixed administration, the agencies shall make a joint environmental assessment.

§ 3802.3-2 Requirements for environmental protection.

(a) *Air Quality.* The operator shall comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act (42 U.S.C. 1857 et seq.).

(b) *Water Quality.* The operator shall comply with applicable Federal and State water quality standards, including regulations issued pursuant to the Federal Water Pollution Control Act (33 U.S.C. 1151 et seq.).

(c) *Solid Wastes.* The operator shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes. All garbage, refuse, or waste shall either be removed from the affected lands or disposed or treated to minimize, so far as is practicable, its impact on the environment and the surface resoureces. All tailings, waste rock, trash, deleterious materials of substances and other waste produced by operations shall be deployed, arranged, disposed or treated to minimize adverse impact upon the environment and surface resources.

(d) *Visual Resources.* The operator shall, to the extent practicable, harmonize operations with the visual resources, identified by the authorized officer, through such measures as the design, location of operating facilities and improvements to blend with the landscape.

(e) *Fisheries, Wildlife and Plant Habitat.* The operator shall take such action as may be needed to control or prevent adverse impact upon plants, fish, and wildlife, including threatened or endangered species, and their habitat which may be affected by the operations.

(f) *Cultural and Paleontological Resources.* (1) The operator shall not disturb, alter, injure, destroy or take any scientifically important paleontological remains or any historical, archaeological, or cultural district, site, structure, building or object.

(2) The operator shall immediately bring to the attention of the authorized officer any such cultural and/or paleontological resources that might be altered ro destryed by his operation, and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer shall evaluate the discoveries brought to his attention, and determine within five working days what action shall be taken with respect to such discoveries.

(3) The responsibility and the cost of investigations and salvage of such values discovered during approved operations shall be the Federal Government's.

(g) *Access Routes.* No new access routes that would cause more than temporary impact and therefore would impair wilderness sutiability shall be constructed in a wilderness study area. Temporary access routes that are constructed by the operator shall be constructed and maintained to assure adequate drainage and to control or prevent damage to soil, water, and other resource values. Unless otherwise approved by the authorized officer, roads no longer needed for operations shall be closed to normal vehicular traffic; bridges and culverts shall be removed; cross drains, dips, or water bars shall be constructed, and the road surface shall be shaped to as near a natural contour as practicable, be stabilized and revegetated as required in the plan of operations.

(h) *Reclamation.* (1) Unless a longer time is allowed by the authorized officer, the operator shall perform reclamation of those lands disturbed or affected by the mining operation conducted by the operator under an approved plan of operations containing reclamation measures stipulated by the authorized officer as contemporaneously as feasible with operations. The disturbance or effect on mined land shall not include that caused by separate operations in areas abandoned before the effective date of these regulations.

(2) An operator may propose and submit with his plan of operations measures for reclamation of the affected area.

(i) *Protection of survey monuments.* The operator shall, to the extent practicable and consistent with the operation, protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against destruction, obliteration, or damage from the approved operations. If, in the course of operations, any monuments, corners or accessories are destroyed, obliterated or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe in writing the requirement for the restoration or reestablishment of monuments, corners, bearing trees, and line trees.

§ 3802.4 General provisions.

§ 3802.4-1 Noncompliance.

(a) An operator who conducts mining operations which are undertaken either without an approved plan of operations or without taking actions specified in a notice of noncompliance within the time specified therein may be enjoined by an appropriate court order from continuing such operations and be liable for damages for such unlawful acts.

(b) Whenever the authorized officer determines that an operator is failing or has failed to comply with the requirements of an approved plan of operations, or with the provisions of these regulations and that noncompliance is causing unnecessary and undue degradation of the resources of the lands involved, he shall serve a notice of noncompliance upon the operator by delivery in person to the operator or his authorized agent, or by certified mail addressed to his last known address.

(c) A notice of noncompliance shall specify in what respects the operator is failing or has failed to comply with the requirements of the plan of operations of the provisions of applicable regulations, and shall specify the actions which are in violation of the plan or regulations and the actions which shall be taken to corrrect the noncompliance and the time limits, usually 30 days, within which corrective action shall be taken.

§ 3802.4-2 Access.

(a) An operator is entitled to non-exclusive access to his mining operations consistent with provisions of the United States mining laws and Departmental regulations.

(b) In approving access as part of a plan of operations, the authorized officer shall specify the location of the access route, the design, construction, operation and maintenance standards, means of transportation, and other conditions necessary to prevent impairment of wilderness suitability, protect the environment, the public health or safety, Federal property and economic interests, and the interests of other lawful users of adjacent lands or lands traversed by the access road. The authorized officer may also require the operator to utilize existing roads in order to minimize the number of separate rights-of-way, and, if practicable, to construct access roads within a designated transportation and utility corridor. When commercial hauling is involved and the use of an existing road is required, the authorized officer may require the operator to make appropriate arrangements for use and maintenance.

(c) On all mining claims located after July 23, 1955, and on all other claims which are subject to section 4 of the Surface Resources Act of July 23, 1955 (43 U.S.C. 612), the operator shall permit free and unrestricted access for all lawful and proper purposes, except when such access would endanger or materially interfere with authorized prospecting, exploration or mining operations or would constitute a hazard to health or safety, as determined by the authorized officer. Restriction of public access by the operator is not allowed without prior approval of the authorized officer, except where necessary for timely compliance with State laws.

§ 3802.4-3 Multiple-use conflicts.

In the event that uses under any lease, license, permit, or other authorization pursuant to the provisions of any other law, shall conflict, interfere with, or endanger operations in approved plans or otherwise authorized by these regulations, the conflicts will be reconciled, as much as practicable, by the authorized officer.

§ 3802.4-4 Fire prevention and control.

The operator shall comply with all applicable Federal and State fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires on the area of mining operations.

§ 3802.4-5 Maintenance and public safety.

During all operations, the operator shall maintain his structures, equipment, and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to protect the public in accordance with applicable

Federal and State laws and regulations.

§ 3802.4-6 Inspection.

The authorized officer shall periodically inspect operations to determine if the operator is complying with these regulations and the approved plan of operations, and the operator shall permit access to the authorized officer for this purpose.

§ 3802.4-7 Notice of suspension of operations.

(a) Except for seasonal suspension, the operator shall notify the authorized officer of any suspension of operations within 30 days of such suspension. This notice shall include:

(1) Verification of intent to maintain structures, equipment, and other facilities, and

(2) The expected reopening date.

(b) The operator shall maintain the operating site, structure, and other facilities in a safe and environmentally acceptable condition during nonoperating periods.

(c) The name and address of the operator shall be clearly posted and maintained in a prominent place at the entrance to the area of mining operations during periods of nonoperation.

§ 3802.4-8 Cessation of operations.

The operator shall, within one year following cessation of operations, remove all structures, equipment, and other facilities and clean up the site of operations, unless variances are agreed to in writing by the authorized officer. Additional time may be granted by the authorized officer upon a show of good cause by the operator.

§ 3802.5 Appeals.

(a) An operator adversely affected by a decision of the authorized officer or the State Director made pursuant to the provisions of this subpart shall have a right of appeal to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to part 4 of this title.

(b) In any case involving lands under the jurisdiction of any agency other than the Department of the Interior, or an office of the Department of the Interior other than the Bureau of Land Management, the office rendering a decision shall designate the authorized officer of such agency as an adverse party on whom a copy of any notice of appeal and any statement of reasons, written arguments, or brief must be served.

§ 3802.6 Public availability of information.

(a) Except as provided herein, all information and data, including plans of operation, submitted by the operator shall be available for examination by the public at the office of the authorized officer in accordance with the provisions of the Freedom of Information Act (F.O.I.A.).

(b) Information and data submitted and specifically identified by the operator as containing trade secrets or confidential or privileged commercial or financial information and so determined by the authorized officer will not be available for public examination.

(c) The determination concerning specific information which may be withheld from public examination will be made in accordance with the rules in 43 CFR Part 2.

GUY R. MARTIN,
Assistant Secretary of the Interior.

JANUARY 2, 1979.

[FR Doc. 79-982 Filed 1-11-79; 8:45 am]

[4310-55-M]

Fish and Wildlife Service

[50 CFR Part 20]

MIGRATORY BIRD HUNTING

Proposed Rule Describing Areas in Which Non-Toxic Shot Would Be Required in Waterfowl Hunting Seasons Commencing in 1979

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule describes non-toxic shot zones for waterfowl hunting for hunting seasons commencing in 1979. When eaten by waterfowl, spent lead pellets have a toxic effect. The intended effect of these non-toxic shot zones is to reduce the number of deaths to waterfowl caused by eating spent lead pellets.

DATES: Comments on this proposed rulemaking will be accepted until February 12, 1979.

ADDRESS: Submit comments to Director (FWS-MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Robert I. Smith, Special Projects Coordinator, Office of Migratory Bird Management, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202-254-3207).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Research on the problem of lead poisoning in waterfowl has been conducted for the past 25 years. The complexities of the issue have been explored with conservationists, ammunition manufacturers, and State fish and game departments. During the past seven years the Service has studied lead poisoning of waterfowl in cooperation with organizations representing a broad cross section of interests affected by and concerned with the problem.

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the Service prepared a Final Environmental Statement (Use of Steel Shot for Hunting Waterfowl in the United States). This document was published in January 1976 and is available on request.

On March 20, 1976, the Secretary of the Interior announced a plan for the progressive implementation of steel shot. According to this plan, shotshells loaded with non-toxic shot were to be required for hunting waterfowl in designated areas of the Atlantic Flyway in 1976, in designated areas of the Mississippi Flyway in 1977, and in designated areas of the Central and Pacific Flyways in 1978.

On July 28, 1976, a final rule on the use of steel shot for waterfowl hunting was published in the FEDERAL REGISTER (41 FR 31386-89) and became effective August 27, 1976. On September 13, 1976, the Service published an amendment to 50 CFR 20.105(e) containing descriptions of areas where non-toxic shot was required for waterfowl hunting in the Atlantic Flyway in 1976 (41 FR 38772-38774).

On April 28, 1977, the Service published descriptions of areas where non-toxic shot was required for waterfowl hunting in the Atlantic and Mississippi Flyways in hunting seasons commencing in 1977 (42 FR 21616-18). On February 28, 1978, the Service published descriptions of areas where non-toxic shot was required for waterfowl hunting in portions of 32 States in 1978 (43 FR 8144-8149).

The zones proposed below were identified using several criteria; however, the primary consideration was quantities of lead shot found in the digestive tracts of waterfowl harvested in the area and quantities of lead shot being deposited by waterfowl hunters. The zones proposed below would apply to waterfowl hunting occurring after August 30, 1979. However, appropriated funds for the Department of the Interior (Pub. L. 95-465) for fiscal year 1979 were restricted in their use by the following provision:

"No funds appropriated by this Act shall be available for the implementation or enforcement of any rule or regulation of the United States Fish and Wildlife Service, Department of the Interior, requiring the use of steel shot in connection with the hunting of waterfowl in any State of the United States unless the appropriate State regulatory authority approves such implementation."

This provision is effective from October 1, 1978, until September 30, 1979.

PROPOSED RULING

Accordingly, it is proposed that 50 CFR 20.180 be revised to read as follows:

§ 20.108 Non-toxic shot zones.

The areas described within the States indicated below are designated for the purposes of § 20.21(j) as non-toxic shot zones.

ATLANTIC FLYWAY

CONNECTICUT

1. That portion of New Haven and Fairfield Counties bounded by a line beginning at the north end of the breakwater at Milford Point extending south to Stratford Point, north along Prospect Drive and Rte. 113 to Interstate 95, easterly along I-95 to Naugatuck Avenue, southerly along Naugatuck Avenue and Milford Point Road and continuing along a line extending from the end of Milford Point Road to the north end of the breakwater at Milford Point.

2. That portion of New Haven County along the Quinnipiac River known as the Quinnipiac Meadows beginning at the intersection of Sackett Point Road and Interstate 91, extending south along I-91 to Rte. 5, northerly along Rte. 5 to Sackett Point Road, and easterly along Sackett Point Road to I-91.

DELAWARE

All bays, lakes, ponds, marshes, swamps, rivers, and streams of the State and within a 150-yard zone of land in the State adjacent to the margins of such waters. Drainage ditches and temporary sheet water more than 150 yards from the waters described above are excluded from the non-toxic shot requirement. Areas described as sea duck zones in waterfowl regulations of the State of Delaware are excluded from these provisions.

FLORIDA

In Oceola, Broward, Dade, Glade, and Leon Counties and on Lake Miccosukee, which lies in Leon County and the adjacent portions of Jefferson County. In that portion of Brevard County lying east of Interstate Highway 95, and on Orange Lake and Lochloosa Lake in Alachua County.

MAINE

On the waters of the Kennebec River known as Merrymeeting Bay bounded as follows: from the high tension wires at Chops Point to the first dam on the Androscoggin River, to the first road bridge on the Muddy, Cathance, Abbagadasset, and Eastern Rivers and the Richmond-Dresden bridge on the Kennebec River, and within a 150-yard zone of land adjacent to the margins of these waters in the counties of Cumberland, Sagadahoc and Lincoln.

MARYLAND

All waters (including bays, lakes, ponds, marshes, swamps, rivers, streams, and Chesapeake Bay) in Worcester, Somerset, Wicomico, Dorchester, Talbot, Caroline, Queen Anne's, Kent and Cecil Counties and those portions of Harford, Baltimore, and Anne Arundel Counties lying south and east of U.S. Route 1, and within a 150-yard zone of land in the above counties adjacent to the margins of such waters. Drainage ditches and temporary sheet water more than 150 yards from the waters described above are excluded from the steel shot requirement.

MASSACHUSETTS

Essex County: *North Boundary*—Massachusetts—New Hampshire line (Salisbury). *West Boundary*—U.S. Route 1 from State line southward to juncture with 1A in Newburyport, southward on 1A through the towns of Newbury and Rowley to juncture with 133 in Rowley and further south along combined routes 133-1A through Ipswich. *South Boundary*—juncture of 133 and 1A in Ipswich east along Route 133 through Essex and Gloucester to juncture of 13 and Route 128 in Gloucester. East along 128 to west bank of Annisquam River. *East Boundary*—west bank of the Annisquam River north to Ipswich Bay continuing north along the shoreline at Ipswich Bay to the Atlantic Ocean to New Hampshire—Massachusetts line.

Plymouth County: *North Boundary*—Route 139 from the west bank of the Green Harbor River (Marshfield) west to juncture with Route 3A (Duxbury). *West and South Boundary*—Route 3A from juncture of 139 south along 3A through towns of Duxbury, Kingston and Plymouth to juncture with Rocky Hill Road in Plymouth. *East Boundary*—Line extending from juncture of Route 3A and Rocky Hill Road in Plymouth north of Plymouth Light House on Duxbury Beach and further north along ocean side of Duxbury Beach to the west bank of Green Harbor River in Marshfield. Also—waters of the Wareham and Weweantic Rivers in the towns of Wareham and Marion and the marshes adjacent to these rivers and within a 150-yard zone of land adjacent to these rivers and marshes, seaward from the first upstream bridge.

Barnstable County: Barnstable Marshes. *North Boundary*—Cape Code Bay. *West Boundary*—from Cape Cod Bay south along Sandy Neck Road in the towns of Barnstable and Sandwich to juncture with Route 6A in E. Sandwich. *South Boundary*—juncture of Sandy Neck Road and Route 6A in E. Sandwich east along 6A through E. Sandwich, Barnstable, Yarmouth and Dennis to juncture with New Boston Road. *East Boundary*—North along New Boston Road to Beach Street and, north along Beach Street to Cape Cod Bay. Also—Nauset Marshes—Pleasant Bay. *North Boundary*—Nauset Beach west along Doane Road in Eastham to juncture Nauset Road continuing southwest along Nauset Road to juncture with 6 in Eastham. *West Boundary*—south along Route 6 from juncture of Route 6 and Nauset Road in Eastham to juncture of Route 6 and 6A, south along Route 6A to juncture with Route 28 in Orleans, and south along Route 28 to juncture with Shore Road in Chatham to Chatham Light house. *South Boundary*—line extending from Chatham Lighthouse to Atlantic Ocean. *East Boundary*—Atlantic Ocean.

Bristol County: Waters of the Wareham River, Weweantic River, East Branch of the Westport River, and the West Branch of the Westport River, and the marshes adjacent to these rivers, and within a 150-yard zone of land adjacent to these rivers and marshes, seaward from the first upstream bridge.

NEW JERSEY

That portion of the State bounded on the north by Highway 36 from its intersection with the Garden State Parkway near Keyport eastward to the Atlantic Ocean (south of Raritan Bay and Sandy Hook Bay), bounded on the west by the Garden State Parkway, and bounded on the south by the Cape May Canal.

NEW YORK

All waters (including bays, lakes, ponds, marshes, swamps, rivers, streams, and ocean waters) of Nassau and Suffolk Counties and that portion of New York west of Interstate Highway 81 and north of the New York Thruway (Interstate Highway 90) and within a 150-yard zone of land in the above area adjacent to the margins of such waters. Drainage ditches and temporary sheet water more than 150 yards from the waters described above are excluded from the non-toxic shot requirement. Areas described as sea duck zones in waterfowl regulations of the State of New York and Flander's Bay are excluded from the non-toxic shot requirements.

NORTH CAROLINA

1. All waters (including sounds, lakes, ponds, marshes, swamps, rivers, and streams) of Currituck, Dare, and Pamlico Counties and within 150-yard zone of land in these counties adjacent to the margins of such waters. Drainage ditches and temporary sheet water more than 150 yards from the waters described above are excluded from the steel shot requirement.

2. The waters of the Cape Fear River and its tributaries in New Hanover and Brunswick Counties and a 150-yard zone of land adjacent to the waters of this river and its tributaries in these two counties.

PENNSYLVANIA

Crawford County, Middle Creek Wildlife Management Area in Lancaster and Lebanon Counties, and the waters of the Susquehana River beginning at the confluence of the North and West branches at Northumberland and continuing southward to the Maryland-Pennsylvania State boundary and including a 25-yard zone of land adjacent to the waters of the Susquehana River that are described above.

RHODE ISLAND

That portion of Washington County lying south and east of U.S. Route 1 but excluding Block Island and the waters of Block Island Sound and Narragansett Bay.

SOUTH CAROLINA

Georgetown, Colleton, Charleston, and Beaufort Counties.

VIRGINIA

All waters and a 150-yard zone of land adjacent to these waters in the City of Virginia Beach and in an area between the York River and the James River bounded on the north by U.S. Highway 60, on the west by Highway 155, and on the south by Highway 5.

MISSISSIPPI FLYWAY

ARKANSAS

All waters of Poinsett and Arkansas Counties and that portion of Bayou Meta Wildlife Management Area in Jefferson County and within a 150-yard zone of land in these counties adjacent to the margins of these waters. This includes lakes, ponds, marshes, swamps, rivers, streams, and seasonally flooded areas of all types. Drainage ditches and temporary sheet water more than 150 yards from the water areas described above are excluded from the non-toxic shot requirement.

ILLINOIS

1. On all waters and all lands within 150 yards of these waters in the following counties: Jo Daviess, Carroll, Rock Island, Henderson, Pike, Calhoun, Jersey, Cass, Mason, Woodford, Marshall, Putnam, Lake, and McHenry. Drainage ditches and temporary sheet water more than 150 yards from the above described waters are exempted from this regulation.

2. On all State managed lands and waters, including the following public hunting areas: Anderson Lake, Baldwin, Bluff Lake, Carlyle Lake and subimpoundments, Chain O'Lakes, Collins Station, Forbes State Park, Grass Lake, Horseshoe Lake (Alexander County), Horseshoe Lake (Madison County), Kankakee River, Lake DePue, Lake Shelbyville and subimpoundments, Lake LaRue Scatters, Marshall County, Mermet, Oakwood Bottoms, Potter's Marsh, Rend Lake and subimpoundments, Rice Lake, Saline County, Sanganois, Sangchris Lake State Park, Savanna Ordnance, Sinnissippi Lake, Sparland, Spring Lake, Union County, Will County, William Powers, and Woodford County.

3. All waters managed for waterfowl hunting by the Illinois Department of Conservation on the Mississippi River, the Illinois River, and the Rock River from Pool 12 at the city of East Dubque, south to the Lock and Dam at Pool 26.

4. Crab Orchard National Wildlife Refuge.

INDIANA

1. On all waters of Lake, Porter, LaPorte, Newton, Jasper, Starke, Elkhart, Kosciusko, LaGrange, Steuben, and Posey Counties and within 150-yard zone of land in these counties adjacent to the margins of these waters. This includes lakes, ponds, marshes, swamps, rivers, streams, and seasonally flooded areas of all types. Excluded from these provisions are the waters of Lake Michigan and drainage ditches and temporary sheet water that are more than 150 yards from the waters described above.

2. Within the boundaries of the following State-owned or State-operated properties: Jasper-Pulaski Fish and Wildlife Area in Pulaski County, Mallard Roost Wetland Conservation Area in Noble County, Monroe Reservior in Monroe and Brown Counties, and Glendale Fish and Wildlife Area in Daviess County, and the Tri-County Fish and Wildlife Area in Noble and Kosciusko Counties.

3. Within the proposed boundaries of the Menominee Wetlands Conservation Area in Marshall County.

IOWA

In Fremont and Mills Counties on all waters and a 150-yard zone of land in these two counties adjacent to waters. The waters referred to above include lakes, ponds, marshes, swamps, rivers, streams, and seasonally flooded areas of all types. Excluded from these provisions are the waters of the Missouri River and drainage ditches and temporary sheet water that are more than 150 yards from the waters described above.

LOUISIANA

1. That portion of Vermilion Parish lying north of the Intracoastal Waterway.

2. That portion of Calcasieu Parish lying south of Interstate Highway 10.

3. That portion of Cameron Parish lying north of the Intracoastal Waterway.

4. On the west side of Calcasieu Lake that portion of Cameron Parish lying west of Highway 27 and north of the boundary of the Sabine National Wildlife Refuge.

5. In that portion of the State bounded as follows: From Pineville northeast along State Highway 28 to Archie, then northwest along U.S. Highway 84 from Archie to Jena, then southwest along State Highway 8 from Jena to Pollock, then south along U.S. Highway 165 from Pollock to Pineville.

6. The green-tree reservoir located on the Saline Wildlife Management Area.

OHIO

On all waters of Erie, Ottawa and Lucas Counties and within a 150-yard zone of land in these counties adjacent to the margins of these waters. This includes lakes, ponds, marshes, swamps, rivers, streams, and seasonally flooded areas of all types. Drainage ditches and temporary sheet water more than 150 yards from the water areas described above are excluded from the non-toxic shot requirement.

MICHIGAN

1. Saginaw Bay Area—That area of Iosco, Arenac, Bay, Saginaw, Tuscola and Huron counties:

Beginning at a point at the tip of Tawas Point in Sec. 3, T21N, R8E, Iosco County; northeast north and west on Tawas Point Road to its intersection with highway US-23 (Sec. 21, T22N, R8E); south and west on highway US-23 in Iosco and Arenac counties to the intersection with highway M-13(Sec. 2, T18N, R4E, Arenac County); south on highway M-13 in Arenac and Bay counties to the intersection with interstate highway I-75 (Sec. 13, T14N, R4E); south on I-75, US-23 to the intersection with highway US-10 (Sec. 24 T14N, R4E); west on highway US-10 to the intersection with Garfield Road (northeast corner Sec. 27, T14N, R3E); south on Garfield Road in Bay and Saginaw counties to the intersection with Tittabawassee Road (southwest corner Sec. 35, T13N, R3E); west on Tittabawassee Road to intersection with Graham Road (northwest corner Sec. 4, T12N, R3E); south on Graham Road to the junction of highways M-46 and M-52 (west quarter corner Sec. 28, T12N, R3E); south on highway M-52 to highway M-57 (southwest corner Sec. 7, T9N, R3E); east on highway M-57 to highway M-13 (southeast corner Sec. 13, T9N, R4E); north on highway M-13 to Burt Road (northwest corner Sec. 31, T10N, R5E); east on Burt Road to highway I-75, US-10 and US-23 (Sec. 28, T10N, R6E); north on highway I-75 to Highway M-46 (Sec. 28, T12N, R5E); east on highway M-46 to North Gera Road southeast corner (Sec. 27, T12N, R6E); north on North Gera Road to highway M-15 (Sec. 23, T12N, R6E); north on highway M-15 in Saginaw and Bay counties to Munger Road (Sec. 18, T13N, R6E); east on Munger Road (M-138) in Bay County and Fairgrove Road (M-138), in Tuscola County to Vassar Road (southeast corner Sec. 13, T13N, R7E); north on Vassar Road to highway M-25 east quarter corner (Sec. 13, T14N, R7E); east and north on highway M-25 in Tuscola and Huron counties to Kinde Road (Sec. 35, T18N, R10); east on Kinde Road to highway M-53 (southeast corner Sec. 36, T18N, R12E); north on highway M-53 to the junction with highway M-25 (Sec. 30, T19N, R13E); north from that point to the shoreline of Lake Huron and then northwesterly from this point to the point of beginning (tip of Tawas Point in Iosco County).

2. Houghton Lake Area—That area of Roscommon, Missaukee, Kalkaska and Crawford counties:

Beginning at the intersection of State Highway M-55 and highway M-76 in Roscommon County (southeast corner Sec. 10, T22N, R1W); north on highway M-76 to the Village of Roscommon, then west and south on county road 100 to the intersection of county road 104 (Sec. 32, T24N, R3W); west on county road 104 to the intersection of highway US-27 (Sec. 34, T24N, R4W); north on highway US-27 to the intersection of Fletcher Road in Crawford County (Sec. 23, T25N, R4W); west and northwest on Fletcher Road to county road 571 in Kalkaska County (Sec. 8, T25N, R6W); south on county road 571 to highway M-55 in Missaukee County (Sec. 32, T23N, R6W); then east on highway M-55 to the point of beginning.

3. Eastern Upper Peninsula Area—That area of Mackinac and Chippwea counties:

Beginning at the point where the Mackinac Straits Bridge intersects the Lake Huron shoreline of Mackinac County north on highway I-75 to highway M-134 (Sec. 4, T42N, R3W); east on highway M-134 to highway M-129 (southeast corner Sec. 25, T42N, R1W); north on highway M-129 to business loop I-75 (Sec. 7, T47N, R1E); north on business loop I-75 to downtown Sault Ste. Marie and extending on a line northward to the International Boundary between U.S. and Canada; east and south along the International Boundary on the St. Marys River north channel and Lake Huron to a point west of the southwest corner of Cockburn Island (in Canada); east from that point on the International Boundary in Lake Huron to the south tip of Goose Island lying southwest of Marquette Island; continuing southwest in Lake Huron to the southernmost point of Mackinac Island and then west to the point of beginning.

4. Southwestern Michigan Area (revised)—That area of Muskegon, St. Joseph, Newago, Ottawa, Allegan, Van Buren, Cass, Kalamazoo, Calhoun, Barry, Ionia and Kent counties:

Beginning at the southwest meandor corner of Sec. 4, T12N, R18W, Muskegon County, west on a line across Lake Michigan to the State boundary between Michigan and Wisconsin; south along the State boundary to a point directly west of the mouth of the Black River (Sec. 9, T1S, R17W) Van Buren County; east along a line to the mouth of the Black River (Sec. 9, T1S, R17W); upstream along the south shore of the Black River to highway US-31, then southerly along highway US-31 to highway M-43 (Sec. 14, T1S, R17W); easterly along highway M-43 in Van Buren County to the junction with M-40 (Sec. 13, T2S, R14W); southerly along M-40 to the

junction of M-216 (Marcellus) (Sec. 16, T5S, R13W) Cass County; easterly along M-216 to junction of US-131 (Sec. 19, T5S, R11W); south on US-131 and Business US-131 to junction with M-60 (Sec. 18, T6S, R11W) St. Joseph County; north on M-60 and M-66 to the junction with I-96 (Sec. 25, T6N, R7W) Ionia County; west on I-96 to the junction with M-37 (Sec. 13, T7N, R12W) Kent county; north on M-37 to 112 St. (north quarter corner Sec. 13, T11N, R13W); west on 112 St. to Warner road (Sec. 13, T11N, R14W); north on Warner Road to Roth Road (NE corner, Sec. 26, T12N, R14W); west on Roth Road to Maple Island Road to highway M-20 (southwest corner, Sec. 31, T13N, R14W) and continuing north on M-20 to Skeels Road (northeast corner Sec. 1, T12N, R15W); west on Skeels Road to Nichols Road (Sec. 2, T12N, R16W); south on Nichols Rd. to Fruitville Rd. (Sec. 2, T12N, R16W); west on Fruitville Road to highway US-31 (Sec. 9, T12N, R17W); north on highway US-31 to Meinert Road (Sec. 4, T12N, R17W); west on Meinert Road to the southwest meandor corner Sec. 4, T12N, R18W (the point of beginning).

5. Southeastern Michigan Area (revised)—That area of Shiawassee, Washtenaw, Lenawee, Jackson, Wayne, Ingham, St. Clair, Macomb and Monroe counties.

Beginning at a point on the Blue Water Bridge at the International boundary between the United States and Canada (Sec. 35, T7N, R17E) St. Clair County; westerly and south on highway I-94 in St. Clair, Macomb counties to the junction with M-59; west on M-59 to the junction with highway I-75 in Oakland County; northwest along highway I-75 to the junction with highway I-69 in Genesee County; southwest along highway I-69 to the junction with highway M-52 (Sec. 9, T5N, R2E) Shiawassee County; south on M-52 to the junction with highway M-36 (Sec. 22, T2N, R2E) Ingham County; west on M-36 to the junction with highway US-127 (Sec. 6, T2N, R1W) Ingham County; south along US-127 in Ingham and Jackson counties (through City of Jackson) to the junction with highway US-12 (Sec. 7, T5S, R1E) Lenawee County; easterly on US-12 to the junction with highway I-94 (Sec. 18, T3S, R7E) Washtenaw County; easterly on I-94 to the junction with highway I-275 in Wayne County; southerly along I-275 to the junction with I-75 in Monroe County; southerly along I-75 to the State line (Sec. 5, T17S, R8E); east along the State line between Michigan and Ohio to the shoreline of Lake Erie; northeasterly along the State line to the International boundary in Lake Erie, northerly along the International boundary in Lake Erie, the Detroit River, Lake St. Clair and the St. Clair River to the point of beginning.

MINNESOTA

1. All waters within the boundaries of all State Wildlife Management Areas and Federal Waterfowl Production Areas and within a 150-yard zone of land adjacent to the margins of these waters. This includes lakes, ponds, marshes, swamps, rivers, streams and seasonally flooded areas of all types. Drainage ditches and temporary sheet water more than 150 yards from the water areas described above are excluded from the steel shot requirement. Controlled hunting zones of goose management areas are excluded from this provision, except the Roseau Wildlife Management Area which is included.

2. On the waters on Swan and Middle Lakes in Nicollet County, North and South Heron Lakes in Jackson County, Pelican Lake in Wright County, Bear Lake in Freebord County, and Christina Lake in Douglas and Grant Counties and within a 150-yard zone of land adjacent to the margins of the above lakes.

3. Beginning at the intersection of the midline of the Mississippi River and U.S. Highway 61 at Hastings, thence southerly along U.S. Highway 61 to U.S. Highway 16 at LaCresent, thence southerly along U.S. Highway 16 to State Trunk Highway 26, thence southerly along State Trunk Highway 26 to the southern boundary of the State; thence along the Southern and Eastern boundaries of the State to the confluence of the St. Croix and Mississippi Rivers, thence along the midline of the Mississippi River to the point of beginning.

MISSOURI—

Within the following areas on all waters and a 150-yard zone of land within the areas adjacent to these waters. This includes lakes, ponds, marshes swamps, rivers, streams and seasonally flooded lands of all types. Drainage ditches and temporary sheet water more than 150-yards from water areas described above are excluded from the non-toxic shot requirement.

1. Squaw Creek Area: North boundary—Iowa-Missouri State line. East boundary—U.S. Highway I-29, South boundary —St. Joseph, Missouri city limits. West boundary—East bank of the Missouri River.

2. Swan Lake—Fountain Grove Area: North boundary—U.S. Highway 36. East boundary—State Highway 5. South boundary—State Highway 240 and U.S. Highway 65. West boundary—U.S. Highway 65.

3. Upper Mississippi River Area: North boundary—U.S. Highway 36. East boundary—Illinois-Missouri State line. South boundary—North bank of the Missouri River. West boundary—U.S. Highway 61.

4. Montrose—Schell-Osage Area: North boundary—State Highway 7. East boundary—State Highway 13. South boundary—U.S. Highway 54. West boundary—U.S. Highway 71.

5. Duck Creek—Mingo Area: North boundary—State Highway 34. East boundary—State Highways 51, 91, and 25. South boundary—U.S. Highway 62. West boundary—U.S. Highway 67 and State Highway 53.

TENNESSEE

Camden, Big Sandy, New Hope, Lick Creek and Harmon's Creek Wildlife Management Areas.

WISCONSIN

1. In that portion of the State lying west of the Burlington Northern Railroad in Pierce, Pepin, Buffalo, Trempealeau, La Crosse, Vernon, Crawford and Grant Counties.

2. On all waters in the counties of Calumet, Columbia, Dane, Dodge, Fond du Lac, Green Lake, Jefferson, Kenosha, Manitowoc, Marquette, Milwaukee, Outagamie, Ozaukee, Rancine, Sheboygan, Walworth, Waukesha, Winnebago, Washington, Waupaca and Waushara, all of the Wisconsin River in Juneau and Adams Counties, and those portions of Oconto and Marinette Counties east of U.S Highway 41, and that portion of Brown County lying northwest of the Fox River and east of U.S. Highway 141, and the Brown County Islands in Green Bay and within a 150-yard zone of land adjacent to the margins of these waters. The waters referred to above include lakes, ponds, marshes, swamps, rivers, streams and seasonally flooded areas of all types. Drainage ditches and temporary sheet water more than 150 yards from the water areas described above and the open water of Lake Michigan are excluded from the non-toxic shot requirements. All county boundary waters and lakes partially within a steel shot zone are totally included.

3. On any State wildlife area within the zones described in (2), steel shot is required for hunting waterfowl anywhere on State-owned lands or waters within the boundaries of said wildlife area and on the following State-owned wildlife areas which are not within the zones described in (2): Mead Wildlife Area in Marathon, Wood and Portage Counties, Wood County Wildlife Area and Sandhill Wildlife Area in Wood County, Meadow Valley Wildlife Area in Juneau County.

CENTRAL FLYWAY

KANSAS

Barton County: The Cheyenne Bottoms Wildlife Area except the south 200 yards west of U.S. 156 and east of the north-south centerline of S36, T18S, R13W in Barton County.

Linn County: All of the Marais des Cygnes Wildlife Areas.

Montgomery County: All of the Elk City Reservoir and Wildlife Area including all lands and waters managed by the U.S. Corps of Engineers and the Kansas Forestry, Fish and Game Commission.

Neosho County: All of the Neosho Wildlife Area.

Reno County: All of the Cheney Reservoir and Wildlife Area including all lands managed by the U.S. Bureau of Reclamation and the Kansas Forestry, Fish and Game Commission. Also, that portion of Quivira National Wildlife Refuge in Reno County.

Stafford County: That portion of the Quivira National Wildlife Refuge in Stafford County.

Rice County: That portion of the Quivira National Wildlife Refuge in Rice County.

NEBRASKA

Clay and Fillmore Counties and in Kearney and Phelps Counties except on the waters of the Platte River.

TEXAS

J. D. Murphree Wildlife Management Area and Sea Rim State Park in Jefferson County.

PACIFIC FLYWAY

CALIFORNIA

1. That portion of the Lower Klamath Basin beginning at the junction of Highway 161 (State Line Road) and the Dorris-Brownell Road at the NW corner of Indian Tom Lake; thence south and east on the Dorris-Brownell Road as it makes a semicircle and unites again with Highway 161 on the east side of Sheepy Ridge; thence west along Highway 161 to point of origin at the NW side of Indian Tom Lake. Also included is the Tule Lake National Wildlife Refuge (excluding refuge lands on Sheepy Ridge) in

the Tule Lake portion of the Klamath Basin.

2. Sacramento and Delevan National Wildlife Refuges in the Counties of Glenn and Colusa.

IDAHO

The Deer Flat National Wildlife Refuge in Canyoin County, excluding the Snake River Island Unit.

NEVADA

The Stillwater Wildlife Management Area.

OREGON

Beginning at the Longview Bridge on the Columbia River, thence south on State Highway 30 to Portland, thence east from Portland along Interstate Highway 80N to the Bonneville Dam, thence down the Columbia River along the Oregon-Washington boundary to the Longview Bridge and point of origin.

WASHINGTON

1. Beginning at Interstate 5 and Highway 20 at Burlington, thence easterly along Highway 20 to Highway 9 at Sedro Woolley; thence southerly along Highway 9 to Highway 538 at Big Rock; thence westerly along Highway 538 to Mt. Vernon and Interstate 5; thence northerly along Interstate 5 to the point of origin.

2. Beginning at the Conway Junction of Highway 530 and Fir Island Road, northwesterly along Fir Island Road to the Chilberg Road; thence northwesterly along Chilberg Road to LaConner and the Swinomish Channel; thence southerly and westerly along the red buoy line of Swinomish Channel to the Island County line; thence southeasterly along Island County line to State Highway 532; thence easterly along Highway 532 to State Highway 530 at Stanwood; thence northerly along State Highway 530 to the point of origin.

3. Beginning at the Longview Columbia River Bridge, thence north and east on Highways 833 and 832 to Interstate 5; thence southerly along I-5 to State Highway 14 in Vancouver; thence easterly along Highway 14 to the Skamania County line; thence southerly along said County line to the Columbia River; thence down the Columbia River along the Oregon-Washington State boundary to the Longview Bridge and point of origin.

NOTE.—The Department has determined that this rule is not a significant rule and does not require preparation of a regulatory analysis. An Environmental Assessment was prepared and a negative declaration filed.

This final rule was authored by Robert I. Smith, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, 202-254-3207.

Dated: January 3, 1979.

LYNN A. GREENWALT,
Director,
Fish and Wildlife Service.

[FR Doc. 79-941 Filed 1-11-79; 8:45 am]

notices

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.

[6050-01-M]

ACTION

COMPETITIVE NATIONAL VISTA GRANTS

Proposed Procedures

AGENCY: Action.

ACTION: Amendment to Proposed Notice of Competitive National VISTA Grants published October 5, 1978, at 43 FR 46153, and October 30, 1978, at 43 FR 50488.

SUMMARY: The proposed notice set forth the competitive procedures under which applications for national VISTA grants will be accepted and reviewed in fiscal year 1979. It provided that to be eligible for consideration, an application must be prepared and submitted in accordance with the announcement and with forms, instructions, and program guidelines contained in the national VISTA grant application kit.

This amendment changes the application due date from January 12, 1979, to January 29, 1979, because a modification was made in the Table of Allowable National/Regional VISTA Grant Costs found in the application kit.

FOR FURTHER INFORMATION CONTACT:

Ms. Diana London; VISTA, 806 Connecticut Avenue, NW., Washington, DC 20525, 202-254-5195.

SAM BROWN,
Director.

[FR Doc. 79-1318 Filed 1-11-79; 8:45 am]

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

DEPARTMENT OF AGRICULTURE, STATE OF ILLINOIS, SPRINGFIELD, ILL.

Offical Agency Designation and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the designation of the Illinois Department of Agriculture as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The Illinois Department of Agriculture, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Illinois Department of Agriculture which included onsite reviews of the inspection points (specified service points).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Illinois Department of Agriculture was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Illinois Department of Agriculture as an official agency was signed on November 13, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is: the Northern Section of the area which shall be:

Bounded: on the North by the Illinois-Wisconsin State line from Jo Daviess County east to Interstate 94;

Bounded: on the East by Interstate 94 south to Interstate 294; Interstate 294 south to Interstate 55; Interstate 55 southwest to Will County;

Bounded: on the South by the northern Will County line west to Kendall County; the Western Will County line south to Grundy County; the southern Kendall County line west to LaSalle County; the eastern LaSalle County line north to DeKalb County; the northern LaSalle County line west to Lee County; the southern Lee County line west to Whiteside County; and

Bounded: on the West by the western Lee County line north to Ogle County; the western Ogle County line north to Stephenson County; the southern Stephenson County line west to Jo Daviess County; the western Stephenson County line north to Wisconsin.

The Southern Section of the area which shall be:

Bounded: on the North by the northern Pike County line from the Mississippi River east to the Illinois River; the Illinois River south to Greene County; the northern Greene County line east to Macoupin County; the northern Macoupin County line east to State Route 111; a straight line from the junction of State Route 111 and the Macoupin County line southeast to the junction of Interstate 55 and State Route 16; State Route 16 east-northeast to a point approximately one mile northeast of Irving; a straight line from this point to the northern Fayette County line; the northern Fayette County line east to Effingham County; the northern Effingham county line east to Cumberland County; the western Cumberland County line north; the northern Cumberland County line east; the eastern Cumberland County line south to Jasper County; the northern Jasper County line east to Crawford County; the western Crawford County line south to State Route 33; State Route

33 east-southest to U.S. Route 50; U.S. Route east to the Wabash River;

Bounded; on the East by the Wabash River south-southwest to the Ohio River; the Ohio River southwest to Massac County;

Bounded: on the South by the eastern Massac County line north-northwest to Johnson County; the eastern Johnson County line north; the northern Johnson County line west to Union County; the northern Union County line west to U.S. Route 51; U.S. Route 51 north to State Route 13; State Route 13 northwest to State Route 149; State Route 149 west to State Route 3; State Route 3 northwest to State Route 51; State Route 51 south to the Mississippi River; and

Bounded: on the West by the Mississippi River north to Interstate 270; Interstate 270 east to Interstate 70; Interstate 70 east to State Route 4; State Route 4 north to Macoupin County; the southern Macoupin County line west to Jersey County; the eastern Jersey County line north; the northern Jersey County line west to the Illinois River; the Illinois River south-southeast to the Mississippi River; the Mississippi River west-northwest to Adams County.

Service locations outside of this geographic area but also to be serviced by the Illinois Department of Agriculture shall include: Casey, Illinois, in Clark County; Leland, Illinois, in LaSalle County; and Sigel, Illinois, in Shelby County. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located.

An exception to this designated geographic area is the following service location inside the area which is serviced by another official agency: Florence, Illinois, in Pike County, to be serviced by Springfield Grain Inspection Department.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service points of this agency are: Illinois Department of Agriculture, 621 South Belt West, Belleville, Illinois 62221; Illinois Department of Agriculture, 315 North 6th Street, DeKalb, Illinois 60115; Illinois Department of Agriculture, 2209 West Main Street, Marion, Illinois 62959; and Illinois Department of Agriculture, State Office Building, 601 North 18th Street, Mt. Vernon, Illinois 62864, all located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official insection functions and where the agency or one or more of its licensed inspectors is located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note).)

Done in Washington, D.C. on: January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1167 Filed 1-11-79; 8:45 am]

[3410-02-M]

BLOOMINGTON GRAIN INSPECTION DEPARTMENT, BLOOMINGTON, ILL.

Official Agency Designation and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the designation of the Bloomington Grain Inspection Department as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The Bloomington Grain Inspection Department, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Bloomington Grain Inspection Department which included an onsite review of the inspection point (specified service point).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Bloomington Grain Inspection Department was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Bloomington Grain Inspection Department as an official agency was signed on October 20, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North by State Route 18 from State Route 26 east to U.S. Route 51; U.S. Route 51 south to State Route 17; State Route 17 east to Livingston County; the Livingston County line north then east to the ICG Railroad line northeast to Dwight, Illinois;

Bounded: on the East by the ICG Railroad line southwest to Pontiac, Illinois, including the Bunge Elevator 5 miles north-northwest of Pontiac and the city of Pontiac, Illinois; a straight line running north and south from Pontiac south through Arrowsmith to the southern McLean County line;

Bounded: on the South by the southern McLean County line; the eastern Logan County line south to State Route 10; State Route 10 west to State Route 121; and

Bounded: on the West by State Route 121 North to Interstate 74; Interstate 74 northwest to State Route 116; State Route 116 north to State Route 26; State Route 26 north to State Route 18.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service point of this agency is: Bloomington Grain Inspection Department, 1700 W. Olive Street, P.O. Box 817, Bloomington, Illinois 61701, located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note).)

Done in Washington, D.C. on: January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1169 Filed 1-11-79; 8:45 am]

[3410-02-M]

ALTON GRAIN INSPECTION DEPARTMENT, ALTON, ILL.

Official Agency Designation and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the designation of the Alton Grain Inspection Department as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The Alton Grain Inspection Department, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Alton Grain Inspection Department which included an onsite review of the inspection point (specified service point).

NOTE—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Alton Grain Inspection Department was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Alton Grain Inspection Department as an official agency was signed on September 25, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North by the northern county line of Jersey County; the eastern county line of Jersey County; the Madison-Macoupin county line to State Route 4;

Bounded: on the East by State Route 4 south to Interstate 70;

Bounded: on the South by Interstate 70 west to Interstate 270; Interstate 270 west to the Mississippi River; and

Bounded: on the West by the Mississippi River north to the Illinois River; the Illinois River north to the northern Jersey County line.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service point of this agency is: Alton Grain Inspection Department, 145 W. Broadway, Alton, Illinois 62002, located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this

designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note))

Done in Washington, D.C. on: January 5, 1979.

D. R. GALLIART,
Acting Administrator.

FR Doc. 79-1170 Filed 1-11-79; 8:45 am]

[3410-02-M]

CAIRO GRAIN INSPECTION AGENCY, CAIRO, ILL.

Official Agency Designation and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the designation of the Cairo Grain Inspection Agency as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79 (g)(1) and 79a(c)).

The Cairo Grain Inspection Agency, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Cairo Grain Inspection Agency which included an onsite review of the inspection point (specified service point).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Cairo Grain Inspection Agency was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Cairo Grain Inspection Agency as an official agency was signed on August 31, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is: in Illinois, the area which shall be: southeast of State Route 150 from the Mississippi River north to State Route 3; State Route 3 southeast to State Route 149; State Route 149 east to State Route 13; State Route 13 southeast to U.S. Route 51; U.S. Route 51 south to Union County; the area shall include the following counties: Alexander County, Johnson County, Massac County, Pulaski County, and Union County.

In Kentucky, the area shall include the following counties: Ballard County, Calloway County, Carlisle County, Fulton County, Graves County, Hickman County, Livingston County, Lyon County, Marshall County, McCracken County, and Trigg County; and in Tennessee, the area shall include the following counties: Benton County, Dickson County, Henry County, Houston County, Humphreys County, Lake County, Montgomery County, Obion County, Steward County, and Weakley County.

Service locations outside this designated geographic area, but also to be serviced by Cairo Grain Inspection Agency, shall include: Hopkinsville, Kentucky, and Masonville, Kentucky, in Christian County. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading, where no licensed inspectors are located.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service point of this agency is: Cairo Grain Inspection Agency, 4007 Sycamore Street, Cairo, Illinois 62914, located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. The designation document provides for the inclusion of additional service locations and specified service points which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note))

Done in Washington, D.C. on: January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1165 Filed 1-11-79; 8:45 am]

[3410-02-M]

CHAMPAIGN-DANVILLE GRAIN INSPECTION DEPARTMENTS, INC., DANVILLE, ILL.

Official Agency Designation and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the designation of the Champaign-Danville Grain Inspection Departments, Inc., as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, SW., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The Champaign-Danville Grain Inspection Departments, Inc., an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Champaign-Danville Grain Inspection Departments, Inc., which included onsite reviews of the inspection points (specified service points).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Champaign-Danville Grain Inspection Departments, Inc., was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Champaign-Danville Grain Inspection Departments, Inc., as an official agency was signed on September 15, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officiallly inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North by a line running east and west along State Route 115 from the western Kankakee County line east to U.S. Route 52; U.S. Route 52 south to the northern Iroquois County line; the Iroquois County line east to State Route 1; State Route 1 south to U.S. Route 24; U.S. Route 24 east into Indiana to U.S. Route 41;

Bounded: on the East by U.S. Route 41 south, including Attica, Indiana, to the southern Fountain County line; the Fountain County line west to Vermillion County; the eastern Vermillion County line south to U.S. Route 36;

Bounded: on the South by U.S. Route 36 west to Illinois to the eastern Douglas County line; the eastern Douglas County line and Coles County line; the southern Coles County line; and

Bounded: on the West by the western Coles County line north; the western Douglas County line north; the Champaign county line north to Interstate 72 southwest to the western Piatt County line; the McLean County line west to a point 10 miles west of the western Champaign County line; a straight line running north and south from this point north to U.S. Route 136; U.S. Route 136 east to Interstate 57; Interstate 57 north to the northern Champaign County line; the northern Champaign County line; the western Vermillion and Iroquois County lines; the Kankakee County line north to the northern boundary.

Service locations outside of this geographic area, but also to be serviced by Champaign-Danville Grain Inspection Departments, Inc., shall include: Monticello, Illinois, in Piatt County; Pittwood, Illinois, in Iroquois County; Cadwell, Illinois, in Moultrie County; and Lovington, Illinois, in Moultrie County., A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located.

A specified service point outside of this geographic area, but also to be serviced by Champaign-Danville Grain Inspection Departments, Inc., only on an intermittent basis as requested by the applicant, is Farmer City, Illinois, in Dewitt County. a specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located.

Exceptions to this designated geographic area are the following service locations inside the area which are serviced by other official agencies: Danna, Indiana, in Vermillion County; Newman, Illinois, in Douglas County; and Oakland Illinois, in Coles County, all to be serviced by Paris Illinois Grain Inspection; Sheldon, Illinois, in Iroquois County, to be serviced by Schneider Inspection Service; Dunn, Raub, and Boswell, Indiana, in Benton County, all to be serviced by Titus Grain Inspection.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service points of this agency are: Champaign Grain Inspection Department, 209 Wallace, Champaign, Illinois 61820; and Danville Grain Inspection Department, 527 East Main Street, Danville, Illinois 61832. Specified service points where services will be provided only on an intermittent basis as requested by the applicant are: Champaign Grain Inspection Department, State Route 150, Champaign, Illinois 61820; Champaign Grain Inspection Department, 201 West North Street (West Plant), Farmer City, Illinois 61842; and Danville Grain Inspection Department, 402 East Coffeen, Homer, Illinois 61849. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, SW.,

Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note).)

Done in Washington, D.C. on January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1171 Filed 1-11-79; 8:45 am]

[3410-02-M]

COLUMBUS GRAIN INSPECTION, INC., COLUMBUS, OHIO

Official Agency Designation and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the designation of the Columbus Grain Inspection, Inc., as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The Columbus Grain Inspection, Inc., an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Columbus Grain Inspection, Inc., which included onsite reviews of the inspection points (specified service points).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Columbus Grain Inspection, Inc., was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Columbus Grain Inspection, Inc., as an official agency was signed on September 30, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall offically inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North by U.S. Route 30 from U.S. Route 68 east to State Route 154 east to the Ohio-Pennsylvania State line;

Bounded: on the East and South by the Ohio-Pennsylvania State line south to the Ohio River; and the Ohio River south-southwest to the western Scioto County line; and

Bounded: on the West by the western Scioto County line north to State Route 73; State Route 73 northwest to U.S. Route 22; U.S. Route 22 west to U.S. Route 68; U.S. Route 68 north to the northern Clark County line; the Clark County line west to State Route 560; State Route 560 north to State Route 296; State Route 296 west to Interstate 75; Interstate 75 north to State Route 47; State Route 47 northeast to U.S. Route 68; U.S. Route 68 north to U.S. Route 30.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service points of this agency are: Columbus Grain Inspection, Inc., 2177 South James Road, Columbus, Ohio 43227; Columbus Grain Inspection, Inc., East Farming Street, P.O. Box 72, Marion, Ohio 43302; Columbus Grain Inspection, Inc., South Main Street, Mechanicsburg, Ohio 45504. Specified service points where services will be provided only on an intermittent basis as requested by the applicant are: Columbus Grain Inspection, Inc., Browns Lane, Coshocton, Ohio 43812; Columbus Grain Inspection, Inc. 1855 E. Main, Columbus, Ohio 43205; Columbus Grain Inspection, Inc., 4200 Sullivant Avenue, Columbus, Ohio 43228; Columbus Grain Inspection, Inc., 4250 Groves Road, Columbus, Ohio 43227; Columbus Grain Inspection, Inc., Cherokee Street, Harpster, Ohio 43323; Columbus Grain Inspection, Inc., 12574 State Route 41, N.W., Jeffersonville, Ohio 43128; Columbus Grain Inspection, Inc., Highway 31 South, Kenton, Ohio 43326; Columbus Grain Inspection, Inc., 489 North Main Street, Mansfield, Ohio 44903; Columbus Grain Inspection, Inc., Vandemark Road, Sidney, Ohio 45365; Columbus Grain Inspection, Inc., 149 S. Chillicothe, South Charleston, Ohio 45368; Columbus Grain Inspection, Inc., 3345 Lilly Chapel Road, West Jefferson, Ohio 43162; Columbus Grain Inspection, Inc., 4201 S R 238, Bloomingburg, Ohio 43106, all located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR

1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note).)

Done in Washington, D.C. on January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1175 Filed 1-11-79; 8:45 am]

[3410-02-M]

DETROIT GRAIN INSPECTION SERVICE, INC., DETROIT, MICH.

Official Agency Designation and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the designation of the Detroit Grain Inspection Service, Inc., as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The Detroit Grain Inspection Service, Inc., an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Detroit Grain Inspection Service, Inc., which included an onsite review of the inspection point (specified service point).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Detroit Grain Inspection Service, Inc., was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Detroit Grain Inspection Service, Inc., as an official agency was signed on September 11, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North by the northern Clinton County line from U.S. Route 27 east; the eastern Clinton County line south to Interstate 69; Interstate 69 northeast to the Shiawassee County line; the Shiawassee County line south; the northern Livingston County line; the northern Oakland County line east to Lapeer County; the western Lapeer County line north to State Route 24; State Route 24 north to State Route 46; State Route 46 east to Lake Huron;

Bounded: on the East by the shoreline south to State Route 50 at Monroe, Michigan;

Bounded: on the South by State Route 50 west-northwest to U.S. Route 127; and

Bounded: on the West by U.S. Route 127 north to U.S. Route 27; U.S. Route 27 north to the northern Clinton County line.

Service locations outside of this geographic area, but also to be serviced by Detroit Grain Inspection Service, Inc., shall include: St. Johns, Michigan, in Clinton County. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service point of this agency is: Detroit Grain Inspection Service, Inc., 111 E. Larned Street, Detroit, Michigan 48226, located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note).)

Done in Washington, D.C. on January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1174 Filed 1-11-79; 8:45 am]

[3410-02-M]

FOSTORIA GRAIN INSPECTION, FOSTORIA, OHIO

Official Agency Designation and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the designation of the Fostoria Grain Inspection as an official agency to perform grain inspection services under

the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The Fostoria Grain Inspection, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Fostoria Grain Inspection which included an onsite review of the inspection point (specified service point).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Fostoria Grain Inspection was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Fostoria Grain Inspection as an official agency was signed on October 25, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North by the Michigan-Ohio State line from the Williams-Fulton County line east to Lake Erie; the Lake Erie shoreline east to the Ottawa-Sandusky County line;

Bounded: on the East by the Ottawa-Sandusky County line west to State Route 590; State Route 590 south to Seneca County; the Seneca-Sandusky County line east to State Route 53; State Route 53 south to Wyandot County; the southern county line of Seneca County east to State Route 19; State Route 19 south to U.S. Route 30;

Bounded: on the South by U.S. Route 30 west to Allen County; and

Bounded: on the West by the western county line of Hancock County; west on the southern county line of Henry County to State Route 108; State Route 108 north to Napoleon, Ohio; U.S. Route 24 southwest to Defiance County; north on the eastern county line of Defiance County then west on the northern Defiance County line to Williams County; the eastern line of Williams County.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegaton and Designation Branch.

The specified service point of this agency is: Fostoria Grain Inspection, 506 Lockwood Avenue, Fostoria, Ohio 44830, located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note).)

Done in Washington, D.C. on January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1126 Filed 1-11-79; 8:45 am]

[3410-02-M]

GRAIN INSPECTION SERVICES, INC., BATTLE CREEK, MICH.

Official Agency Designation and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the designation of the Grain Inspection Services, Inc., as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The Grain Inspection Services, Inc., an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Grain Inspection Services, Inc., which included an onsite review of the inspection point (specified service point).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Grain Inspection Services, Inc., was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Grain Inspection Services, Inc., as an official agency was signed on August 31, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North by the northern Mason County line from Lake Michigan east; the eastern Mason County line south to Newaygo County; the northern Newaygo County line east; the eastern Newaygo County line south to Montcalm County; the Montcalm County line east to Gratiot County; the northern Gratiot County line east to U.S. Route 27;

Bounded: on the East by U.S. Route 27 south to U.S. Route 127; U.S. Route 127 south to the State line; the Michigan-Ohio State line west to the eastern William County line, in Ohio; the William County line south to Defiance County;

Bounded: on the South by the Southern Williams County line west; the Ohio-Indiana State line north; the Michigan-Indiana State line west to Lake Michigan; and

Bounded: on the West by the shoreline north to the northern Mason County line.

Service locations outside this geographic area, but also to be serviced by Grain Inspection Services, Inc., shall include: North Star, Michigan, in Gratiot County; Hudson, Michigan, in Lenawee County. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading, where no licensed inspectors are located.

Exceptions to this designated geographic area are the following service locations inside the area which are serviced by other official agencies: St. Johns, Michigan, in Clinton County to be serviced by Detroit Grain Inspection Service.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service point of this agency is: Grain Inspection Services, Inc., 24 First Street, Battle Creek, Michigan 49017, located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note))

Done in Washington, D.C. on: January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1173 Filed 1-11-79; 8:45 am]

[3410-02-M]

LIMA GRAIN INSPECTION SERVICE, LIMA, OHIO

Official Agency Designation and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the designation of the Lima Grain Inspection Service as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The Lima Grain Inspection Service, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Lima Grain Inspection Service which included an onsite review of the inspection point (specified service point).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Lima Grain Inspection Service was deemed eligible for

designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Lima Grain Inspection Service as an official agency was signed on August 31, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North by the northern Defiance County line east; the eastern Defiance County line south to U.S. Route 24; U.S. Route 24 northeast to Napoleon, Ohio;

Bounded: on the East by State Route 108 from Napoleon, Ohio, south to Putnam County; the northern Putnam County line east; the eastern Putnam County line south; the eastern Allen County line south to Hardin County; the northern Hardin County line east to U.S. Route 68; U.S. route 68 south to Bellefontaine, Ohio;

Bounded: on the South by U.S. Route 47 from Bellefontaine, Ohio, west-southwest to Sidney, Ohio; Interstate 75 south to the southern Shelby County line; the southern Shelby County line west; the western Shelby County line north; the southern Mercer County line west to the State line;

Bounded: on the West by the Ohio-Indiana State line north to the northern Defiance County line.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service point of this agency is: Lima Grain Inspection Service, 2242 Arcadia Avenue, Lima, Ohio 45805, located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note))

Done in Washington, D.C. on: January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1172 Filed 1-11-79; 8:45 am]

[3410-02-M]

PARIS ILLINOIS GRAIN INSPECTION, PARIS, ILL.

Official Agency Designation and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the designation of the Paris Illinois Grain Inspection as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The Paris Illinois Grain Inspection, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Paris Illinois Grain Inspection which included an onsite review of the inspection point (specified service point).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Paris Illinois Grain Inspection was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Paris Illinois Grain Inspection as an official agency was signed on August 25, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North by U.S. Route 36 from the western Edgar County line in Illinois; east across the State line to Parke County in Indiana; the western Parke County line north to Fountain County; the northern Parke County line east to Putnam County; the northern Putnam County line east to Hendricks County;

Bounded: on the East by the eastern county lines of Putnam County, Owen County, and Greene County;

Bounded: on the South by the southern Greene County line west to Sullivan County; the southern Sullivan County line west to U.S. Route 41 (150); U.S. Route 41 (150) south to U.S. Route 50; U.S. Route 50 west across the State line to Illinois State Route 33; State Route 33 north to the western Crawford County line; and

Bounded: on the West by the western Crawford County line north to Clark County; the western county lines of Clark County and Edgar County north to U.S. Route 36.

Service locations outside of this geographic area, but also to be serviced by Paris Illinois Grain Inspection shall include: Dana, Indiana, in Vermillion County; Newman, Illinois, in Douglas County; and Oakland, Illinois, in Coles

County. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located.

Exceptions to this designated geographic area are the following service locations inside the area which are serviced by other official agencies: Casey, Illinois, in Clark County, to be serviced by the Illinois Department of Agriculture.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service point of this agency is: Paris Illinois Grain Inspection, 1020 North Central Avenue, Paris, Illinois 61944, located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note))

Done in Washington, D.C. on January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1163 Filed 1-11-79; 8:45 am]

[3410-02-M]

QUINCY GRAIN INSPECTION & WEIGHING SERVICE, QUINCY, ILL.

Official Agency Designation and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the designation of the Quincy Grain Inspection & Weighing Service as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The Quincy Grain Inspection & Weighing Service, and existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Quincy Grain Inspection & Weighing Service which included an onsite review of the inspection point (specified service point).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Adminstrator.

As a result, the Quincy Grain Inspection & Weighing Service was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Quincy Grain Inspection & Weighing Service as an official agency was signed on August 25, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is: the area within Illinois in Adams County and Brown County.

Exceptions to this designated geographic area are the following service locations inside the area which are serviced by other official agencies: Meyer and Ursa, Illinois, in Adams County to be serviced by Keokuk Grain Inspection Service, Inc. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service point of this agency is: Quincy Grain Inspection & Weighing Service, 902 South 6th Street, P.O. Box 755, Quincy, Illinois 62301, located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W.,

Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note))

Done in Washington, D.C. on: January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1164 Filed 1-11-79; 8:45 am]

[3410-02-M]

SPRINGFIELD GRAIN INSPECTION DEPARTMENT, SPRINGFIELD, ILL.

Official Agency Designation and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the designation of the Springfield Grain Inspection Department as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The Springfield Grain Inspection Department, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Springfield Grain Inspection Department which included an onsite review of the inspection point (specified service point).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Springfield Grain Inspection Department was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Springfield Grain Inspection department as an official agency was signed on September 11, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North by the northern Schuyler County line east to the Illinois River; the Illinois River southwest to Cass County; the northern Cass County line; the northern Mendard County line; the western Logan County line north to State Route 10; State Route 10 east to the west side of Beason, Illinois;

Bounded: on the East by a straight line from the west side of Beason, Illinois southwest to Elkhart, Illinois, on Interstate 55; a straight line from Elkhart southeast to Stonington, Illinois, on State Route 48; a straight line from Stonington southwest to Irving, Illinois, on State Route 16;

Bounded: on the South by State Route 16 west to Interstate 55; a straight line from the junction of Interstate 55 and State Route 16 northwest to the junction of State Route 111 and the Morgan County line; the southern Morgan County line and Scott County line west to the Illinois River; and

Bounded; on the West by the Illinois River north to Schuyler County; the southern and western county lines of Schuyler County.

Service locations outside of this geographic area, but also to be serviced by Springfield Grain Inspection Department, shall include: Florence, Illinois, in Pike County. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service point of this agency is: Springfield Grain Inspection Department, 1301 North 15th Street, Springfield, Illinois 62702, located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other loction specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are herey given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note))

Done in Washington, D.C. on: January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1166 Filed 1-11-79; 8:45 am]

[3410-02-M]

DECATUR GRAIN INSPECTION, INC., DECATUR, ILL.

Official Agency Designation and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the designation of the Decatur Grain Inspection, Inc., as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The Decatur Grain Inspection, Inc., an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Decatur Grain Inspection, Inc., which included an onsite review of the inspection point (specified service point).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Decatur Grain Inspection, Inc., was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Decatur Grain Inspection, Inc., as an official agency was signed on November 13, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North by the northern and eastern county lines of DeWitt County; the eastern county line of Macon County south to Interstate 72; Interstate 72 northeast to the eastern Piatt County line;

Bounded: on the East by the eastern Piatt, Moultrie, and Shelby County lines;

Bounded: on the South by southern Shelby County line west; a straight line running along the southern Montgomery County line west to State Route 16, a point northeast of Irving, Illinois; and

Bounded: on the West by a straight line from the point northeast of Irving northeast to Stonington, Illinois; a straight line from Stonington northwest to Elkhart, Illinois; a straight line from Elkhart northeast to the west side of Beason, Illinois, on State Route 10; State Route 10 east to DeWitt County; the western DeWitt County line north.

Exceptions to this designated geographic area are the following service locations inside the area which are serviced by other official agencies: Farmer City, Illinois, in DeWitt County; Cadwell, Illinois, and Lovington, Illinois, in Moultrie County; and Monticello, Illinois, in Piatt County to be serviced by the Champaign-Danville Grain Inspection Departments, Inc.; Sigel, Illinois, in Shelby County to be serviced by the Illinois Department of Agriculture. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service point of this agency is: Decatur Grain Inspection, Inc., 3434 East Wabash Avenue, Decatur, Illinois 62521, located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note).)

Done in Washington, D.C. on January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1168 Filed 1-11-79; 8:45 am]

[3410-02-M]

OFFICIAL AGENCY DESIGNATION

Official Designation of the Evansville Grain Inspection, Evansville, Ind., and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the designation of the Evansville Grain Inspection as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79 (g)(1) and 79a(c)).

The Evansville Grain Inspection, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Evansville Grain Inspection which included an onsite review of the inspection point (specified service point).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrative.

As a result, the Evansville Grain Inspection was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Evansville Grain Inspection as an official agency was signed on August 31, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is the area which shall be within the following counties: Daviess County, Dubois County, Gibson County, Knox County, except the area west of U.S. Route 41 (150) from Sullivan County south to U.S. Route 50, Pike County, Posey County, Vanderburgh County, and Warrick County, all in Indiana.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service point of this agency is: Evansville Grain Inspection, 1320 S. Grand Avenue, P.O. Box 2057, Station D, Evansville, Indiana 47714, located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located. The designation document provides for the inclusion of additional service locations and specified service points which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note))

Done in Washington, D.C. on: January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1184 Filed 1-11-79; 8:45 am]

[3410-02-M]

OFFICIAL AGENCY DESIGNATION

Official Designation of the Henderson Grain Inspection, Henderson, Ky., and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the designation of the Henderson Grain Inspection as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE. Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525)

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79(c)).

The Henderson Grain Inspection, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Henderson Grain Inspection which included an onsite review of the inspection point (specified service point).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Henderson Grain Inspection was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Henderson Grain Inspection as an official agency was signed on August 31, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geograph-

ic area assigned on an interim basis pending final determination in this matter is: in Kentucky, the area which shall be

Bounded: on the North by the Ohio River from Crittenden County, in Kentucky, northeast to Henderson County;

Bounded: on the East by the eastern Henderson County line south-southwest to U.S. Route Alternate 41; U.S. Route Alternate 41 south to State Route 814; State Route 814 south to State Route 109; State Route 109 south to the Western Kentucky Parkway; the Western Kentucky Parkway east to the Hopkins County line; the Hopkins-Christian-Todd-Logan County lines; the eastern Logan County line to Tennessee;

Bounded: on the South by the Kentucky-Tennessee State line west to the western Christian County line; and

Bounded: on the West by the western Christian County line north to Caldwell County; the Caldwell County line west-northwest to Crittenden County; the western Crittenden County line to the Ohio River;

In Tennessee, the area which shall include the following counties: Cheatham County, Davidson County, and Robertson County.

Exceptions to this designated geographic area are the following service locations inside the area which are serviced by other official agencies: Hopkinsville, Kentucky, and Masonville, Kentucky, in Christian County to be serviced by Cairo Grain Inspection Agency.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service point of this agency is: Henderson Grain Inspection, West Jefferson Street, P.O. Box 622, Henderson, Kentucky 42420, located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note))

Done in Washington, D.C. on: January 5, 1979.

D. R. GALLIART,
Acting administrator.

FR Doc. 79-1185 Filed 1-11-79; 8:45 am]

[3410-02-M]

OFFICIAL AGENCY DESIGNATION

Official Designation of the Indianapolis Grain Inspection & Weighing Service, Inc., Indianapolis, Ind., and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the designation of the Indianapolis Grain Inspection & Weighing Service, Inc., as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The Indianapolis Grain Inspection & Weighing Service, Inc., an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Indianapolis Grain Inspection & Weighing Service, Inc., which included onsite reviews of the inspection points (specified service points).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Indianapolis Grain Inspection & Weighing Service, Inc., was deemed eligible for designation to perform offcial inspection functions (other than appeal inspection), not including official weighing. A document designating the Indianapolis Grain Inspection & Weighing Service, Inc., as an official agency was signed on November 20, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North by the southern county line of Boone County; the Boone-Hamilton County line north to State Route 32; State Route 32 east to Fishersburg, Indiana; State Route 13 south to Hancock County; the northern Hancock County line east to Henry County; the Hancock-Henry County line; the Henry-Rush County line east;

Bounded: on the East by the eastern Rush County line south to State Route 244; State Route 244 west to Shelby County; the Shelby County line south to Bartholomew County; the Bartholomew County line south to Jackson County;

Bounded: on the South by the Southern county lines of Bartholomew County, Brown County, and Monroe County; and

Bounded: on the West by the western county lines of Monroe County, Morgan County, and Hendricks County.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service points of this agency are: Indianapolis Grain Inspection & Weighing Service, Inc., 727 Board of Trade Building, 143 North Meridian Street, Indianapolis, Indiana 46204; and Indianaplis Grain Inspection & Weighing Service, Inc., 2235 North Montcalm, Indianapolis, Indiana 46202, both located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note).)

Done in Washington, D.C. on: January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1188 Filed 1-11-79; 8:45 am]

[3410-02-M]

OFFICIAL AGENCY DESIGNATION

Official Designation of the Schneider Inspection Service, Inc., Lowell, Ind., and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the designation of the Schneider Inspection Service, Inc., as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79 (g)(1) and 79a(c)).

The Schneider Inspection Service, Inc., an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Schneider Inspection Service, Inc., which included an onsite review of the inspection point (specified service point).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Schneider Inspection Service, Inc., was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Schneider Inspection Service, Inc., as an official agency was signed on October 25, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North by the northern Will County line, in Illinois, from Interstate 57 east to Indiana; the Illinois-Indiana State line north to Interstate 94; Interstate 94 east-northeast to Michigan; the Indiana-Michigan State line east to LaGrange County;

Bounded: on the East by the eastern Elkhart County line south; the southern Elkhart County line west to Marshall County; the eastern Marshall County line south to Fulton County;

Bounded: on the South by the southern Marshall County line west; the southern Starke County line west to Jasper County; the eastern Jasper County line south-southwest to U.S. Route 24; U.S. Route 24 west to State Route 55; State Route 55 south to Benton County; the northern Benton County line west to U.S. route 41; U.S. Route 41 north to U.S. Route 24; U.S. Route 24 west across the State line to Illinois State Route 1; and

Bounded: on the West by State Route 1 north to Kankakee County; the southern Kankakee County line west to U.S. Route 52; U.S. Route 52 north to Interstate 57; Interstate 57 north to Cook County.

Service locations outside of this geographic area, but also to be serviced by Schneider Inspection Service, Inc., shall include: Winamac, Indiana, in Pulaski County; and Sheldon, Illinois, in Iroquois County. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading, where no licensed inspectors are located.

An exception to this designated geographic area is the following service location inside the area which is serviced by another official agency: Pittwood, Illinois, in Iroquois County to be serviced by Champaign-Danville Grain Inspection Departments, Inc.

Interested persons may obtain a map of the proposed geographic area for

this agency from the Compliance Division, Delegation and Designation Branch.

The specified service point of this agency is: Schneider Inspection Service, Inc., 15406 White Oak, Lowell, Indiana 46356, located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979 (45 days after publication). All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note).)

Done in Washington, D.C. on January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1187 Filed 1-11-79; 8:45 am]

[3410-02-M]

OFFICIAL AGENCY DESIGNATION

Official Designation of the Titus Grain Inspection, West Lafayette, Ind., and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the designation of the Titus Grain Inspection as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The Titus Grain Inspection, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Titus Grain Inspection which included onsite reviews of the inspection points (specified service points).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Titus Grain Inspection was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Titus Grain Inspection as an official agency was signed on August 31, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North by the northern Pulaski County line;

Bounded: on the East by the eastern Pulaski County line; the southern Pulaski County line; the eastern White County line; the eastern Carroll County line to State Route 25; State Route 25 southwest to Tippecanoe County; the eastern Tippecanoe County line;

Bounded: on the South by the southern Tippecanoe County line; the eastern Fountain County line; the southern Fountain County line west to U.S. Route 41; and

Bounded: on the West by U.S. Route 41, including Boswell, Indiana, north to the northern Benton County line; the northern Benton County line east to State Route 55; State Route 55 north to U.S. Route 24; U.S. Route 24 east to the western White County line; the western White County line; the western Pulaski County line.

Service locations outside of this geographic area but also to be serviced by Titus Grain Inspection shall include: The Anderson's Elevator, located at Delphi, Indiana, in Carroll County; Dunn and Raub, Indiana, in Benton County; Leiters Ford, Indiana, in Fulton County; Linden, Indiana, in Montgomery County. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located.

Exceptions to this designated geographic area are the following service locations inside the area which are serviced by other official agencies: Winamac, Indiana, in Pulaski County to be serviced by Schneider Inspection Service.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service points of this agency are: Titus Grain Inspection, 1111 E. 800 N., West Lafayette, Indiana 47906; Titus Grain Inspection, Routes 25 & 218 RR 3, Delphi, Indiana 46923, located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assigment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979 (45 days after publication). All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note).)

Done in Washington, D.C. on January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1183 Filed 1-11-79; 8:45 am]

[3410-02-M]

OFFICIAL AGENCY DESIGNATION

Offical Designation of the William F. Christen Grain Inspection, Decatur, Ind., and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the designation of the William F. Christen Grain Inspection as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202)447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The William F. Christen Grain Inspection, an existing official agency, made applicaton to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the William F. Christen Grain Inspection which included an onsite review of the inspection point (specified service point).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the William F. Christen Grain Inspection was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the William F. Christen Grain Inspection as an official agency was signed on October 20, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North by the northern Lagrange and Steuben County lines;

Bounded; on the East by the eastern Steuben, Dekalb, Allen, and Adams County lines;

Bounded: on the South by southern Adams and Wells County lines; the eastern Grant County line south to State Route 18; State Route 18 west to State Route 221; State Route 221 north to Huntington County; the southern Huntington County and Wabash County lines; and

Bounded: on the West by the western Wabash County line north to Disko, Indiana; State Route 114 northwest to Akron, Indiana; State Route 19 north to Kosciusko County; the western and northern Kosciusko County lines; the western Noble and Lagrange County lines.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegaton and Designation Branch.

The specified service point of this agency is: William F. Christen Grain Inspection, 108 W. Monroe Street, P.O. Box 87, Decatur, Indiana 46733, located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future; within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. (45 days after publication). All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8. Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note).)

Done in Washington, D.C. on: January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1186 Filed 1-11-79; 8:45 am]

[3410-02-M]

OFFICIAL AGENCY DESIGNATION

Official Designation of the Winchester Grain Inspection, Winchester, Ind., and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the designation of the Winchester Grain Inspection as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, SW., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The Winchester Grain Inspection, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Winchester Grain Inspection which included an onsite review of the inspection point (specified service point).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Winchester Grain Inspection was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Winchester Grain Inspection as an official agency was signed on August 31, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North by the northern county lines of Blackford County and Jay County;

Bounded: on the East by the Indiana-Ohio State line south to the northern Darke County line in Ohio; the northern, eastern, and southern county lines of Darke County; the Ohio-Indiana State line south to the southern Union County line in Indiana;

Bounded: on the South by the southern county lines of Union County and Fayette County; the western Fayette County line; the southern Henry County line; and

Bounded: on the West by the western Henry County line; the southern Madison County line west to State Route 13; State Route 13 north to State Route 28; north on the western Madison County line; the northern Madison county line; the northern Delaware County line; the western Blackford County line.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service point of this agency is: Winchester Grain Inspection, 220 North East Street, Winchester, Indiana 47394, located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, SW., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. (45 days after publication). All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note).)

Done in Washington, D.C. on: January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1182 Filed 1-11-79; 8:45 am]

[3410-02-M]

OFFICIAL AGENCY DESIGNATION

Official Designation of the Alva Grain Inspection Department, Alva, Okla., and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the designation of the Alva Grain Inspection Department as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been

amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The Alva Grain Inspection Department, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Alva Grain Inspection Department which included an onsite review of the inspection point (specified service point).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Alva Grain Inspection Department was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Alva Grain Inspection Department as an official agency was signed on August 31, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is:

The area within the following counties: Alfalfa, Beckham, Caddo, Custer, Dewey, Ellis, Greer, Harper, Kiowa, Major, Roger Mills, Washita, Woods, and Woodward, all located in Oklahoma.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service point of this agency is: Alva Grain Inspection Department, 129 College, P.O. Box 501, Alva, Oklahoma 13717, located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note))

Done in Washington, D.C. on: January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1177 Filed 1-11-79; 8:45 am]

[3410-02-M]

OFFICIAL AGENCY DESIGNATION

Official Designation of the Ft. Smith-Van Buren Grain Inspection Service, Van Buren, Ark., and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the designation of the Ft. Smith-Van Buren Grain Inspection Service as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geopgraphic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The Ft. Smith-Van Buren Grain Inspection Service, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS conducted the required investigation of the Ft. Smith-Van Buren Grain Inspection Service which included an onsite review of the inspection point (specified service point).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Ft. Smith-Van Buren Grain Inspection Service was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Ft. Smith-Van Buren Grain Inspection Service as an official agency was signed on September 30, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is: the following area in Arkansas and Oklahoma.

In Arkansas, the area shall include the following counties: Benton, Boone, Carroll, Crawford, Franklin, Johnson, Logan, Howard, Madison, Montgomery, Newton, Polk, Sebastian, Sevier, Scott, Washington, and Yell.

In Oklahoma, the area shall include the following counties: Adair, Cherokee, Choctaw, Delaware, Haskell, Latimer, Le Flore, McCurtain, McIntosh, Muskogee, Ottawa, Pittsburg, Pushmataha, and Sequoyah.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service point of this agency is: Ft. Smith-Van Buren Grain Inspection Service, Kibler Road, P.O. Box 498, Van Buren, Arkansas 72956, located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note))

Done in Washington, D.C. on: January 5, 1979.

D. R. GALLIART,
Acting Administrator.

FR Doc. 79-1178 Filed 1-11-79; 8:45 am]

[3410-02-M]

OFFICIAL AGENCY DESIGNATION

Official Designation of the Enid Grain Inspection Co., Inc., Enid, Okla., and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the designation of the Enid Grain Inspection Co., Inc., as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202)447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The Enid Grain Inspection Co., Inc., an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Enid Grain Inspection Co., Inc., which included onsite reviews of the inspection points (specified service points).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Enid Grain Inspection Co., Inc., was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Enid Grain Inspection Co., Inc., as an official agency was signed on October 5, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North and including the counties of Grant, Kay, Osage, Washington, Nowata, and Craig;

Bounded: on the East and including the counties of Mayes, Wagoner, Okmulgee, Okfuskee, Hughs, Coal, Atoka, and Bryan;

Bounded: on the South and including the counties of Marshall, Love, Jefferson, Cotton, Tillman, Jackson, and Harmon; and

Bounded: on the West and including the counties of Comanche, Grady, Canadian, Blaine, Kingfisher, and Garfield, all located in Oklahoma.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service points of this agency are: Enid Grain Inspection Co., Inc., 2305 N. 10th Street, P.O. Box 229, Enid Oklahoma 73701, Enid Grain Inspection Co., Inc., 5212 West Chanel Road, Port of Catoosa, Oklahoma 74015, both located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all of specified official inspection functions and where the agency or one or more of its licensed inspectors is located. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or

comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8. Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note).)

Done in Washington, D.C. on: January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1179 Filed 1-11-79; 8:45 am]

[3410-02-M]

OFFICIAL AGENCY DESIGNATION

Official Designation of the Guymon Grain Inspection, Inc., Guymon, Okla., and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Comments.

SUMMARY: This notice announces the designation of the Guymon Grain Inspection, Inc., as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250 (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The Guymon Grain Inspection, Inc., an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS conducted the required investigation of the Guymon Grain Inspection, Inc., which included an onsite review of the inspection point (specified service point).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Guymon Grain Inspection, Inc., was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Guymon Grain Inspection, Inc., as an official agency was signed on October 15, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is: the area within the following counties in Oklahoma: Beaver County, Cimarron County, and Texas County.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service point of this agency is: Guymon Grain Inspection, Inc., Highway 54 East, P.O. Box Drawer E, Guymon, Oklahoma 73942, located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note))

Done in Washington, D.C. on: January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1180 Filed 1-11-79; 8:45 am]

[3410-02-M]

OFFICIAL AGENCY DESIGNATION

Offical Designation of the Frankfort Grain Inspection, Inc., Frankfort, Ind., and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the designation of the Frankfort Grain Inspection, Inc., as an official agency to perform grain inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

DATE: Comments by February 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Edith A. Christensen, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250, (202) 447-8525.

SUPPLEMENTARY INFORMATION: The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, hereinafter the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act (7 U.S.C. 79 and 79a), the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate triennially (7 U.S.C. 79(g)(1) and 79a(c)).

The Frankfort Grain Inspection Inc., an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection functions, not including official weighing.

This is to announce that the FGIS has conducted the required investigation of the Frankfort Grain Inspection, Inc., which included an onsite review of the inspection point (specified service point).

NOTE.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

As a result, the Frankfort Grain Inspection, Inc., was deemed eligible for designation to perform official inspection functions (other than appeal inspection), not including official weighing. A document designating the Frankfort Grain Inspection, Inc., as an official agency was signed on August 25, 1978.

Said designation also included an interim assignment of geographic area within which the official agency shall officially inspect grain. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North by the northern Fulton County line;

Bounded: on the East by the eastern Fulton County line south to State Route 19; State Route 19 south to Akron, Indiana; State Route 114 southeast to Disko, Indiana; the eastern Miami County line south to Grant County; the northern Grant County line east to State Route 221; State Route 221 south to State Route 18; State Route 18 east; the eastern Grant County line south; the southern Grant County line; the eastern Tipton County line south; the eastern Hamilton County line south to Fishersburg, Indiana;

Bounded: on the South by State Route 32 west from Fishersburg to Boone County; the eastern Boone County line south; the southern Boone County line; the southern Montgomery County line; and

Bounded: on the West by the western Montgomery County line; the northern Montgomery County line; the western Clinton County line; the western Carroll County line to State Route 25; State Route 25 northeast to Cass County; the western Cass County line; the western Fulton County line.

Exceptions to this designated geographic area are the following service locations inside the area which are serviced by other official agencies: Leiters Ford, Indiana, in Fulton County; Linden, Indiana, in Montgomery County; and Delphi, Indiana, in Carroll County, all to be serviced by Titus Grain Inspection.

Interested persons may obtain a map of the proposed geographic area for this agency from the Compliance Division, Delegation and Designation Branch.

The specified service point of this agency is: Frankfort Grain Inspection, Inc., R R 2, Frankfort, Indiana 46041, located within the proposed geographic area. A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of all or specified official inspection functions and where the agency or one or more of its licensed inspectors is located. A service location for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection functions other than official grading where no licensed inspectors are located. The designation document provides for the inclusion of additional specified service points and service locations which may be established in the future, within the agency's geographic area.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, 201 14th Street, S.W., Room 2405, Auditors Building, Washington, D.C. 20250. All materials should be mailed to the Director not later than February 26, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); sec. 27, Pub. L. 94-582, 90 Stat. 2889 (7 U.S.C. 74 note).)

Done in Washington, D.C. on January 5, 1979.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 79-1181 Filed 1-11-79; 8:45 am]

[3410-11-M]

Forest Service

MODOC NATIONAL FOREST GRAZING ADVISORY BOARD

Meeting

The Modoc National Forest Grazing Advisory Board will meet at 1:00 p.m. February 15, 1979 in the Conference Room of the Supervisor's Office at 411 N. Main St. Alturas, California.

The purpose of this meeting is to establish a charter, secure recommendations for use of the range betterment fund, and grazing allotment plans.

The meeting will be open to the public. Persons who wish to attend should notify William E. Britton, Modoc Supervisor's Office; telephone 916-233-3521. Written statements will be filed with the Board before or after the meeting.

KENNETH C. SCOGGIN,
Forest Supervisor.

JANUARY 3, 1979.

[FR Doc. 79-1079 Filed 1-11-79; 8:45 am]

[3410-16-M]

Soil Conservation Service

BLIND BROOK WATERSHED, NEW YORK AND CONNECTICUT

Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Blind Brook Watershed, Westchester

County, New York, and Fairfield County, Connecticut.

The environmental assessment of this federally-assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Robert L. Hilliard, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

The project or measure concerns a plan for watershed protection and flood prevention. The planned works of improvement include conservation land treatment, two floodwater retarding structures, three dikes, a flood warning system, and an evacuation plan.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The SCS invites participation of agencies and individuals with expertise or interest in the preparation of the draft environmental impact statement. The draft environmental impact statement will be developed by Mr. Robert L. Hilliard, State Conservationist, Soil Conservation Service, 771 Federal Building, 100 S. Clinton Street, Syracuse, New York 13260.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program—Pub. L. 83-566, (16 U.S.C. 1001-1008).)

Dated: January 4, 1979.

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service, U.S. Department of Agriculture.

[FR Doc. 79-1069 Filed 1-11-79; 8:45 am]

[3410-16-M]

UPPER BIG SWAMP CREEK WATERSHED, ALABAMA

Deauthorization of Federal Funding

Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of deauthorization of Federal funding for the Upper Big Swamp Creek Watershed, Lowndes County, Alabama, effective on December 20, 1978.

A notice of intent not to file an environmental impact statement for deauthorization of Federal funding was published on October 10, 1978. Appropriate committees of Congress and concerned Federal, State, and local agencies were notified of the proposed deauthorization at least 60 days prior to the effective date. No objections to deauthorization or expressions of support to complete the project have been made known to the Soil Conservation Service.

Dated: January 4, 1979.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program—Pub. L. 83-566 (16 U.S.C. 1001-1008).)

JOSEPH W. HAAS,
Assistant Administrator for Water Resoures, Soil Conservation Service, U.S. Department of Agriculture.

[FR Doc. 79-1070 Filed 1-11-79; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Order 79-1-30; Dockets 32333 and 33100]

AMERICAN AIRLINES, INC.

Application for Amendment of Certificate of Public Convenience and Necessity; Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 4th day of January, 1979.

On July 26, 1978, American Airlines, Inc. filed an application in Docket 33100 to amend its certificate of public conveniece and necessity for Route 134 to add Zihuatanejo and Manzanillo, Mexico, as intermediate points to its existing Chicago-Dallas/Ft. Worth-San Antonio-Mexico City-Acapulco route. American also sought a purely technical amendment of Condition (5) of its Route 134 certificate to reflect the addition of the two new Mexican points. Specifically, Condition (5) which now reads:

(5) Flights serving the intermediate point San Antonio, Texas, shall originate at Mexico City or Acapulco, Mexico, and terminate at Ft. Worth-Dallas, Texas, or a point north thereof, or originate at Ft. Worth-Dallas, Texas, or a point north thereof, and terminate at Mexico City or Acapulco, Mexico,

would be chaned to read as follows:

(5) Flights serving the intermediate point San Antonio, Texas, shall originate at Acapulco, Zihuatanejo, Manzanillo, or Mexico City, Mexico and terminate at Ft. Worth/Dallas, Texas, or a point north thereof, or originate at Ft. Worth/Dallas, Texas, or a point north thereof, and terminate at Mexico City, Manzanillo, Zihuatanejo or Acapulco, Mexico.

American's application was accompanied by a petition requesting that the Board act by show cause procedures.[1]

In support of its application in Docket 33100, American states that the latest amendment to the U.S.-Mexico Air Transport Agreement, signed January 20, 1978, adds Manzanillo and Zihuantanejo as intermediate points on American's U.S.-Mexico route; that the Board has recently employed show cause procedures to add Mexican points to the routes of Braniff Airways, Inc. (Order 78-5-182) and Western Air Lines, Inc. (Order 78-5-186) where the new Mexican points were added totheir routes by the amended bilateral agreement; that estimates show that Manzanillo and Zihuatanejo will be able to accommodate nearly one million visitors annually by the year 1994; that it proposes to operate three services weekly to each of the new Mexican points via its existing services to Mexico City; and that it anticipates an operating profit of $505,900, annually as a result of the new services.

We have received no answers to the application in Docket 33100, or to the petition to show cause.

We have decided to issue an order directing all interested persons to show cause why American Airlines' certificate for Route 134 should not be amended to add Manzanillo and Zihuatanejo to the Chicago-Dallas/Ft. Worth-San Antonio-Mexico City-Acapulco route, and to modify Condition (5) of Route 134 to reflect the addition of Manzanillo and Zihuatanejo to the route.[2] We tentatively find that American is fit, willing, and able properly to perform the air transportation authorized by the certificate proposed to be issued by this order and to conform to the provisions of the Act and to the Board's rules, regulations and requirements. Furthermore, we tentatively conclude that the public convenience and necessity require the amendments which american seeks. Lastly, we tentatively find that an oral evidentiary hearing is not required in this proceeding.

We have decided to propose a modification of Condition (5) somewhat different from that proposed by American. This condition has been in American's certificate since it first received Mexican authority.[3] It was modified in 1972 to enable American to operate nonstop or one-stop (via Mexico City) San Antonio-Acapulco service in competition with Braniff, but it was not

[1] Earlier, in an application filed April 3, 1978 in Docket 32333, American had requested modification of Route 134's Condition (5). No action was taken on this application, and American's application in Docket 33100 clearly supersedes it. We will, therefore, dismiss as moot American's application in Docket 32333.

[2] Based upon our review of American's Environmental Evaluation, we find that the addition of the new authority will not constitute a "major Federal action" within the meaning of the National Environmental Policy Act of 1969. Moreover, since American's proposed operations will not result in the near-term consumption of 10 million gallons of fuel, our action here will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975.

[3] *Additional Service to Latin America*, 6 C.A.B. 857, 881-82 (1946).

eliminated because the Board found that removal would significantly change the balance of competitive opportunities between American and Braniff.[4] We, therefore, propose the following simplified long-haul condition:

(5) Flights serving the intermediate point San Antonio, Tex., shall also serve a point in Mexico and Dallas/Ft. Worth, Tex., or a point north thereof.

Any interested persons objecting to the issuance of an order making final the Board's tentative findings and conclusions and amending American's certificate shall file such objections within 30 days of the date of service of this order. Answers to objections shall be filed no later than ten days thereafter. We expect such persons to support their objections with detailed economic analysis. If an evidentiary hearing is requested, the objector should state, in detail, why the hearing is necessary and what relevant and material facts he would expect to establish through such a proceeding that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections.

ACCORDINGLY: 1. We direct interested persons to show cause why the Board should not (1) issue an order making final the tentative findings and conclusions stated here, and (2) subject to disapproval by the President under section 801(a) of the Act, amend the certificate of public convenience and necessity of American Airlines, Inc. for Route 134 by adding the intermediate points Manzanillo and Zihuatanejo, Mexico, and by revising Condition (5);

2. We direct interested persons having objections to the issuance of an order making final tentative findings and conclusions stated here, or to the proposed certificate amendment in the specimen form attached, to file no later than February 8, 1979, with the Board and serve upon all persons listed in paragraph 7, a statement of objections together with a summary of testimony, statistical data, and other evidence expected to be relied upon to support the stated objections. Answers shall be due no later than February 20, 1979;

3. If timely and properly supported objections are filed, we will give further consideration to the matters and issues raised by the objections before we take further action;[5]

4. In the event no objections are filed, all further procedural steps will be waived, and the Secretary shall enter an order which shall (1) make final the Board's tentative findings and conclusions set forth in this order, and (2) subject to disapproval by the President under section 801(a) of the Act, issue an amended certificate to the applicant;

5. We grant the petition of American Airlines, Inc. for issuance of an order to show cause;

6. We dismiss the application of American Airlines, Inc. in Docket 32333; and

7. We will serve a copy of this order upon American Airlines, Inc., Hughes Air Corp., d/b/a Hughes Airwest, Aeronaves de Mexico, S.A., Mexicana de Aviacion, S.A., the Governors of Illinois and Texas, the Governors of Colima and Guerrero, Mexico, the Ambassador of the Republic of Mexico in Washington, D.C., and the U.S. Departments of State and Transportation.

We shall publish this order in the FEDERAL REGISTER and shall transmit a copy to the President of the United States.

By the Civil Aeronautics Board:[6]

PHYLLIS T. KAYLOR,
Secretary.

[Specimen Certificate]

UNITED STATES OF AMERICA CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY (AS AMENDED) FOR ROUTE 134

AMERICAN AIRLINES, INC. is authorized, subject to the provisions set forth below, the provisions of Title IV of the Federal Aviation Act of 1958, as amended, and the Board's orders, rules, and regulations issued under it, to engage in air transportation of persons, property and mail:

Between the coterminal points Acapulco and Mexico City, Mexico, the intermediate point Monterrey, Mexico, and (a) beyond Monterrey, the terminal point El Paso, Texas, and (b) beyond Monterrey, the intermediate points Zihuatanejo and Manzanillo, Mexico, and San Antonio and Dallas/Ft. Worth, Texas, and the terminal point Chicago, Illinois.

The service is subject to the following terms, conditions and limitations:

(1) The holder shall conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued for the purpose of requiring compliance with such treaties and agreements.

(2) The holder shall render service to and from each of the points named, except as temporary suspensions of service may be authorized by the Board, and may begin and terminate or begin or terminate trips at points short of terminal points.

(3) The holder may continue to serve regularly any point named through the airport last regularly used to serve that point before the effective date of this certificate; and may continue to maintain regularly scheduled nonstop service between any two points not named consecutively if nonstop service was regularly scheduled between the points before the effective date of this certificate.

Upon compliance with such procedures as the Board may prescribe, the holder may, in addition, regularly serve a named point through any convenient airport and may operate nonstop service between any two points not named consecutively.

(4) The exercise of the authority granted shall be subject to the holder's first obtaining from the Mexican Government such operating rights as may be necessary.

(5) Flights serving the intermediate point San Antonio, Tex., shall also serve a point in Mexico and Dallas/Ft. Worth, Tex., or a point north of Dallas/Ft. Worth.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions and limitations required by the public interest as the Board may prescribe.

This certificate shall be effective on: .....: *Provided,* That, before the date on which this certificate would otherwise become effective, the Board, either on its own initiative or upon the timely filing of a petition for reconsideration of the order issuing this certificate, may by order or orders extend the effective date from time to time: *Provided, further,* That the continued effectiveness of the authority to serve the intermediate points Zihuatanejo and Manzanillo, Mex., shall be subject to timely payment of such license fees as the Board may prescribe.

The Civil Aeronautics Board, through its Secretary, has executed this certificate and affixed its seal on

(SEAL)

Secretary.

[FR Doc. 79-1198 Filed 1-11-79; 8:45 am]

[6320-01-M]

[Order 79-1-37; Dockets 23080-2; 26487; 34395]

PRIORITY AND NONPRIORITY DOMESTIC SERVICE MAIL RATES INVESTIGATION AND TRANSATLANTIC, TRANSPACIFIC AND LATIN AMERICAN MAIL RATES

Amendment of Certificates of Charter Air Carriers To Authorize Mail Transportation; Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 4th day of January, 1979.

By Order 78-11-80, dated November 16, 1978, the Board, in Docket 23080-2, established final domestic service mail rates for the certificated air carrier and air taxi operator parties to the proceeding. By Order 78-12-159, dated December 21, 1978, the Board, in Docket 26487, established final international service mail rates for certificated air carrier parties to the proceeding. By this order, the Board is proposing to amend the certificates of all charter air carriers to include the

[4] *Texas-Mexico Service Investigation,* Order 72-7-49 (served July 17, 1972).

[5] Since provision is made for filing of objections to this order, petitions for reconsideration will not be entertained.

[6] All Members concurred.

authority to transport mail[1] and is proposing to establish final domestic and international service mail rates for charter air carriers, all-cargo air carriers,[2] including those who have been awarded permissive authority to provide all-cargo air service pursuant to ER-1080, intrastate and other carriers who have been awarded unused authority which includes the authority to carry mail, and intrastate and other carriers who have been awarded certificates to engage in nonstop service between any one pair of points in interstate or over seas air transportation under the new automatic entry market program.

The Airline Deregulation Act of 1978[3] eliminates paragraph 37 from section 101 of the Federal Aviation Act of 1958, as amended. Paragraph 37 defined "supplemental air transportation," now replaced by the term "charter air transportation" to mean charter trips in air transportation, other than the transportation of mail by aircraft. In defining charter air transportation in the new paragraph 15 of section 101, Congress did not exclude the transportation of mail by aircraft. Accordingly, we believe that Congress intended to empower the Board to authorize the charter air carriers to transport mail. We propose to amend the certificates of all existing charter air carriers to include the authority to transport mail and to insure that all future certificates for charter air transportation include such authority. As there are no mail rates in effect for charter air carriers who transport mail, we propose to fix the rates established in Dockets 23080-2 and 26487 as the fair and reasonable final mail rates for those carriers.

Section 418 of the Federal Aviation Act provides for the issuance of "grandfather" certificates awarding mandatory authority for all-cargo air service to carriers who held valid certificates or operated under an exemption and provided scheduled all-cargo air service and to carriers who held valid certificates and provided supplemental air transportation carrying only cargo for a specified "grandfather" period. Those carriers holding "grandfather" certificates, which authorize the carriage of mail, are covered by the domestic and international service mail rates fixed in Dockets 23080-2 and 26487. However, other carriers which have been or subsequently will be certificated pursuant to section 418(a)(4) of the Act have not been made parties to those dockets and thus service mail compensation has not been fixed for their mail transportation services. In addition, there will be a group of carriers (virtually any applicant) to which the Board, pursuant to final rule (ER-1080) adopted November 8, 1978, will award permissive authority to transport mail in all-cargo air service. No mail rate is presently in effect for that group of carriers.

Finally, under the new section 401(d)(5) of the Federal Aviation Act,[4] the Board is empowered to award certificates to air carriers authorizing them to serve routes which had previously constituted unused authority of the former certificate holder. These newly certificated carriers may include intrastate air carriers and carriers who also operate as air taxi operators. In addition, a new section 401(d)(7) of the Federal Aviation Act[5] instructs the Board to award certificates to air carriers and intrastate air carriers to engage in nonstop service between any one pair of points in interstate or overseas air transportation under a new automatic entry market program. There is presently no rate in effect for the transportation of mail pursuant to authority awarded under those two new sections of the Act.

We have reviewed the nature and extent of the air transport services now and hereafter to be provided by the various categories of carriers covered by this order, and we find that those carriers are and will be performing essentially the same services as those provided by the carriers who are presently receiving compensation for the transportation of mail under final domestic service mail rates established by Order 78-11-80 in Docket 23080-2, and for the transportation of mail under final international service mail rates established by Order 78-12-159 in Docket 26487. We therefore find it in the public interest and consistent with the objectives of the Federal Aviation Act to establish as the fair and reasonable rates of mail compensation for charter air services, all-cargo air services, air services over routes previously unused, and air services provided under the automatic market entry program, the final domestic service mail rates fixed by Order 78-11-80 in Docket 23080-2, and the final international service mail rates fixed by Order 78-12-159. We intend that this order shall propose rates of compensation for the transportation of mail in all charter or scheduled services authorized by the Board by certificate or exemption which are not covered by those orders.[6]

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly, sections 204(a), 401, 406, and 416(b) thereof, and the regulations promulgated in 14 C.F.R. Part 302,

1. We propose to make all air carriers and air taxi operators covered by this order and all applicants for air services covered by this order parties to the proceedings in Dockets 23080-2 and 26487;

2. We propose to exempt air carriers, charter air carriers, all-cargo air carriers, intrastate air carriers, and air taxi operators now and hereafter covered by this order from the provisions of section 406 of the Federal Aviation Act of 1958, as amended, insofar as the enforcement of section 406 would prevent those carriers from continuing to receive compensation for the transportation of mail under contracts entered into with the Postal service;[7]

3. We propose to amend the certificates of all existing charter air carriers to include the authority to transport mail;

4. We direct all interested persons to show cause why the Board should not adopt the findings and conclusions proposed here, amend the certificates of all existing charter air carriers to include the authority to transport mail and fix the final domestic service mail rates established by Order 78-11-

[1] No longer prohibited as the result of enactment of Pub. L. 95-504.

[2] Certificated pursuant ot the provisions of section 418 of the Federal Aviation Act of 1958, *as amended by* Pub. L. 95-163.

[3] Pub. L. 95-504, 95th Cong., 2nd Session (October 24, 1978).

[4] Section 10(a) of the Airline Deregulation Act of 1978.

[5] Section 12 of the Airline Deregulation Act of 1978.

[6] We intend, however, that the domestic service mail rates not apply to the services of air taxi or commuter air carriers that are performed pursuant to contracts with the Postal Service, but are subsequently changed to a "certificated" status through authority granted under one of the liberalized entry programs. With the exception of certain air taxi/commuter parties to Docket 23080-2, air taxi operators are not authorized to carry mail except in accordance with contracts with the Postal Service entered into in accordance with the authority in section 5402(c) of the Postal Reorganization Act [14 CFR Part 298.35; 39 U.S.C. §5402(c)]. Although certification would change the nature of this relationship, in the sense that an air taxi holding a certificate would be technically subject to the mail rate provisions in section 406 of the Act, rates that the air taxi had previously established under its status as a contract carrier would presumably constitute valid expressions of what the marketplace viewed as the fair and reasonable rate of compensation for the services involved. Accordingly, we believe that it is in the public interest that these rates be permitted to survive certification and we propose to exempt the certificated operations of air taxi and commuter air carriers to the extent that enforcement of section 406 would prevent the continuation of rates established by contract with the Postal Service. As a general matter, of course, our action in this order does not affect the authority of the Postal Service to contract for air services, certificated or noncertificated, in circumstances that accord with the provisions and conditions set forth in section 5402 of the Postal Reorganization Act.

[7] When in accord with the provisions and conditions set forth in section 5402 of the Postal Reorganization Act.

80 in Docket 23080-2 and the final international service mail rates established by Order 78-12-159 in Docket 26487 as the fair and reasonable rates of compensation to be paid for the transportation of mail by aircraft, the facilities used and useful therefor and the services connected therewith as related to new air services authorized pursuant to Pub. L. 95-163 and Pub. L. 95-504;

5. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings and conclusions with respect to the certificate amendments proposed here to file with us and serve upon all parties to Docket 34395, no later than February 12, 1979, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections; answers shall be due no later than February 26, 1979;

6. If timely and properly supported objections are filed, we will accord full consideration to the matters and issues raised by the objections before we take further action; [8]

7. In the event no objections are filed, we will deem all further procedural steps to have been waived and we may proceed to enter an order in accordance with the tentative findings and conslusions set forth here;

8. Further procedures with respect to the rates proposed herein shall be in accordance with the Board's Rules of Practice, particularly Rule 302, *et seq.*, and if there is any objection to the rates specified herein, notice must be filed no later than January 22, 1979, and, if notice is filed, written answer and supporting documents must be filed no later than February 12, 1979;

9. If notice of objection is not filed within the time specified here, or if notice is filed and answer is not filed within the time required, or, if an answer timely filed raises no material issue of fact, we shall deem all interested persons to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order fixing the rates specified herein;

10. If a timely notice of objection and answer are filed presenting issues for hearing, we shall limit the issues going to the establishement of the fair and reasonable rates to those specifically raised by such answer except as otherwise provided in 14 C.F.R. section 302.307;

11. The final domestic service mail rates, including both linehaul and terminal charges, container minimum charges and excess weight charges established in Order 78-11-80 and made applicable to all air carriers and air taxi operator parties to this proceeding shall be paid in their entirety by the Postmaster General;

12. The final international service mail rates established in Order 78-12-159 shall be paid in their entirety by the Postmaster General; and

13. We shall serve this order on all parties to the proceedings in Dockets 23080-2 and 26487.

We shall publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[9]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-1197 Filed 1-11-79; 8:45 am]

[8] Since provision is made for the filing of objections to this order, we will not entertain petitions for reconsideration.

[9] All Members concurred.

[6320-01-M]

[Docket 32920]

ST. LOUIS-DENVER-LAS VEGAS/RENO ROUTE INVESTIGATION

Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held commencing February 13, 1979, at 9:30 a.m. (local time) in Room 1003, Hearing Room A, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned Administrative Law Judge.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the Prehearing Conference Report, served August 28, 1978, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., January 8, 1979.

JOSEPH J. SAUNDERS,
Administrative Law Judge.

[FR Doc. 79-1196 Filed 1-11-79; 8:45 am]

[6320-01-M]

[Dockets 33048, 33235, 33614, 34075; Order 79-1-35]

TRANS WORLD AIRLINES, INC., ET AL.

Applications for Certificate Authority; Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 4th day of January, 1979.

On July 19, 1978, Trans World Airlines filed an application to amend its certificate for Route 2 to include unrestricted nonstop authority between Colorado Springs, Colorado, and Chicago, Illinois. This application was accompanied by a joint motion of TWA and the Colorado Springs Chamber of Commerce for a hearing. On October 5, 1978, TWA filed a petition requesting us to issue an order to show cause why its certificate application for Colorado Springs-Chicago authority should not be granted.

In support of its application, it states that Continental, the market's monopoly authorized nonstop carrier, provides inadequate service with only one nonstop round trip and two and one-half one-stop round trips between Colorado Springs and Chicago; that it will initially provide two nonstop round trips in the Colorado Springs-Chicago market and first single plane service in the Colorado Springs-New York/Washington markets [1]; that it will offer new fares that are lower than those currently offered by Continental as well as super-saver fares in all on-line connecting markets; and that it will earn an operating profit of $2.7 million computed on a Subpart K costing basis.

The City of Colorado Springs and the New York Chamber of Commerce have filed answers supporting TWA's application.

On August 18, 1978, American Airlines filed an application requesting the same authority requested by TWA, accompanied by a motion to consolidate.[2] This application was amended on September 25, 1978, to include a request, with supporting data, for nonstop authority in the Colorado Springs-St. Louis/Dallas/Fort Worth/Denver markets, and accompanied by a motion for hearing.[3] On October 7, American petitioned for a show cause order on its amended application, in support of which it states that it will provide first nonstop service in the Colorado Springs-St. Louis market and first competitive nonstop service in the Colorado Springs-Dallas/Fort Worth market; it will provide new single plane service to beyond markets, and it will offer low-fare options in all markets.

TWA and the Colorado Springs Chamber of Commerce filed answers in opposition to American's motion to consolidate. They argue that there is a pressing need for expeditious action on the Colorado Springs-Chicago market and that consideration of other markets would unnecessarily delay the processing of TWA's application.

Subsequently, Northwest Airlines and Ozark Air Lines filed applications

[1] Braniff is authorized to provide single plane service between Colorado Springs and New York/Newark and Washington via Dallas/Fort Worth, but it does not currently exercise that authority.

[2] No supporting data was filed.

[3] The Civil Parties of Dallas and Fort Worth filed an answer supporting American's motion.

for nonstop authority in the Colorado Springs-Chicago/St. Louis/Dallas/Fort Worth/Denver markets, along with motions to consolidate with TWA's application. No supporting data was filed.

The incumbent carriers in the markets have neither filed answers to TWA's motion nor made any other indications that they object to awards of new authority.

Upon consideration of the facts and pleadings in this case, we have tenatively determined that we should grant multiple awards here. We tentatively conclude, on the basis of the tentative findings below, that it is consistent with the public convenience and necessity to award multiple authority, on a category II subsidy-ineligible basis, in the Colorado Springs-Chicago Midway/Chicago O'Hare/St. Louis/Dallas/Fort Worth/ Denver markets and to grant the applications of TWA, American, Northwest, Ozark, and any other fit, willing and able applicant, whose fitness, willingness and ability can be established by officially noticeable data.[4] Further, we tentatively conclude that no oral evidentiary hearing is needed here since there are no material determinative issues of fact requiring such a hearing for their resolution.

We have tentatively decided to grant Colorado Springs-Chicago Midway and Colorado Springs-Chicago O'Hare authority separately. If any carrier does not use either its Chicago O'Hare-Colorado Springs authority or its Chicago Midway-Colorado Springs authority, another carrier can obtain that authority under section 401(d)(5) of the Act as long as they are listed as separate points on the first carrier's certificate (*see* Order 78-11-41). We find this approach more consistent with the Act's declaration of policy which calls on us to encourage air service at major urban areas through secondary or satellite airports.

Under the Airline Deregulation Act of 1978, we must approve an application for certificate authority unless we find, by a preponderance of the evidence, that approval would not be consistent with the public convenience and necesssity (Pub. L. No. 95-504, section 14). The new Act creates a presumption that the grant of all applications is consistent with the public convenience and necessity. It places on any opponents of these applications the burden of proving them inconsistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). To give such opponents a reasonable opportunity to meet their burden of proof, it is our view that applicants must indicate what type of service they would provide if they served the markets at issue. This does not mean that an applicant must show that it will provide service if it receives authority but rather what the nature of its service would be if it decided to serve. We will give all existing and would-be applicants 15 days from the date of service of this order to supply data,[5] in order to give interested persons sufficient information on the nature of the applicant's proposal to assess consistency with the public convenience and necessity. Our tentative findings concerning all applicants that have not filed illustrative service proposals are contingent on such filings.

Our tentative conclusions comport with the letter and spirit of the Airline Deregulation Act of 1978, particularly the declaration of policy set forth in section 102 which instructs us to rely, to the maximum extent possible, on competitive forces, including potential competition.[6] See our general conclusions about the benefits of multiple permissive authority in *Improved Authority to Wichita Case, et al.*, Order 78-12-106, December 14, 1978. Accordingly, we conclude that it is desirable to award the additional authority sought by the applicants, whether or not services are in fact operated. The existence of additional operating rights in markets now being served by incumbent carriers or authorized to be served will best effect the statute's policy objective of placing maximum reliance on the decisions of the marketplace. This will occur because newly authorized carriers may actually enter the market in order to exploit unmet demand, both in terms of price and service, or because incumbents will be encouraged by the realistic threat of entry to meet such demand. Because demand is dynamic in character and therefore constantly changing, the most effective means to assure that competitive forces will operate quickly and efficiently is to award multiple operating authority to carriers that are fit, willing and able to provide service.

Notwithstanding the foregoing tentative conclusions in support of multiple permissive authority in this proceeding, we wish to make clear that we in no way desire to deter objections that might be asserted under the 1978 Act by air carriers, civic interests or other interested persons. The new statute contains a completely revised declaration of policy in section 102, as well as numerous additional and modified substantive provisions. Some of these statutory changes relate to considerations not expressly covered in the preceding statute. For example, while diversion from existing carriers will not be given decisive weight in rejecting applications for new authority except upon an extraordinary showing of financial jeopardy on the part of one or more existing air carriers, with the consequent loss of air service which cannot be immediately replaced, other provisions suggest that the Congress desires us to take into account other factors. These include, but are not limited to, satellite airport questions and the degree of concentration within the industry and safety. Any party in this proceeding may explain in full why the authority that we propose to grant should not issue. Such explanations should apply specifically to the applications in issue, and should be sufficiently detailed to overcome the presumption of favorable treatment that the Act bestows on applications.

Finally, upon review of the environmental evaluations submitted by TWA for the Colorado Springs-Chicago market and American for the Colorado Springs-St. Louis/Dallas/Fort Worth/Denver markets, to which no answers have been filed, we find that our decision to award them authority in those markets does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, or a major regulatory action under the Energy Policy and Conservation Act of 1975. We reserve judgment on the environmental consequences of other ap-

[4] Officially noticeable data consist of that information set out in rule 24(M) of the Board's Rules of Practice. Applicants whose fitness cannot be so established must make a showing of fitness, as well as dealing with any questions under sections 408 and 409 of the act. Should such applications be filed, we will then consider how to deal with them procedurally.

On the basis of officially noticable data, we find that TWA, American, Northwest and Ozark are citizens of the United States and are fit, willing and able to perform the air services proposed and to conform to the provisions of the Act and our rules, regulations and requirements.

[5] They should submit an illustrative schedule of service in the markets at issue, which shows all points that they might choose to serve, the type and capacity of the equipment they would likely use and the elapsed trip time of flights in block hours over segments. For the markets at issue only, they should also provide an environmental evaluation as required by Part 312 of our Regulations, and an estimate of the gallons of fuel to be consumed in the first year of operations in the markets if they instituted the proposed service, as well as a statement on the availability of the required fuel.

[6] Section 102(a) specifies as being in the public interest, among other things:

"The placement of maximum reliance on competitive market forces and on actual and potential competition (a) to provide the needed air transportation system, and (b) to encourage efficient and well-managed carriers to earn adequate profits and to attract capital;" and "The encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation services."

plications, pending submission of environmental data.

We will give interested persons 30 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; replies will be due within 10 days thereafter. We expect such persons to direct their objections, if any, to specific markets, and to support such objections with detailed economic analysis. If an evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a proceeding that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections.

We remind objectors that under the 1978 Act they have the burden of proving why the awards proposed here will not be consistent with the public convenience and necessity.

ACCORDINGLY,

1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and amending the certificate of public convenience and necessity of Trans World Airlines for Route 2 so as to authorize the carrier to engage in nonstop operations between Colorado Springs-Chicago Midway and Colorado Springs-Chicago O'Hare; amending the certificates of public convenience and necessity of American Airlines for Route 4, Northwest Airlines for Route 3 and Ozark for Route 107 so as to authorize them to engage in nonstop operations between Colorado Springs, on the one hand, and St. Louis, Chicago Midway, Chicago O'Hare, Dallas/Fort Worth and Denver, on the other; and amending, to grant any of the authority in issue, the certificates of any other fit, willing and able applicants the fitness of which can be established by officially noticeable material;

2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or certificate amendments set forth here, to file with us and serve upon all persons listed in paragraph 7, no later than February 8, 1979, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections; answers shall be due no later than February 20, 1979;

3. If timely and properly supported objections are filed, we will accord full consideration to the matters and issues raised by the objections before we take further action;[7]

4. In the event no objections are filed, we will deem all further procedural steps to have been waived and we may proceed to enter an order in accordance with the tentative findings and conclusions set forth here;

5. We grant the motions of American, Northwest and Ozark to Consolidate their applications in Dockets 33235, 33614 and 34075, respectively, with TWA application in Docket 33048;

6. We direct American, Northwest, Ozark and any other applicant for the authority in issue to file the data set forth in footnote 5 no later than January 24, 1979; and

7. We will serve a copy of this order upon all persons named in the service list of Docket 33048.

We will publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[8]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-1199 Filed 1-11-79; 8:45 am]

[7] Since provision is made for the filing of objections to this order we will not entertain petitions for reconsideration.

[8] All Members concurred.

[6335-01-M]

COMMISSION ON CIVIL RIGHTS

CALIFORNIA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the California Advisory Committee (SAC) of the Commission will convene at 2:00 p.m. and will end at 5:00 p.m. on January 27, 1979, at the National Association for Better Broadcasting, 2315 Westwood Boulevard, Los Angeles, California 90064.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Western Regional Office of the Commission, 312 North Spring Street, Room 1015, Los Angeles, California 90012.

The purpose of this meeting is to discuss the establishment of a commission communications policy through research and findings on broadcasting in California.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C. January 9, 1979.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 79-1218 Filed 1-11-79; 8:45 am]

[6335-01-M]

MINNESOTA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Minnesota Advisory Committee (SAC) of the Commission will convene at 5:00 p.m. and will end at 9:00 p.m. on February 7, 1979, at Capp Towers, 77 E. 9th Street, Walnut Room, St. Paul, Minnesota 55119.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Midwestern Regional Office of the Commission, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604.

The purpose of this meeting is to discuss the Police project and plan for the hearing on the same.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C. January 9, 1979.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 79-1219 Filed 1-11-79; 8:45 am]

[6335-01-M]

NEW JERSEY ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the New Jersey Advisory Committee (SAC) of the Commission will convene at 6:30 p.m. and will end at 8:30 p.m. on February 5, 1979, at the Gateway Hilton, Gateway Center, Newark, New Jersey 07102.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, New York 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C. January 9, 1979.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 79-1220 Filed 1-11-79; 8:45 am]

[3510-24-M]

DEPARTMENT OF COMMERCE

Economic Development Administration

JEFFERSONVILLE, INDIANA RAILWAY FACILITIES RELOCATION AND RECREATION AREA—VISITORS CENTER DEVELOPMENT

Intent to Prepare an Environmental Impact Statement

Notice is hereby given that, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Economic Development Administration (EDA) of the Department of Commerce will prepare an environmental impact statement on an application for financial assistance from the city of Jeffersonville, Indiana.

Jeffersonville, in cooperation with private investors and the Baltimore and Ohio Railroad Company, plans to relocate existing railway facilities from the center of the city to an appropriate industrial zone and to redevelop the current railway site into a recreational area and vistors center. The railway facilities will be relocated to a 26-acre industrial site. The recreation-visitors center development will involve 12 acres. No businesses or private dwellings will require relocation.

Federal, State and local agencies, proponents of the proposed action, and interested citizens are invited to assist EDA in developing the scope of the environmental analyses and to advise EDA in preparing the environmental impact statement for this proposal. Expressions of interest should be forwarded as soon as possible to:

Economic Development Administration, U.S. Department of Commerce, 175 West Jackson Boulevard, Suite A-1630, Chicago, Illinios 60604. ATTN: Mr. Budarz.

Dated: January 5, 1979.

ROBERT T. HALL,
Assistant Secretary for Economic Development.

[FR Doc. 79-1075 Filed 1-11-79; 8:45 am]

[3510-25-M]

Industry and Trade Administration

UNIVERSITY OF ILLINOIS, URBANA-CHAMPAIGN CAMPUS, ET AL.

Applications for Duty Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230, on or before February 1, 1979.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 a.m. and 5:00 p.m., Monday through Friday, in Room 6886C of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

DOCKET NUMBER: 78-00449. APPLICANT: University of Illinois Urbana-Champaign Campus, Purchasing Division, 223 Administration Building, Urbana, Illinois 61801. ARTICLE: 450 Watt Xenon arc lamp system with lamp and housing and accessories. MANUFACTURER: Photochemical Research Associates, Canada. INTENDED USE OF ARTICLE: The article is intended to be used to study the kinetic decays of photochemicals as well as the spectra of reagents, products, and intermediate compounds. Chemical reactions and/or recombinations on a time scale of from 100 microseconds to milliseconds along with spectra from 4000 to 8000 Angstroms will be studied. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: December 14, 1978.

DOCKET NUMBER: 79-00068. APPLICANT: Washington University, Lindell and Skinker Blvds., St. Louis, Missouri 63130. ARTICLE: Electron Microscope, Model JEM 100S with Haskris Water Chiller. MANUFACTURER: JEOL Ltd., Japan. INTENDED USE OF ARTICLE: The article is intended to be used to study the inner ear tissues and auditory areas of the central nervous system from various experimental animals (chinchilla, guinea pig, gerbil, cat, and monkey). The phenomena to be studied concern injury of these structures by exposure to different noxious agents such as noise, drugs or partial or total lack of oxygen. Studies will be conducted to elucidate the mechanisms of action of noise, drugs and circulatory dysfunction upon the inner ear and auditory portions of the central nervous system. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: December 14, 1978.

DOCKET NUMBER: 79-00069. APPLICANT: National Bureau of Standards, B-344, Metrology Bldg., Washington, D.C. 20234. ARTICLE: Imacon 790/S20 fibre optic coupled camera with S20 photocathode and accessories. MANUFACTURER: John Hadland Ltd., United Kingdom. INTENDED USE OF ARTICLE: The article is intended to be used to study conduction and breakown in insulating materials. Scheduled applications include measurement of the pre-breakdown streamers in transformer oil and water, measurement of the electric field distribution during electrical breakdown at the interface between eposy and compressed sulfur hexafluoride gas, and measurement of the lifetime of selected atomic states during arc extinction in gases. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: December 14, 1978.

DOCKET NUMBER: 79-00075. APPLICANT: University of Mississippi, University, MS 38677. ARTICLE: LKB 2107-010 Batch Microcalorimeter and Accessories. MANUFACTURER: LKB Produkter AB, Sweden. INTENDED USE OF ARTICLE: The article is intended to be used to study the thermodynamics of the binding of specific ligands to proteins. These studies will be conducted to relate the thermodynamics information to the nature of the protein-ligand binding forces. The article will also be used to monitor the kinetics of enzyme catalyzed reactions. In addition, the article will be used to study the heat of detergent micelle formation. The article will be used as an educational tool in the courses Biochemistry Laboratory (Chem 472) and Graduate Research (Chem 697-797). APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: December 14, 1978.

DOCKET NUMBER: 79-00076. APPLICANT: Purdue University, Purchasing Department, FREH Building, West Lafayette, Indiana 47907. ARTICLE: Model GX20 Rotating Anode X-ray Generator and Accessories. MANUFACTURER: Marconi Elliott Avionics, United Kindom. INTENDED USE OF ARTICLES: The article is intended to be used as high intensity fine focus X-ray source for the investigation of the crystal and molecular structure of small spherical RNA viruses. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: December 14, 1978.

DOCKET NUMBER: 79-00077. APPLICANT: University of Florida, College of Pharmacy, Box J-4, J. Hillis Miller Health Center, Gainesville, Florida 32610. ARTICLE: LKB 2107-010 Batch Microcalorimeter and accessories. MANUFACTURER: LKB Produkter AB, Sweden. INTENDED USE OF ARTICLE: The article is intended to be used for the study of the binding of drugs to molecules (albumin, enzymes, nucleic acids, polysaccharides, etc.). The binding is investigated by having the macromolecule and drug separated in the mixing cell, then measure the heat changes following

the mixing from the magnitude of this heat; important information on the strength of binding as well as the binding capacity of the macromolecule can be obtained. The article will also be used in research courses leading to masters and Ph.D degrees, for the teaching of research methods and understanding of drug macromolecule interactions. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: December 14, 1978.

Docket Number: 79-00078. Applicant: Geophysical Institutes, C. T. Elvey Bldg., University of Alaska, Fairbanks, AK 99701. Article: TG-4A Water Level Recorder. Manufacturer: Annderaa Instruments, Canada. Intended Use of Article: The article is intended to be used to measure the basic water circulation parameters under arctic conditions on the Alaskan coastal shelf. The article will be lowered to the bottom of the sea from a small boat and left at the bottom and will record the needed parameters continuously at about 10 minute intervals for a length of time of at least one month. The instrument will then be recovered and the data retrieved. Later, after the ice has formed on the sea, the instrument will be replaced through a hole in the ice after access to the spot via helicopter. The instrument will be left for a period of about 8 months before it will be recovered again. Application Received by Commissioner of Customs: December 14, 1978.

Docket Number: 79-00079. Applicant: DHEW, PHS, National Institute of Dental Research, Building 30, Room B-20, 9000 Rockville Pike, Bethesda, Md. 20014. Article: Stereotaxic Frame and Micromanipulator Frame. Manufacturer: AB Transvertex, Sweden. Intended use of article: The article is intended to be used for research which involves the introduction of a fine micropipette (Tip Diameter less than 1 um) into nerve cells of the spinal cord and brain. Physiological characterization of these nerve cells will be followed by the intracellular iontophoresis of a chemical which will permit observation of the morphology of the cells studied physiologically. The objective of this research is to characterize the function and morphology of nerve cells (and the connections between them) involved in pain perception. Application received by Commissioner of Customs: December 14, 1978.

Docket Number: 79-00080. Applicant: University of Wisconsin-Madison, Laboratory of Molecular Biology, 1525 Linden Drive, Madison, Wisconsin 53706.

ARTICLE: D&M 2008 Electron Microscope and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for the following research/objectives:

(1) Electron Microscope Studies on the Structure and Replication of R plasmid DNA—which includes (a) physical mapping studies of R plasmid DNA and the isolation of R plasmid mutants which affect important plasmid genes and functional sites; (b) The regulation of R plasmid replication; (c) the structure of R plasmid DNA in both the non-replicating and replicating states and the location of R plasmid origins of replication; (d) the mechanism of segregation of plasmid DNA at cellular division and the localization and internal organization of plasmid DNA within bacterial cells.

(2) Ultrastructures of the Excitable Membranes and the Cilia or Normal and Mutants *Parnmecium*,— to understand the structural and mechanistic basis of behavior.

(3) Electron Microscope Studies on the Assembly and Function of Cytoplasmic Microtubules—to study the molecular mechanisms governing the assembly and function of microtubules.

(4) Structure and Mechanism of Assembly of the 308 Ribosome—research concerned with the development of new techniques designed to elucidate the structure, function and mechanism of assembly of the 308 ribosome from *E. coli*.

(5) Organization and Replication of Yeast Ribosomel DNA—a research program designed to (a) gain a more detailed understanding of the fine structure of the repeating units in *Saccharomyees cerevisise* ribosomal DNA, (b) examine the tramacriptional controls affecting their expression, (c) determine the arrangement of the multiple repeating units in yeast chromosomes and characterize the DNA adjacent to them, and finally (d) study the replication of chromosomes containing the ribosomal DNA.

(6) Motility, Membrances, and Mechanotransduction—to (1) investigate the mechanism of a unique type of cell motility in a protozoan, (2) study the maeromolecular structure of fluid membranes in this cell, and (3) determine the properties of a non-nervous, epithelial conducting pathway that coordinates comp blates in ctenophores.

Application received by Commissioner of Customs: December 14, 1978.

Docket Number: 79-00081. Applicant: Battelle Memorial Institute, Pacific Northwest Laboratories, P.O. Box 999, Richland, WA 99352. ARTICLE: VIW2302A1 Portable Magnetometer. Manufacturer: Varian Associates of Canada, Ltd., Canada. INTENDED USE OF ARTICLE: The article is intended to be used for research and development on methods to detect and map buried waste materials such as oil drums, pipes, steel scrap, and tools. Application received by Commissioner of Customs: December 14, 1978.

Docket Number: 79-00086. Applicant: State of Florida, Department of Citrus, Scientific Research Department, c/o University of Florida, Institute of Food and Agricultural Sciences, Agricultural Research and Education Center, P.O. Box 1088, Lake Alfred, FL 33850. ARTICLE: LKB 2127-0011 Tachophor complete, with Power Supply Unit, Analyzer Unit and accessories. Manufacturer: LKB Produkter AB, Sweden. INTENDED USE OF ARTICLE: The article is intended to be used for studies of biological molecules (including metabolites from plant tissue). Investigation will include studies on *in vitro* and/or *in vivo* reactions between molocules following increase, decrease, or absence of one or all of the reacting molocules.

The objective pursued in the course of these investigations is to understand the interrelationship between biological molecules and to correlate these changes with chemical alterations observed in organic acid levels in citrus fruit. Application received by Commissioner of Customs: December 14, 1978.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Sepps,
Director,
Statutory Import Programs Staff.

[3510-25-M]

NATIONAL RADIO ASTRONOMY OBSERVATORY, ET AL.

Applications for Duty Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230, on or before February 1, 1979.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, in Room 6886C of the Department of Commerce Building, 14th and

Constitution Avenue, N.W., Washington, D.C. 20230.

DOCKET NUMBER: 79-00074. APPLICANT: National Radio Astronomy Observatory, Post Office Box O, 1000 Bullock Blvd. NW, Socorro, New Mexico 87801. ARTICLE: 4,060 pieces TE01 Circular Waveguide and 3,900 Coupling Sleeves and accessories. MANUFACTURER: Sumitomo Electric Industries, Japan. INTENDED USE OF ARTICLES: The article is intended to be used as a part of the Very Large Array radio telescope to transmit radio wavelength radiation received from extraterrestrial objects to recording apparatus. The study of this radiation enables astronomers to study the sources of energy, origin, and evolution of the universe. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: December 14, 1978.

DOCKET NUMBER: 79-00082. APPLICANT: Battelle Memorial Institute, Pacific Northwest Division, P.O. Box 999, Richland, WA 99352. ARTICLE: Model 2192DIT Microdiffractometer with attachments for transmission method and accessories. MANUFACTURER: Rigaku, Japan. INTENDED USE OF ARTICLE: The article is intended to be used to do small area x-ray diffractions which will give structural and microstructural information on geothermal samples, fine crystalling phases, and thin films. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: December 14, 1978.

DOCKET NUMBER: 79-00083. APPLICANT: Surgical Neurology Branch, N.I.N.C.D.S., NIH, 9000 Rockville Pike, Bethesda, Maryland 20014. ARTICLE: LKB 2128-010 Ultrotome IV Ultramicrotome and accessories. MANUFACTURER: LKB Produkter AB, Sweden. INTENDED USE OF ARTICLE: The article is intended to be used to prepare cells from the central and peripheral nervous system taken from tumor and other biopsies in patients or from various animal models for study directly or after growth in vitro. Scientific problems to be studied will include:

1. The ultrastructural characteristics of gliomas and other types of brain tumors.

2. Quantitative ultrastructural surface and cytoplasmic characteristics of chromatolytic and regenerating neurons and quiescent, hypertrophic and mitotic post-injury microglia, oligodendroglia and astroglia.

3. Quantitative ultrastructural surface and cytoplasmic characteristics of arachnoidal cells under quiescent and various experimental conditions (such as subarachnoid hemorrhage and ischemic and blunt trauma), i.e. arachnoiditis.

4. Surface membrane characterization and differentiation of gliomas and other brain tumors.

5. Analysis of lectin and other receptor movement after alterations of membrane fluidity and cytoskeletal organization; surface and cytoplasmic events in transformation as well as nerve regeneration.

6. Quantitative analysis of fine structural changes in glioma cells after treatment with various chemotherapeutic agents such as CCNU, BCNU, phentoin, procarbazine, methotrexate (TEM with quantitative image analysis).

7. Quantitation of elemental content of neuronal and glial cell surfaces and cytoplasmic regions as organelles for elements ranging from Be to U or Na to U by wave dispersive and/or energy dispersive X-ray spectroscopy.

8. Examination of freeze fracture and replica surface specimens.

9. The determination of molecular and supramolecular structure of intact and isolated proteins and/or protein complexes.

Post-doctoral fellows as well as medical students and neurological and neurosurgical residents will be trained to use the instrument as part of the research training in the laboratories. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: December 14, 1978.

DOCKET NUMBER: 79-00085. APPLICANT: University of Texas at Austin, Humanities Research Center, P.O. Box 7219, Austin, Texas 78712. ARTICLE: Prismascope. MANUFACTURER: Scolar Press Ltd., United Kingdom. INTENDED USE OF ARTICLE: The article is intended to be used as an attachment on a camera to provide a flat, undistorted, evenly illuminated image of the book page (of old and rare books) on which it is focused when the page is not opened out flat. APPLICATION RECEIVED: BY COMMISSIONER OF CUSTOMS: December 14, 1978.

DOCKET NUMBER: 79-00087. APPLICANT: Frederick Cancer Research Center, P.O. Box B, Frederick, Maryland 21701. ARTICLE: LKB 2128-010/ Ultrotome IV Ultramicrotome and accessories. MANUFACTURER: LKB Produkter AB, Sweden. INTENDED USE OF ARTICLE: The article is intended to be used for light microscopic and ultrastructural studies on normal and pathologic human and animal tissues as well as of normal and transformed cells and tissues in culture. Other investigations will include histochemical and ultrahistochemical studies to localize enzymes and subcellular organelles and morphometric examinations to study the changes in sizes and distribution of subcellular organelles as well as of autoradiography to localize the subcellular distribution of cancer inducing chemicals. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: December 14, 1978.

DOCKET NUMBER: 79-00088. APPLICANT: Carnegie-Mellon University—Dept. of Metallurgy and Materials Science, Schenley Park, Pittsburgh, PA 15213. ARTICLE: JEM 100CX-Temscan Electron Microscope, and accessories. MANUFACTURER: JEOL Ltd., Japan. INTENDED USE OF ARTICLE: The article is intended to be used for conducting varied research projects which will include the following investigations:

1. Microstructural methods for controlling Fatigue Crack Growth in *B*-Ti Alloys.

2. The effect of Composition and Microstructure on the Low Cycle Fatigue Life of α and near-α Ti Alloys.

3. Analysis of Local Stresses and Strains in Ti-Welds.

4. Relationships Between Structure and roughness in Ultra-High Strength Aluminum alloys.

5. Direct Observation of Interfacial Microstructure.

6. Ordering in Ni-Based Binary Systems.

7. The Role of Hydrogen in the Stress Corrosion Cracking of High Strength Aluminum Alloys.

8. Mechanisms of Hydrogen Cracking in Structural Materials.

9. An Investigation on the use of Metallurgical Variable and Surface Properties to Control Hydrogen Embrittlement of Steel.

10. Relationships Between Gain Boundary Structure and Migration Kinetics by Means of TEM.

11. Studies of Interfacial Reactions in Dissimilar Metallic Thin Films.

12. Cell Biology Studies.

In addition, the article will be used in the course 27-763 Electron Optical Methods of Materials Characterization to teach standard techniques in Tem, Stem and Sem to a level of competence that the student may use these techniques in his research projects. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: December 14, 1978.

DOCKET NUMBER: 79-00089. APPLICANT: The Buffalo General Hospital, 100 High Street, Buffalo, New York 14203. ARTICLE: Uro-dynamic's Amplifier, Calibrator and Withdrawal. MANUFACTURER: Vingmed, Norway. INTENDED USE OF ARTICLE: The article is intended to be used for the study of female-stress urinary inconvenience. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: December 14, 1978.

DOCKET NUMBER: 79-00090. APPLICANT: The Regents of the University of California, San Diego, University of California Medical Center, 225 Dickinson Street, San Diego, Calif.

92103. ARTICLE: LKB 2088 Ultrotome V Ultramicrotome and the LKB Histoknifemaker 2078 and accessories. MANUFACTURER: LKB Produkter AB, Sweden. INTENDED USE OF ARTICLE: The article is intended to be used to prepare specimens for long-term studies of the pathology of alloxan diabetes in rats and, in particular, the glomerular basement thickening in rats with long-term alloxan diabetes. APPLICATION RECEIVED BY COMMISSIONER OF CUSTOMS: December 14, 1978.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 79-1077 Filed 1-11-79; 8:45 am]

[3510-25-M]

YALE UNIVERSITY

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

DOCKET NUMBER: 77-00018. APPLICANT: Yale University, Purchasing Department, 260 Whitney Avenue, New Haven, CT 06520. ARTICLE: Gas Chromatograph-Mass Spectrometer, Model MAT 111 and accessories. MANUFACTURER: Varian MAT, West Germany. INTENDED USE OF ARTICLE: The article is intended to be used for the study of metabolities in the blood and urine from patients with metabolic disease and from control subjects. The materials analyzed will be complex mixtures of compounds extracted from blood or urine. The objectives of the investigations that will require use of the article are threefold: 1) to detect and characterize metabolic disorders which have not yet been described; 2) to establish the diagnosis of known diseases in new patients; 3) to study such disorders, both known and newly discovered, in greater detail in order to gain insight into their biochemical origins and implications.

COMMENTS: No comments have been received with respect to this application. A letter postmarked December 15, 1976 was received from Nuclide Corporation (Nuclide) which stated among other things that either its Model 6-60-G or its Model 12-90-G, when combined with a suitable gas chromatograph (GC), can meet all the applicant's requirements and that there is no basis for duty-free entry. This letter, which was received after expiration of the period for comment, was treated as an offer to provide additional information in accordance with Subsection 301.10 of the regulations 15 C.F.R. 301.10(1978). DECISION: Application denied. An instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the article was ordered (May 31, 1973). REASONS: This application is a resubmission of Docket Numbers 74-00018-01-11000, 74-00314-01-11000, and 75-00214-01-11000 which were denied without prejudice to resubmission (DWOP) on November 2, 1973, August 7, 1974, and July 16, 1976, respectively, for informational deficiencies. The applicant states in response to Question 8 that a combination of several features of the foreign article alleged to be pertinent to its intended use is not incorporated into any domestic instrument. However, the National Bureau of Standards (NBS) advises in memorandum dated December 3, 1977 and August 9, 1978, that the applicant's needs, as described in response to question 7, can be met with either the 6-60-G or the 12-90-G fitted for gas chromatography/mass spectrometry (GC/MS). A discussion of each of the features alleged to be pertinent follows:

MAGNETIC ANALYZER

The applicant acknowledges, and specifications confirm, that the Model 12-90-G and the Model 21-490B (manufactured by E. I. DuPont De Nemours and Company Inc.), Instrument Products Division (DuPont) provide magnetic mass analyzers. Further, NBS advises, and specifications conform, that both the domestic 6-60-G and 12-90-G provide magnetic mass analyzers. The Department notes that the applicant's statement of an unmatched requirement for magnetic analyzers is not intended to apply to the 6-60-G, 12-90-G or 21-490B (which operate on the same principle as the foreign article) but rather to mass spectrometers with other types of analyzers such as quadrupole mass spectrometers. Quadrupoles have frequently been used for purposes similar to those described by the applicant and the applicant has not provided enough information (e.g., on required accuracy) to establish their inadequacy for the intended use of the article. However, it will not be necessary to determine whether a quadrupole instrument can meet the applicant's needs since domestic instruments with magnetic analyzers have been found scientifically equivalent to the foreign article for the applicant's intended research program.

MASS RANGE

The applicant claims a requirement for a mass range of one to 1000 with 10% valley resolution of 1000 at scan speed of 330 masses/second linear with constant sensitivity over the entire mass range. However, no claim is made by the applicant that this specification is not matched in the Model 6-60-G, 12-90-G or 21-490B. In fact, the applicant indicates correctly that difficulties in meeting the above mass range specification apply only to quadrupole mass spectrometers and similar instruments such as the "dodecapole". As part of the comparison of magnetic versus quadrupole analyzers in the second and third submissions (Docket Numbers 74-00314-01-11000 and 75-00214-01-11000), the applicant states that magnetic analyzers provide constant sensitivity over the entire mass range and, in the table summarizing the response to question 8 of the third and fourth submissions (Docket Numbers 75-00214-01-11000 and 77-00018), the applicant indicates that both the 21-490B and the 12-90-G match the article with respect to the mass range feature given above. This summation is in agreement with specifications of the 6-60-G, 12-90-G and 21-490B which indicate that each of these magnetic analyzer systems equipped with available options could provide a mass range greater than 1-1000, scan speeds above and below 330 masses/second and 10% valley resolution above 1000. Accordingly, the Department concurs with NBS's advice that both the 6-60-G and the 12-90-G match the complete mass range specification of the foreign article.

DUTY CYCLE

Duty cycle is defined by the applicant as the sum of the time required for the mass scan plus the time required before another mass scan can be initiated. The applicant explains that with magnetic instruments time is required to reset the magnet from the end mass of the scan to the starting mass. The applicant claims a requirement for a duty cycle in a cyclic exponential model of less than 1.25 seconds for one mass decade (sec/dec) or less than 2.25 second for two mass decades (sec/2 dec). In comparing the foreign article with domestic instruments, the applicant recognizes that the DuPont 21-490B and the Nuclide 12-90-G can provide scan rates fast enough for a single scan and that this

scan rate is acceptable for analysis of the sharp gas chromatography (GC) peaks produced with capillary columns but claims that the article has a reset time of 0.25 seconds while the DuPont instrument has a 8 second reset time (i.e., a 10 sec/2 dec duty cycle) and the Nuclide instrument "also has a relatively long reset time." The applicant further claims that the shorter duty cycle of the article will permit more scans per GC peak than its domestic counterparts, in order to yield better results and eliminate statistical error in the analysis of the overlapping peaks expected in the determination of stable isotope enrichment in the analysis or urinary metabolites from precursors labeled with such isotopes. The applicant states that each peak of urinary metabolite is usually eluted within 35 seconds permitting only three scans with the 21-490B as opposed to 15 for the foreign article.

Although the applicant claimed the need for fast mass scan and reset in the initial submission (Docket Number 74-00018-01-11000), the duty cycle values of 1.24 sec/dec and 2.24 sec/2 dec (scan rate of 1 sec/dec or 2 sec/2 dec plus reset time of 0.25 seconds) were not provided until the third submission (Docket Number 75-00214-01011000). The applicant's need for these duty cycle values, which were not guaranteed by the manufacturer of the foreign article at the time of order but were obtained experimentally under unknown conditions in the applicant's laboratory, was restated in this fourth submission. Recognizing the experimental nature of the applicant's duty cycle values as extending far beyond manufacturer's guaranteed performance specifications, NBS advised that (1) the fine tuning of a specific instrument to attain a performance greater than that guaranteed or specified by the [foreign] manufacturer does not rule out this same possibility with instruments of domestic manufacture which, when given the same degree of tuning, may give an even better performance than that of the foreign article; (2) although the duty cycle attained by the applicant is a pertinent specification for analysis of individual components in small, very sharp peaks, the greater sensitivity of the Nuclide instrument would have the advantage in this respect; and (3) the performance attainable or guaranteed by the domestically manufactured instruments of the Nuclide Corporation is equivalent or exceeds that of the foreign article for the applicant's intended use. The ability of both DuPont and Nuclide to meet the applicant's duty cycle requirement will be discussed below.

In comments dated March 22, 1974 and January 9, 1975 (relating to the applicant's second and third submissions, Docket Numbers 74-00314-01-11000 and 75-00214-01-11000, DuPont claimed that its duty cycle is 4 sec/2 dec, not 10 sec/2 dec as alleged by the applicant. While 4 sec/2 dec is longer than the duty cycle attained with the foreign article (2.25 sec/2 dec), it is still fast enough to permit a reasonable number of scans of the 35 second GC peaks described above (i.e., almost 9 scans). This number of scans appears adequate considering the applicant's stated need to run a large number of samples daily (e.g., in response to question 8.c.(3) of Docket Numbers 74-00018-01-11000, 74-00314-01-11000 and 75-00214-01-11000) which would be difficult to accomplish if a very large number of scans per peak were performed. Nuclide provides as a standard feature with its Model 12-90-G, the Model MR-13 magnetic regulator and power supply. The MR-13 system, which was available at the time the foreign article was ordered, is designed to operate the magnet of either the 12-90-G or the 6-60-G in those applications requiring rapid scanning. The 12-90-G equipped with a power supply such as the MR-13 is capable of meeting or exceeding the applicant's duty cycle needs in at least two ways. The applicant needs can be met through a undirectional exponential scan. In this mode, measurements made with the 12-90-G over the mass range of 10-1000 indicate that this instrument has duty cycles of 2.7 sec/2 dec (scan time 2.2 seconds and reset 0.5 seconds) at an ion acceleration of 4480 volts (V), 1.5 sec/2 dec (scan time 1.1 seconds and reset 0.4 seconds) at 1000 V and 1.0 sec/2 dec (scan time 0.7 seconds and reset 0.3 seconds) at 500 V. Even faster scan rates should be possible using less massive magnets such as in the 6-60-G. Further, since lowering the ion acceleration, which determines the magnet field range required, also lowers the minimum feasible scan time and reset time for magnetic scanning, Nuclide's ability to vary continously voltage down to 100 V is advantageous. The accelerating voltage of the foreign article is not listed in its specifications but the manufacturer of the article has informed the Department that this voltage is normally fixed at 820 V but can be lowered approximately 30% for multiple ion selection. The applicant's needs can also be met with mirror image scanning which is more efficient than unidirectional scanning since there is essentially no lost time in the duty cycle and the maximum duty cycle of the 12-90-G in this mode should be in the vicinity of 1.7 sec/2 dec (exponential scan) at 5000 V.

In view of the above, the Department finds that with respect to duty cycle the Nuclide Models 12-90-G, 6-60-G are, and almost certainly the DuPont Model 21-490G is scientifically equivalent to the foreign article for the applicant's intended purposes.

SLIT SEPARATOR

The applicant terms the device that separates GC eluants* from carrier gas prior to introduction into MS, the "Separator", and consistently alleges that the article's variable slit type separator is pertinent to the uses described in reply to question 7 because it allows variation of flow into the MS without changing source conditions or breaking the vacuum. But, after it became clear to the applicant that the original specific reasons for needing the capabilities of the article's separator could not justify duty-free entry, these reasons changed considerably.

At the outset (Docket Number 74-00018-01-11000) the applicant's statements relating to the need for the article's separator were, in essence, as follows:

1. No separator for the applicant's planned work should discriminate, by chemical characteristics, the compounds which are separated by GC as does the "Membrane separator." In this separator, permeability through the membrane differs greatly from compound to compound. Hewlett-Packard Company's (HP) model 5930A has a membrane separator.

2. Because the number of samples to be analyzed is very large the separator must be durable. The fine glass nozzle [i.e., glass jet] type of separator "works well for separation" but "may" not be suitable for the intended work where frequent use is required. Finnigan Corporation's (Finnigan) has a glass jet separator. It also causes clogging sometimes. In contrast, the article's slit separator is simpler in structure and easily adjustable.

3. In the ordinary preliminary GC separation a packed column with fairly large carrier gas flow will be used. For better separation of the metabolites to be analyzed a capillary column with very small flow must be used. The article's slit separator can be optimally adjusted to either packed or capillary columns but glass jet separators, such as found in Finnigan's 1015 and DuPont's 490, are not suitable for use at the low rate of flow of capillary columns. In the case of jet separators "Scavenger gas," which significantly reduces the efficiency of the GC/MS system, is added to make up gas flow rate.

Both DuPont and Finnigan, in letters dated August 13, 1978 commented on the initial application (Docket Number 74-00018-01-11000) and supported their comments adequately with manufacturer's literature. In this

* Elution is a process for extracting (eluting) a solid substance (the eluant) from a mixture of solids with a liquid or gas.

and subsequent submissions, DuPont forwarded its comments directly to the applicant and the essence of Finnigan's claims were provided to the applicant in the DWOP DuPont claimed that it offers either metal or glass separators and pointed out that performance of a metal separator will be poor at low concentrations of most of the applicant's samples due to catalytic decomposition at metal surfaces. DuPont also pointed out that it offers differential pumping and a capillary inlet which permits introduction of at least 5 ml/minute of column effluent directly into the MS, that its system is more sensitive than the article and that it does not use "scavenger gas." Finnigan claimed that the up-time and sample throughput of its system far exceed that of the article, that the capillary column can be coupled directly with its MS without a separator, that its scan rate is far superior to that of the article and of definite advantage in good capillary column performance and finally that, unlike the glass jet, the hot metal surface of the article's separator will degrade labile compounds such as metabolites. After reviewing the application and these comments HEW in its memorandum of October 5, 1973 advised that domestic instruments comparable to the article such as the 1015 or the 21-490B are not clearly shown to be scientifically inadequate for the planned work. HEW further pointed out that a superiority of slit versus jet separators is not proven or documented and that scavenging gas use is not shown actually to reduce jet separator efficiency. A copy of HEW's memorandum was forwarded to the applicant as part of the DWOP of the initial application on November 2, 1973. The DWOP also pointed out that neither DuPont nor Nuclide instruments have been shown to be incapable of operating with capillary columns. *In the second submission* (Docket Number 74-00314-01-11000) the applicant repeated some of the allegations made at the outset and added in summary the following:

1. Adjustment of the article's slit separator can change the fraction of GC effluent admitted to the MS ion source during the course of a GC run. Once the retention time of a minor component of interest is known, a larger sample may be injected into the GC. The separator may be opened and most of the major components of GC effluent may be pumped away to prevent contamination of the ion source or analyzer without preventing continuous monitoring of these major components which may be detected even when little effluent enters the source. When the minor component of interest is about to emerge from the GC, the separator may be closed somewhat and the desired source housing pressure attained for recording the spectrum. In addition, this same technique allows one to avoid the dangers posed by introducing a large amount of the sample's solvent into the source.

2. The article's separator allows the use of any carrier gas flow rate between 1 milliliter per minute (ml/min) and 100, ml/min with maintenance of source housing pressure at any desired value over this range. Since fragmentation patterns in mass spectra is crucially dependent on source pressure, a mass spectrum of an unknown cannot be reliably compared to that of a reference compound unless the two were recorded at the same source pressure.

3. The variable slit separator, which operates at its highest efficiency at the low flow rates of capillary columns, is much more suitable than separators of domestic instruments for use with capillary columns. The differential pumping technique, which involves direct connection of the capillary column to the ion source resulting in operation at relatively high source pressure, is unacceptable because the spectrum attained could not be compared with reference spectra attained under low source pressure.

DuPont in its letter of March 24, 1974 and Finnigan in its letter of March 25, 1974 commented on the second submission. In brief, DuPont's rebuttal of the applicant's second submission allegations were as follows:

1. The contamination problem stated by the applicant to occur when a sufficiently large sample is introduced to permit detection of minor components does not exist in the 21-490B. The article does not have differential pumping, which severely limits sample introduction rate and results in instrument contamination, particularly in GC application. The 21-490B with differential pumping accepts 5 ml/min of helium without loss of performance or increased contamination. Both the jet system and the direct capillary inlet are connected in parallel and no shut down or venting is required when changing between capillary and packed column.

2. Fragmentation patterns of the 21-490B are completely independent of sample introduction rate up to 5 ml/min, and should be independent of source pressure in any properly designed MS. Furthermore, the much greater sensitivity (25-fold greater) of the 21-490B largely alleviates the necessity to use such large samples to detect minor components.

Finnigan's rebuttal is summed up as follows:

1. The article's slit separator is very difficult to reset reproducibly.

2. The use of the slit separator for capillary column is in an illusory advantage since no separator needs to be used with capillary column GC.

3. The concern for high source pressure is also illusory. A properly designed MS with good conductance and a sufficient pumping capacity does not have this problem.

In its memorandum of June 6, 1974, HEW advised that it believed comments by DuPont and Finnigan were valid. In the DWOP of Docket Number 74-00314-01-11000 the applicant was informed that domestic instruments of Nuclide, Finnigan and DuPont were not shown to be inadequate for the intended use of the article.

In the *third submission* (Docket Number 75-00214-01-11000) the applicant, among other things, alleged:

1. For the purposes described in response to question 7, the article has been utilized at flow rates from 6 ml/min to 80 ml/min for packed columns. The article's separator can handle 1-100 ml/min with maximum results over the entire range while maintaining constant flow into the MS.

2. Jet separators give poor yields at low GC flow rates and porous-type effusion separators can be optimized for only one set of flow conditions.

3. The yield of the slit separator is highest at low flow rates.

4. The article's separator can be opened with solvent emerges from the GC, then accurately reset to a desired flow rate avoiding contamination of the ion source with large amounts of solvent. Suppression of the solvent peak is especially important when analyzing trimelthysilyl-derivatives because an excess of trimethylsilation agent is present.

5. The article's separator allows changing of packed columns without seriously affecting vacuum in the MS with a saving of time, allowing analysis of more samples in a given period of time. [According to the applicant's reply to question 7 of the second submission several specimens from patients (each requiring 1-2 hours) are to be analyzed daily].

6. The article's separator is gold plated and treated to enhance inertness. While gold does not prevent decomposition of labile samples as well as glass, data on the decomposition of cholesterol indicates that it gives better results than steel and gold is more rugged mechanically than glass.

DuPont, in comments dated January 9, 1975 countered in essence with the following:

1. Yield from the jet separator has been confirmed experimentally to be 80-90% at 10 ml/min (the lowest flow normally used in packed column work). Such yields are theoretically possible even at 1-2 ml/min. with the DuPont capillary column system discussed in prior comments yield is 100% up to 5 ml/min. Yield of the article's

separator is 3% at 80 ml/min to 30% at 10 ml/min.

2. The need to vent or partially vent solvent may be a problem with the non-differentially pumped article but users of the 21-490B run large numbers of samples in all types of solvents, including silylated samples without the need for frequent cleaning. Further, DuPont can provide a metal or all-glass system for venting solvent peaks, for those users who feel that this capability is essential.

3. With DuPont's system, columns are changed without affecting vacuum of the MS, and without introducing air into the MS or jet separator.

4. DuPont feels that the comparison of gold separators and glass separators with respect to decomposition would favor glass separators even more if more sensitive compounds than cholesterol were studied.

After reviewing the complete record NBS advised in its memorandum dated May 26, 1976, that the choice of a separator system is not pertinent to achievement of the applicant's ends which can be accomplished equally well with jet separators or with a high speed differential pumping system requiring no separator.

A copy of NBS's memorandum was forwarded to the applicant as part of the DWOP

In this fourth submission (Docket Number 77-00018) the applicant referred to discussion in prior submissions relating to the claimed superiority of the slit-separators and high speed differential pumping and then emphasized the article's utility for suppressing solvent as well as major component peaks. The applicant also reiterated some of the allegations already discussed. Thus, the issues to be resolved in this fourth submission are as follows:

1. Suppressing the solvent peak by opening briefly the slit eliminates contamination of the ion source by large or undesirable amounts of solvent which would result in ionization chiefly of solvent *even* when a sample elutes on the solvent *shoulder*. Using this technique permits analysis of samples whose concentration is only 10 to 100 parts per million (ppm) of solvent concentration.

2. Suppression is an invaluable aid in obtaining mass spectra of a relatively minute amount of sample eluting slightly after a considerably greater quantity of sample because the variable slit separator *instantaneously* allows control of the quantity of sample entering the ion source to eliminate flooding.

3. The article can handle a range of flow rates from 1 ml/min to 100 ml/min with maximum results over the entire range while maintaining constant flow into the MS.

4. Jet separators give poor yields at low GC flow rates. Porous-type effusion separators can be optimized for only one set of flow conditions. At widely varying flow rates, the yield of such separators is reduced considerably. The variable slit separator permits optimal MS results while operating under optimal GC conditions.

5. The article's separator makes the use of capillary columns possible since its yield is highest at low flow rates.

These issues differ substantially from those raised initially (Docket Number 74-00018-01-11000) and their presentation from the second submission forward appears to exceed the intent of the DWOP procedure, a mechanism which permits correction of deficiencies that fall within the scope and context of those described to the applicant in writing.

Moreover, all of the applicant's fourth submission allegations were considered in prior submissions and were shown to be without merit. DuPont and Finnigan in their comments have clearly shown that domestic instruments meet the applicant's needs including those emphasized in this fourth submission. Nuclide's instruments have capabilities similar to DuPont's. Further discussion of the issues emphasized in this fourth submission follows.

Suppression of Peaks

1. The foreign manufacturer's literature states that flow though the slit of the article's separator is molecular, mainly the lighter carrier gas [not higher molecular weight solvent] escapes, so that the high molecular [weight] sample, the chromatographed peak, is enriched in the annular channel. The literature further states that there is a possibility [not a capability] of suppressing the solvent peak without disturbing recording. Although the claim is made that suppression of solvent peak facilitates analysis of the sample, whose concentration is perhaps only 10 to 100 ppm of the solvent concentration, no mention is made of suppression of either solvent or sample peak to favor a shoulder peak of interest and no examples of such an analysis are shown. The Department notes that the foreign manufacturer has no actual responsibility with respect to suppression of peaks and finds that this possibility does not have the force of a guaranteed specification which, in accordance with Subsection 301.11(a) of the regulations, are considered in duty-free entry deliberations.

2. DuPont has stated that an instrument with high speed differential pumping and high sensitivity (25 times that of the article) does not have the problem with contamination of the source or the need to vent or partially vent solvents experienced in the article. Nuclide's 6-60-G and 12-90-G have high speed differential pumping systems and high sensitivity. Should a customer desire to vent or partially vent solvent peaks, valving systems for that purpose are available from both DuPont and Nuclide. Such valving systems are amenable to continuous recording. GC technicians have used the technique of partial venting and continuous recording for at least 10 years. Nuclide has published GC/MS chromatograms showing that solvent peak can be completely vented with a resultant enhancement of a shoulder peak and, since the unrecorded solvent was already known, no loss of significant data. Prior knowledge of solvent, and retention time of large peaks and shoulder peaks is required to use the suppression technique and such knowledge can be gained from the preliminary run which the applicant performs (or from the literature). Other recognized techniques, in addition to those already have utility in particular situations. For example, effluent splitting, pattern venting, changing columns and solvents after a preliminary run, turning off the ionizing beam temporarily to prevent solvent detection and multiple ion detection can be used.

Range of Flow Rates

DuPont, in its comments, has shown that its glass jet separator (either alone or in combination with direct capillary inlet) compares favorably with the article with respect to efficiency over the range of flow rates utilized by the applicant (6 to 80 ml/min). Nuclide's 6-60-G and 12-90-G (both in GC/MS mode) provides capabilities for high speed differential pumping, direct introduction of GC effluent, porous glass frit (Watson-Biemen) separators and other separators. NBS advises that the applicant has not shown that the Watson-Biemen separator (which Nuclide states in its literature is quite general in its applicability, can be used with a wide variety of GC and column gas flow rates, and can handle flow rates of over 60 ml/min.) is less efficient than the article's separator over any given range. Further, Nuclide's high speed differential pumping system needs no separator at all. NBS advises that this system is capable of providing yields of 100% to at least 10 ml/min down to 20% at 150 ml/min., i.e., greater yields than the foreign article (70% at 1 ml/min, 30% at 10 ml/min and 7% at 60 ml/min). The Department notes that a splitter valve is used with carrier gas flow rates above 10 ml/min to provide constant flow into the MS without changing source conditions or breaking vacuum.

LOW-GC FLOW RATES

In the discussion of "Range of Flow Rates" it is shown that domestic separators (jet or porous frit) can be used under a variety of conditions. Further, with DuPont, Finnigan or Nuclide systems no separator is needed at low GC flow rates. Without a separator, yield is 100%.

CAPILLARY COLUMNS

Discussion above clearly indicates that domestic systems can provide more than adequate yields at capillary column flow rates. Nuclide specifications show mass scans obtained from a GC with a capillary column interfaced to the 12-90-G through a glass frit separator.

CONCLUSION

In conclusion it is noted that NBS advises that the methods of separation of carrier gas available from domestic manufacturers such as the glass jet, the porous frit and direct introduction of GC effluent into the MS are scientifically equivalent alternate methods of satisfying the applicant's requirements. In view of the above discussion including consideration of prior submissions, the Department finds that the domestic instruments and the article are scientifically equivalent with respect to flow rates.

It is important to note that the applicant has drawn conclusions about the capabilities and features available from domestic manufacturers without affording these manufacturers an opportunity to bid an instrument appropriate to the planned work.

Based on the foregoing discussion, NBS advice, our own review of the application and factual information in our possession (specifications, textbooks etc), we find that Nuclide 12-90-G or 6-60-G in the GC/MS mode was of equivalent scientific value to the foreign article for such purposes as this article is intended to be used at the time the article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 79-1078 Filed 1-11-79; 8:45 am]

[3510-15-M]

[Docket No. S-633]

APPLICATION BY GULF OIL CORP.

Participation by Vessel Built With Construction-Differential Subsidy in the Carriage of Alaskan Oil in the Domestic Trade

Notice is hereby given that Gulf Oil Corporation has filed an application for written permission under section 506 of the Merchant Marine Act, 1936, as amended (the Act), for its vessel, the SS AMERICAN SPIRIT, to make one voyage in the Alaska/Panama oil trade.

The AMERICAN SPIRIT is a VLCC of 262,376 DWT, built with construction-differential subsidy. The AMERICAN SPIRIT is to commence the requested single voyage in the Alaska/Panama oil trade on or about February 5, 1979, under charter to Sohio Natural Resources Company, as a replacement vessel for the SS STUYVESANT, a VLCC which suffered an engine breakdown. The voyage would be made in accordance with the provisions of section 506 of the Act and the regulations set forth in Part 250 of Chapter II, Title 46, of the Code of Federal Regulations.

Interested parties may inspect the application in the Office of the Secretary, Maritime Administration, Room 3099-B, Department of Commerce Building, 14th and E Streets NW., Washington, D.C. 20230.

Any person, firm, or corporation who is a "competitor," as defined in section 250.2 of the regulations as set forth in Part 250 of Chapter II Title 46 of the Code of Federal Regulations published in the FEDERAL REGISTER issue of June 29, 1977 (42 F.R. 33035), and desires to protest such application should submit such protest in writing, in triplicate, to the Secretary, Maritime Administration, Washington, D.C. 20230. Protests must be received within five working days after the date of publication of this Notice in the FEDERAL REGISTER. If a protest is received, the applicant will be advised of such protest by telephone or telegram and will be allowed three working days to respond in a manner acceptable to the Assistant Secretary for Maritime Affairs. Within five working days after the due date for the applicant's response, the Assistant Secretary will advise the applicant, as well as those submitting protests of the action taken, with a concise written explanation of such action. If no protest is received concerning the application, the Assistant Secretary will take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistant Program No. 11.500 Construction-Differential Subsidies (CDS).)

By Order of the Assistant Secretary for Maritime Affairs.

Dated: January 9, 1979.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 79-1260 Filed 1-11-79; 8:45 am]

[3510-22-M]

National Oceanic and Atmospheric Administration

NEW ENGLAND FISHERY MANAGEMENT COUNCIL'S SCIENTIFIC AND STATISTICAL COMMITTEE

Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Scientific and Statistical Committee of the New England Fishery Management Council, established under Section 302(g) of the Fishery Conservation and Management Act of 1976 (Public Law 94-265), will meet to discuss: (1) Lobster plan scientific needs; (2) Silver Hake; and (3) Other Business.

DATES: The meeting will convene on Tuesday, January 30, 1979, at approximately 10:00 a.m. and adjourn at approximately 5:00 p.m.

ADDRESS: The meeting will take place at the Holiday Inn, Junction of Routes 1 and 128, Peabody, Massachusetts.

FOR FURTHER INFORMATION CONTACT:

Spencer Apollonio, Executive Director, New England Fishery Management Council, Peabody Office Building, One Newbury Street, Peabody, Massachusetts 01960, Telephone: (617) 535-5450.

SUPPLEMENTARY INFORMATION: For information on seating arrangements, changes to the agenda, and/or written comments, contact the Executive Director.

Dated: January 9, 1979.

WINFRED H. MEIBOHM,
Acting Executive Director, National Marine Fisheries Service.

[FR Doc. 79-1259 Filed 1-11-79; 8:45 am]

[3510-04-M]

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U. S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents & Trademarks, Washington, DC 20231, for $.50 each. Requests for copies of patents must include the patent number.

Copies of the patent applications can be purchased from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $4.00 ($8.00 outside North American Continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, 1900 HALF STREET SW., WASHINGTON, D.C. 20324.

Patent Application 826,222: Method for the Preparation of 1-Alkyl Pyridinium Chlorides; filed August 19, 1977.

Patent Application 926,359: A Self-Aligned Process for Fabricating Radiation Hard CMOS/SOS Devices; filed July 20, 1978.

Patent Application 926,360: Electret Charge Technique; filed July 20, 1978.

Patent Application 926,361: Arm Restraint System; filed July 20, 1978.

Patent Application 929,468: Apparatus for, and Method of, Recording and Viewing Laser-made Images on High Gain Retroreflective Sheeting; filed July 31, 1978.

Patent Application 929,470: Procedure for the Synthesis of Stoichiometric Proportioned Indium Phosphide; filed July 31, 1978.

Patent Application 932,814: Non-Combustible High Temperature Abradable Seal Material; filed August 10, 1978.

Patent Application 932,815: A Balanced Input Zero Differential Detector; filed August 10, 1978.

Patent 4,090,684: Stowable Airfoil Structure; filed April 18, 1977; patented May 23, 1978; not available NTIS.

Patent 4,091,279: Method and Means for Equalizing the Sensitivity of a Multi-Element Sensor Array; filed March 23, 1976; patented May 23, 1978; not available NTIS.

Patent 4,095,289: Air Ventilation Apparatus for Flight Helmet; filed August 31, 1976; patented June 20, 1978; not available NTIS.

Patent 4,095,614: Liquid Level Control System; filed November 5, 1976; patented June 20, 1978; not available NTIS.

Patent 4,095,899: Apparatus for Double-Beaming in Fourier Spectroscopy; filed March 1, 1976; patented June 20, 1978; not available NTIS.

Patent 4,097,388: Linear Fluorinated Polyether Lubricant Compositions Containing Perfluoroalkylether Substituted Phosphines; filed October 12, 1976; patented June 27, 1978; not available NTIS.

Patent 4,097,827: Constant Impedance, Constant Phase PIN Diode with Attenuator; filed February 4, 1977; patented June 27, 1978; not available NTIS.

Patent 4,097,866: Multilevel Sidelobe Canceller; filed February 10, 1977; patented June 27, 1978; not available NTIS.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217.

Patent application 902,196: Axisymmetric Stabilized Liner Implosion System; filed May 2, 1978.

Patent application 910,544: Pressure Probe for Safety-Arming Device; filed May 24, 1978.

Patent application 920,088: Fiber Optic Acoustic Sensor; filed June 28, 1978.

Patent application 921,527: Liquid Propellant Gun; filed July 3, 1978.

Patent 4,053,867: Acoustic Hologram Reconstructor Using Surface Acoustic Wave Devices; filed December 22, 1975; patented October 11, 1977; not available NTIS.

Patent 4,067,016: Dual Notched/Diagonally Fed Electric Microstrip Dipole Antennas; filed November 10, 1976; patented January 3, 1978; not available NTIS.

Patent 4,069,483: Coupled Fed Magnetic Microstrip Dipole Antenna; filed November 10, 1976; patented January 17, 1978; not available NTIS.

Patent 4,072,951: Notch Fed Twin Electric Microstrip Dipole Antennas; filed November 10, 1976; patented February 7, 1978; not available NTIS.

Patent 4,074,270: Multiple Frequency Microstrip Antenna Assembly; filed August 9, 1976; patented February 14, 1978; not available NTIS.

Patent 4,078,237: Offset Fed Magnetic Microstrip Dipole Antenna; filed November 10, 1976; patented March 7, 1978; not available NTIS.

Patent 4,087,061: Wide Angle Seeker; filed May 8, 1972; patented May 2, 1978; not available NTIS.

Patent 4,088,969: Tapped Surface Acoustic Wave Delay Line; filed April 19, 1977; patented May 9, 1978; not available NTIS.

Patent 4,089,000: High Altitude Pulse Doppler Fuze; filed November 20, 1970; patented May 9, 1978; not available NTIS.

Patent 4,090,168: Solid Filled Vitration Isolation Module for a Towed Sonar Array; filed May 17, 1977; patented May 16, 1978; not available NTIS.

Patent 4,090,197: Monopulse, Fan-Beam, Search-Radar System with Improved Height and Azimuth Determination; filed May 24, 1977; patented May 16, 1978; not available NTIS.

Patent 4,090,458: Pressure Responsive Fluid Bag Ejector; filed April 27, 1970; patented May 23, 1978; not available NTIS.

Patent 4,091,734: Aircraft to Weapon Fuze Communication Link; filed February 22, 1977; patented May 30, 1978; not available NTIS.

Patent 4,092,621: Thin Foil Pulse Transformer Coil for Reducing Distributed and Leakage Inductance; filed November 18, 1976; patented May 30, 1978; not available NTIS.

Patent 4,092,898: Shock-Excursion Apparatus for Retracting the Umbilical Plug of a Missile; filed April 25, 1977; patented June 6, 1978; not available NTIS.

Patent 4,092,947: Oil Level Indicator for Use with Damping Fluid Metering Pins; filed October 6, 1977; patented June 6, 1978; not available NTIS.

Patent 4,093,428: Gas/Liquid Separator; filed April 12, 1977; patented June 6, 1978; not available NTIS.

Patent 4,095,527: Specialized Detonator Firing Circuit; filed September 15, 1964; patented June 20, 1978; not available NTIS.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsels for Patent Matters, NASA Code GP-2, Washington, D.C. 20546.

Patent application 935,811: Belt for Coupling Driven Members; filed August 22, 1978.

Patent application 938,582: A Floating Nut Retention System; filed August 31, 1978.

Patent application 940,688: Fibrous Refractory Composite Insulation; filed September 8, 1978.

Patent application 940,689: Dual Acting Slit Control Mechanism; filed September 8, 1978.

Patent application 941,711: Cork-Resin Ablative Insulation for Complex Surfaces and Method for Applying the Same; filed October 17, 1978.

Patent application 943,086: Belt for Transmitting Power from a Driving Member to a Driven Member; filed September 18, 1978.

Patent application 943,089: Diffractoid Grating Configuration for X-Ray and Ultraviolet Focusing; filed September 18, 1978.

Patent application 945,040: Spray Coating Apparatus Having a Rotatable Workpiece Holder; filed September 22, 1978.

Patent application 945,044: Pneumatic Inflatable End Effector; filed September 22, 1978.

Patent 4,092,466: Heat Resistant Polymers of Oxidized Styrylphosphine; filed July 19, 1976; patented May 30, 1978; not available NTIS.

Patent 4,092,606: Quadraphase Demodulation; filed June 21, 1977; patented May 30, 1978; not available NTIS.

Patent 4,092,617: Wide Power Range Microwave Feedback Controller; filed March 29, 1977; patented May 30, 1978; not available NTIS.

Patent 4,092,633: Condition Sensor System and Method; filed May 21, 1976; patented May 30, 1978; not available NTIS.

Patent 4,092,712: Regulated High Efficiency, Lighweight Capacitor-Diode Multiplier DC to DC Converter; filed May 27, 1977; patented May 30, 1978; not available NTIS.

Patent 4,093,156: Supersonic Transport; filed August 27, 1976; patented June 6, 1978; not available NTIS.

Patent 4,093,354: Method and Apparatus for Splitting a Beam of Energy; filed December 23, 1975; patented June 6, 1978; not available NTIS.

Patent 4,093,382: Hybrid Holographic Non-Destructive Test System; filed May 14, 1976; patented June 6, 1978; not available NTIS.

Patent 4,093,771: Reaction Cured Glass and Glass Coatings; filed October 29, 1976; patented June 6, 1978; not available NTIS.

Patent 4,094,862: Process for Preparing Thermoplastic Aromatic Polyimides; filed March 28,1975; patented June 13, 1978; not available NTIS.

Patent 4,094,943: Process for Spinning Flame Retardant Elastomeric Compositions; filed February 13, 1976; patented September 13, 1978; not available NTIS.

Patent 4,095,593: Cooling System for Removing Metabolic Heat from an Hermetically Sealed Spacesuit; filed December 23, 1976; patented July 20, 1978; not available NTIS.

Patent 4,096,315: Process for Producing a Well-Adhered Durable Optical Coating on an Optical Plastic Substrate; filed December 15, 1976; patented June 20, 1978; not available NTIS.

[FR Doc. 79-1202 Filed 1-11-79; 8:45 am]

[3510-25-M]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COLOMBIA

Increasing the Import Restraint Level for Certain Wool Textile Products

JANUARY 9, 1979.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing the level of restraint for women's, girls' and infants' wool suits in Category 444 from Colombia and controlling imports at this level during the agreement year which began on July 1, 1978. (A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 F.R. 884), as amended on January 25, 1978 (43 F.R. 3421), March 3, 1978 (43 F.R. 8828), June 22, 1978 (43 F.R. 26773), September 5, 1978 (43 F.R. 39408), and January 2, 1979 (44 F.R. 94).

SUMMARY: Under the terms of paragraph 16 of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 3, 1978, between the Governments of the United States and Colombia, the Government of the United States has agreed, at the request of the Government of Colombia, to increase the level of restraint for Category 444 from 1,852 dozen to 4,167 dozen and will control imports at that level for the agreement year which began on July 1, 1978.

EFFECTIVE DATE: January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Donald R. Foote, International Trade Specialists, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

SUPPLEMENTARY INFORMATION: On October 5, 1978, there was published in the FEDERAL REGISTER (43 F.R. 46062) a letter dated September 28, 1978 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Colombia, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on July 1, 1978 and extends through June 30, 1979. The agreement also establishes consultation levels for categories, like Category 444, which are not subject to specific limits. In accordance with the terms of the bilateral agreement, and at the request of the Government of Colombia, the United States Government has agreed to increase the consultation level for Category 444 during the twelve-month period which began on July 1, 1978. Accordingly, there is published below a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, directing that imports in this category be limited to the designated level of restraint. The level has not been adjusted to reflect any imports during the period which began on July 1, 1978. An adjustment will be made to account for imports during the period beginning on July 1, 1978 and extending through the effective date of this action.

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

JANUARY 9, 1979.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229.

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive issued to you on September 28, 1978 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Colombia.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 3, 1978, between the Governments of the United States and Colombia; and in accordance with the provisions of Excecutive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 12, 1979 and for the twelve-month period beginning on July 1, 1978 and extending through June 30, 1979, entry into the United States for consumption and withdrawal from warehouse for consumption, of wool textile products in Category 444, produced or manufactured in Colombia, in excess of 4,167 dozen.[1]

Entries of wool textile products in Category 444, produced or manufactured in Colombia and exported to the United States before July 1, 1978 shall not be subject to this directive.

Wool textile products in Category 444 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1848(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 F.R. 884), as amended on January 25, 1978 (43 F.R. 3421), March 3, 1978 (43 F.R. 8828), June 22, 1978 (43 F.R. 26773), September 5, 1978 (43 F.R. 39408), and January 2, 1979 (44 F.R. 94).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of Colombia and with respect to imports of wool textile products from Colombia has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 79-1250 Filed 1-11-79; 8:45 am]

[1] The level of restraint has not been adjusted to account for any imports after June 30, 1978.

[6820-33-M]

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1979

Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to Procurement List 1979 commodities to be produced by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 14, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed addition, all entities of the Federal government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1979, November 15, 1978 (43 FR 53151):

Class 8430

Footwear Cover, Radioactive Contaminants, 8430-00-591-1359, 8430-00-580-1206, 8430-00-580-1205.

C. W FLETCHER,
Executive Director.

[FR Doc. 79-1097 Filed 1-11-79; 8:45 am]

[6820-33-M]

PROCUREMENT LIST 1979

Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1979 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: January 12, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On October 13, 1978 the Committee for Purchase from the Blind and Other Severely Handicapped published notice (43 FR 47235) of proposed addition to Procurement List 1979, November 15, 1978 (43 FR 53151).

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following commodities are hereby added to Procurement List 1979:

Class None

Mattress, Bed, Innerspring, 38-75-100, 38 x 75"; 53-75-100, 53 x 75" (Navy requirements only)

C. W FLETCHER,
Executive Director.

[FR Doc. 79-1096 Filed 1-11-79; 8:45 am]

[3810-70-M]

DEPARTMENT OF DEFENSE

Office of the Secretary

DEFENSE SCIENCE BOARD TASK FORCE ON ECM

Advisory Committee Meeting

The Defense Science Board Task Force on ECM will meet in closed session on January 30-31, 1979 in the Pentagon, Arlington, Virginia.

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.

A meeting of the Task Force on ECM has been scheduled for January 30-31, 1979 to discuss potential technical solutions to several current problems in electronic counter-measures.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Defense Science Board Task Force meeting concerns matters listed in Section 552b(c) of Title 5, of the United States Code, specifically subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

JANUARY 9, 1979.

MAURICE W. ROCHE,
Director, Correspondence and Directives DOD/WHS.

[FR Doc. 79-965 Filed 1-11-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

NATIONAL PETROLEUM COUNCIL, TASK GROUP OF THE COMMITTEE ON GEOPRESSURED ZONES

Meeting

Notice is hereby given that the National Petroleum Council, Committee on Unconventional Gas Sources, Geopressured Zones Task Group will meet on Tuesday, January 16, 1979, starting at 9:00 a.m. in the office on the 9th floor of Union Oil Company of California, 900 Executive Plaza West, 4635 Southwest Freeway, Houston, Texas.

The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Discussion of the study methodology to be employed by the Geopressured Zones Task Group and review of assignments.
3. Discussion of the timetable of the Geopressured Zones Task Group.
4. Discussion of any other matters pertinent to the overall assignments of the Geopressured Zones Task Group.

The meetings are open to the public. The Chairman of the task group are empowered to conduct the meetings in a fashion that will, in their judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the task group will be permitted to so do, either before or after the meeting. Members of the public who wish to make oral statements should inform Lucio D'Andrea, Office of Resource Applications, 202-633-8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Transcripts and/or minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

Issued at Washington, D.C. on January 4, 1979.

GEORGE S. MCISAAC,
Assistant Secretary for Resource Applications.

JANUARY 4, 1979.

[FR Doc. 79-1243 Filed 1-11-79; 8:45 am]

[6450-01-M]

Assistant Secretary for Defense Programs

SANDIA CORPORATION SITES

Trespassing on Department Property

The notice concerning unauthorized entry into or upon the Sandia Corporation sites of the Energy Research and Development Administration (formerly the Atomic Energy Commission) appearing at pages 13269-90 of the FEDERAL REGISTER of October 19, 1965, 30 FR 13289 (FR Doc. 65-11115) as amended by the notice appearing at page 5384 of the FEDERAL REGISTER of March 30, 1967, 32 FR 5384 (FR Doc. 67-3475), and at page 17738 of the FEDERAL REGISTER of November 1, 1969, 34 FR 17738 (FR Doc. 69-13011), and at page 12912 of the FEDERAL REGISTER of April 9, 1974, 39 FR 12912 (FR Doc. 74-8103), is hereby further amended in the following respects:

The following installations are added:

Facility	County	Section	New Mexico Principal Median Township and Range
Explosive Preparation Facility (Building 9832)	Bernalillo	SW¼,SE¼	T.9N, R.5E
Explosive Storage Magazine (Building 9968)	Bernalillo	SW¼,NW¼ of Sec. 27	T.9N, R.4E
Signal Conditioning Bunker (Building 9964)	Bernalillo	SE¼, SW¼ of Sec. 33	T.9N, R.4E
New Cable Site, Sol se Mete Canyon	Bernalillo	SE¼, SE¼ of Sec. 17	T.9N, R.5E
Sodium Concrete Reaction Facility (Building 9939A)	Bernalillo	NE¼, SW¼ of Sec. 27	T.9N, R.4E
Solar Thermal Test Facility comprising 490 acres of land and having erected thereon a concrete solar tower, a heliostat collector field, Building 9981, and four temporary buildings all enclosed within a chain link fence.	Bernalillo	SW¼; S½ NW¼; S½ N½ NW¼; SW¼ NE¼; S½ NW¼ NE¼; SW¼ NE¼ NE¼; W½ SE¼ NE¼; W½ SE¼; W½ E½ SE¼ of Sec. 34.	T.9N, R.4E
Electron Beam Fusion Accelerator: Laboratory Building 980 and Office Building 981.	Bernalillo	SW¼, S½	T.9N, R.4E

Dated at Washington, DC this 5th day of January 1979.

DUANE C. SEWELL,
Assistant Secretary,
for Defense Programs.

[FR Doc. 79-1244 Filed 1-11-79; 8:45 am]

[6450-01-M]

Economic Regulatory Administration

[Release No. 7]

MANDATORY OIL IMPORT PROGRAM

Oil Import Allocations and Licensing, December 1-31, 1978

The fee-exempt allocations and licenses issued in accordance with Presidential Proclamation 3279, as amended, during the period December 1-31, 1978, are given in the following tables. The allocations are listed for the appropriate sections of 10 CFR 213 under which the allocations are made.

On December 8, 1978 the President signed Proclamation No. 4629 (43 FR 58077 (December 12, 1978)) which further amended Proclamation 3279, which provides for the long-term control of petroleum imports. Proclamation 4629 provided, among other changes, for an increase in fee-exempt residual fuel oil allocations into District I for use as fuel. A final rule amending the Department of Energy's Oil Import Regulations was recently published (43 FR 59458 (December 20, 1978)) providing for those additional fee exempt allocations. In accordance with the changes provided for in the final rule, additional allocations were issued pursuant to amended section 213.15 to 20 historical importers. Also listed are those allocations of fee-exempt residual fuel oil allocation issued to those who applied under the provisions of paragraphs 213.15 (d) and (e).

A tabulation of the fee-exempt crude oil and product licenses and a listing of the sale and reassignment of fee-exempt crude oil licenses issued during the month of December 1978, is shown on tables 3 and 4.

Previous releases covered the issuance of allocations and licenses for the period May 1, 1978, through November 30, 1978. The releases will continue to be issued on a monthly basis.

Dated: January 5, 1979.

FINN K. NEILSEN,

Acting Assistant Administrator,
Fuels Regulation, Economic
Regulatory Administration.

INDEX

Table	Title
1	Allocations of Residual Fuel Oil—District I—10 CFR 213.15.
2	Fee-exempt allocation for imports of Canadian oil based upon exchange for domestic oil—10 CFR 213.28(b).
3	Sales of fee-exempt licenses—10 CFR 213.22.
4	Fee-paid licenses issued—10 CFR 213.35.
5	Fee-exempt licenses issued as a result of decision and orders from the Office of Hearings and Appeals.

DEPARTMENT OF ENERGY

OFFICE OF OIL IMPORTS, ALLOCATION DECEMBER 1-31, 1978

TABLE 1.—*Residual Fuel Oil Imports § 213.15—District I Additional Allocations—Paragraph 213.15(c)*

Company	Address	Allocation bbls.
Exxon Corporation	Houston, Texas	42,447,335
Belcher Oil Company	Miami, Florida	5,223,531
Central Petroleum Corp	Bronx, New York	508,047
Colonial Oil Industries	Savannah, Georgia	4,863,024
A. Tarricone, Inc	Yonkers, New York	282,317
Swann Oil, Inc	Bala Cynwyd, PA	2,004,988
Steuart Petroleum Co	Washington, D.C	2,591,617
Sears Oil Co., Inc	Rome, New York	217,225
Rico Petroleum Corp	New York, New York	899,297
Northville Industries	Huntington Station, NY	2,490,661
Metropolitan Petroleum	New York, New York	5,350,788
George Hall Company	Ogdensburg, NY	54,705
Irving Oil Corporation	Bangor, Maine	1,387,612
Coastal States Gas Corp	Houston, Texas	3,431,509
Oceana Terminal Corp	Bronx, New York	1,874,838
Amerada Hess Corporation	Woodbridge, New Jersey	51,301,115
Asiatic Petroleum Corp	New York, New York	10,049,094
New England Petroleum	New York, New York	37,189,091
Texaco Inc	White Plains, New York	15,000,000
Castle Coal & Oil Co	Bronx, New York	1,753,259
Allocations Issued Pursuant to Paragraphs 213.15(d) and (e)		
Chevron U.S.A. Inc	San Francisco, CA	500,000
Kaiser Aluminum	Oakland, CA	275,000
Tauber Oil Company	Houston, Texas	500,000
Leeward Petroleum USA	New York, New York	500,000
Trammo Petroleum Corp	New York, New York	500,000

TABLE 2.—*Canadian Crude Oil—Exchange of Material Not Allocated Under Part 214 Paragraph 213.28(b)*

Company	Address	Exchange volume license total barrels
Total Petroleum	Alma, Michigan	50,000
Dow Chemical Co	Midland, Michigan	912,000

TABLE 3.—*Oil Import Licenses Sold Pursuant to Paragraph 213.22(d)*

Seller	Buyer	Date	Commodity	Barrels sold
DISTRICT I-IV				
Western Refining Co	Ashland Oil	Nov. 27, 1978	Crude	500,000
Winston Refining Co	Gulf Oil Co	Nov. 27, 1978	Crude	475,000
Winston Refining Co	Gulf Oil Co	Nov. 27, 1978	Crude	214,850
Bruin Refining Co	Gulf Oil Co	Nov. 27, 1978	Crude	500,000
Giant Industries	Texaco Inc	Nov. 27, 1978	Crude	1,168,730
Crystal Oil Co	Getty Refining	Nov. 24, 1978	Crude	232,870
Vickers Petroleum	Cities Service	Dec. 4, 1978	Crude	1,000,000
Atlantic Richfield	Energy Coop	Dec. 4, 1978	Crude	4,000,000
American Cyanamid	Texaco Inc	Dec. 4, 1978	Crude	59,540
Husky Oil Company	Mobil Oil	Dec. 4, 1978	Crude	1,195,000
Husky Oil Company	Mobil Oil	Dec. 4, 1978	Crude	524,820
Getty Refining	Texaco Inc	Dec. 4, 1978	Crude	403,033
Little America	Mobil Oil	Dec. 8, 1978	Crude	2,000,000
Oxirane Chemical	Gulf Oil Co	Dec. 8, 1978	Crude	85,811
Oxirane Chemical	Gulf Oil Co	Dec. 8, 1978	Crude	93,340
Soltex Polymert	Texaco Inc	Dec. 8, 1978	Crude	103,260
Dart Industries	Texaco Inc	Dec. 8, 1978	Crude	172,574
Dart Industries	Texaco Inc	Dec. 8, 1978	Crude	62,909
Vickers Petroleum	Texaco Inc	Dec. 13, 1978	Crude	1,000,000
Vickers Petroleum	Texaco Inc	Dec. 13, 1978	Crude	1,000,000
Oklahoma Refining	Total Petroleum	Dec. 14, 1978	Crude	430,000
Oklahoma Refining	Total Petroleum	Dec. 14, 1978	Crude	585,399
Cabot Corporation	Gulf Oil Co	Dec. 18, 1978	Crude	39,055
Cabot Corporation	Gulf Oil Co	Dec. 18, 1978	Crude	39,055
Cabot Corporation	Gulf Oil Co	Dec. 18, 1978	Crude	48,286
Cabot Corporation	Gulf Oil Co	Dec. 18, 1978	Crude	45,734
Cabot Corporation	Gulf Oil Co	Dec. 18, 1978	Unfinished	8,521
Cabot Corporation	Gulf Oil Co	Dec. 18, 1978	Unfinished	8,071
Thriftway, Inc	Amoco Oil Co	Dec. 21, 1978	Crude	59,725
Thriftway, Inc	Amoco Oil Co	Dec. 21, 1978	Crude	524,405
Thriftway, Inc	Amoco Oil Co	Dec. 21, 1978	Crude	110,000
Louisiana Land	Amoco Oil Co	Dec. 21, 1978	Crude	2,249,830
Wyoming Refining	Ashland Oil	Dec. 21, 1978	Crude	310,000
Wyoming Refining	Ashland Oil	Dec. 21, 1978	Crude	136,030
Shell Oil Co	Phillips Petro	Dec. 27, 1978	Unfinished	1,206
Shell Oil Co	Phillips Petro	Dec. 27, 1978	Unfinished	1,918
DISTRICT V				
USA Petroleum	Texaco Inc	Dec. 4, 1978	Crude	3,000,000
USA Petroleum	Gulf Oil Co	Dec. 4, 1978	Crude	1,000,000
San Joaquin	Mobil Oil	Dec. 21, 1978	Crude	600,000
Chevron USA, Inc	Edgington Oil	Dec. 27, 1978	Crude	250,000
Mohawk Petroleum	Union Oil CA	Dec. 27, 1978	Crude	392,150
Mohawk Petroleum	Union Oil CA	Dec. 21, 1978	Crude	538,375
Mohawk Petroleum	Union Oil CA	Dec. 21, 1978	Crude	807,745
Beacon Oil Co	Texaco Inc	Dec. 27, 1978	Crude	444,690
Beacon Oil Co	Texaco Inc	Dec. 27, 1978	Crude	500,000
Beacon Oil Co	Texaco Inc	Dec. 27, 1978	Crude	700,000

TABLE 4.—*Fee-Paid Licenses Issued Pursuant to §213.35*

Company	Date	Quantity total bbls.
CRUDE OIL—PREPAID		
Farmers Union Central	Dec. 1, 1978	300,000
Int'l Petroleum	Dec. 21, 1978	375,000
CRUDE OIL—BOND POSTED		
United Refining Co	Dec. 1, 1978	1,097,750
Coastal States Gas Corp	Dec. 4, 1978	5,000,000
Coastal States Gas Corp	Dec. 5, 1978	1,000,000
Koch Industries, Inc	Dec. 7, 1978	750,000
Sun Oil Co. of PA	Dec. 7, 1978	6,000,000
CRA, Inc. (Farmland)	Dec. 7, 1978	2,000,000
Atlantic Richfield Co	Dec. 11, 1978	1,000,000
Atlantic Richfield Co	Dec. 11, 1978	2,000,000
Atlantic Richfield Co	Dec. 11, 1978	2,000,000
Cities Service Oil Co	Dec. 13, 1978	7,000,000
Exxon Corporation	Dec. 13, 1978	30,000,000
Farmers Union Central	Dec. 15, 1978	1,400,000
Chevron U.S.A. Inc	Dec. 15, 1978	10,000,000
Gulf Oil Co U.S	Dec. 15, 1978	3,542,857
Crown Central Petroleum	Dec. 18, 1978	2,500,000
Clark Oil & Refining	Dec. 19, 1978	2,500,000
Texaco Inc	Dec. 19, 1978	17,000,000
Champlin Petroleum Co	Dec. 21, 1978	1,617,000
Gordon Duke	Dec. 21, 1978	20,000
Gulf Oil Company—U.S	Dec. 27, 1978	6,500,000
FINISHED PRODUCTS—PREPAID		
Nashua Corporation	Dec. 4, 1978	[1]33
Mattiace Petrochemical	Dec. 4, 1978	[1]10,000
Bombardier Corporation	Dec. 8, 1978	[1]40
Edwin Cooper, Inc	Dec. 8, 1978	[1]2,600
Finachem Canada	Dec. 8, 1978	[1]10,000
Sunchem (Div. of Sunoco)	Dec. 13, 1978	[1]54,000
Airco Welding Products	Dec. 13, 1978	[1]27,000
Thrall Oil/Major Oil	Dec. 15, 1978	[1]190
Americhem Corporation	Dec. 18, 1978	[1]20,000
Hudson Lubricants	Dec. 18, 1978	[1]500
Schofield Oil Ltd	Dec. 18, 1978	[1]1,500
Mitsubishi International	Dec. 19, 1978	[1]9,576
Edwin Cooper	Dec. 19, 1978	[1]514
Keyser International	Dec. 20, 1978	[1]600
John Deere	Dec. 20, 1978	[1]60
Industrial Solvents	Dec. 20, 1978	[1]60,000
Robert L. Freeman	Dec. 20, 1978	[1]4,000
Sunchem (Div. of Sunoco)	Dec. 21, 1978	[1]30,000
Metro Oil & Chemical Corp	Dec. 26, 1978	[1]3,000
Charter International	Dec. 18, 1978	[1]10,800
UCO Oil Company	Dec. 27, 1978	[1]241,399
The Lubrizol Corporation	Dec. 27, 1978	[1]10,300
Interprise Oil & Gas Co	Dec. 27, 1978	[1]90,000
Witco Chemical Corporation	Dec. 28, 1978	[1]10,935
FINISHED PRODUCTS—BOND POSTED		
By-Lo Oil Company	Dec. 4, 1978	120,000
Colonial Oil Industries	Dec. 4, 1978	200,000
Chevron U.S.A. Inc	Dec. 5, 1978	800,000
Western Trading Company	Dec. 7, 1978	50,000
Chevron U.S.A. Inc	Dec. 7, 1978	1,000,000
Chevron U.S.A. Inc	Dec. 7, 1978	1,000,000
Philipps Brothers	Dec. 7, 1978	9,000
Union Oil Co. of CA	Dec. 13, 1978	200,000
Texaco Inc	Dec. 19, 1978	5,000,000
Chevron U.S.A. Inc	Dec. 19, 1978	500,000
So. California Edison Co	Dec. 26, 1978	7,500,000
Shell Oil Company	Dec. 26, 1978	1,000,000
Puerto Rico Sun Oil Co	Dec. 28, 1978	400,000

[1]License quantity total barrels.

TABLE 5.—*Fee-Exempt Licenses Issued as a Result of Decisions and Orders*

FROM THE OFFICE OF HEARINGS AND APPEALS

Company	Date	Commodity	Barrels
American Petrofina	Dec. 13, 1978.	Crude Oil	992,311

[FR Doc. 79-1030 Filed 1-11-79; 8:45 am]

[6450-01-M]

NATIONAL PETROLEUM COUNCIL

Coordinating Subcommittee and Task Groups of the Subcommittee on Petroleum Inventories and Storage and Transportation Capacities

Meetings

Notice is hereby given that the Coordinating Subcommittee on Petroleum Inventories and Storage and Transportation Capacities of the National Petroleum Council will meet on January 17, 1979. In addition, the Gas Pipeline Task Group will meet on January 9, 1979, the Petroleum Pipeline Task Group will meet on January 10, 1979 and, the Inventory and Storage Task Group will meet on January 16, 1979.

The National Petroleum Council was established to provide advice, information and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries. The Subcommittee on Petroleum Inventories and Storage and Transportation Capacities will make an analysis of the Petroleum inventories, and storage and transportation capacities of the United States, and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by task groups whose efforts will be coordinated by the Coordinating Subcommittee.

The fourth meeting of the Coordinating Subcommittee of the Subcommittee on Petroleum Inventories and Storage and Transportation Capacities will meet on Wednesday, January 17, 1979, starting at 1:30 p.m., in Room 1635, One Shell Plaza, Houston, Texas. Its tentative agenda is as follows:

1. Introductory Remarks by R. Scott VanDyke, Chairman.
2. Remarks by Mario Cardullo, Government Cochairman.
3. Discussion of Study Coordination.
4. Discussion of the Glossary.
5. Discuss Any Other Matters Pertinent to the Overall Assignment of the Coordinating Subcommittee.

The individual task groups will meet at the following times and locations.

Gas Pipeline Task Group: fourth meeting: Tuesday, January, 9, 1979, starting at 8:30 a.m., in Demonstration Room A, Pacific Gas & Electric Company, 245 Market Street Lobby, San Francisco, California.

Petroleum Pipeline Task Group: fourth meeting: Wednesday, January 10, 1979, starting at 9:00 a.m. in the 14th Floor Conference Room, Sun Building, 907 Detroit Avenue, Tulsa, Oklahoma.

Inventory and Storage Task Group: fourth meeting: Wednesday, January 17, 1979, starting at 10:00 a.m. in Room 1635, One Shell Plaza, Houston, Texas.

The agenda for each of these task groups will be as follows:

1. Remarks by Chairman and Government Co-chairman.
2. Discussion of Data Collection.
3. Discussion of Glossary.
4. Discussion of Any Other Matters Pertinent to the Overall Assignment of the Task Group.

The meetings are open to the public. The chairman of the Coordinating Subcommittee and task groups are empowered to conduct the meetings in a fashion that will, in their judgment facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee or task groups will be permitted to do so, either before or after the meeting but not later than January 26, 1979. Members of the public who wish to make oral statements should inform Dr. Erik A. Svenson, Office of Policy and Evaluation, 202-376-1846, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of all Task group meetings will be prepared and filed. Full transcripts of the Coordinating Subcommittee meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA-152, Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcripts from the reporter.

Issued at Washington, D.C. on January 5, 1979.

ALVIN L. ALM,
Assistant Secretary for Policy and Evaluation, Department of Energy.

[FR Doc. 79-1044 Filed 1-9-79; 9:19 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50395; FRL 1036-6]

ISSUANCE OF EXPERIMENTAL USE PERMITS

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 270-EUP-1. Farnam Companies, Inc., Phoenix, Arizona 85036. This experimental use permit allows the use of one pound of the insecticide chlorpyrifos on 300 dog collars to evaluate control of ticks and fleas on dogs. The program is authorized only in the States of Arizona, California, Florida, Kentucky, and Texas. The experimental use permit is effective from November 17, 1978 to November 17, 1979. (PM 12, Room: E-229; Telephone: 202-426-9425.)

No. 876-EUP-33. Velsicol Chemical Corporation, Chicago, Illinois 60611. This experimental use permit allows the use of 10,772 pounds of the herbicide dicamba on field and silage corn to evaluate control of weeds. A total of 35,200 acres is involved; the program is authorized only in the States of Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, Virginia, Wisconsin, and Wyoming. The experimental use permit is effective from November 16, 1978 to November 16, 1979. A permanent tolerance has been established for residues of the active ingredient in or on corn (40 CFR 180.227). (PM 25, Room: 301, Telephone: 202-755-2196.)

No. 1021-EUP-21. McLaughlin Gormley King Company, Minneapolis, Minnesota 55427. This experimental use permit allows the use of 27 pounds of the repellent putrescent whole egg solids on Douglas fir seedlings to evaluate control of deer. A total of 50 acres is involved; the program is authorized only in the State of Oregon. The experimental use permit is effective from November 20, 1978 to November 20, 1979. (PM 16, Room: 229, Telephone: 202-755-9315.)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permits may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

(Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in

1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

Dated: December 7, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 79-1045 Filed 1-11-79; 8:45 am]

[6560-01-M]

[OPP—30000/12B; FRL 1036-8]

DETERMINATION PURSUANT TO 40 CFR 162.11(a)(5) CONCLUDING THE REBUTTABLE PRESUMPTION AGAINST REGISTRATION OF PESTICIDE PRODUCTS CONTAINING AMITRAZ

Availability of Position Document

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Notice of Determination and Availability of Position Document concerning Amitraz.

SUMMARY: On April 6, 1977, the EPA published in the FEDERAL REGISTER (42 FR 18299) a notice of rebuttable presumption against registration (RPAR) of pesticide products containing amitraz, a new pesticide for which an end use has not yet been approved. The applicant for registration and other interested persons were provided the opportunity to submit data and information to rebut the presumption. After reviewing the rebuttals the EPA has accepted certain arguments and rejected others. The Agency has determined that there is weakly positive evidence that amitraz is a potential human carcinogen and has concluded that the proposed uses of amitraz on pears and applies might pose a very small risk of cancer to certain exposed groups. The Agency has also reviewed information relating to the benefits of these proposed uses. While there is an indication of possible significant benefit from the use of amitraz on pears, there appears to be little or no benefit from its use on applies. After weighing these risks and benefits, and considering whether the prerequisites for conditional registration have been met, the Agency has determined that it will grant a conditional registration of amitraz for use on pears for 4 years, provided that the applicant for registration submits additional benefit data and a mouse oncogenic bioassay within 4 years (along with annual reports of progress and test results), and amends the proposed label to restrict the use of amitraz as specified by the Agency. EPA has decided to deny the application for registration of amitraz for use on apples.

DATE: Comments must be received on or before February 12, 1979.

ADDRESS COMMENTS TO: FEDERAL REGISTER Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M St., S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Jeff Kempter, Project Manager, Special Pesticide Review Division, Office of Pesticide Programs (TS-791), Room 447, East Tower, EPA (202/755-8053).

SUPPLEMENTARY INFORMATION: This Notice of Determination and the referenced Amitraz Position Document 3 detail the reasons for the regulatory actions being proposed. As required by the Federal Insecticide, Fungicide, and Rodenticide Act as Amended (FIFRA), copies of this Notice of per Bozoff Determination and the Position Document are being transmitted to the Secretary of Agriculture and the Scientific Advisory Panel for comment; these documents are also being provided to the affected applicant for registration. Other interested persons may receive a copy of the Position Document by contacting Jeff Kempter, Project Manager, at the address given.

Anyone may comment on the proposed actions. All comments should be sent to the FEDERAL REGISTER Section at the EPA headquarters address given. Copies of the comments should be submitted to facilitate the work of the Agency and others interested in inspecting the comments. The comments should bear the identifying notation OPP-30000/12B.

I. INTRODUCTION

On April 6, 1977, the Environmental Protection Agency issued a notice of rebuttable presumption against registration ("RPAR") of pesticide products containing amitraz (42 FR 18299). This action initiated the Agency's public review of the risks and benefits of the use of amitraz on pears and apples, the two uses which are proposed in the only pending application for registration. This Notice of Determination ("Notice") is issued pursuant to 40 CFR § 162.11(a)(5) and constitutes a preliminary notice of intent to deny registration of amitraz for use on apples and to grant conditional registration of amitraz for use on pears.

In broad summary, the Agency has determined that the cancer risk presumption announced in the amitraz RPAR has not been rebutted; therefore, the evidence that amitraz might pose a cancer risk to exposed groups is of sufficient concern to require the Agency to thoroughly evaluate the risks and the economic, social and environmental benefits of the agent. The Agency has performed detailed risk and benefit assessments, based in part on information submitted by the applicant for registration and by the U.S. Department of Agriculture. The Agency has weighed risks against benefits in order to determine if the risks from each proposed use are warranted by the respective benefits. In making this determination, the Agency has considered the quality of the risks and benefits data, the availability of risk reduction measures, and the extent to which these risk reduction measures impact on the benefits of use.

With respect to the proposed uses of amitraz, the Agency has determined: (1) The benefits from the use of amitraz on pears for four years outweigh the risks from that use only if the risks are reduced by modification in the proposed terms and conditions of registration. More definitive data are needed before the benefits and risks of the long-term use of amitraz on pears can be compared with adequate precision. (2) The risks from the use of amitraz on apples outweigh the benefits of such use, even when the reduction in risk which might be achieved by modifications in the proposed condition of registration is taken into account.

Based on these factors and the applicable legal requirements, the Agency is initiating action to conditionally register amitraz for use on pears for 4 years, provided that the proposed terms and conditions of registration are restricted and that the registrant provides additional benefit and risk data within four years, along with annual reports of progress and test results. The Agency is also initiating action to deny the application for registration of amitraz for use on apples.

The remainder of this notice sets forth in detail the Agency's analysis of comments submitted during the rebuttal phase of the amitraz RPAR and the Agency's reasons and factual bases for the regulatory actions it is initiating. The notice is organized in four sections. Section I is this introduction. Section II, "Legal Background," is a general discussion of the regulatory framework within which this action is taken. Section III sets forth the Agency's determinations concluding the amitraz RPAR and initiating the regulatory action which flow from these determinations; Section III and Position Document 3 set forth the bases for these determinations. Section IV, "Procedural Matters," is a brief discussion of the procedures which will be followed in implementing the regulatory actions which the Agency is initiating in this notice.

II. Legal Background

In order to obtain a registration for a pesticide under the FIFRA, a manufacturer must demonstrate that the pesticide satisfies the statutory standard for registration. That Standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects" on the environment (Section 3(c)(5)). "Unreasonable adverse effects on the environment" is defined to mean "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide" [FIFRA, Section 2(bb)]. In effect, this standard requires a finding that the benefits of each use of the pesticide exceed the risks of each use, when the pesticide is used in accordance with the terms and conditions of registration or in accordance with commonly recognized practice.[1]

Under special circumstances, the Administrator may conditionally register a pesticide for a limited period of time. The conditional registration provision of FIFRA which is applicable to amitraz is Section 3(c)(7)(C). This section provides that the Administrator may conditionally register a pesticide containing an active ingredient not contained in any currently registered pesticide if he determines: (1) a period reasonably sufficient for the generation and submission of data required for unconditional registration has not elapsed since the Administrator first imposed the data requirement; (2) use of the pesticide during the period of conditional registration will not cause any unreasonable adverse effects; and (3) use of the pesticide is in the public interest. If the Administrator makes these determinations and grants conditional registration, such registration shall be subject to the conditions that (1) the data submission requirement be satisfied before the specified term of the registration has expired and (2) the newly submitted data do not meet or exceed any of the risk criteria enumerated in 40 CFR § 162.11. In addition, the Administrator may prescribe any other conditions he deems appropriate. If the Administrator determines that the registrant has failed to take appropriate steps toward fulfilling any condition imposed or that a condition has not been met within the period prescribed for satisfying such condition, he shall issue a notice of intent to cancel the conditional registration. New chemical conditional registrations will be decided on a case-by-case basis until promulgation of appropriate regulations. Amitraz falls within the purview of Section 3(c)(7)(C) because it is not currently registered for use as a pesticide. Although technical amitraz is registered, this registration is for formulation only, not for pest control. The Agency considers the provisions of Section 3(c)(7)(C) to apply to pesticides which are not currently registered for an end use.

The Agency created the RPAR process to facilitate the identification of pesticide uses which may not satisfy the statutory standard for registration, and to provide a structure for gathering and evaluating risk and benefit information. The structure permits public participation at major points in the evaluation process.

The RPAR process is set forth at 40 CFR § 162.11. This section provides that a rebuttable presumption shall arise if a pesticide meets or exceeds any of the risk criteria set out in the regulations. After an RPAR is issued, applicants for registration and other interested persons are invited to review the data on which the presumption is based and to submit data to rebut the presumption. Respondents may rebut the presumption of risk by showing that the Agency's initial determination of risk was in error, or by showing that use of the pesticide is not likely to result in any significant exposure to man or the environment.[2] In addition, respondents may submit evidence which demonstrates that the economic, social and environmental benefits of the use of a pesticide subject to a presumption outweigh the risks of use.

The regulations require the Agency to conclude an RPAR by issuing a notice of determination. In that notice, the Agency first must state whether the risk presumption has been rebutted. If the Agency determines that the presumption has been rebutted, the Agency will register the pesticide, assuming all the requirements for registration have been met. If the Agency determines that the presumption has not been rebutted, it will consider information relating to the social, economic and environmental costs and benefits which the applicant for registration and other interested persons submitted to the Agency, and any other benefits information collected by the Agency. If the Agency determines that the risks of a pesticide use outweigh its benefits, the RPAR process will conclude with a notice of intent to deny registration, pursuant to FIFRA Section 3(c)(6). If, on the other hand, the Agency determines that benefits appear to outweigh the risks, the Agency may issue a notice of intent to hold a hearing, as authorized by Section 6(b)(2) of FIFRA, to determine whether the application for registration should be denied.[3] The Regulations further provide that the Agency may withdraw a notice of intent to hold a hearing on whether registration should be denied if there is insufficient public interest.

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[1] Another part of the statutory standard for registration is that the pesticide must satisfy the labeling requirements of FIFRA. These requirements are set out in the statutory definition of "misbranded" [FIFRA section 2(q)]. Among other things, this section provides that a pesticide is misbranded if "the labeling does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with together with any [restrictions] imposed under section 3(d) .. are adequate to protect health and the environment."

The Agency can require changes in the directions for use of a pesticide in most circumstances, either finding that the pesticide is misbranded if the labeling is not changed or by finding that the pesticide would cause unreasonable adverse effects on the environment, unless labeling changes are made which accomplish risk reductions.

[2] 40 CFR 162.11(a)(4) provides that registrants and applicants may rebut a presumption against registration by sustaining the burden of proving: (1) In the case of a pesticide which meets or exceeds the criteria for risk set forth in paragraphs (a)(3) (i) or (iii) that when considered with the formulation, packaging, method of use, and proposed restrictions on and directions for use and widespread and commonly recognized practices of use, the anticipated exposure to an applicator or user and to local, regional or national populations of nontarget organisms is not likely to result in any significant acute adverse effects; or (ii) in the case of a pesticide which meets or exceeds the criteria for risk set forth in paragraph (a)(3)(ii) that when considered with proposed restrictions on use and widespread and commonly recognized practices of use, the pesticide will not concentrate, persist or accrue to levels in man or the environment likely to result in any significant chronic adverse effects; or (iii) that the determination by the Agency that the pesticide meets or exceeds any of the criteria for risk was in error. A primary purpose of the RPAR process is to screen for appropriate action those pesticide uses which pose risks which are of sufficient concern to require the Agency to consider whether offsetting benefits justify the risks. Accordingly, the Agency's approach to rebuttal determinations concentrates on whether the risk concerns which are central to each RPAR proceeding have in fact been answered.

[3] As indicated earlier, one of the primary purposes of the RPAR process is information-gathering about pesticide uses which may cause unreasonable adverse effects. At times during an RPAR, new information about the risks or benefits of a pesticide will come to light, as a result of the development of new information, or as a result of reassessing previously available information or for other reasons. In such instances, it is Agency policy to consider such information in the risk/benefit assessment of the pesticide use in question which is already underway. Generally, the Agency will not publish a separate or amended RPAR notice with respect to such new information; accordingly, the Agency has frequently admonished pesticide registrants and other participants in the RPAR process to take full and frequent advantage of the Agency's open invitation to inspect the RPAR public files, and otherwise to keep abreast of developments in any ongoing RPAR proceeding.

In weighing the risks and benefits, the Agency considers the quality of the data, possible modifications to the proposed terms and conditions of registration which can reduce risks, and the impacts of such modifications on the benefits of the use. Risk reduction measures short of denial which are available to the Agency include requiring changes in the directions for use on the pesticide's labeling, and classifying the pesticide for "restricted use" pursuant to FIFRA, Section 3(d).

The statute requires the Agency to submit a notice, issued pursuant to Section 6(b)(2) to the Secretary of Agriculture for comment. The Agency must also provide the Secretary of Agriculture with an analysis of the impact of the proposed action on the agricultural economy. These documents must be received by the Secretary at least 60 days before the notice is sent to the applicant or made public. The Secretary of Agriculture is required to comment in writing within 30 days, and the Agency is required to publish the Secretary's comments and the Administrator's response with the publication of the notice. The statute also requires the Administrator to submit Section 6 notices to a scientific advisory panel for comment on the impact of the proposed action on health and the environment, at the same time and under the same procedures as those for review by the Secretary of Agriculture [Section 25(d) of FIFRA].

Although not required by the statute, the Agency has decided that it is consistent with the general theme of the RPAR process and Agency's overall policy of open decision-making to give the applicant and other interested persons the opportunity to comment on the bases for the actions proposed in this notice of determination. Accordingly, the applicant and other interested persons will be allowed the same period of time to comment—30 days—that the statute provides for receipt of comments from the Secretary of Agriculture and the Scientific Advisory Panel.

After receiving these comments and making any changes in the contemplated action which it deems appropriate in light of the comments, the Agency will implement its regulatory action by publishing either a notice of denial of registration under FIFRA Section 3(c)(6) or a notice of intent to hold a hearing under FIFRA Section 6(b)(2). In the case of a notice of denial, under FIFRA Section 6(b) the applicant for registration and other interested persons with the concurrence of the applicant, have 30 days to request a hearing. In the event a hearing is not requested and any changes in the terms or conditions of registration directed in the denial notice are not accepted, the denial will become final at the end of the 30-day notice period. If a hearing is requested, it will be governed by the Agency's rules of practice for hearings under FIFRA Section 6 [40 CFR Part 164]; the denial will not become final except pursuant to an order of the Administrator at the conclusion of the hearing. Rules governing participation in and the conduct of hearings under FIFRA Section 6(b)(2) are also set forth in 40 CFR Part 164. As noted, the Agency may withdraw such a notice prior to the commencement of a hearing, upon appropriate findings.

III. Determinations and Initiation of Regulatory Action

The Agency has considered information on the risks from the use of amitraz, including information submitted by the applicant for registration and other interested persons in rebuttal to the amitraz RPAR. The Agency has also considered information on the social, economic and environmental costs and benefits of the uses of amitraz subject to the RPAR, including benefits information submitted by the applicant for registration and other interested persons in conjuction with their rebuttal submissions, and information submitted by the U.S. Department of Agriculture. The position document accompanying this notice (Position Document 3) describes in detail the Agency's assessment of the risks and benefits of the uses of amitraz subject to this RPAR, its determinations as to whether these uses of amitraz pose unreasonable adverse effects on the environment, and its determinations as to whether modifications in terms or conditions of registration reduce risks sufficiently to eliminate any unreasonable adverse effects. Position Document 3 is hereby adopted by the Agency as its statement of reasons for the determinations and actions announced in this notice, and as its analysis of the impacts of the regulatory actions on the agricultural economy. The Agency's determinations and the reasons for these determinations are summarized in this section.

A. Determinations on Risk

After the RPAR was issued, the Agency initiated a detailed risk assessment in accordance with its Interim Procedures and Guidelines for Health Risk and Economic Impact Assessment of Suspected Carcinogens (41 FR 21401–21405, May 25, 1976). In the preamble to these guidelines, the Administrator stated that it is necessary to consider evidence for carcinogenicity as a "warning signal," the strength of which depends on the quality and scope of the data, the nature of the toxicological response, and the potential impact on human health. The Agency's risk assessment has addressed these important topics and reached its conclusions as follows:

1. Evaluation of Rebuttal Submissions—As part of its evaluation of the quality and scope of available data, the Agency reviewed rebuttal arguments on risk which it received during the 105 day comment period following the RPAR. The only rebuttal relevant to the presumption of risk was jointly submitted by the Upjohn Company and the Boots Company, Ltd. This Boots-Upjohn rebuttal was very extensive and addressed nearly every statement made by the Agency in the notice of RPAR, Position Document 1 and other supporting documents. Consequently, the Agency found it necessary to reexamine nearly all of its statements made in these documents and to articulate responses to the most important rebuttal comments. This is done in Position Document 3.

Briefly, the three major findings made in support of the RPAR which have been challenged are: (1) amitraz induced lymphoreticular (LR) tumors in the highest-dose female mice in the Boots Mouse Study; (2) amitraz induced lung tumors in the highest dose female mice in the Boots Mouse Study; and (3) 2,4-dimethylaniline, a metabolite of amitraz, induced sarcomas in female mice and malignant tumors in male rats in a National Cancer Institute study.

In rebuttal to these findings, Boots-Upjohn asserted that: (1) the excess of lymphoreticular tumors in the high dose female mice was "probably a non-specific reaction arising indirectly through a combination of factors" and not due to amitraz alone; (2) the Agency's tabulation of lung lesions contained errors and the method of correcting the lung tumor counts for survival was incorrect; and (3) if the Agency had pooled the tumor incidences of six available control groups of mice before making statistical comparisons to the mice treated with 2,4-dimethylaniline, it would have found no statistically significant differences.

While the Agency concludes that it erred in its count of lung tumors in the female CFLP mice, it still concludes that amitraz induced a significant excess of lymphoreticular tumors in the high dose CFLP mice; and that 2,4-dimethylaniline induced a positive oncogenic response in mice and a positive mutagenic response in one strain of bacteria. Therefore, the Agency concludes that the rebuttal comments do not successfully rebut the cancer risk presumption.

2. Qualitative Assessment of Risk Data—To provide a judgment on the "weight" or meaning of the available evidence, the Agency has evaluated the quality of the relevant studies on

amitraz and 2,4-dimethylaniline. The Agency has also assessed the nature and extent of the toxicological response observed in these studies.

EPA's Interim Cancer Guidelines describe the weight that should be given to various kinds of risk evidence. The "best" evidence is provided through epidemiological studies of humans confirmed by animal tests. "Substantial" evidence comes from animal tests showing excess incidences of malignant tumors and benign tumors that are recognized as early stages of malignant tumors. "Suggestive" evidence may consist of non-life-shortening benign tumor counts, mutagenicity tests, initiation-promotion skin tests and other ancillary information.

In the case of amitraz, there are no epidemiological data available. Of the animal oncogenicity tests conducted with this compound on both sexes of two species at three doses (plus controls), an excess incidence of one tumor type (lymphoreticular) was seen by several pathologists in one sex (female) of one species (mouse) at one dose (400 ppm). There are questions about the protocols and results of the mouse test, and, consequently, another test has been recommended by the Agency. Further, the mutagenicity tests performed on amitraz cannot be interpreted due to a lack of information on the protocols. However, additional evidence to support the possibility of risk is (a) an NCI study showing 2,4-dimethylaniline induced an oncogenic effect in female mice at the highest dose, and (b) an Ames test performed by the Boots and Upjohn companies showing this compound induced a positive mutagenic response.

In summary, although a few positive oncogenic effects were observed in the Boots mouse study, there are questions as to the reliability of that study. Also, 2,4-dimethylaniline gave one positive oncogenic response in animals and a single mutagenic response in bacteria. On this basis, the Agency concludes that there is weakly positive evidence that amitraz is a potential human carcinogen.

3. Human Exposure to Amitraz—From information provided by the U.S. Department of Agriculture, State Extension Service personnel, the Boots-Upjohn rebuttal, and other sources, the Agency has identified human populations exposed to amitraz, the route of their exposure, and the extent of their exposure.

The reliability of the dietary and occupational exposure estimates vary according to the data and assumptions upon which they were based. Since dietary exposures were derived from actual average residues in fresh and processed fruit, on standard food factors, and on the estimates of acreage treated with amitraz, they should be considered fairly accurate. Occupational exposures, however, were mostly derived from data for other pesticides and based upon worst-case assumptions about the penetrability of amitraz into the body.

Based on these estimates it appears that the highest exposures to humans are through the skin during mixing and loading and during application. Much lower doses result from lung penetration of swallowing of amitraz during these same activities. Doses resulting from ingestion of amitraz residues on treated fruit are very small. No exposure is expected for farm workers as long as an appropriate reentry interval is observed. Very little exposure is anticipated for persons not immediately in the application area.

4. Quantitative Risk Estimates—The Interim Cancer Guidelines state that when a chemical is judged to be a potential human carcinogen, the Agency will make estimates of its possible impact on public health at anticipated levels of exposure. These guidelines also recognize that the available techniques for assessing the magnitude of cancer risk to human populations based on animal data are at best very crude; this is due, among other things, to uncertainties in the extrapolation of dose-response data to very low dose levels and to differences in levels of susceptibility of animals and humans. Accordingly, the risk estimates are neither scientific certainties nor absolute upper limits, but are used by the Agency only as rough approximations of potential health risks.

For the uses proposed by the applicant for registration, the Agency has observed that the hypothetical lifetime cancer risks for individuals consuming treated apples and pears are small ($2X10^{-6}$ for each) with these risks being one to two orders of magnitude higher for apple and pear applicators ($1X10^{-4}$ and $6X10^{-5}$ to $1X10^{-4}$, respectively). However, the hypothetical total number of cancer cases per year is much higher for the U.S. population consuming treated apples (6 per year) and pears (8 per year) than for apple and pear applicators (0.002 and 0.004 per year, respectively). This is due to the great disparity between the size of the U.S. population (220,000,000) and the size of the applicator population (5,000).

B. DETERMINATIONS ON BENEFITS

The Agency examined the potential usage of amitraz if it were to be registered, the availability and comparative efficacy and costs of alternative pest control programs, and the potential impacts on growers and consumers that might result if amitraz were not available.

The Agency depended upon a team of agricultural specialists from the U.S. Department of Agriculture and the EPA to collect test plot data, to evaluate that data and to make economic estimates based on that data and their best judgment. Basically, there were two economic impact assessments. One was performed by EPA in March, 1977, to indicate the impacts of approving or disapproving applications for the emergency use of amitraz on pears in Oregon and Washington during the summer of 1977, ("Emergency Economic Assessment of Pears"). The other analysis was conducted by USDA and EPA from May, 1977, to August, 1978, to evaluate the impacts of the unavailability of amitraz for use in pears and apples from 1977 through 1981 ("USDA/State Assessment Team Report").

Below are the results of these analyses for apples and pears, followed by the Agency's judgment on the quality of the empirical data, the limitations of the assumptions made, and the relative weight which the Agency places on the economic estimates of the benefits of amitraz.

1. Apples—Amitraz has been used on apples in the United States only on an experimental basis. Under the proposed label, it would be used to control European red mites, apple rust mites and two-spotted spider mites. According to the USDA/State Assessment Team Report, amitraz is expected to be used only in the Eastern and North-Central apple-producing states on a maximum of 52,000 acres. In these areas, acaricides are routinely used for mite control because alternative integrated pest management (IPM) methods are not well established. If an additional material such as amitraz were available, it might be rotated with other popular apple miticides to minimize mite resistance. Washington, Oregon and California are also large apple-producing areas; however mite populations are already effectively controlled in these areas by IPM methods.

The Assessment Team Report also states that several miticides are currently registered for use on apples which are as efficacious as amitraz for mite control. Of these, cyhexatin (Plictran) and propargite (Omite) are the most widely used miticides, and both are less expensive to use than amitraz. Also, advances in integrated pest management methods indicate that the need for broad spectrum acaricides might be substantially lessened in the future.

Because fully effective means for the control of apple mites already exist, the USDA/State Assessment Team Report concludes that the unavailability of amitraz for use on apples would have a negligible impact on apple growers and would have no effect on consumers.

2. Pears—Amitraz is currently under consideration for registration for use as a summer control of pear psylla in pear orchards. The control of summer pear psylla is a pest problem in three states: California, Washington and Oregon. Ninety-one thousand acres of pear orchards are cultivated in these states. The Assessment Team Report estimates that about 54,000 acres might be treated with amitraz each year.

The unavailability of amitraz would be expected to have an effect on pear producers in California, Washington and Oregon. The Assessment Team Report states that damage from summer pear psylla would result in the downgrading of the fruit from US#1 to US#2 and culls, and would eventually so weaken the trees as to require their uprooting. The Report estimates that between 1978 and 1981, the extent of this damage might be as much as $33 million dollars. The Report also predicts that over a period of 5 years, grower returns could be expected to be reduced from $330/A to $89/A, ultimately resulting in the planting of affected acreage with other crops. Finally, the Report indicates that retail prices of pears could increase by a significant amount.

3. Quality of the Benefit Data.

a. Apples—The Agency believes that the Assessment Team used an adequate data base in evaluating the potential economic impact of the use of amitraz on apples. Nine field trials conducted in 1976 and 1977 on apple orchards provided an extensive data base for comparing the efficacy of amitraz to other registered miticides (Entomological Society of America 1977, 1978). These test plots involved several varieties of applies, several states, different formulations of products, most of the registered apple miticides and all of the target-pest species listed on the proposed BAAM label.

Although the test results vried, the Assessment Team concluded after examining the data that amitraz and the alternative registered miticides provide comparable levels of mite control, that no overall change in apple yield or quality would result from the introduction of amitraz, and that the only potential benefit from amitraz would be in areas which might face mite resistance. Because of the higher cost of amitraz compared to alternative registered pesticides, it was concluded that the use of amitraz could have a negative economic impact. The Agency concurs with these conclusions.

b. Pears—For pears, the data base was very small. Four test ploys in various locations were set up by the Assessment Team to compare amitraz to the alternate spray programs. The results were variable, some showing no effect by either amitraz or the alternate spray program, some showing amitraz was less effective than the alternate program and some indicating it was more effective. Only a few of the available alternative insecticides were tested. The agricultural specialists pointed out that psylla infestation levels were lower than usual that year. They labeled two of the plots "atypical" because of this factor.

Based on the results observed in the two remaining plots, the Assessment Team assumed that the better performance by amitraz would be repeated on all the affected acres in Oregon, Washington and California. The Team then used the data from these two plots to extrapolate 1977 economic impacts for the entire Pacific Northwestern pear production area. Thus, the figures obtained were essentially based on the opinion of the agricultural specialists and not upon an adequate number of experimental test plots or other documented field evidence.

To estimate economic impacts of the the unavailability of amitraz for 1978-1981, the Assessment Team made assumptions about the losses due to pear tree decline and pear quality grading decreases. However, the empirical data in the Team's report which could support these assumptions are extremely limited. In addition, a number of anomalies and errors in the Assessment Team's analysis have been discovered which undermine the reliability of the Team's estimates of adverse economic impacts.

Thus, the Agency considers the data base for the economic estimates of the benefits of amitraz to be very weak. The Agency believes that the use of two of the four test plots as data bases for the entire Pacific Northwest pear production area would not produce a reliable extrapolation of potential losses in 1977. Furthermore, EPA concludes that the projection of losses for the 1979-1981 period could not be reliably achieved solely on the basis of expert opinion, or in the absence of an empirical data base.

Nevertheless, the Agency believes that expert opinion should be given some weight. Therefore, the Agency concludes that while the adverse economic impact of denying the use of amitraz cannot be quantified, it may be subtantial in the short-run.

C. DETERMINATIONS ON UNREASONABLE ADVERSE EFFECTS

The Agency has made the following determinations as to whether the proposed uses of amitraz would pose unreasonable adverse effects. The rationale for these determinatons is set forth in Position Document 3.

1. Determination on Apple Uses—The Agency has determined that the potential risks arising from the proposed use of amitraz on apples would be greater than the social, economic and environmental benefits of these uses.

2. Determination on Pear Uses—Uncertainties in the reliability of the risks and benefits data make it impossible to ascertain at this time whether the benefits of the long-term use of amitraz on pears outweigh the risks. However, the Agency believes that the data is sufficiently reliable to balance the short-term risks and benefits. After doing so, the Agency has determined that the benefits from the use of pears for a four year period are greater than the risks of this use if risk reductions are accomplished by modifications in the proposed terms and conditions of registrations, described in subsection E. These modifications would reduce the risk to the general population from ingestion of pear residues by 20% to 50%, and to pear applicators by 80%.

D. OTHER DETERMINATIONS

The Agency has determined that the applicant must submit another mouse on cogenic bioassay and additional benefits data for use of amitraz on pears within 4 years, along with annual reports of progress and test results. The Agency needs these data for the purpose of refining its risk and benefit assessments on the use of amitraz on pears; these data will also be used to reassess its conclusion that the use of amitraz on pears, in accordance with the Agency's proposed modifications to the terms or conditions of registration, does not cause unreasonable adverse effects on the environment. The Agency considers these data requirements to be "additional" data requirements which the applicant for registration has not yet had an ample opportunity to generate, rather than "old" data requirements.

The Agency has also determined that use of amitraz on pears for four years while new data is being generated would be in the public interest. Such use appears to be necessary to meet consumer demands for pears and would result in no unreasonable adverse effects.

E. INITIATION OF REGULATORY ACTIONS

Based upon the determinations summarized elsewhere in this notice and developed in detail in Position Document 3, the Agency is initiating the following regulatory actions:

1. Deny registration of amitraz products for use on apples.

2. Conditionally register the amitraz product BAAM for use on pears with the requirement that the applicant submit another mouse oncogenic bioassay and benefit data within 4 years (with annual reports of progress and test results), and modify the terms and conditions of registration as follows:

a. Classification of amitraz products for restricted use only by or under the direct supervision of certified applicators.

b. Modification of the labeling of amitraz products to include the following:

Restricted Use Pesticide. For retail sale to and use only by certified applicators or persons under their direct supervision and only for those uses covered by the certified applicator's certification.

General Precautions

A. Avoid getting in eyes, on skin, or on clothing.

B. Avoid breathing vapors or spray mist.

C. In case of contact with skin, wash as soon as possible with soap and plenty of water.

D. If amitraz gets on clothing, remove contaminated clothing and wash affected parts of body with soap and water. If the extent of contamination is unknown, bathe entire body thoroughly. Change to clean clothing.

E. Wash hands with soap and water each time before eating, drinking, or smoking.

F. At the end of the work day, bathe entire body with soap and plenty of water.

G. Wear clean clothes each day and launder before reusing.

Required Clothing and Equipment for mixing, loading and cleanup procedures:

1. Long-sleeve shirt (fine weave)
2. Long pants (fine weave)
3. Rubber gloves
4. Apron
5. Boots

Required clothing for ground spray application:

1. Long-sleeve shirt (fine weave)
2. Long pants (fine weave)
3. Rubber gloves
4. Boots

Re-entry Interval. Reentry into treated areas is prohibited until the leaves are completely dry, and in any event, until at least 24 hours after application.

Preharvest Interval. Harvest of treated pears is prohibited until 7 days after application of amitraz.

IV. PROCEDURAL MATTERS

Section II of this notice explains in detail the Agency's responsibility to refer the determinations described in this notice to the Secretary of Agriculture and the Scientific Advisory Panel for review. The Position Document 3 and this notice of determination are being transmitted immediately to the Secretary of Agriculture and the Scientific Advisory Panel for comment to satisfy these external review requirements. The Position Document 3 is also being sent to the applicant for registration. As indicated in Section II, the Agency offers the applicant and other interested persons an opportunity to comment on the bases for the Agency's action.

After completion of these review procedures, the Agency will consider the comments and publish an analysis of them, together with any changes in the regulatory actions announced in this notice which it determines are appropriate. Until this final review phase is concluded, it is not necessary for the applicant for registration or other interested persons with the concurrence of the applicant, to request a hearing to contest any proposed regulatory actions resulting from the conclusion of this RPAR.

Dated: January 6, 1979.

STEVEN D. JELLINEK,
Assistant Administrator for Toxic Substances.

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[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20271]

ITU 1979 WORLD ADMINISTRATIVE RADIO CONFERENCE (WARC)

Announcement of Proposals

The FCC adopted yesterday a *Report and Order* announcing its proposals to amend the international Radio Regulations to be considered at the general World Administrative Radio Conference in September 1979.

The FCC's *Report and Order* in this proceeding comes at the end of four years of inquiries in preparation for the general World Administrative Radio Conference (WARC). The Department of State will now use this *Report and Order* to prepare United States proposals which will be delivered to the International Telecommunication Union (ITU) in January 1979 for circulation among the nations of the world.

The ITU is an international organization of 154 member nations and has a history dating back to 1865. It is headquartered in Geneva, Switzerland. Through the ITU, nations cooperate in the use of telecommunications of all kinds to prevent interference, to provide common standards, and to promote the development of efficient technical facilities. It does this by several means, the most significant of which are: agreement among the member nations on a common set of international regulations [the function of Administrative Conferences]; agreement on common technical recommendations [the function of the International Consultative Committees (CCIR and CCITT)]; and registration of radio stations to avoid harmful interference [the function of the International Frequency Registration Board (IFRB)]. Each country participates on an equal basis.

The purpose of the 1979 (WARC) is to amend nearly the entire set of international Radio Regulations. These regulations consist of various definitions and operational and administrative requirements. The most extensive provisions are contained in a Table of Allocations which proceeds from one end of the radiofrequency spectrum to the other, and allocates various bands to defined "services." The Table is divided into three world regions. The Americas are contained within Region 2; Europe, Africa, and the Soviet Union within Region 1; and Asia, Australia, and the South Pacific within Region 3. Past General Administrative Radio Conferences were convened in 1927, 1932, 1937, 1947, and 1959. Numerous specialized Conferences have been held since the 1959 General Conference.

The FCC's Conference preparatory effort began in January 1975, with the issuance of a notice of inquiry, and establishment of a supporting Commission staff, including a Steering committee having overall management responsibility, and several specialized Functional Committees. In addition, the FCC created a number of industry advisory committees to serve as advocates for the various radio user groups through the preparation of reports and the filing of comments in this proceeding. During these past four years, the notices of inquiry have not only served to elicit public comment, they have also represented successive revisions in a process of refining FCC proposals.

Because the Radio Regulations affect all radio users, the Commission has coordinated all of its preparatory activities with the Department of Commerce/National Telecommunications and Information Administration (NTIA) [formerly the Executive Office of the President/Office of Telecommunications Policy (OTP)]. NTIA has the responsibility for coordinating U.S. government use of radio, which is managed by the Interdepartment Radio Advisory Committee (IRAC). IRAC established a 1979 (WARC) preparatory structure similar to that of the Commission's. Because of this ongoing coordination, the proposals adopted by the FCC are consonant with those of IRAC.

During this proceeding, thousands of United States citizens contributed their work and thoughts to the effort. Nearly 2,000 individual comments occupy almost 10 feet of file space. They range from those of a private citizen who saw his life impacted, to

the massive reports of corporations and industry groups who saw their businesses potentially affected. The Commission is grateful for all these comments which, large or small, were considered and appreciated for the unique perspective which they afforded. Although the envisioned needs for radio spectrum exceeded the amount available, the FCC believes that in each case it has suggested a position which is equitable, in the public interest, and capable of being accepted by most of the ITU member nations.

The resulting Final Acts of the Conference will be in the form of a multilateral treaty and, in order to be binding, must proceed through the U.S. ratification process. Where the ITU Regulations impose a new affirmative obligation, the Commission will amend its Rules and Regulations to reflect the obligation. Where the ITU Regulations allow new allocations flexibilities, the Commission will, in appropriate future proceedings, consider the available options and offer them for public comment.

After the 1979 GWARC, there will be additional ITU Conferences which will also be of substantial importance to the U.S. Among them, the Plenipotentiary Conference [the equivalent of a constitutional convention] in 1982 has the power to consider and modify all major ITU institutional features. The Region 2 [Western Hemisphere] Broadcasting-Satellite Conference in 1983 will review the 12 GHz band allocations.

The FCC's underlying policy goal throughout this proceeding has been to minimize the international constraints placed upon the FCC in its domestic regulatory activities. Thus, it should be noted that merely because the FCC's GWARC position provided for the possibility of implementing a service in some band in the frequency spectrum, the Commission is not required in any future domestic proceeding to actually implement it.

Many of the FCC's proposals advocate increased sharing of frequency bands among radio services, as well as minimal administrative restraints on availability of radio spectrum and geostationary orbit allotments. This position of flexibility is particularly appropriate during the period of dramatic technological change which is foreseeable during the next two decades. The FCC believes that such a posture benefits not only the United States, but all ITU members.

Some of the highlights of the FCC's proposals include:

Proposing the expansion of the AM broadcasting band. The expansion would create a band at 1615-1800 kHz which is shared between broadcasting and various other services, and a band at 1800-1860 which is exclusively allocated to broadcasting. This change could result in approximately 14 new channels [or approximately 700 new AM stations]. Because most of the available broadcasting channels have been alloted to licensees, this would provide new channels for potential diversities in broadcasting and minority ownership. However, it will require that changes in the design of AM radio receivers be made. These new receivers should not be more costly than existing ones, although a significant number must obviously be in use for the new allocations to be economically viable.

Proposing that the UHF band be internationally allocated equally among most communications services. Because communications technology is rapidly changing and the demand for local communications is increasing, it is highly desirable to minimize international restraints in this band. Therefore, the FCC is proposing to add the fixed and mobile communications services in nearly the entire band between 470 and 890 MHz which is presently allocated exclusively to broadcasting. This will give the Commission the flexibility to apportion this spectrum among these three services in whatever manner it deems appropriate in future domestic proceedings. This posture does not indicate a lessened committment to domestic UHF broadcasting, but rather a recognition of the great value of the radio spectrum resource, and a desire to make it available for use where appropriate.

Proposing that HF (shortwave) band allocations be adjusted to increase frequencies available to broadcasting, maritime and amateur communications. A number of interests have sought to use the band between 3 and 30 MHz, because of its ability to furnish inexpensive, long-range communications. The Commission has concurred in an NTIA proposal to increase the spectrum available for short-wave broadcasting because of White House interests in increasing the international flow of information, to increase spectrum for maritime communications to accomodate growth in maritime industries, and to increase spectrum for amateur radio to as to accomodate the growing amateur community. With only four broadcasting licensees in the international broadcasting service, the Commission would not appear to have a substantial interest in this matter, and has largely relied on NTIA to reach a compromise among the various affected government agencies.

Proposing to double the available radio/orbital resource available for advanced satellite communication systems at 12 GHz. Because many of our country's technologically advanced, domestic communication systems will be introduced in the 12/14 GHz bands during the next decade, this issue is considered by many to be one of the most significant for the U.S. at the 1979 (WARC). In light of a number of factors, the Commission is proposing to make the entire range of the geostationary orbit available in the Western Hemisphere equally to fixed and broadcasting services; and at the same time, separating into individual 500 MHz segments the frequency bands within which the services must operate.

Proposing amendments which would allow introduction of large-scale, user-oriented satellite systems in a number of bands. Such satellite systems are those which will employ a number of emerging technologies to provide highly efficient, two-way communication capabilities (electronic mail service, voice, facsimile, slow-scan TV) directly to large numbers of very low-cost earth stations. They are systems which can bypass existing terrestrial communications systems to provide interconnection among themselves or with regional information service facilities. From the array of options available, the Commission is proposing that certain allocation and technical specification changes be made to allow appropriate introduction of these satellite systems in the 2.5/6, 10, and 12/14 GHz bands as the technology is developed.

Proposing the protection of certain frequencies for scientific uses. The Commission is proposing the allocation of certain bands, and the application of certain technical limitations, to enable the use of satellite sensing of natural microwave emissions for environmental and weather studies. This technique, known as "passive sensing," allows the determination of things such as the moisture content of the soil, the surface temperature, ice thickness, water vapor, and other data of universal benefit to mankind. Most of the needs of radio astronomy have been met, as have those for the research of the physical characteristics of space.

Proposing an amendment which would allow future consideration of a land mobile-satellite service in the 806-890 MHz band. This amendment allows the implementation of land-mobile satellite service in some 20 MHz segment in the 806-890 MHz band. Such a service could provide inexpensive two-way voice and data communications to a wide variety of local, state, and federal government users in mountainous or rural areas where such systems are not presently feasible.

Proposing allocations to various radio services between 40 and 275 GHz. The present international Table

of Allocations ends at 275 GHz. In the spectral region between 40 and 275 GHz, only a few allocations have been made. The Commission said that specific allocations would encourage experimentation and development, and certain bands associated with natural microwave emissions must be protected for the scientific community.

Proposing a number of changes to transmitter technical standards which would improve the efficiency of spectrum use. These changes include additional limits on unwanted signals of radio transmitters, on the requirement that a transmitter stay within a certain frequency range, the eventual conversion to single sideband equipment in the short-wave broadcasting service, and improved control over the pointing of satellite antennas.

The text of the FCC's *Report* and *Order* has been released publicly December 28, 1978. The document consists of 437 pages. Because of the cost of printing so voluminous a text, it will not be published in the FEDERAL REGISTER. However, the FCC has prepared a limited number of copies that are available upon request (*Report* and *Order* FCC 78-849, Docket No. 20271, adopted December 5, 1978, "An Inquiry relative to preparation for a General World Administrative Radio conference of the International Telecommunication Union to consider revision of the International Radio Regulations.") at its Information Office, Room 202, 1919 M Street, N.W., Washington, D.C. 20554. The *Report* and *Order* is also available for inspection at the Commission's Docket Reference Room.

FEDERAL COMMUNICATION COMMISSION.
WILLIAM J. TRICARICO,
Secretary.

STATEMENT OF CHAIRMAN CHARLES D. FERRIS

DECEMBER 6, 1978.

RE: Docket 20271, 1979 (WARC) Proposals.

For over four years the Federal Communications Commission has examined literally hundreds of issues related to the 1979 general World Administrative Radio Conference (WARC). This Conference, which will begin next September, will review the international Radio Regulations and make decisions about use of the airwaves for the next twenty years.

The Commission's proposals will be forwarded to the Department of State which is responsible for forwarding the final U.S. proposals to the ITU. The *Report and Order* represents a careful and in-depth examination of thousands of comments and an expert determination of the future needs of the non-governmental users of the radio spectrum in the United States.

Throughout this process, I have sought, as Chairman, to have the Commission's recommendations reflect several important themes. The first is that our recommendations be based on the public comments of the thousands of interested individuals and groups who petitioned the Commission.

The second is that our proposals provide the United States—and every other nation—with the greatest possible flexibility in deciding how to use the available spectrum. Too often, international and national regulations are inflexible—restricting innovation, dramaticaly increasing communication costs, or even precluding development. If the Commission's recommendations are adopted at the Conference, each national administration will be able to choose how to best meet its national communications needs. This flexibility will aid the less developed nations, as well as the U.S., in communications planning, and will facilitate the development of innovative services which may radically restructure the way we communicate as we approach the 21st Century. For example, new uses for communications satellites, new systems for electronic message distribution, should benefit from this flexibility.

A third principle underlying the Commission recommendations is that detailed analyses of the policy choices in communications planning are required. Even given the flexibility of U.S. proposals, the available spectrum is simply insufficient to meet all possible communications needs. Our recommendations make clear our policy choices.

A fourth and related principle is that every effort must be made to conserve the spectrum. The spectrum is one of our most valuable resources. Recommendations that encourage inefficient use of the spectrum will only lessen our ability to communicate—a precious ability in an interdependent world such as our own. As technology develops we must be able to utilize it to increase spectrum efficiency.

Finally the Commission's recommendations seek to provide our country with increased diversity in the electronic media. Adoption of the Commission's expansion in the AM broadcast band could provide hundreds of new stations which would allow those who have traditionally been excluded from our electronic media to enter into the communications mainstream. In another example, the adoption of our recommendations would preserve the possibility of direct broadcast satellites providing new channels across the United States.

The Commission's formal work is over with the adoption of this *Report and Order.* I look forward to following the proceedings of the 1979 Conference with great interest. Because of its fundamental importance, I hope all concerned citizens will also be watching.

JOINT SEPARATE STATEMENT OF COMMISSIONER ABBOTT WASHBURN AND COMMISSIONER JAMES H. QUELLO

DECEMBER 5, 1978.

RE: Docket 20271, WARC 1979 Proposals.

President Carter has enunicated a policy of increasing the international flow of information and, for this purpose, has adopted a policy of increasing the use by the United States of international shortwave broadcasting * * * primarily by the *Voice of America, Radio Free Europe,* and *Radio Liberty.* The frequency allocations for international broadcasting contained in today's Report and Order—totaling an increase of 865 kHz—reflect but one alternative now under active consideration within the Executive Branch of the Government. This total falls some 800 kHz short of the proposals that have been made by the International Communications Agency and the Board by International Broadcasting.

Inclusion here of the 865-kHz alternative was not based on any independent analysis by the Commission. The FCC has merely deferred judgment in this matter to other agencies of the Executive Branch.

In the interest of accuracy, we believe it should be brought to the attention of all interested parties, here and abroad, that at the time of the Commission's action (December 5, 1978) there has yet been no decision within the Executive Branch as to a final figure for a U.S.-proposed frequency allocation for international broadcasting.

This is the purpose of our joint separate statement.

[FR Doc. 79-1214 Filed 1-12-79; 8:45 am]

[6712-01—M]

Office of the Secretary

[Report No. 1158]

PETITIONS FOR RECONSIDERATION OF ACTIONS IN RULE MAKING PROCEEDINGS FILED

JANUARY 3, 1979.

Docket or RM No.	Rule No.	Subject	Date Rec'd.
21348	Parts 90, 89, 91 & 93	Amendment of the Commission's Rules governing the Private Land Mobile Radio Services to provide a new Part 90 that Re-regulates and consolidates Parts 89, 91 and 93. Filed by Peter Tannenwald, and Gerald O' Reilly, Attorneys for Sears, Roebuck and Co.	Dec. 15, 1978.

NOTE.—Oppositions to Petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the FEDERAL REGISTER. Replies to an opposition must be filed within 10 days after time for filing oppositions has expired.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 79-1213 Filed 1-11-79; 8:45 am]

[6712-01-M]

RENEWAL OF ADVISORY COMMITTEES

The Federal Communications Commission has determined that renewal of two advisory committees, the Radio Technical Commission for Marine Services (RTCM) and the Advisory Committee for Cable Signal Leakage, is necessary and in the public interest. Pursuant to the provisions of the Federal Advisory Committee Act, P.L. 92-463, notice of renewal is hereby provided.

The purpose of the Radio Technical Commission for Marine Services is to advance the art and science of marine telecommunications through study, investigation, appropriate recommendations to the Federal Government and industry, and promotion of ideas and exchange of information. The RTCM has been renewed for an additional period of nine months, extending until October 5, 1979.

The purpose of the Advisory Committee for Cable Signal Leakage is to furnish advice concerning research being undertaken to prevent the possibility of interference from cable television systems to aeronautical navigation and safety radio services. The advisory committee advises the FCC and other Federal agencies participating in the research on design of the research plan, monitors progress of the research, and recommends areas for additional study. The Committee is being renewed for an additional period of two years, extending until February 10, 1981.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 79-1215 Filed 1-11-79; 8:45 am]

[1610-01-M]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on January 3, 1979. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER *is to inform the public of such receipt.*

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FCC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before January 30, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

FEDERAL COMMUNICATIONS COMMISSION

The FCC requests clearance of a revision to Form 610-A, Application of Alien Amateur Radio Licensee for Permit to Operate in the United States. Form 610-A is required by Parts 1 and 97 of the FCC's Rules and Regulations and is used by aliens who apply for or modify a reciprocal amateur radio license. Before an alien can operate an amateur radio station in the United States, an alien amateur licensee must obtain a permit for such operation from the FCC. A permit for such operation is issued only to an alien holding a valid amateur operation and station authorization from his/her government, and only when there is in effect a bilateral agreement between the U.S. and that government for such operation on a reciprocal basis by U.S. amateur radio operators. Form 610-A is being revised to add a new question "Are you a citizen of the U.S.?" Citizens of the U.S. are not eligible for an alien operator permit and must take a test to receive a license. It has been the Commission's experience that many applicants ignore instructions and certifications whether intentionally or unintentionally. Therefore in order for the FCC to ascertain whether an applicant is eligible for an alien permit this question is necessary for the Commission to make a determination. The FCC estimates that approximately 3,000 applications are received annually and that respondent burden averages 15 minutes per response.

NORMA F. HEYL,
Regulatory Reports Review Officer.

[FR Doc. 79-1217 Filed 1-11-79; 8:45 am]

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 78F-0328]

AMERICAN CYANAMID CO.

Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: American Cyanamid Co. has filed a petition (FAP 8B3399) proposing to amend the food additive reg-

ulations to provide for the safe use of 2 - (2*H* - benzotriazol - 2 yl)-4-(1,1,3,3-tetramethylbutyl)phenol as a stabilizer in polycarbonate resins intended for food-contact use.

FOR FURTHER INFORMATION CONTACT:

John J. McAuliffe, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under provisions of 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 8B3399) has been filed by American Cyanamid Co., Wayne, NJ 07470, proposing that the food additive regulations be amended to provide for the safe use of 2-(2*H*benzotriazol-2-yl)-4-(1,1,3,3-tetramethylbutyl)phenol as a stabilizer in polycarbonate resins intended for use in contact with food.

The agency has determined that the proposed action falls under § 25.1(f)(3) (21 CFR 25.1(f)(3)) and is exempt from the need of an environmental impact analysis report, and that no environmental impact statement is necessary.

Dated: January 3, 1979.

SANFORD A. MILLER,
Director, Bureau of Foods.

[FR Doc. 79-1072 Filed 1-11-79; 8:45 am]

FERTILITY AND MATERNAL HEALTH DRUGS ADVISORY COMMITTEE

Meeting Cancellation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Fertility and Maternal Health Drugs Advisory Committee subcommittee meeting announced by notice in the FEDERAL REGISTER of December 15, 1978 (43 FR 58629), for January 17, 1979, has been canceled.

FOR FURTHER INFORMATION CONTACT:

A. T. Gregoire, Bureau of Drugs (HFD-130), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3520.

Dated: January 4, 1979.

WILLIAM F RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-814 Filed 1-11-79; 8:45 am]

[4110-03-M]

[Docket No. 78N-0315]

SAFETY OF CERTAIN HUMAN FOOD INGREDIENTS

Opportunity for Public Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces an opportunity for public hearing on the safety of starter distillate, hydrochloric acid, tartrates, riboflavin, and propionates to determine whether they are generally recognized as safe (GRAS) or subject to a prior sanction. This action accords with procedures of a comprehensive safety review that the agency is conducting. Interested persons are invited to give their views on the safety of these substances.

DATE: Requests to make oral presentations at the public hearing must be postmarked on or before February 12, 1979.

ADDRESSES: Written requests to the Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014, and to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of July 26, 1973 (38 FR 20053), the Commissioner of Food and Drugs issued a notice advising the public that an opportunity would be provided for oral presentation of data, information, and views at public hearings to be conducted by the Select Committee on GRAS Substances of the Life Sciences Research Office, Federation of American Societies for Experimental Biology (the Select Committee), about the safety of ingredients used in food, to determine whether the ingredients are GRAS or subject to a prior sanction.

The Commissioner now announces that the Select Committee is prepared to conduct a public hearing on the following categories of food ingredients: starter distillate and diacetyl for direct food use; hydrochloric acid for direct food use; potassium acid tartrate, sodium potassium tartrate, sodium tartrate, and tartaric acid for direct food use; riboflavin and riboflavin-5'-phosphate for direct food use; propionic acid, calcium propionate, and sodium propionate for direct food use; and thiodipropionic acid and dilauryl thiodipropionate for direct food use, and for food packaging materials. The public hearing will provide an opportunity, before the Select Committee reaches its final conclusions, for any interested person(s) to present scientific data, information, and views on the safety of these substances, in addition to those previously submitted in writing under notices published in the FEDERAL REGISTER of July 26, 1973 (38 FR 20051, 20053), April 17, 1974 (39 FR 13798), and March 28, 1978 (43 FR 12941).

The Select Committee has reviewed all the available data and information on the categories of food ingredients listed above and has reached one of the five following tentative conclusions on the status of each:

1. There is no evidence in the available information that demonstrates or suggests reasonable grounds to suspect a hazard to the public when the ingredient is used at levels that are now current or that might reasonably be expected in the future.

2. There is no evidence in the available information that demonstrates or suggests reasonable grounds to suspect a hazard to the public when the ingredient is used at levels that are now current and in the manner now practiced. However, it is not possible to determine, without additional data, whether a significant increase in consumption would constitute a dietary hazard.

3. Although no evidence in the available information demonstrates a hazard to the public when the ingredient is used at levels that are now current and in the manner now practiced, uncertainties exist requiring that additional studies be conducted.

4. The evidence is insufficient to determine that the adverse effects reported are not deleterious to the public health when the ingredient is used at levels that are now current and in the manner now practiced. (This finding does not apply to the substances covered by this notice.)

The information available is not sufficient to make a tentative conclusion. (This finding does not apply to the substances covered by this notice.)

The following table lists each ingredient, the Select Committee's tentative conclusion (keyed to the five types of conclusions listed above), and the available information on which the Select Committee reached its conclusions; all prices listed in the table are subject to change:

Substance	Select Committee tentative conclusion	Scientific literature review (order no.; price code; price)	Animal study report (order no.; price code; price)	Other information (order no.; price code; price)
Starter Distillate:				
Starter distillate	3	PB 234-896/AS; A07; $7.25	1. Final report to FDA on teratogenicity of starter distillate in animals submitted by Food and Drug Research Laboratories, Inc. (PB 223-833/AS); A03; $4.50.	1. Human intake data taken from "A Comprehensive Survey of Industry on the Use of Food Chemicals Generally Recognized as Safe (GRAS)," available from the National Technical Information Service (PB Nos. 221-921 through 221-949; PB 221-920 for the set); E99; $173.00.
Diacetyl	1		2. Mutagenic evaluation (Tier 1) of starter distillate (71-73) by Litton Bionetics, Inc., under FDA contract (PB 245-431/AS); A03; $4.50.	2. Telephone conversation, R. L. Sellars, C. Hansen's Laboratory, Inc., Milwaukee, WI. 3. Letter, August 4, 1977, L. W. Chumlea, Chumlea's Laboratory, Lebanon, IN. 4. Memorandum, July 20, 1977, R. I. Meyer, FDA, Washington, DC. 5. Lindsay, R. C., 1978, Madison, WI, supplemental information about the composition and use of starter distillate. 6. Telephone conversation, Mr. Beery, Chumlea's Laboratory, Lebanon, IN.
Hydrochloric Acid	1	PB 241-962/AS; A04; $5.25		1. Human intake data taken from "A Comprehensive Survey of Industry on the Use of Food Chemicals Generally Recognized as Safe (GRAS)," available from the National Technical Information Service (PB Nos. 221-921 through 221-949; PB 221-920 for the set); E99; $173.00.
Tartrates:				
L (+) Potassium acid tartrate	1	PB 241-955/AS; A05; $6.00	1. Mutagenic evaluation (host-medicated assay, cytogenetics, dominant lethal assay) of tartaric acid (71-55) by Litton Bionetics, Inc., under FDA contract (PB 245-445/AS); A08; $8.00. 2. Teratogenic evaluation of tartaric acid (71-55) by Food and Drug Research Laboratories, Inc., under FDA contract (PB 223-821/AS); A04; $5.25. 3. Mutagenic evaluation (Tier I) of potassium acid tartrate (71-13) by Litton Bionetics, Inc., under FDA contract (PB 254-521/AS); A03; $4.50.	1. Human intake data taken from "A Comprehensive Survey of Industry on the Use of Food Chemicals Generally Recognized as Safe (GRAS)," available from the National Technical Information Service (PB Nos. 221-921 through 221-949; PB 221-920 for the set); E99; $173.00. 2. Toxicity and teratogenicity studies in avian embryos: tartaric acid. Submitted by the University of Arizona.
L (+) Sodium potassium tartrate	1			
L (+) Sodium tartrate	1			
L (+) Tartaric acid	1			
Riboflavin:				
Riboflavin	1	PB 241-964/AS; A12; $10.75	1. Mutagenic evaluation (Tier I) of riboflavin (75-76) by Litton Bionetics, Inc., under FDA contract (PB 278-477/AS); A03; $4.50.	1. Human intake data taken from "A Comprehensive Survey of Industry on the Use of Food Chemicals Generally Recognized as Safe (GRAS)," available from the National Technical Information Service (PB Nos. 221-921 through 221-949; PB 221-920 for the set); E99; $173.00.
Riboflavin-5'-phosphate	1	PB 275-753/AS; A02; $4.00	2. Mutagenic evaluation (Tier I) of riboflavin-5'-phosphate, sodium (75-77) by Litton Bionetics, Inc., under FDA contract (PB 278-478/AS); A03; $4.50.	2. Wade, M. J., Review of the Recent Literature of the Health Aspects of Riboflavin and Riboflavin-5'-phosphate as food Ingredients (PB 275-917/AS); no record of price code and price. 3. Randall, L. O., Toxicity of Monodiethanolamine Salt of Riboflavin Monophosphoric Acid Ester Dihydrate. Unpublished report submitted by Hoffmann-LaRoche, Inc. 4. Randall, L. O., Chronic Toxicity of Mono-diethanolamine Salt of Riboflavin Monophosphoric Acid Ester Dihydrate. Unpublished report submitted by Hoffmann-LaRoche, Inc.

Substance	Select Committee tentative conclusion	Scientific literature review (order no.; price code; price)	Animal study report (order no.; price code; price)	Other information (order no.; price code; price)
Propionates:				
Direct food use:				
Propionic acid	1	PB 228-538/AS; A05; $6.00	1. Mutagenic evaluation (host-medicated assay, cytogenetics, dominant lethal assay) of calcium propionate (71-36) by Litton Bionetics, Inc., under FDA contract (PB 245-448/AS); A06; $6.50. 2. Teratogenic evaluation of calcium propionate (71-36) by Food and Drug Research Laboratories, Inc., under FDA contract (PB 221-778); A04; $5.25. 3. Mutagenic evaluation (Tier I) of calcium propionate (71-36) by Litton Bionetics, Inc., under FDA contract (PB 245-439/AS); A03; $4.50. 4. Mutagenic evaluation (Tier I) of propionic acid (75-62) by Litton Bionetics, Inc., under FDA contract (PB 266-897/AS); A04; $5.25. 5. Mutagenic evaluation (Tier I) of sodium propionate (75-61) by Litton Bionetics, Inc., under FDA contract (PB 266-900/AS); A04; $5.25. 6. Mutagenic evaluation (host-medicated assay, cytogenetics, dominant lethal assay) of dilauryl thiodipropionate (71-40) by Litton Bionetics, Inc., under FDA contract (PB 245-452/AS; A06; $6.50. 7. Teratogenic evaluation of dilauryl thiodipropionate (71-40) by Food and Drug Research Laboratories, Inc., under FDA contract (PB 221-776); A03; $4.50; (PB 223-824/AS); A02; $4.00. 8. Mutagenic evaluation (Tier I) of thiodipropionic acid (75-33) by Litton Bionetics, Inc., under FDA contract (PB 257-874/AS); A03; $4.50.	1. Human intake data taken from "A Comprehensive Survey of Industry on the Use of Food Chemicals Generally Recognized as Safe (GRAS)," available from the National Technical Information Service (PB Nos. 221-921 through 221-949; PB 221-920 for the set); E99; $173.00. 2. Committee on GRAS List Survey—Phase III. Estimating distribution of daily intakes of certain GRAS substances. 3. Investigation of the toxic effects of GRAS substances to the developing chicken embryo: calcium propionate, submitted by Mississippi State University. 4. Investigation of the toxic and teratogenic effects of GRAS substances to the developing chicken embryo: sodium propionate; FDA in-house investigation. 5. Tullar, P. E., 1947, The George Washington University, The Pharmacology and Toxicology of Thiodipropionic Acid and its "Dilauryl-" and "Distearyl-" Esters. 6. Hazleton, L. W., and R. C. Hellerman, 1947, Hazleton Laboratories, Thiodipropionic acid-ester mixture heated in lard. 7. Investigation of the toxic and teratogenic effects of GRAS substances to the developing chicken embryo: thiodipropionic acid; FDA in-house investigation. 8. Investigation of the toxic and teratogenic effects of GRAS substances to the developing chicken embryo: dilauryl thiodipropionate; submitted by Mississippi State University.
1				
1				
2				
2				
Food packaging materials:				
Thiodipropionic acid	1			
Dilauryl thiodipropionate	1			

Reports in the table with "PB" prefixes may be obtained from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Va. 22151.

In addition to the information contained in the documents listed in the table above, the Select Committee supplemented, where appropriate, its reviews with specific information from specialized sources as announced in a previous hearing opportunity notice published in the FEDERAL REGISTER of September 23, 1974 (39 FR 34218).

The Select Committee's tentative reports on (1) starter distillate and diacetyl for direct food use; (2) hydrochloric acid for direct food use; (3) potassium acid tartrate, sodium potassium tartrate, sodium tartrate, and tartaric acid for direct food use; (4) riboflavin and riboflavin-5'-phosphate for direct food use; and (5) propionic acid, calcium propionate, and sodium propionate for direct food use, and thiodipropionic acid and dilauryl thiodipropionate for direct food use and for food packaging materials are available for review at the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857, and also at the Public Information Office, Food and Drug Administration, Rm. 3807, 200 C Street SW., Washington, D.C. 20204. In addition, all reports and documents used by the Select Committee to review the ingredients are available for review at the office of the Hearing Clerk.

To schedule the public hearing, the Select Committee must be informed of the number of persons who wish to attend and the amount of time requested to give their views. Accordingly, any interested person who wishes to appear at the public hearing to make an oral presentation shall so inform the Select Committee in writing, addressed to: The Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, Md. 20014. A copy of each such request shall be sent to the Hearing Clerk, address noted above, and all requests shall be placed on public display in that office. Any such request

must be postmarked on or before February 12, 1979, shall state the substance(s) on which an opportunity to present oral views is requested, and shall state how much time is requested for the presentation. Requests should specify the docket number found in brackets in the heading of this notice. As soon as possible after the request deadline, a notice announcing the date, time, place, and scheduled presentations for any public hearing that may be requested will be published in the FEDERAL REGISTER.

The purpose of the public hearing is to receive data, information, and views not previously available to the Select Committee about the substances listed above. Information already contained in the scientific literature reviews and in the tentative Select Committee report shall not be duplicated, although views on the interpretation of this material may be presented.

Depending on the number of requests for opportunity to make oral presentations, the Select Committee may reduce the time requested for any presentation. Because of time limitations, individuals and organizations with common interests are urged to consolidate their presentations. Any interested person may, in lieu of an oral presentation, submit written views, which shall be considered by the Select Committee. Three copies of written views identified with the docket number found in brackets in the heading of this notice, shall be addressed to the Select Committee at the address noted above, and must be postmarked not later than 10 days before the scheduled date of the hearing. A copy of any written views shall be sent to the Hearing Clerk, Food and Drug Administration, and shall be placed on public display in that office.

A public hearing will be presided over by a member of the Select Committee. Hearings will be transcribed by a reporting service, and a transcript of each hearing may be purchased directly from the reporting service and will also be placed on public display in the office of the Hearing Clerk, Food and Drug Administration.

Dated: December 19, 1978.

WILLIAM F RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-813 Filed 1-11-79; 8:45 am]

[4110-03-M]

[Docket No. 78P-0386]

TOMATO JUICE DEVIATING FROM IDENTITY STANDARD

Temporary Permit For Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces that a temporary permit has been issued to Riviana Foods Inc., to market test tomato juice from concentrate. The purpose of the temporary permit is to permit the applicant to measure consumer acceptance of the food.

EFFECTIVE DATE: This permit is effective for 15 months, beginning on the date the new food is introduced into or caused to be introduced into interstate commerce, but not later than April 12, 1979. However, the permit may terminate sooner, depending upon the final action on the Food and Drug Administration's proposal to amend the standard of identity for tomato juice published in the FEDERAL REGISTER of May 9, 1978 (43 FR 19864). If the proposal is affirmed, the permit will terminate on the effective date of the final regulation. If the proposal is rejected, the permit will expire 30 days after such negative ruling on the proposal.

FOR FURTHER INFORMATION CONTACT:

F Leo Kauffman, Bureau of Foods (HFF-414), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-245-1164.

SUPPLEMENTAL INFORMATION: In accordance with § 130.17 (21 CFR 130.17) on temporary permits to facilitate market testing of foods varying from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), notice is given that a temporary permit has been issued to Riviana Foods, Inc., Houston, Texas 77001. This permit covers interstate marketing tests of tomato juice that deviates from the standard of identity prescribed in § 156.145 (21 CFR 156.145). The permit provides for the temporary marketing of 15,000 cases of forty-eight 5¼-ounce cans of the product to be distributed in Puerto Rico and the U.S. Virgin Islands.

The test product will be packed at the Riviana Foods, Inc., subsidiary Alimentos Kern de Guatemala, located in Guatemala City, Guatemala. The product is prepared from concentrated tomato liquid that complies with the requirements of § 155.192(a)(1) (21 CFR 155.192(a)(1)). The finished product will be equivalent to a single-strength tomato juice normally found in the marketplace. The finished product will contain not less than 5.5 percent tomato soluble solids.

The principal display panel of the label will state the product name as "tomato juice from concentrate." Each of the ingredients used will be stated on the label as required by the applicable sections of 21 CFR Part 101, except that the tomato ingredient complying with the requirements of § 155.192(a)(1) will be declared as "tomato concentrate" This permit is effective for 15 months, beginning on the date the new food is introduced or caused to be introduced into interstate commerce, but no later than April 12, 1979. However, the permit may terminate sooner, depending upon the final action on the Food and Drug Administration's proposal to amend the standard of identity for tomato juice published in the FEDERAL REGISTER of May 9, 1978 (43 FR 19864). If the proposal is affirmed, the permit will terminate on the effective date of the final regulation. If the proposal is rejected, the permit will expire 30 days after the negative ruling on the proposal.

Dated: January 5, 1979.

WILLIAM F RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-1073 Filed 1-11-79; 8:45 am]

[4110-02-M]

Office of Education

FOREIGN LANGUAGE AND AREA STUDIES FELLOWSHIPS PROGRAM AND INTERNATIONAL STUDIES CENTERS PROGRAM

Closing Date for Transmittal of Applications for Fiscal Year 1979

Applications are invited for new projects under the Foreign Language and Area Studies Fellowships Program and the International Studies Centers Program.

Authority for these programs is contained in section 601 of the National Defense Education Act of 1958, as amended.

(20 U.S.C. 511)

The Fellowships and the Centers Programs issue awards to institutions of higher education; consortia applications are eligible but must be submitted by a member institution.

The purpose of the awards under the Fellowships Program is to assist individuals undergoing advanced training in modern foreign languages and related area studies through awards to approved institutions. The purpose of the awards under the International Studies Centers Program is to provide general assistance for programs in language and area studies and in international studies.

CLOSING DATE FOR TRANSMITTAL OF APPLICATIONS: Applications for awards must be mailed (post-

marked) or hand delivered by February 20, 1979.

APPLICATIONS DELIVERED BY MAIL: An application sent by mail must be addressed to the U.S. Office of Education, Application Control Center, Attention: 13.434 (for Fellowships) and/or 13.435A (for Centers), Washington, D.C. 20202.

Proof of mailing must consist of a legible U.S. Postal Service dated postmark or a legible mail receipt with the date of the mailing stamped by the U.S. Postal Service. Private metered postmarks, or mail receipts will not be accepted unless they have been date stamped by the U.S. Postal Service.

Note.—The U.S. Postal Service does not uniformly provide a dated postmark. Applicants should check with their local post office before relying on this method.

Applicants are encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered in the current competition.

APPLICATIONS DELIVERED BY HAND: An application that is hand delivered must be taken to the U.S. Office of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, or Federal Holidays.

Applications that are hand delivered will not be accepted after 4:00 p.m. on the closing date.

PROGRAM INFORMATION: Specific information about the Fellowships and Centers Programs is contained in the regulations and guidelines (published in the FEDERAL REGISTER on My 23, 1977) and in the program information and application package.

All grants will be new awards; a current grantee may apply for a new award on the same basis as an applicant not previously funded. In this competition awards for both fellowships and centers are for two years' duration. Continuation of the award for the second year depends upon the availability of funds and satisfactory performance. It is expected that a three-year cycle will resume with the subsequent competition.

AVAILABLE FUNDS: It is anticipated that approximately $4,590,000 will be available for the Fellowships program for FY 1079. It is estimated that three funds could support approximately 800 Fellowships for language and area studies at an average unit cost of $5,700. The tentative allocation of foreign language and area fellowships according to world areas is as follows: Africa 89; East Asia 193; Eastern Europe and the U.S.S.R. 140; Latin America 75; Middle East 140; South Asia 88; Southeast Asia 70; and Western Europe 5.

It is anticipated that approximately $8,000,000 will be available for the Centers Program in FY 1979. It is estimated that these funds could support approximately 80 awards to Centers, with up to 20% of the awards for centers with a primary focus on other than foreign language and area studies, such as comparative area studies or international affairs, and with up to 20% of the awards for undergraduate centers. The anticipated average award for centers will be about $100,000 with a range between $32,000 and $180,000.

The number of regional centers will range from about 8 to 15 for each of the following world areas: East Asia (including Japan, China, and Korea), South Asia (India, Sri Lanka, Pakistan, Bangladesh, and Nepal), the Middle East (including North Africa), the Soviet Union and Eastern Europe, Africa, and Latin America. Assistance will also be available for up to approximately three centers in each of the following areas: Southeast Asia (including Indonesia and the Philippines as well as Thailand, Vietnam, Cambodia, Laos, Malaysia, and Burma) and contemporary Western Europe; and about one or two for other world areas such as Canada, Inner Asia, and the Pacific Islands.

These estimates do not bind the U.S. Office of Education except as may be required by the applicable statute and regulations.

APPLICATION FORMS: Application forms and program information packages are available and will be mailed to interested parties upon publication of this Notice in the FEDERAL REGISTER. Applications and information packages may be obtained by writing to the International Studies Branch of the U.S. Office of Education (Room 3923, Regional Office Building 3), 400 Maryland Aveune, SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages.

APPLICABLE REGULATIONS: The regulations applicable to this program are:

(a) Office of Education General Provisions Regulations (45 CFR Parts 100. and 100a), and

(b) Regulations governing the International Studies Centers and the Foreign Language and Area Studies Fellowships (45 CFR Part 146), published on May 23, 1977.

FURTHER INFORMATION: For further information, contact the Centers Program staff (202) 245-9588, or the Fellowships Program staff (202) 245-9808, of the International Studies Branch, Division of International Education, U.S. Office of Education (Room 3923, Regional Office Building 3), 400 Maryland Aveune, SW., Washington, D.C. 20202.

(20 U.S.C. 511)

(Catalog of Federal Domestic Assistance Numbers 13.434: Foreign Language and Area Studies Fellowships Program, and 13.435A: International Studies Centers Program)

Dated: January 8, 1979.

JOHN ELLIS,
Acting United States Commissioner of Education.

[FR Doc. 79-1161 Filed 1-11-79; 8:45 am]

[4110-02-M]

MEDIA RESEARCH PRODUCTION, DISTRIBUTION, AND TRAINING GRANT PROGRAM

Extension of Deadline Date for Transmittal of Applications for Fiscal Year 1979

The March 5, 1979, deadline date for transmittal of new applications under the Media Research Production, Distribution, and Training Grant Program is extended because the application forms and program information was not available January 2 as stated. The material is expected to be ready for mailing by January 15, 1979. The *new deadline date is March 19, 1979.*

The purpose of the awards is to promote the advancement of handicapped persons through media by assisting research, production, distribution, and training in the use of media.

Closing date for transmittal of applications: To be assured of consideration for funding, applications for new awards should be mailed or hand delivered by March 19, 1979.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Office of Education, Application Control Center, Attention: 13.446, Washington, D.C. 20202. The application must be mailed on or before the deadline date.

Proof of mailing must consist of a legible U.S. Postal Service dated postmark or a legible mail receipt with the date of mailing stamped by the U.S. Postal Service. Private metered postmarks or mail receipts will not be accepted without a legible date stamped by the U.S. Postal Service.

NOTE.—The U.S. Postal Service does not uniformly provide a dated postmark. Applicants should check with their local post office before relying on this method.

Applicants are encouraged to use registered or at least first-class mail.

Each late applicant will be notified that its application will not be considered in the current competition.

Application delivered by hand: An application that is hand delivered

must be taken to the U.S. Office of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8 a.m. and 4 p.m. (Washington, D.C., time) daily, except Saturdays, Sundays, and Federal holidays.

Applications that are hand delivered will not be accepted after 4 p.m. on the closing date.

Available funds: Approximately $5.5 million has been obligated to more than 50 new awards in the first 2 years of the program. The budget total for 1979 new awards has not yet been established but should equal and may well exceed the average for the first 2 years.

Previous first year awards for new projects have been between $25,000 and $19,000 with an average just over $100,000. It is anticipated that most new awards will fall in this range.

These estimates do not bind the U.S. Office of Education except as may be required by the applicable statute and regulations.

Application forms: Application forms and program information packages are expected to be ready for mailing by January 15, 1979. They may be obtained by writing to the Division of Media Services, Bureau of Education for the Handicapped, U.S. Office of Education (Room 4821, Donohoe Building), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages.

Special information: Applicants to this program are not subject to the State and areawide clearinghouse procedure under OMB Circular A-95.

Applicable regulations: The regulations applicable to this program are:

(a) Office of Education General Provisions Regulations (45 CFR Parts 100 and 100a), and

(b) Regulations governing Instructional Media for the Handicapped (45 CFR Part 121i).

For further information: For further information contact Dr. Barry E. Katz, Grant Program Officer, Division of Media Services, BEH, U.S. Office of Education (Room 4319, Donohoe Building), 400 Maryland Avenue, SW., Washington, D.C. 20202, Telephone 202-472-4640.

(20 U.S.C. 1451, 1452.)

(Catalog of Federal Domestic Assistance No. 13.446, Media Research Production, Distribution, and Training Grant Program.)

Dated: January 8, 1979.

JOHN ELLIS,
Acting United States Commissioner of Education.

[FR Doc. 79-1162 Filed 1-11-79; 8:45]

[4110-08-M]

National Institutes of Health

REPORT ON BIOASSAY OF COUMAPHOS FOR POSSIBLE CARCINOGENICITY

Availability

Coumaphos (CAS 56-72-4) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of coumaphos for possible carcinogenicity was conducted by administering the test chemical in feed to F344 rats and B6C3F1 mice. Applications of the chemical include use as a pesticide.

It is concluded that under the conditions of this bioassay, coumaphos was not carcinogenic for either F344 rats or B6C3F1 mice.

Single copies of the report, Bioassay of Coumaphos for Possible Carcinogenicity (T.R. 96), are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20014.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: January 3, 1979.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc. 79-944 Filed 1-11-79; 8:45 am]

REPORT ON BIOASSAY OF 4 - NITRO - O - PHENYLENEDIAMINE FOR POSSIBLE CARCINOGENICITY

Availability

4 - Nitro - o - phenylenediamine (CAS 99-56-9) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay for the possible carcinogenicity of 4 - nitro - o - phenylenediamine was conducted using Fischer 344 rats and B6C3F1 mice. Applications of the chemical include use as an ingredient of hair dyes. 4 - Nitro - o - phenylenediamine was administered in the feed, at either of two concentrations, to groups of 50 male, and 50 female animals of each species.

Under the conditions of this bioassay, dietary administration of 4 - nitro - o - phenylenediamine was not carcinogenic in Fischer 344 rats or B6C3F1 mice.

Single copies of the report, Bioassay of 4 - Nitro - o - phenylenediamine for Possible Carcinogenicity (T.R. 180), are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20014.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: January 3, 1979.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc. 79-943 Filed 1-11-79; 8:45 am]

[4110-08-M]

NATIONAL CANCER INSTITUTE COMMITTEES

Renewals

The Director, National Institutes of Health, announces the renewal of charters on December 20, 1978, of the advisory committees indicated below by the Director, National Cancer Institute. Such advisory committees shall be governed by the provisions of the Federal Advisory Committee Act, as amended (Pub. L. 92-463) setting forth standards governing the establishment and use of advisory committees. These committees will terminate on December 20, 1980 unless renewed by appropriate action as authorized by law.

Committees established under the authority of section 410(a)(3) of the Public Health Service Act (42 U.S.C. 286d) are:

Biometry and Epidemiology Contract Review Committee
Board of Scientific Counselors, Division of Cancer Biology and Diagnosis
Board of Scientific Counselors, Division of Cancer Treatment
Breast Cancer Task Force Committee
Committee on Cytology Automation
Diagnostic Research Advisory Group

Committees established under the authority of section 410A(a) of the Public Health Service Act (42 U.S.C. 286e) are:

Cancer Clinical Investigation Review Committee
Cancer Special Program Advisory Committee

Dated: January 5, 1979.

DONALD S. FREDRICKSON, M.D.,
Director, National Institutes of Health.

[FR Doc. 79-1094 Filed 1-11-79; 8:45 am]

[4110-08-M]

NATIONAL HEART, LUNG, AND BLOOD INSTITUTE

Amended Notice of Meeting of Division of Blood Diseases and Resources Advisory Committee

A notice is hereby given of a change in the January 15 and 16, 1979, meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, which was published in the FEDERAL REGISTER of November 27, 1978 (43 FR 55285-55286).

This meeting was originally intended to be an entirely open meeting. There now will be a closed session on January 16, 1979 from 8:30 AM-10:00 AM. In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 8:30 AM-10:00 AM for the consideration of personnel qualifications and performance of all investigators involved in three Specialized Centers of Research supported by the Division of Blood Diseases and Resources, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Fann Harding, Special Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 514, National Institutes of Health, Bethesda, Maryland, 20014, phone: (301) 496-1817, will furnish substantive program information.

Dated: January 10, 1979.

SUZANNE L. FREMEAU,
Committee Management, Officer, NIH.

[FR Doc. 79-1365 Filed 1-11-79; 8:45 am]

[4310-02-M]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

NEAR RESERVATION DESIGNATIONS

DECEMBER 27, 1978.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 230 DM 2.

In accordance with Title 25—Indians, Chapter 1—Bureau of Indian Affairs, Department of the Interior, Subchapter D—Social Welfare, Part 20—Financial Assistance and Social Services Program (25 CFR 20) the Assistant Secretary—Indian Affairs has designated certain locales as "Near reservation" locations appropriate for the extension of Bureau of Indian Affairs financial assistance and/or social services. The locales listed alphabetically below by Bureau Agency Office jurisdiction are those designated for this purpose:

Agency	Reservation-Tribe	"Near reservation" location
Cherokee Agency, Cherokee, NC.	Cherokee	Counties of Cherokee, Graham, Haywood, Jackson and Swain (all of the above within the State of North Carolina).
Choctaw Agency, Philadelphia, MS.	Choctaw	Counties of Neshoba, Leake, Newton, Kemper, Scott, Attala, Lauderdale, Winston, Noxubee, Clarke, Smith and Jones (all of the above within the State of Mississippi).
Colorado River Agency, Parker, AZ.	Colorado River	Bouse, Ehrenberg, Parker, Salome, Lake Havasu City, Kingman, Bull Head City, Holiday Shores, Mohave Valley, Havasu Valley (all of the above within the State of Arizona).
Fort Apache Agency, Whiteriver, AZ.	Fort Apache	Pine Top, Lakeside, Eager, Showlow, Nutrioso, Holbrook, Overgaard, Alpine, Taylor, Springerville, Herber, Globe, St. Johns, Snowflake, Winslow (all of the above within the State of Arizona).
Fort Hall Agency, Fort Hall, ID.	Shoshone-Bannock	Counties of Bingham, Power, Bannock and Caribou (all of the above within the State of Idaho).
Fort McDowell Agency, Fountain Hills, AZ.	Mojave-Apache	Mesa, Tempe, Scottsdale (all of the above within the State of Arizona).
Fort Yuma Agency, Yuma, AZ.	Quechan, Cocopah	Gadsen, Roll, San Luis, Somerton, Tacna, Yuma, Wellton (all of the above within the State of Arizona).
Hopi Agency, Keams Canyon, AZ.	Kaibab-Paiute	Fredonia, Arizona; St. George, Utah; Kanob, Utah; Cedar City, Utah.
	Hopi	Holbrook, Winslow, Flagstaff, Grand Canyon, Page (all of the above in the State of Arizona).
Navajo Area Office, Window Rock, AZ.	Navajo	Grand Canyon, Joseph City, Marble Canyon, Flagstaff, Snowflake, Holbrook, Page, Wupatki, Winslow (all of the above in the State of Arizona); Farmington, Aztec, Bloomfield, Magdalena, Cuba, Kirtland, Grants, Milan, Socorro, Gallup (all of the above within the State of New Mexico); La Plata, Cortez, Bayfield, Durango, Ignacio, and Towaoc (all of the above within the State of Colorado).
Papago Agency, Sells, AZ	Papago	Tucson, Why, South Tucson, Ajo, Gila Bend, Sasabe, Case Grande, Sahuarita, Coolidge, Marana, Florence, Red Rock, Eloy, Cortaro, Toltec, Picacho, Buckeye, Arizona City, Stanfield (all of the above in the State of Arizona).
Pima Agency, Sacaton, AZ	Ak-Chin	Chandler, Mobile, Laveen, Stanfield, Casa Grande, Gila Bend, Phoenix, Midway, Eleven Mile Corner, Kyrene, Coolidge, Florence, Buckeye, Maricopa (all of the above within the State of Arizona).
	Gila River	Chandler, LaPalma, Eloy, Ocotillo, Casa Grande, Gilbert, Higley, Kyrene, Rittenhouse, Hightown, Queen Creek, Gila Bend, Standfield, Chandler Hts, Florence, Mobile, Maricopa, Coolidge, Borree Corners, Avondale, Randolf, Tempe, Phoenix, Guadalupe, Mesa, Glendale, Litchfield, Laveen, Eleven Mile Corner, Buckeye, Cotton Bowl, Tolleson, Apache Junction (all of the above within the State of Arizona).
Salt River Agency, Scottsdale, AZ.	Salt River Pima-Maricopa.	Tempe, Mesa, Phoenix, Scottsdale (all of the above within the State of Arizona).
San Carlos Agency, San Carlos, AZ.	San Carlos	Miami, Superior, Eden, Thatcher, Pima, Safford, Hayden, Winkleman, Globe, Fort Thomas, Showlow (all within the State of Arizona).
Truxton Canon Agency, Valentine, AZ.	Hualapai	Kingman, Seligman, Nelson (all of the above within the State of Arizona).
Havasupai		Grand Canyon, Williams, Flagstaff (all of the above within the State of Arizona).
	Yavapai (Prescott)	Prescott, Arizona.
	Yavapai (Apache)	Jerome, Clarkdale, Cottonwood, Rimrock, McGuire< ville, Camp Verde, Lake Montezuma (all of the above within the State of Arizona).
Umatilla Agency, Pendleton, OR.	Umatilla	Counties of Umatilla and Union; Celilo Village in Wasco county (all of the above within the State of Oregon).
Western Washington Agency, Everett, WA.	Lummi	County of Whatcom in the State of Washington.
	Klallam	County of Kitsap in the State of Washington.
	Puyallup	Counties of King, Pierce, Kitsap, Thurston, in the State of Washington.
	Tulalip	County of Snohomish in the State of Washington.
	Hoh	Counties of Clallam, Jefferson, Grays Harbor and King, in the State of Washington.
	Quileute	Forks, Washington.

25 CFR 20—*Financial Assistance and Social Services Program* regulations have full force and effect when extending Bureau of Indian Affairs assistance and/or services in the above designated "Near reservation" locations.

Further information about these "Near reservation" designations may be obtained from the Chief, Division of Social Services, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Washington, D.C. 20245, telephone 703-235-2756.

RICK LAVIS,
Acting Assistant Secretary—Indian Affairs.

[FR Doc. 79-1071 Filed 1-11-79; 8:45 am]

[1505-01-M]

Bureau of Land Management

[AA-6661-A, B, C, H]

ALASKA

Alaska Native Claims Selection

Correction

In FR Doc. 78-35919 appearing at page 60337 in the issue of Wednesday, December 27, 1978, make the following corrections:

(1) On page 60338, in the last column, the fifth paragraph which begins with the number "10", in the second to the last line of this paragraph the address should read "555 Cordova Street".

(2) On page 60339, the first column, in the seventh line the number "2344" should be corrected to read "2433".

[1505-01-M]

COOK INLET/SHELIKOF STRAIT, ALASKA, OUTER CONTINENTAL SHELF (TENTATIVE SALE NO. 60)

Call for Nominations of and Comments on Areas for Oil and Gas Leasing

Correction

In FR Doc. 78-36064, appearing at page 60671 in the issue of Thursday, December 28, 1978, on page 60671 in the middle column under the heading of *"OSC Official Protraction Diagrams"* in the paragraph which begins with the number five, the fourth line should read "573, inclusive".

[4310-84-M]

[NM 35522]

NEW MEXICO

Application

JANUARY 3, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Northwest Pipeline Corporation has applied for one 4½-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 30 N., R. 14 W.,
Sec. 10, lots 2, 3, S½NE¼ and E½SE¼.

This pipeline will convey natural gas across 1.045 miles of public land in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-1080 Filed 1-11-79; 8:45 am]

[4310-84-M]

DRAFT INTERIM MANAGEMENT POLICY AND GUIDELINES FOR WILDERNESS STUDY AREAS

Availability for Public Review and Comment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and invitation for comment.

SUMMARY: This notice includes as an attachment the draft interim management policy and guidelines for the management of wilderness study areas on public lands. The Federal Land Policy and Management Act provides for special management of areas that are being studies to determine their wilderness suitability. The purpose of this notice is to seek public participation in the development of the interim management policy and guidelines for wilderness study areas.

DATE: Send comments by March 14, 1979.

ADDRESS: Send comments to Director (303), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Terry R. Sopher, 202-343-6064.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782) directs the Secretary of the Interior to review areas of the public lands administered by the Bureau of Land Management that have wilderness characteristics. The Act also provides special, interim management direction for these areas during the wilderness review and until Congress determines otherwise. The attached draft contains the proposed policy and guidelines by which the BLM would implement the interim management provision.

The background of the proposed interim management policy is described in Chapter I (Overview) of the draft.

Members of the public are invited to submit written comments on the draft to the Director, Bureau of Land Management, at the address listed above.

To obtain further comment, BLM will hold a national workshop in Washington, D.C., and each BLM State Office will sponsor a public meeting or workshop. The dates and locations of these meetings and workshops will be announced in the FEDERAL REGISTER.

Comments received on the draft document within 60 days (March 14, 1979) will be considered when the draft is revised. The Bureau plans to complete revision and release the final Interim Management Policy and Guidelines prior to the 1979 summer season of peak development activity on the public lands.

Dated: January 8, 1979.

FRANK GREGG,
Director, Bureau of Land Management.

[4310-84-C]

INTERIM MANAGEMENT POLICY AND GUIDELINES FOR WILDERNESS STUDY AREAS

DRAFT

U.S. Department of the Interior

Bureau of Land Management

January 12, 1979

INTERIM MANAGEMENT POLICY AND GUIDELINES FOR WILDERNESS STUDY AREAS

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CHAPTER I. OVERVIEW

This document describes policies and guidelines for managing the use of lands and islands administered by the Bureau of Land Management which have been identified as wilderness study areas (WSA's). These WSA's are areas that have wilderness characteristics and are being reviewed by the BLM to determine whether they are suitable or nonsuitable for designation as wilderness. The BLM's recommendations will be submitted through the Secretary of the Interior to the President, and the President will send his recommendations to Congress.

The policies and guidelines in this document also apply to BLM-administered lands and islands that are subject to the wilderness review but have not yet been dropped from the inventory or been identified as wilderness study areas. Such lands must be considered potential WSA's, and will be managed under the Interim Management Policy until BLM has resolved their status.

The BLM wilderness review program stems from section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA). In FLPMA, Congress gave BLM its first clear-cut, comprehensive mandate on how the public lands should be managed. The law establishes a policy of keeping the public lands in Federal ownership, and it directs BLM to manage them under principles of multiple use and sustained yield. Management decisions are to be made through a land-use planning process that considers all potential uses of each land area. Under FLPMA, wilderness preservation is part of BLM's multiple-use mandate. The specific responsibility for the wilderness review program appears in section 603. (The complete text of section 603 is shown in Appendix E of this document.)

Section 603(c) tells BLM how to manage the lands that are being reviewed, in these words:

> During the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands according to his authority under this Act and other applicable law in a manner *so as not to impair the suitability of such areas for preservation as wilderness* ... (emphasis added).

A grandfather clause in section 603(c) lays out more specific instructions for existing mining, grazing, and mineral leasing—what will be called "grandfathered" uses—in these words:

> ... subject, however, to the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was being conducted on the date of approval of this Act ....

However, these uses are not completely unrestricted. The Secretary is also directed by section 603(c) to "take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection." This applies not only to these grandfathered uses, but to all activities.

These mandates establish as a matter of policy that, while some development activities may continue or be permitted in a WSA, they must be carefully regulated. All activities except the grandfathered uses must be regulated to prevent impairment of wilderness suitability, and in some circumstances development may be prohibited where impairment cannot be prevented or where the impacts will not be rehabilitated. To the extent that activities and their imprint on wilderness are temporary and can be carried on in a manner that minimizes interference with wilderness potential, these activities pose less of a threat to an area's suitability for wilderness designation than do activities with long-term impact and low rehabilitation potential.

There are two different practical effects of these "interim management" mandates in FLPMA. First, those grazing, mining, and mineral leasing uses which existed on October 21, 1976 (the date FLPMA was enacted), may continue in the same manner and degree as on that date, even if they do impair wilderness suitability, so long as they do not cause unnecessary or undue degradation of the lands and their resources.

Second, uses and activities other than the grandfathered uses may be permitted in WSA's so long as they can take place without impairing the suitability of the area for preservation as wilderness. Obviously, the question of what causes "impairment" is the key to determining what can take place in a WSA.

A yardstick for answering this question is the definition of wilderness in section 2(c) of the Wilderness Act of 1964:

> A wilderness, in contrast with those areas where man and his own works dominate the landcape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

This definition is based on the physical and esthetic character of the land, not on how the land is being used.

Another criterion for "impairment," applicable to new mineral activities (including oil and gas), stems from the management provisions in section 4(d) of the Wilderness Act. These provisions allow carefully controlled mining and mineral leasing in designated wilderness areas of the national forests. Almost by

definition these activities could adversely affect wilderness character to some degree, yet by enacting these provisions Congress decided that mining and mineral leasing may be compatible with an area's suitability for preservation as wilderness. Therefore, oil and gas and mining activities whose impacts are only temporary are considered not to impair wilderness suitability.

The goal of interim management is to ensure that any area that now satisfies the wilderness definition in section 2(c) of the Wilderness Act will still satisfy this definition when Congress acts on the President's recommendations as to whether that area should be designated permanently as wilderness. Anything that would cause the land not to meet this definition would constitute impairment of its suitability for designation as wilderness. The final decision belongs to Congress. The Interim Management Policy protects Congress's right to make that decision by preventing actions that would preempt that decision.

However, there are two exceptions. First, the congressional decision might be preempted by impairment resulting from the grandfathered mining, mineral leasing, and grazing uses. That is a risk Congress chose to take when it approved FLPMA.

Second, new mining and mineral leasing activities might cause temporary impacts that would be rehabilitated within 5 years after Congress designates the area as wilderness.

The question will arise, why does the BLM allow activities in WSA's that are prohibited in designated wilderness areas? (An example is operation of motor vehicles.) The answer is that section 603(c) of FLPMA gave BLM no authority to impose such prohibitions; some activities that are prohibited in wilderness areas do not inherently impair a WSA's wilderness potential. The BLM's mandate is to protect the physical and esthetic features that make an area suitable for designation as wilderness so that Congress can make the decision on whether or not to designate it as wilderness. The mandate is *not* to prohibit any and all activity in the area.

Most activities will fall in one of the following categories:

- There are some activities that may occur in WSA's that are also allowed in designated wilderness areas. (For example: hunting.)
- There are some acts that may occur in WSA's even though they are not allowed in designated wilderness areas, because these activities do not cause physical changes that would impair the area's wilderness suitability. (For example: driving motor vehicles on existing ways and trails.)
- There are other activities that may occur in WSA's, even though they cause temporary impact on wilderness suitability, because the impact can and will be rehabilitated within a reasonable time. (For example: building a temporary road to install a water source for cattle.)
- The most difficult questions arise with activities that have longlasting impacts, so that the area will not be suitable for wilderness designation for many years. Such activities will not be allowed, unless they are necessary to conduct grandfathered mineral or grazing uses.

The purpose of the policies and guidelines in this document is to guide BLM staff in the specific decisions that arise every day in the management of land uses in WSA's.

A. Objectives. The objectives of interim management are:

1. To manage "so as not to impair the suitability . . . for preservation as wilderness" of those areas and islands that meet the criteria of section 2(c) of the Wilderness Act of 1964.
2. To manage existing mineral and grazing uses continuing in the manner and degree in which the same were being conducted on October 21, 1976, so as to prevent undue or unnecessary degradation of the lands and their resources and to afford environmental protection.
3. To manage so that, to the extent possible, resource uses may continue with minimum interruption while a wilderness review program is being conducted.

B. Authority.

1. The WSA interim management policy is based on the following authorities:

a. The Federal Land Policy and Management Act of 1976, Public Law 94-579, section 603, hereafter referred to as "FLPMA." (See Appendix D for the text of section 603.)

b. The Wilderness Act of September 3, 1964, Public Law 88-577. (See Appendix E for the text of section 2(c).)

C. The Wilderness Program. To carry out the mandate of FLPMA, the Bureau has developed a wilderness program with these four elements:

1. Wilderness Review. The wilderness review process has three phrases: inventory, study, and submission of a report to Congress. Public involvement is provided for all phases of the process, with opportunity for comment, participation, and review. The review applies to most public lands administered by BLM, except those Oregon and California Grant (O&C) lands which are managed for commercial timber production.

a. Inventory. First, BLM does an inventory of the public lands to identify areas that meet the definition of wilderness established by Congress. Such areas are identified as wilderness study areas (WSA's).

b. Study. Next, BLM studies each WSA, using the BLM land-use planning system to analyze all values, resources, and uses within the WSA. The findings of the study determine whether the area will be recommended as suitable or nonsuitable for designation as wilderness.

c. Reporting. When the study has been completed, a recommendation as to whether the WSA is suitable or nonsuitable for designation as wilderness is submitted through the Secretary of the Interior and the President to Congress. Reports on all WSA's must reach the President by October 21, 1991, and reach Congress by October 21, 1993.

2. **Instant Study Areas.** FLPMA also requires wilderness recommendations to be reported to the President by July 1, 1980, on 55 public land areas which were formally designated as "natural" or "primitive" areas prior to November 1, 1975. These are known as the "instant study areas" because they are already identified, and need not go through the inventory process.

3. **Management of WSA's.** In a WSA, the BLM must not permit actions which would impair the area's suitability for preservation as wilderness. Existing mining, mineral leasing, and grazing uses may continue in the same manner and degree as they were being done when FLPMA was enacted on October 21, 1976, but will be regulated to afford environmental protection and prevent undue and unnecessary degradation of the land and resources.

4. **Management During Wilderness Inventory.** The wilderness inventory work began in 1978 and will be completed by September 30, 1980. While the inventory is in progress, the Bureau has an obligation to protect the wilderness suitability of any lands that may be identified as WSA's by the final inventory decisions. This does not mean that all public lands will be covered by the interim management policy. It does mean that during the inventory period, BLM-administered lands that have not yet been dropped from the inventory will be regarded as potential WSA's, and will be governed by the Interim Management Policy. Before WSA's have been identified, the Bureau will approve activities on BLM-administered land under any of these four conditions:

a. If a "special project inventory" or the initial inventory, supported by public comments, shows that the land clearly and obviously does not meet the wilderness definition, and therefore will not be identified as a WSA, the activity may be approved by normal BLM procedures.

b. If a special project inventory or the initial inventory, supported by public comments, shows that the land appears to meet the wilderness definition, and therefore is likely to be identified as a WSA, then the question must be addressed in the EAR/ES process: Will the activity impair the area's wilderness suitability? If the answer is "no," the activity may be approved.

c. If the activity is necessary to an existing grazing, mining, or mineral-leasing use being conducted in the same manner and degree as on October 21, 1976, it may be approved without any inventory.

d. If the activity is something that the BLM has determined, as a rule, does not impair wilderness suitability (such as reforestation, or camping), it may be approved without any inventory. (See Appendix A for examples.)

D. Definitions.

Some of the terms used in this document have particular and specific meanings and are defined as follows:

Cumulative Impact: The total impact caused by a proposed activity combined with the impacts of existing substantially unnoticeable intrusions in an area or island that were not previously sufficient to preclude the land from WSA designation.

Impair: To diminish in value, excellence, etc. (Distinguished from impacts; see "temporary impacts.")

Instant Study Area: One of the 55 primitive and natural areas formally identified through a final action published in the *Federal Register* prior to November 1, 1975. FLPMA requires a wilderness review of these areas.

Multiple Use: "... the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output." (From section 103, FLPMA.)

Outstanding: 1. Standing out among others of its kind; conspicuous; prominent. 2. Superior to others of its kind; distinguished; excellent.

Permanent Roads, Structures, or Facilities: Those which cause impacts that cannot be practically and economically rehabilitated in a reasonable period of time.

Potential Wilderness Study Area: Any area of the public lands that is subject to the wilderness inventory, but has not yet been dropped from the inventory or been identified as a wilderness study area.

Primitive and Unconfined Recreation: Recreational activities that do not use motorized equipment and do not require manmade structures.

Public Lands: For the purpose of the wilderness review program, any lands and interest in lands owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except:

1. Land located on the Outer Continental Shelf; and

2. Lands held for the benefit of Indians, Aleuts, and Eskimos; and

3. Lands where the United States retains the minerals, but the surface is in other ownership.

Roadless: Refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Words and phrases used in the above definition of "roadless" are defined as follows:

1. Improved and maintained: Actions taken physically by man to keep the road open to vehicular traffic. "Improved" does not necessarily mean formal construction. "Maintained" does not necessarily mean annual maintenance.

2. Mechanical means: Use of hand or power machinery or tools.

3. Relatively regular and continuous use: Vehicular use which has occurred and will continue to occur on a relatively regular basis. Examples are: Access roads for equipment to maintain a stock water tank or other established water sources; access roads to maintained recreation sites or facilities; or access roads to mining claims.

Roadless Area or Roadless Island: An area or island bounded by non-Bureau administered land, water or a road, using the edge of the physical change that created the road or the adjacent edge of the right-of-way as the boundary. Applies only to areas identified and indexed as such through the roadless area inventory of the wilderness inventory process.

Solitude: 1. The state of being alone or remote from habitations; isolation. 2. A lonely, unfrequented, or secluded place.

Substantially Unnoticeable: Refers to something that is not immediately recognizable as manmade or man-caused because of age, weathering, or biological change, or because the thing is so insignificant as to be only a very minor feature of the overall area. An example of the first would be an old juniper control project that has grown up to a natural appearance, the old fallen trees largely decomposed. An example of the latter would be one or a few minor dams or abandoned mine buildings that are widely scattered over a large area, so that they are an inconspicuous part of the scene. Serious intrusions of this kind, or many of them, may preclude inclusion of the land in a wilderness study area.

Temporary Impacts: Impacts which the BLM has determined to be temporary on grounds that rehabilitation will be practically and economically accomplished by the time of congressional designation of the area as wilderness or in the case of new mineral activities, no later than 5 years after congressional designation. The BLM will determine in advance the plan and schedule for rehabilitation measures. The effects of the activity must be rehabilitated to the point of being substantially unnoticeable, and the damaged environmental systems must be capable of being rehabilitated to essentially the condition which existed on the date the activity was approved by BLM.

Undue Degradation: Detrimental impacts from a proposed or ongoing action resulting in unnecessary damage to lands or their resources. These usually occur when an operator is not using or does not propose to use the best available management or operating practices which are technically economically, and legally feasible.

Wilderness: The definition contained in section 2(c) of the Wilderness Act of 1964 (78 Stat. 891). (See Appendix E for its full text.)

Wilderness Area: An area formally designated by Congress as a part of the National Wilderness Preservation System.

Wilderness Characteristics: The definition contained in section 2(c) of the Wilderness Act of 1964 (78 Stat. 891).

Wilderness Inventory: An evaluation of the public lands in the form of a written description and map showing those lands that meet the wilderness criteria as established under section 603(a) of the FLPMA and section 2(c) of the Wilderness Act, which will be referred to as wilderness study areas (WSA's). (See Wilderness Inventory Handbook, dated September 27, 1978.)

Wilderness Review Program: The process covering the entire wilderness inventory, study and reporting for the wilderness resource and culminating in recommendations to the Secretary, the President, and Congress as to the suitability or nonsuitability of WSA's for inclusion in the National Wilderness Preservation System.

Wilderness Study Area: A roadless area or island which has been inventoried and found to have wilderness characteristics as described in section 603 of the FLPMA and section 2(c) of the Wilderness Act of 1964 (78 Stat. 891).

E. Implementing Regulations. Some of the policies in this document will be implemented through regulations. These particular policies will be reflected in proposed regulations that are now in preparation. One rulemaking concerns mining activities in WSA's and potential WSA's:

— Exploration and Mining—Wilderness Review Program (43 CFR 3802). These regulations will be effective upon final rulemaking until the Surface Management (43 CFR 3809) regulations are promulgated. They will then be incorporated into the 3809 regulations.

Two other rulemakings concern mineral leasing and mining activities on all BLM-administered lands:

— Geophysical Exploration—Oil and Gas (43 CFR 3045).
— Surface Management (43 CFR 3809).

A rulemaking is also in preparation concerning use of off-road vehicles on all BLM-administered lands:

— Off-Road Vehicles (43 CFR 6290). Upon publication of final rulemaking in the *Federal Register* the number will be changed to 43 CFR 8340.

Changes in existing regulations will also be proposed wherever this is found necessary to implement the Interim Management Policy.

Chapter II. Management Policy for Wilderness Study Areas

A. General Policy. The Department of the Interior's management policy is to continue resource uses in wilderness study areas in a manner that preserves the areas' suitability for designation as wilderness until one of the following occurs:

1. If a BLM wilderness inventory determines that an

area does not meet the Wilderness Act's definition of wilderness; the interim management policies will no longer apply.

2. If Congress designates the area as wilderness, the BLM will manage the area for preservation of its wilderness character. FLPMA requires that designated wilderness areas be managed under provisions of the Wilderness Act which apply to national forest wilderness. BLM is preparing a management policy to implement this mandate.

3. If Congress declares the area nonsuitable for designation as wilderness, the interim management policies will no longer apply.

The Department's policy is also to continue grazing, mining, and mineral leasing activities in wilderness study areas in the manner and degree in which these activities were being done on October 21, 1976, so long as they do not cause unnecessary or undue degradation of the lands and their resources and so long as environmental protection is afforded.

The Department's policy is also to allow new mineral activities in wilderness study areas, so long as they cause only temporary impacts that will be rehabilitated within 5 years after Congress designates the area as wilderness.

B. Specific Policy Guidance.

1. Wilderness Inventory. The Bureau of Land Management is doing the wilderness inventory under procedures described in the *Wilderness Inventory Handbook*, approved on September 27, 1978. The inventory will sort lands into two categories: (a) Wilderness study areas, to which these interim management policies will apply, and (b) lands that are not wilderness study areas and will not be affected by the interim management policies.

2. Special Project Inventory. The BLM Washington Office has directed special project inventories to be done in connection with certain proposed projects. (These are listed in Appendix C.) Other special project inventories may be initiated by BLM State Directors, following procedures in the *Wilderness Inventory Handbook*. A special project inventory sorts lands into these two categories:

a. Lands that clearly and obviously do not satisfy the definition of wilderness and therefore are not affected by the interim management policies.

b. Land that *appear* to satisfy the definition of wilderness. These areas must be given an intensive inventory to determine whether they do indeed satisfy the definition and therefore will be identified as wilderness study areas. The interim management policies will apply to these lands.

3. Non-Impairing Activities. Any activity that BLM has determined does not impair the land's suitability for designation as wilderness may be done in a wilderness study area. (Later in this document, the "Guidelines for Managing Specific Uses" and Appendix A identify some of the these activities.)

4. Supporting Activities. However, some nonimpairing activities require supporting facilities or activities that could impair wilderness suitability. (For example: A ski lift, a boat launching ramp and associated parking area, the use of vehicles off trails to retrieve sailplanes or hang gliders.) When this is the case, the supporting activity will be limited to prevent impairment. (For example: A rope tow may be used instead of a permanent ski lift.) If the supporting activity cannot be done in a nonimpairing manner, then the proposed activity will not be approved.

5. Variable Activities. There are some activities that in certain cases would impair wilderness suitability, but in other cases would not do so, because of differences in size or degree. (For instance, small stock ponds generally are acceptable, but large ones could impair wilderness suitability.) When one of these activities is proposed in a WSA, the BLM will consider the impairment question in the environmental assessment record (EAR) or environmental statement (ES). If the EAR or ES finds that the activity in this case will not impair wilderness suitability, then the activity may be approved.

In some cases, an activity may be modified to preserve wilderness suitability. Sometimes a special design can make something acceptable. Sometimes a different location within the WSA will make an activity more acceptable; some lands are more fragile than others. Sometimes an activity can be limited to a particular season when it will have little impact, or limited to a short period of time.

6. Temporary Activities. Some activities would impair wilderness suitability if they were permanent, but will not do so if their impact is only temporary. Temporary impacts are defined as impacts which the BLM has determined to be temporary on grounds that rehabilitation will be practically and economically accomplished by the time of congressional designation of the area as wilderness or, in the case of new mineral activities, no later than 5 years after congressional designation. The BLM will determine in advance the plan and schedule for rehabilitation measures. The effects of the activity must be rehabilitated to the point of being substantially unnoticeable, and the damaged environmental systems must be capable of being rehabilitated to essentially the condition which existed on the date the activity was approved by BLM.

For instance, a permanent road would make an area nonsuitable for wilderness designation, but a temporary access route that is built for a specific purpose and whose impact will be rehabilitated by regrading and reseeding may be allowed.

The Bureau's contrast rating process (BLM Manual Section 8431, and Form 8400-4) may be used to help determine whether the results of a rehabilitation project will be substantially unnoticeable. A rating of no more than 10 points for any one individual feature (i.e., land/water surface, vegetation, structure) may indicate a satisfactory condition. The definition of "substantially unnoticeable" appears in Chapter I.D of this document.

7. Prohibited Activities. No permanent roads, permanent structures, or permanent installations will be built in WSA's. No public land disposals will be approved in WSA's; however, the question of state selections is unresolved as a result of the *Utah v. Kleppe* litigation.

8. Grazing and Mineral Activities. Grazing, mining, and mineral leasing uses that existed on the date of enactment of FLPMA (October 21, 1978) may continue in WSA's in the same manner and degree as

on that date, even if this impairs wilderness suitability. These activities will be regulated to ensure that they do not cause unnecessary or undue degradation of the lands and their resources.

Grazing, mining, and mineral leasing uses that are new, or that are different in manner and degree from those existing on October 21, 1976, must meet the test of not impairing wilderness suitability, because these are not covered by the grandfather clause in FLPMA section 603. In the case of new mineral uses, temporary impacts are permissible within 5 years after Congress designates the area as wilderness.

9. Maintenance. Existing structures and installations may be maintained to keep them in an effective, usable condition. Except as provided below for grandfathered activities, maintenance will not be allowed to improve a structure or installation to a condition that would impair the area's suitability for wilderness designation. Measures required to do maintenance activities, such as building temporary access routes, will be allowed only if these measures do not in themselves impair wilderness suitability.

Maintenance in connection with grazing, mining, and mineral leasing activities conducted in the same manner and degree as on October 21, 1976, will be subject to regulations described in subsection 8, above.

10. Emergencies. In emergencies, such as drought, fire, or flood, any action necessary to prevent loss of life or property may be taken, even if the action will impair wilderness suitability. Within 2 days of the action, circumstances and action will be documented and filed in the BLM District Office.

11. Oil and Gas Leases. BLM will advise oil and gas lessees to file Applications for Permit to Drill no later than 120 days before expiration of the lease, to allow time for the U.S. Geological Survey and the BLM to consider the APD in light of these interim management policies and to work with the applicant to seek solutions where conflicts appear. Exploration and development activities may be allowed if these activities (including access routes) cause only temporary impacts that will be rehabilitated within 5 years after Congress designates the area as wilderness.

12. Air Quality. Under the Clean Air Act Amendments of 1977, all BLM-administered lands were designated as Class II, under that law's provision concerning prevention of significant degradation. The BLM will continue to manage wilderness study areas as Class II, unless Congress or a state redesignates them as Class I.

Chapter III. How to Evaluate Proposed Activities

There are two different procedures for evaluating proposed activities under the interim management policies. One will be used on lands for which no wilderness inventory has yet been completed. Another will be used for lands identified by an inventory as wilderness study areas.

A. Lands Not Yet Inventoried.

1. When the proposed activity involves lands for which no wilderness inventory has been completed, start by asking these three questions:

a. Is the proposed activity located in an area that an initial inventory (Step 2 in the *Wilderness Inventory Handbook*) has found clearly and obviously not to meet the criteria for identification as a wilderness study area?

b. Is the proposed activity something that BLM has determined, as a rule, does not impair wilderness suitability (such as the activities listed in Appendix A as "Class A"), and is there no evidence that the activity is an exception to the general rule?

c. Is the activity necessary to an existing grazing, mining, or mineral leasing use being conducted in the same manner and degree as on October 21, 1976, and does it afford environmental protection and cause no unnecessary or undue degradation of the lands and their resources?

If the answer to any one of these questions is "yes," then the proposal will be considered acceptable under the interim management policy, and it may be analyzed under normal BLM procedures.

2. If the answer to all three questions is "no," BLM will consider the proposal in either of two ways:

a. Conduct a "special project inventory" using the procedures of the intensive inventory (Step 4 in the *Wilderness Inventory Handbook*), and simultaneously prepare the EAR/ES. This inventory will sort the lands into two categories: (1) those identified as WSA's, and (2) those that do not qualify as WSA's and therefore are no longer subject to the interim management policy. If the proposal involves lands identified by this inventory as a WSA, the EAR/ES must analyze the individual and cumulative impacts of the proposed action on the area's wilderness suitability. If the EAR/ES analysis shows that the activity will not impair wilderness suitability, then the proposal may be approved through normal BLM procedures.

b. If the decision has to be made before a special project inventory can be completed, then the affected lands must be considered a potential WSA and the proposed action must be evaluated as though the land were in a WSA.

B. Lands in Wilderness Study Areas.

1. When the proposed activity involves lands identified as a wilderness study area, start by preparing an EAR/ES that analyzes the impacts of the activity on the wilderness suitability of the WSA.

If the activity is necessary to existing grazing, mining, or mineral leasing uses conducted in the same manner and degree as on October 21, 1976, the EAR/ES will determine whether it will cause unnecessary and undue degradation of the lands and their resources.

2. In the EAR/ES analysis, it is the physical, ecological, and esthetic impact of a proposed activity that determines whether that activity will impair an area's wilderness suitability. Cumulative impacts must also be taken into account, since a gradual accumulation of minor impacts may add up to an impairment of wilderness suitability.

3. If the analysis shows that the activity will not impair the area's wilderness suitability, it may be approved through normal BLM procedures.

In the case of grazing, mining, and mineral leasing covered by the grandfather clause, if the activity will

not cause unnecessary and undue degradation of the lands and their resources, it may be approved through normal BLM procedures.

C. Monitoring. In WSA's and in areas not yet inventoried:

1. The construction of any temporary access route, including routes to mining claims or mineral leases, must be recorded in a District Transportation Plan.

2. Each BLM District Office will keep a log of all proposed and authorized actions (including the construction of temporary access routes) and actions believed to be in violation of FLPMA, section 603. This log will consist of the following information.

a. A description of the proposed or ongoing action.

b. The WSA identification number or location description.

c. A cross-reference to the pertinent case files or decision documentation, and the name of the staff member handling the case.

d. Action taken on proposed and authorized activities (approved/disapproved/pending) and on violations of the Act that are under investigation.

e. Comments on problems encountered or on the current status of the proposal or investigation.

Chapter IV. Guidelines for Specific Activities

A. Recreation. Generally, most recreation activities (including hunting and fishing) are permitted within WSA's, in some cases with restrictions. However, in all cases the magnitude of use must be analyzed to ensure that recreation use will not cause impacts that impair the wilderness suitability of the WSA.

1. In recreation, as with all activities under the Interim Management Policy, no new permanent structures, roads, or facilities will be allowed in a WSA. Temporary installations having minimal visual and environmental impacts may be permitted if the State Director determines that they are necessary to protect the natural environment or to provide acceptable levels of visitor health and safety.

2. Hobby collecting of mineral and vegetative specimens may be allowed unless it is determined to impair the suitability for wilderness designation.

3. ORV use may continue in WSA's on existing ways and trails. Vehicles designed to travel across snow or sand dunes may be allowed in areas designated for these uses, so long as they do not cause physical or esthetic impacts that would impair the suitability of the area for designation as wilderness. For ORV competitive events, assembly areas and start and finish lines shall not be allowed in WSA's. No lands will be classified as "closed" solely because they are in a WSA.

4. Environmental education programs may be continued and teaching stations may be established in a manner that will not impair wilderness suitability.

5. River running may be allowed in a manner that will not impair wilderness suitability.

6. Other recreational use designations may be established so long as they will not cause impacts that would impair a WSA's wilderness suitability.

B. Cultural and Paleontological. Cultural and paleontological resource inventories, studies, and research involving only surface examination or limited subsurface sampling are permitted. Generally, no cultural resource restoration or reconstruction work may be conducted in a WSA. Cultural or paleontological work involving extensive surface collection, excavation, or stabilization may be allowed so long as such work does not impair wilderness suitability. Such work must be monitored, and must include appropriate rehabilitation measures. Physical protection (such as fences) will be limited to those measures needed to reduce impacts and to protect high value resources.

C. Lands Actions. If a proposed land action is determined through the EAR/ES process to be compatible with wilderness preservation, or will result only in a temporary impact on the suitability of the lands for wilderness designation, the action may be permitted.

Appendix A includes a list of the major land actions which will be affected by the Interim Management Policy, and describes some of the restrictions that apply to these actions. It is not intended to be a complete listing, as variations will occur which will have to be considered on a case-by-case basis. However, land transfers cannot be approved within a WSA.

D. Forestry. Except for those Oregon and California (O&C) Grant lands which are managed for commercial timber production, timber management activities on all other forest lands within WSA's are subject to the provisions of the Act. They are guided by the following procedures and by the guidance in Appendix A.

Timber management operations (e.g. road construction, clearcutting, partial cutting, site preparation, and other harvesting activities) authorized prior to October 21, 1976, by timber sale contracts, permits, leases, or licenses must be reevaluated to determine whether the operations within a WSA do or do not impair the area's suitability for wilderness preservation. If the operation is determined to be impairing, BLM will determine whether the contract, permit, lease, or license should be amended, if its terms permit, to prevent impairment of the WSA's suitability for preservation as wilderness.

Timber management activities, as with all activities, will be managed on the basis of the intensity of their impacts, not on the basis of the activity itself.

Activities that cause *major* impacts (such as timber sale, road construction, clearcut, shelterwood cut, partial cut, commercial thinning, and stand conversion) would not be permitted in WSA's.

Generally, activities such as precommercial thinning, site preparation, reforestation, insect and disease control, domestic firewood gathering, and small salvage logging operations, cause only *moderate* impacts or can be rehabilitated so that wilderness suitability will not be impaired. Motorized wheeled or tracked logging equipment will be permitted in the area of operation on existing ways and on new temporary access routes or ways, but impacts caused

by vehicles must be rehabilitated to a substantially unnoticeable condition.

Activities such as pruning, tree improvement (genetic selection and pollination), and seed collection (climbing and squirrel cache) cause only minor impacts. Activities of this kind may proceed, observing the constraints stated in the "Comments" column of Appendix A.

E. Wildlife. Habitat management projects are allowed so long as they do not impair the area's wilderness potential. Projects that alter natural vegetation in a major way may be approved if BLM determines that they will not impair wilderness potential. Projects which seed or plant exotics are not permitted. Most other wildlife-related activities are permitted if they are conducted so as not to impair wilderness suitability.

The BLM will continue to cooperate with State wildlife agencies in the management of resident wildlife species in accordance with established policies and procedures.

Stocking of wildlife species not indigenous to North America is not permitted in WSA's. Introduction of threatened, endangered, and sensitive species which were native to an area is allowed if there is a reasonable chance for the animals or birds to become established. Temporary enclosures and related facilities may be built, and any means of transportation which does not impair wilderness potential may be used to transplant or reintroduce such species. When endangered, threatened, or sensitive species do not respond to the management measures mentioned above, exceptions for more intensive management may be granted on a case-by-case basis.

F. Fire Management. BLM will continue all presuppression, suppression, and post-suppression fire activities under current methods of operation, using caution to avoid unnecessary impairment of an area's suitability for preservation as wilderness, until new fire management plans for each WSA are developed. These fire management plans, including prescribed burning and controlled wild fire, will be developed promptly. Management objectives for the area must take into account the existing wilderness characteristics of the WSA, the need to prevent actions that would impair the suitability of the area for designation as wilderness, historic fire occurrence, natural role of fire, proposed degree of suppression, expected fire behavior, acceptable suppression techniques, adequate buffer zones, smoke management, effect on private or other agency inholdings and on adjacent landowners, the limits of acceptable fire weather, fire behavior, and fire effects, and the access requirements of other agencies. Emergency fire rehabilitation measures will continue to be carried out under guidelines in Manual Section 7441 and Departmental Manual Part 910.

To hold fire damage to the minimum, fire management plans will rely on (1) the most effective methods of suppression that are least damaging to resources and the environment and that involve the least expenditure of public funds to rehabilitate the area; (2) an aggressive fire prevention program; and (3) an integrated cooperative suppression program by agencies of the Department among themselves or with other qualified suppression organizations.

G. Watershed. Land treatments (e.g., trenching, ripping, pitting, terracing, plowing) and vegetative manipulation by biological, mechanical, or chemical means are permitted in WSA's if a given project is determined not to impair the area's wilderness suitability. Temporary structural measures may also be permitted. Permanent structures will not be built. However gauges for air and water monitoring will be considered to be nonimpairing and may be established if these are the minimum necessary for determination of real and potential threats to human health and property or if no other areas are available to collect base line data. Activities needed to alleviate, rehabilitate, or contain damage from existing or potential natural hazards may be accomplished within limits established by a case-by-case review. Hazards caused by fire, storms, biological phenomena, landslides, and fumes may need emergency project work; this emergency work will be conducted in a manner that does not impair the area's wilderness suitability. More intensive measures may be authorized after careful analysis by the State Director. Fire damage will be rehabilitated under the same policy with emphasis on the seeding of species native to the area and on management practices. Permanent structural or similar rehabilitation measures which are not in accord with wilderness preservation should be deemphasized.

Rehabilitation projects will be documented according to standard BLM procedures.

Threatened, endangered, and sensitive plant species as well as paleontological resources (see IV.B—Cultural) may also require emergency protection measures to prevent degradation.

H. Range Management.

1. Grazing. The Act provides for the continuation of existing grazing uses in the same manner and degree in which they were conducted on October 21, 1976, but these must cause no unnecessary or undue degradation of the lands and their resources, and they must afford environmental protection. It is clear that the "manner and degree" in which an "existing" grazing use was being conducted on that date established as a benchmark the physical and esthetic impact that activity was having on the area in question.

Therefore, if an existing grazing use can be expanded without increasing the physical impact on wilderness suitability, it may be allowed. (This might occur, for example, if the range condition has improved, or if ephemeral forage is available.)

New grazing uses, and grazing uses different in manner and degree from those existing on October 21, 1976, may be allowed so long as the activity is regulated to prevent impairment of the area's suitability for designation as wilderness. Expansion or curtailment of grazing use and changes in numbers, seasons of use, and class of livestock may be allowed so long as wilderness suitability is not impaired. This

would include implementation of grazing systems and changes in grazing systems.

2. **Range Improvements.** Use and maintenance of existing range improvements is allowed so long as this does not cause undue or unnecessary degradation. In some cases, maintenance can make an installation less obtrusive and therefore more compatible with Interim Management objectives. New range improvements needed to support and facilitate grazing use and management may be installed and maintained so long as the activities and structures do not impair the area's wilderness suitability. Appropriate location and design can make some range improvements acceptable that would otherwise be considered to impair wilderness suitability.

a. BLM may permit new fences, cattleguards, corrals, and trails to be built if their impacts will not impair wilderness suitability. Motor vehicles may be used in existing ways and trails. New water developments may be built if the surface disturbance is not great and can be rehabilitated in a reasonable period of time, and if the above-ground facilities are discreetly designed to blend with the natural surroundings or are readily removable. Examples that do not require permanent surface disturbance are spring developments with a short pipe and removable trough on the surface, above-ground temporary pipelines, buried pipelines where surface features can be restored, small stock ponds, and artificial catchments requiring minimal surface disturbance.

b. Vegetation manipulation (land treatment) projects will be allowed under controls to assure that wilderness suitability is not impaired.

(1) Projects involving biological, chemical, or mechanical control of undesirable, noxious, and poisonous plants may be approved on a case-by-case basis if the actions do not impair the area's wilderness suitability and the affected acreage is small.

(2) Control by fire—either prescribed burning or controlled wild fire—will be done under conditions specified under the fire management guidelines. These practices are generally allowed, so long as each project does not involve road construction or other land disturbances that would impair wilderness suitability.

(3) Plant species that now occur in the WSA may be reseeded to restore a site to its natural conditions. Seeding should be done only by aerial application or surface broadcasting where these are practical, or by mechanical drilling where this practice is shown to be less destructive of wilderness characteristics than other methods.

3. **Wild Horse and Burro Management.** Activities may be allowed, and temporary facilities for holding and transporting horses and burros may be located and designed, in a manner that will not impair the suitability of the area for designation as wilderness.

I. Minerals.

1. **All Mining and Leasing Activities.**

a. All existing mining and mineral leasing activities may continue in the manner and degree in which they were being conducted on October 21, 1976, but these activities will be regulated to prevent unnecessary or undue degradation of the lands and their resources and to afford environmental protection.

b. In determining the manner and degree of existing operations, a rule of reason will be employed. Existing operations will be defined geographically by the area of active development and the *logical adjacent* (not necessarily contiguous) continuation of the existing activity, and not necessarily by the boundary of a particular claim or lease. It will also be recognized that operations are not always conducted at precisely the same degree at all times. For instance, operations may have been curtailed for economic reasons from one year to the next and may have been temporarily suspended on October 21, 1976. However, the significant measure for these activities is still the impact they are having on the wilderness potential of an area. It is the actual use of the area, and not the existence of an entitlement for use, which is the controlling factor. In other words, an existing activity may continue to be expanded in an area over time so long as the additional impacts caused by the expansion do not cause impairment of wilderness suitability beyond that caused by the existing activity.

c. All *new* mining and mineral leasing operations that began after October 21, 1976, and any change in existing operations that exceed the manner and degree occurring on that date, will not be allowed to impair the area's wilderness suitability.

3. **Oil and Gas Leasing and Development.**

a. **Leasing.** Leasing may continue in WSA's with the addition of the enclosed wilderness protection stipulation (see Appendix B-1) which will be attached to all oil and gas leases. During the wilderness inventory, it will also be attached to leases in potential WSA's, but it will not be attached to leases covering lands which are determined through the initial inventory (Step 2 in the Wilderness Inventory Handbook) as clearly and obviously not meeting the criteria for identification as WSA's. The stipulation becomes inoperative if the intensive inventory (Step 4 in the Wilderness Inventory Handbook) determines that the land in the lease does not meet the criteria for a WSA; it remains in effect if the area is identified as a WSA.

The protection stipulation remains in effect in WSA's unless Congress acts to declare an area nonsuitable for preservation as wilderness.

b. **Notice of Intent to Conduct Oil and Gas Exploration Operations.** Most operations proposed in a notice usually cause only temporary impacts.

c. **Application for Permit to Drill.** The BLM should advise all lessees to file an APD no later than 120 days before expiration of the lease in order to allow adequate time to determine if the area is within a WSA or if the action will impair the area's suitability for wilderness. Any lease issued after October 21, 1976, is subject to conditions to protect the suitability of such lands for preservation as wilderness. Because it is possible that impacts of oil and gas *exploration operations* (including initial investigation, "wildcat" drilling, and construction of temporary access routes) may be successfully removed through rehabilitation in some areas within 5 years after Congress designates an area as wilderness, it is probable that some such operations can be approved in WSA's. Similarly, if the impacts of some oil and gas *production* activities can be successfully rehabilitated within 5 years after

designation, a recommendation of approval of such an operation by BLM to the U.S. Geological Survey may be made. In addition, some production activities (small delivery pipelines, well-control equipment, etc.) may, if put in place so that the impact is substantially unnoticeable, be allowed without being restricted by the requirement to complete rehabilitation within 5 years after designation. However, extensive production activities (major field development) will probably be substantially noticeable and not be capable of practical rehabilitation within 5 years after designation and will not, therefore, be allowed. But it is clearly contemplated that some oil and gas exploration and development activities as determined on a case-by-case basis may be permitted in WSA's.

In areas that clearly and obviously do not qualify as WSA's because they are less than 5,000 acres, roaded, or extremely impacted by existing intrusions (such as drilling rigs, wells, or pipelines), the length of the associated public comment period may be, on a case-by-case determination by the State Director, set for less than 30 days, so long as the public comment period includes adequate publicity in the local news media, and includes at least one public meeting if the State Director determines that a public meeting is appropriate.

d. Suspension of Lease Terms. If commencement of operations is going to be delayed or postponed by BLM beyond the end of the primary term of a lease either because of WSA inventory or review or until Congress decides whether the area will be designated as wilderness, BLM will recommend that the lessee file an application for suspension of operations and production. It will be recommended to the Secretary that such suspension is to begin on the date an acceptable application for suspension of operations and production is filed in the proper U.S. Geological Survey office.

4. Geothermal Resources.

a. Leasing. Prior to the identification of WSA's, leasing (both competitive and noncompetitive) may continue with the addition of the enclosed wilderness protection stipulation (see Appendix B-2) which will be attached to all geothermal leases in potential WSA's. It will not be attached to leases covering lands which clearly do not have potential for wilderness. The stipulation becomes inoperative if the BLM State Director formally determines that the land in the lease does not meet the criteria for a WSA. It remains in effect if the area is designated as a WSA. It prohibits utilization of the leased area for development or production of geothermal resources for the purposes of electrical power development or production until and unless Congress removes the management restrictions of section 603 of the Act. It does provide for use of the surface for limited exploration operations subject to regulation to prevent impairment of the suitability of the area for preservation as wilderness.

After all WSA's are identified, it will be attached to all subsequently issued geothermal leases in those areas and remain in effect until Congress removes the management restrictions of section 603 of the Act.

b. Notice of Intent to Conduct Geothermal Exploration Operations. Because most operations proposed in a notice usually cause only temporary impacts, most may be approved.

c. Action on Plans of Operation (filed under 30 CFR 270.34 or 43 CFR 3203.6). Because of the substantial impact that is caused by construction and operation of power-generating facilities and related facilities on producing geothermal leases, the stipulation that is included in all new geothermal leases prohibits such activities until the wilderness potential of the area has been determined. However, other developmental operations for nonelectrical purposes and the drilling of deep exploration wells may be permitted upon a case-by-case determination if they have only temporary impacts or the impacts are substantially unnoticeable.

d. Suspension of Lease Terms. If BLM delays or postpones approval of exploration operations that are necessary to comply with diligence requirements of the lease because of the possible effect such operations will have on the wilderness potential of an area, BLM will recommend to the U.S. Geological Survey that the terms of the lease be suspended until the wilderness potential of the area is settled. The suspension will be effective from the date of the BLM recommendation.

5. Coal.

a. Leasing.

(1) New Competitive Leases. Criteria to determine which lands are unsuitable for coal mining have been promulated under authority of the Federal Land Policy and Management Act and the Surface Mining Control and Reclamation Act. These criteria are used to determine whether to lease coal. The criterion for WSA's is: Federal lands designated as WSA's shall be considered unsuitable for coal leasing while under review by the Administration and Congress for possible wilderness designation unless the coal will be mined by underground mining methods which produce no surface effects on the WSA. Surface effects include surface occupancy, subsidence, fire, and other environmental impacts of underground mining which are manifested on the surface.

(2) Existing Noncompetitive (Preference Right) Lease Applications. Existing rights to preference right leases will be recognized. In all cases leases shall be conditioned so that operations will not cause undue or unnecessary degradation of the lands. In addition, leases shall be conditioned to prevent impairment of the suitability of the lands for preservation as wilderness. These conditions may include terms which specify areas that cannot be mined and exceed the current technological capability of the particular lease applicant.

(3) Mining Plans. The same criterior applied to coal leasing will be applied to new permits to mine filed on existing leases. It will be recommended that permits be disapproved unless it can be demonstrated that underground mining methods which have no surface effects on the WSA will be used.

b. Exploration. Exploration for Federal coal can occur either under terms of a coal exploration license or permit issued to a private party or by the Federal Government (U.S. Geological Survey) as part of its

normal exploration program. Exploration authority, if granted, is subject to prior environmental analysis of the proposal and in accordance with stipulations determined necessary to avoid, lessen, or mitigate adverse environmental impacts. Because the effects of coal exploration are temporary in nature and can be successfully rehabilitated, they should normally be approved in WSA's.

6. Oil Shale Leasing and Development. Leasing and development of oil shale will be conducted in a manner consistent with section 603(c) of the FLPMA.

7. Other Leasable Minerals (Phosphate, Potash, Sodium, Sulphur, and Hardrock (Solid) Minerals on Acquired Lands).

a. Leases and Prospecting Permits.

(1) Prospecting Permits. Prospecting permits shall continue to be issued in WSA's or areas on which the inventory has not been completed, subject to a stipulation that no preference right leases will be issued until and unless an environmental analysis (or environmental statement) is completed and it is demonstrated (on the basis on the environmental analysis and a mining plan submitted with the application for a preference right lease) that the minerals can be removed by mining methods (including the surface impacts of such mining operations) which will not impair the suitability of the area for preservation as wilderness. The stipulation shall become inoperative under the same conditions as those for oil and gas and geothermal leases and will be included in all leases covering lands which are not clearly in areas without wilderness potential. Each permit will also condition exploration operations by a stipulation to insure that the impact caused by the activities will not impair the area's wilderness suitability.

(2) Noncompetive Preference Right Leases. Existing rights to preference right leases will be recognized. However, conditions will be imposed in such leases to prevent impairment of the suitability of the area for preservation as wilderness. These conditions may include terms which specify areas which may not be mined and/or which exceed the current technological capability of the particular lease applicant.

(3) Competitive and "Fringe-Acreage" Leases. All other leases may be issued in WSA's only if it can be demonstrated that the mineral deposit can be removed by mining methods that will not impair the suitability of the area for wilderness preservation.

b. Exploration and Mining Plans. Exploration and mining plans may be approved in accordance with the terms included in the permit or lease to prevent impairment of the suitability of the permit or lease areas for preservation as wilderness. When the effects of exploration are temporary in nature and can be successfully rehabilitated, they may be approved in WSA's. However, the impacts of mining (especially surface mining operations or underground mining which has surface effects on the WSA) will have to be assessed on a case-by-case basis to determine if they are temporary.

8. Disposal of Mineral Materials (Salable). Salable and free use of mineral materials in WSA's will be assessed on a case-by-case basis. The impacts of small sand and gravel pits and other mineral material sites can be temporary. Because successful reclamation can be done in some areas, it may be possible to approve mineral material sales or free use of these materials in WSA's.

9. Mining Claims Located Under the 1872 Mining Law.

a. Prospecting, Exploration, and Mining. Mining operations conducted in potential and identified WSA's will be subject to regulations to be published simultaneously with this document as proposed rulemaking (43 CFR 3802, copy enclosed). The regulations will not apply to areas that BLM has determined, through the wilderness inventory process, clearly and obviously to have no wilderness potential. These regulations will provide a procedure for notifying the BLM of activities being conducted or proposed to be conducted on mining claims and will also establish the standards for approval of the conduct of those operations, including reclamation. Certain activities will not require approval by the BLM. (See section 3802.1-1 of the enclosed regulations.)

Operations proposed in potential WSA's will be evaluated to determine whether or not they will impair the area's wilderness suitability, with the exception of existing operations which are being conducted in the same manner and degree as they were on October 21, 1976, and are not causing undue or unnecessary degradation of the area.

Operations that began after October 21, 1976, will be regulated to prevent impairment of the suitability of the area for preservation as wilderness. Those causing impairment will not be allowed to continue. However, all work which is reasonable and the minimum necessary to hold the claim under the mining law will be approved subject to conditions to prevent unnecessary or undue degradation and afford environmental protection. When the effects of exploration operations are temporary and can be rehabilitated, they may be approved in WSA's. However, the impacts of mining (especially surface mining operations or underground mining which has surface effects on the WSA) will have to be assessed on a case-by-case basis to determine if they are temporary.

b. Location, Discovery, and Assessment Work. Public land within WSA's will continue to be subject to location under the mining law. Discovery work (which is required in some states to locate a claim) and assessment work may be done in order to locate the claim and comply with state law, but these activities will be regulated to prevent impairment of the area's suitability for preservation as wilderness. Discovery and assessment work which are both necessary and reasonable to locate or to hold a claim will not be totally prohibited.

c. Patents. Patents to mining claims will continue to be processed and issued in WSA's.

Chapter V Enforcement Procedures

Regulations now in effect will be relied upon to enforce management policies and procedures established for WSA's. Necessary trespass actions will be handled in accordance with the appropriate lands, range, or forestry regulations.

However, the following additional steps must be taken whenever a District Manager believes that an activity taking place in an identified WSA is in violation of FLPMA.

A. Enter the activity under investigation in the log described in Chapter III, section C. Update the information in parts c, d, and e when needed as the case progresses.

B. Contact the owner of the operation, informally or in writing (certified mail, return receipt requested). Explain the situation and, depending on the situation or activity attempt to secure his or her cooperation in (1) conditioning the continued activity to eliminate impairment of the suitability for wilderness preservation or (2) restricting such activity in the case of existing grazing or mineral uses to the manner and degree established on October 21, 1976, and preventing unnecessary or undue degradation.

C. If the operator will not cooperate decide whether immediate action is needed to prevent the impairment of the potential of the area for wilderness designation. If so, the State Director should contact the Regional Solicitor and request that he work with the U.S. Attorney's Office to seek a temporary restraining order and injunction, if appropriate, from the local U.S. District Court. Send a copy of the case file to the Director Bureau of Land Management, for transmittal to the Office of the Solicitor Division of Energy and Resources, for information.

D. If the operator will not cooperate and the situation is not an emergency send the case file directly to the State Director for appropriate action. Be sure to include the name and telephone number of a BLM employee who is familiar with the matter. Also, send copies of pertinent information to the Director Bureau of Land Management, to distribute to each division affected. At the State Director's discretion, he may contact the Regional Solicitor for his opinion on the appropriate course of action to be taken.

E. **Appeal Procedures.** Appeal procedures will be provided by the regulations governing the decision being appealed. Applicants who are adversely affected by a management decision within a WSA will be informed of appeal procedures.

APPENDIX A

SPECIFIC ACTIVITY GUIDANCE TABLES

The guidance is intended only to provide general, optional assistance to resource managers in evaluating a few of the many activities on public lands. Decisions must be made on a case-by-case basis through careful analysis and where appropriate, with the assistance of the following guidelines:

TABLE KEY

1. **Class A Activities:** Activities may proceed without initiating a wilderness inventory for the affected area, if they meet the qualifications in the "Comments" column. They will not impair the area's suitability for preservation as wilderness. However, supporting activities and facilities (such as access routes, ski lifts, or the use of vehicles off existing ways and trails) will be assessed as Class B activities.

2. **Class B Activities:** Those that may or may not impair an area's suitability for wilderness preservation. When a project is considered, the wilderness issue must be addressed through a wilderness inventory and an evaluation of the proposed action as described in chapter III, section A.

3. **The "Comments" Column:** Addresses qualifications on allowable activities as well as those activities that more than likely will impair an area's suitability for preservation as wilderness. When a project is considered, the wilderness issue must be addressed through a wilderness inventory and an evaluation of the proposed action as described in chapter III, section A.

RECREATION ACTIONS WITHIN WILDERNESS STUDY AREAS

ACTIVITY	CLASS A	CLASS B	COMMENTS
Recreation Development		X	Temporary structures may be allowed, if wilderness potential is not impaired. Permanent structures are not allowed.
Concessions		X	Temporary structures and mobile facilities may be allowed, with rehabilitation stipulations, when necessary, but no permanent facilities.
The following activities are allowed in wilderness study areas. No permanent structures or facilities to support these activities may be built in the WSA's, but temporary structures and mobile facilities may be used so long as they do not impair the area s suitability for designation as wilderness.			
Fishing, Hunting, Trapping, Winter Sports, Water-skiing, Float Boating, Vegetative Collecting, Rockhounding, Spelunking, Ballooning, Sailplaning, (Sandsailers), Sky-Diving, Hang Gliding, Recreational Gold Dredging, Gold Panning, Camping	X		
Special Recreation	X		

RECREATION ACTIONS WITHIN WILDERNESS STUDY AREAS

ACTIVITY	CLASS A	CLASS B	COMMENTS
Power Boating	X		No permanent launching ramps or dock facilities may be built in WSA s.
Sailboating	X		No permanent launching or docking facilities may be built in WSA's.
Motor-Aircraft	X		No permanent runways or airport structures may be built in WSA's.
Trap Shooting and Skeet	X		No permanent facilities may be built, but temporary facilities are allowed, with rehabilitation stipulations, if necessary.
Interpretation	X		Facilities are limited to temporary ones.
National Recreational Trails		X	New trails for foot and horse travel may be built, but not for use by motor vehicles.
National Scenic Trails	X		
Natural History Areas			
Research Natural	X		Research activities must avoid large-scale manipulation that might impair the area s wilderness suitability.
Experimental Ecological Reserves		X	

RECREATION ACTIONS WITHIN WILDERNESS STUDY AREAS

ACTIVITY	CLASS A	CLASS B	COMMENTS
Natural History Inventory	X		
Recreation Areas			
Natural	X		
Scenic	X		
Cultural Recreation		X	
Recreation Lands		X	
ORV		X	Allowed on existing ways and trails. Snow and sand vehicles are allowed off these routes in designated areas.

CULTURAL ACTIONS WITHIN WILDERNESS STUDY AREAS

ACTIVITY	CLASS A	CLASS B	COMMENTS
Socio-Cultural Areas	X		
Research Actions within *Research Cultural Areas		X	May require rehabilitation efforts.
Cultural Conservation Areas	X		
Cultural Inventories	X		

LANDS ACTIONS WITHIN WILDERNESS STUDY AREAS

ACTIVITY	CLASS A	CLASS B	COMMENTS
Public Sales		X	Sales will not be allowed in a WSA.
Exchanges		X	Lands to be disposed of cannot be within WSA.
State Selections		X	Must be suspended pending further instructions from the Director as a result of the *Utah v. Kleppe* litigation (except Alaska).
R&PP			
(a) Patent		X	No R&PP patents will be issued in WSA s.
(b) Lease		X	1) Only temporary improvements. 2) Short-term lease. 3) Rehabilitation stipulations. 4) No permanent road construction. 5) Revocable upon wilderness designation.
Color of Title			
(a) Class I		X	Must meet the requirement of the Act (occupation and/or cultivation); therefore, the land will not meet wilderness criteria.
(b) Class II		X	Potential land disposal action; therefore, the action must be suspended.

LANDS ACTIONS WITHIN WILDERNESS STUDY AREAS

ACTIVITY	CLASS A	CLASS B	COMMENTS
Temporary Use Permit		X	1) Must be able to restore lands to pre-authorization conditions. 2) No permanent road construction.
Withdrawals			
(a) Preservation or emergency	X		
(b) Military (renewal)		X	Evaluate for health and safety hazards and decontamination potential prior to inclusion into a WSA.
(c) Other specific uses		X	1) No permanent development. 2) No permanent road construction. 3) Rehabilitation stipulations.
Revocation & Restoration		X	Section 603 will have no effect on these actions.

LANDS ACTIONS WITHIN WILDERNESS STUDY AREAS

ACTIVITY	CLASS A	CLASS B	COMMENTS
Desert Land Entry		X	1) Potential land disposal action; therefore, this must be held up pending action by Congress on wilderness designation. 2) Patent may be issued where vested right was established prior to October 21, 1976.
Rights-of-Way (new)			
(a) Linear & ancillary facilities		X	1) No permanent road construction. 2) Only temporary facilities permitted. 3) Rehabilitation stipulations.
(b) Communication sites			4) Early review with applicants to alert them of wilderness considerations. 5) Short-term authorizations.
Rights-of-Way			
(a) Renewal & authorizations for existing use		X	Will be evaluated during renewal.
(b) Joint use of existing facility	X		

The wilderness provisions of the FLPMA are not intended to stop land uses; however, until Congress has indicated which lands will become a part of the Wilderness System, we must carefully consider the degree of permanency and the extent of development requested in all land-use applications.

FORESTRY ACTIONS WITHIN WILDERNESS STUDY AREAS

ACTIVITY	CLASS A	CLASS B	COMMENTS
O&C Lands, Western Oregon	X		O&C lands designated through BPS *as being available and used for continuous timber production* are exempt from section 603 of FLPMA. All other western Oregon lands are subject to the wilderness provisions.
Permits, leases, licenses, and Contracts Authorized Prior to October 21, 1976		X	The documents must be reevaluated to determine if they impair wilderness suitability. If so, consider amending the document, if the terms permit and the contractor is willing.
Actions after October 21, 1976			In general, no timber harvest is allowed in WSA's, and no permanent road construction for timber harvest. These activities will be deferred while an area is in WSA status: Clearcut; Shelterwood Cut; Seedtree Cut; Partial Cut (Includes Commercial Thinning); Stand Conversion
a) Precommercial Thinning		X	Power saws; axes; and chemical means may be used. No wheeled or track logging equipment. Access by helicopter, existing roads, or ways, and-or foot travel.

FORESTRY ACTIONS WITHIN WILDERNESS STUDY AREAS

ACTIVITY	CLASS A	CLASS B	COMMENTS
b) Pruning	X		
c) Seed Collection			
Felling Trees	X		Trees must be well scattered (300 feet or more apart).
Climbing	X		
Squirrel Cache	X		
d) Tree Improvement	X		Genetic selection; pollenation.
e) Site Preparation			
Scarification	X		Hand methods. No motorized wheeled or track logging equipment. Access by helicopter, existing road or way, and/or foot travel.
Brush Control	X		Axes, chemicals, hand tools in general. No motorized wheeled or track logging equipment. Access by helicopter, existing road or way, and/or foot travel.
Burning	X		Only after evaluation to insure that adequate fire protection measures can be implemented. No motorized wheeled or track logging equipment.
f) Reforestation	X		Hand planting or seeding, or aerial seeding. Access by helicopter, existing road or way and/or foot travel. Use native species.
g) Insect/Disease Control			
Major		X	Corrective measures must be approved by State Director.
Minor	X		Felling or chemical treatment of small patches or individual trees. Access by helicopter, existing road or way, and/or foot travel.
h) Salvage Log			
Major		X	Corrective measures must be approved by S.D.
Minor	X		Activities must be assessed on a case-by-case basis.
1) Firewood; Christmas trees, pine nuts, etc.	X		These are noncommercial citizen uses, and they will be confined to small areas. Access by existing road or way and/or foot travel.

WILDLIFE ACTIONS WITHIN WILDERNESS STUDY AREAS

ACTIVITY	CLASS A	CLASS B	COMMENTS
Vegetation Manipulations			
(a) Mechanical		X	Major projects with long-term detrimental visual impact will not be allowed. Use only plant species found within the WSA.
(b) Nonmechanical Plantings and Seedings	X		Hand plantings and seedings may continue if they do not impair wilderness suitability and if they use native plant species.
Prescribed fire		X	May be allowed, so long as no major surface disturbance is necessary in building fire lines.
Land-Water Treatment	X		In the case of disease outbreaks, water land sources may have to be treated; no permanent impacts allowed.
Water Facilities	X		Stream and sediment control should use natural materials; springs, wells, and artificial structures can be developed with minimum disturbance and visual intrusions.
Fences	X		Materials used and location will result in a visual impact which is substantially unnoticeable.

WILDLIFE ACTIONS WITHIN WILDERNESS STUDY AREAS

ACTIVITY	CLASS A	CLASS B	COMMENTS
Introductions and Transplants			
(a) Exotic Animals			No exotics may be introduced.
(b) Native Animals	X		Species native to North America may be reintroduced or transplanted, using temporary enclosures and facilities if necessary.
(c) Threatened and Endangered (T/E) Animals	X		T/E transplants are allowed if the species is or has been native to the region in which they are proposed to be introduced or reintroduced.

FIRE MANAGEMENT ACTIONS WITHIN WILDERNESS STUDY AREAS

ACTIVITY	CLASS A	CLASS B	COMMENTS
Presuppression	X		All fire activities will continue as usual until new fire management plans are developed for each WSA.
Suppression	X		
Post-suppression	X		

WATERSHED ACTIONS WITHIN WILDERNESS STUDY AREAS

ACTIVITY	CLASS A	CLASS B	COMMENTS
Fire Rehabilitation	X		Fire rehabilitation seeding is allowable under current method of operation, using native species.
Water Facilities	X		Only temporary structures.
Fences	X		To protect critical soil and vegetation. Natural material preferred. No fenceline blading. Location and materials cause minimum visual impact.
Monitoring			
(a) Water	X		New structures must be minimum necessary to determine threats to human health and property. Monitors for upstream tributary pollution affecting aquatic habitat and aesthetics will be allowed.
(b) Air	X		
Soil Survey	X		Rehabilitation of soil pits will be required.
Emergency Project Work	X		Will be documented under standard BLM procedures.
Land Treatment Trenching, Ripping, Pitting, Terracing, Plowing		X	Major projects with long term detrimental visual impact will not be allowed. Only treatment for the purpose of preservation of soil productivity will be allowed.

WATERSHED ACTIONS WITHIN WILDERNESS STUDY AREAS

ACTIVITY	CLASS A	CLASS B	COMMENTS
Vegetation Manipulation			
(a) Biological		X	New projects must be the minimum necessary to protect soil productivity or downstream private property. Long term detrimental visual impact will not be allowed.
(b) Mechanical, chemical		X	
Brush Conversions		X	Only allowed if it provides protection of human health or property or to restore site to original condition.
Structural Measures Detention, Retention Dams		X	New structures, other than those required under emergency conditions, will not be allowed unless they are within critical community watersheds. Structures allowed must relate to water supplies needed to protect human health and property.

RANGE MANAGEMENT ACTIONS WITHIN WILDERNESS STUDY AREAS

ACTIVITY	CLASS A	CLASS B	COMMENTS
Range Management			
1. Livestock Grazing			
a. Change in Numbers	X		These changes generally may be allowed so long as grazing is still in the manner and degree it was being conducted on October 21, 1976.
b. Change in Season of Use	X		
c. Change in Class of Livestock	X		
d. Grazing Systems	X		
e Supplemental Feeding		X	Existing practice may be continued. New supplemental feeding may be initiated if it will not cause impairment of wilderness potential.
f. Salting Grounds	X		Existing practice may be continued. New salting station may be initiated to improve distribution of grazing use.

RANGE MANAGEMENT ACTIONS WITHIN WILDERNESS STUDY AREAS

ACTIVITY	CLASS A	CLASS B	COMMENTS
2. Range Improvements			
a. Facilitating Livestock Grazing and Management			
1) Fencing	X		Prevent surface disturbance. Use materials with minimum visual impacts.
2) Cattleguards	X		Temporary installation.
3) New Water Developments			
a) Wells and Springs	X		Prevent undue damage to vegetation and soil. Above surface facilities must be unobtrusive or removable. No constructed access for motorized equipment, but temporary roads may be built.
b) Artificial Catchments	X		Temporary above ground facilities. Little surface disturbance.

RANGE MANAGEMENT ACTIONS WITHIN WILDERNESS STUDY AREAS

ACTIVITY	CLASS A	CLASS B	COMMENTS
c) Supplemental Water Facilities	X		Temporary surface pipelines allowed. Buried pipelines allowed if installed without undue surface disturbance and rehabilitation to natural condition within 1 or 2 years. Watering troughs of material blending with natural surroundings and/or removable.
d) Earthen Reservoirs		X	Small stock ponds may be approved, but larger reservoirs and associated construction activities could permanently impair wilderness potential.
4) Livestock Handling Facilities			
a) New Corrals	X		Temporary structure of materials which blend with natural surroundings.
b) New Trails	X		Locate and design so as not to impair wilderness potential.

RANGE MANAGEMENT ACTIONS WITHIN WILDERNESS STUDY AREAS

ACTIVITY	CLASS A	CLASS B	COMMENTS
c) New Camps	X		Temporary camps, such as sheep camps, may be allowed.
d) New Roads	X		Temporary roads may be allowed, with rehabilitation stipulations.
b. Maintenance of Existing Improvements	X		Limited to that necessary to return facility to original constructed condition without causing impairment of wilderness characteristics. Cross country access by motorized equipment may be allowed.
c. Vegetation Manipulation (Site Conversion)			
(1) Control of Undesirable, Noxious and Poisonous Plants			
(a) Chemical		X	Major projects with long-term detrimental visual impact will not be allowed. Exceptions for small areas or individual plants subject to environmental assessment and approval by the State Director.
(b) Mechanical		X	
(c) Burning		X	May be done through carefully designed prescribed burning or controlled natural fire with same restrictions as in the WSA fire management plan, so long as no major disturbance is necessary in building fire lines.
(2) Reseeding	X		Allowed only to restore site to its natural condition. Use of species native to the site.
(3) Livestock grazing management systems.	X		May be implemented to maintain or improve ecologic conditions. Subject to restrictions on construction of supporting facilities.
Wild Horse and Burro Management			
1. Gathering	X		As conducted under current guidelines and policies.
2. Handling Facilities			
a. Corrals and holdings pens	X		Temporary structure.
b. Transportation (roads or trails)	X		Cross country access on existing ways or trails by motorized vehicles. No constructed roads.

MINERALS ACTIONS WITHIN WILDERNESS STUDY AREAS

ACTIVITY	CLASS A	CLASS B	COMMENTS
All Existing Mining and Mineral Activities (as of October 21, 1976)	X		These activities are allowed provided they are conducted in the manner and degree in which the same were being conducted on October 21, 1976, and they cause no undue or unnecessary degradation.
All New Activities and Those Existing Activities Exceeding the Manner and Degree Established on October 21, 1976			
Oil and Gas			
Leasing	X		Requires stipulation (see Appendix B-1).
APD		X	Subject to conditions.
Notice of Intent to Conduct Exploration		X	Subject to conditions.
Geothermal			
Leasing	X		Requires stipulation (see Appendix B-2).
Plans of Operation		X	Electrical power development excluded and other development and exploration may be allowed.
Coal			
Leasing		X	Not suitable for coal mining while in WSA, unless underground mining with no surface effects.
Development		X	
Oil Shale		X	Subject to Federal Oil Shale Prototype Program.
Other Leasables			
Prospecting		X	Subject to stipulation that no preference right lease will issue until further environmental evaluation.

MINERALS ACTIONS WITHIN WILDERNESS STUDY AREAS

ACTIVITY	CLASS A	CLASS B	COMMENTS
Non-Competitive Leases		X	Existing rights to preference right leases will be recognized.
Competitive Leases		X	Issued only if mineral removal will not impair.
Exploration		X	Subject to non-impairment controls.
Mining Plans		X	"
Salable Minerals		X	Sales by case-by-case basis only.
1872 Mining Claims			
Prospecting, Location, and Assessment		X	Subject to surface protection regulations.

MINERALS ACTIONS WITHIN WILDERNESS STUDY AREAS

ACTIVITY	CLASS A	CLASS B	COMMENTS
Exploration		X	Governed by surface protection regulations.
Search for and Occasional Removal of Small Amounts of Mineral for Sample or Specimen	X		Activities must not increase the size of the access facility.
Mining		X	Governed by surface protection regulations.
Patent	X		
Temporary Road Construction		X	Permanent roads are prohibited.
Existing Roads, Trails, Bridges, Landing Strips, or Other Access Facilities Maintenance	X		As provided in 3802.1-1(d) of Title 43.

Appendix B-1

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

WILDERNESS PROTECTION STIPULATIONS—OIL AND GAS

By accepting this lease, the lessee acknowledges that the lands contained in this lease are being inventoried or evaluated for their wilderness potential by the Bureau of Land Management (BLM) under section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, 2785 43 U.S.C. Sec. 1782).

Until the BLM determines that the lands covered by this lease do not meet the criteria for a wilderness study area as set forth in section 603, or until Congress decides against the designation of lands included within this lease as "wilderness," the following conditions apply to this lease and override every other provision of this lease which could be considered as inconsistent with them and which deals with operations and rights of the lessee:

1. Any oil or gas activity conducted on the leasehold for which a surface use plan is not required under NTL-6 (for example, geophysical and seismic operations) may be conducted only after the lessee first secures the consent of the BLM. Such consent shall be given if the BLM determines that the impact caused by the activity will not impair the area s wilderness suitability.
2. Any oil and gas exploratory or development activity conducted on the leasehold which is included within a surface use plan under NTL-6 is subject to regulation (which may include no occupancy of the surface) or, if necessary, disapproval until the final determination is made by Congress either to designate the area as wilderness or remove the section 603 restrictions.

If all or any part of the area included within the leasehold estate is formally designated by Congress as wilderness, oil and gas exploration and development operations taking place or to take place on that part of the lease shall become subject to: (1) those provisions of the Wilderness Act of 1964 which apply to national forest wilderness areas, 16 U.S.C. Sec. 1131 *et seq.*, as amended; (2) the Act of Congress designating the land as wilderness; and (3) Interior Department regulations and policies pertaining thereto.

Appendix B-2

WILDERNESS PROTECTION STIPULATION—GEOTHERMAL RESOURCES

By accepting this lease, the lessee acknowledges that the lands contained in this lease are being inventoried or evaluated for their wilderness potential by the Bureau of Land Management (BLM) under section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1782.

Until the BLM determines that the lands covered by this lease do not meet the criteria for a wilderness study area as set forth in section 603 or until Congress decides against the designation of lands included within this lease as wilderness, the lessee agrees not to occupy or use the surface of the leased lands for electrical power development or production purposes, except for certain limited uses, as indicated below. Excepted uses will include those exploration operations usually provided with a "Notice of Intent to Conduct Geothermal Resource Exploration Operations" (Form 3200-9), and, in certain instances, other exploration activities. Those operations would generally include geological mapping, geochemical studies, passive geophysical surveys, and the drilling of shallow temperature gradient holes. Drilling deep exploration wells may be permitted on a case-by-case determination by the Authorized Officer.

Any such operations are subject to regulations or, if necessary, disapproval until the final determination is made by Congress either to designate the lands as wilderness or remove the section 603 restrictions. Therefore, none of these operations may be conducted until approval has been obtained from either the Supervisor (under 30 CFR 270.78) or the BLM authorized officer (under 43 CFR 3209). The BLM authorized officer shall approve or recommend approval of such operations if he determines that the impact caused by the operations will not impair the suitability of the area for preservation as wilderness.

If all or any part of the area included within the leasehold is formally designated by Congress as wilderness, all geothermal resources operations taking place or to take place on that part of the lease shall become subject to: (1) the provisions of the Wilderness Act of 1964 which apply to national forest wilderness areas, 16 U.S.C. Sec. 1131 *et seq.*, as amended; (2) the Act of Congress designating the land as wilderness; and (3) Interior Department regulations and policies pertaining thereto.

Appendix C

ACTIONS RECEIVING INSTRUCTIONS FOR SELECT WILDERNESS INVENTORY

STATE	DISTRICT	PROJECT	INITIATING DIVISION	DATE SIGNED
Alaska	Fairbanks/Anchorage	W.G.M. Mining Company	370	4/14/78
Arizona	N/A	Palo Verde—Devers T.L.	370	1/24/78
Arizona	N/A	Palo Verde—Kyvene T.L.	370	8/4/78
Arizona	N/A	Yavapai County Road Proposals	320	8/4/78
Arizona	Yuma	Havasu City—FAA Proposal	321	FS Underway
Arizona	N/A	Sohio Pipeline	321	11/14/77
California	N/A	California Desert C.A.P	370	2/6/78
California	N/A	Sohio/Sundesert Nuclear Power Project	321	11/14/77
California	N/A	Palo Verde—Devers T.L.	370	1/24/78
California	N/A	Palo Verde—Kyvene T.L.	370	8/4/78
California	N/A	Sohio Pipeline	321	11/14/78
California	N/A	Intermountain Power Project	321	8/20/78
Colorado	Grand Junction	Palmer Oil and Gas	370	6/78
Colorado	N/A	White River Grazing Statement Action	CSO	6/78
Colorado	N/A	Gunnison Basin Grazing Statement Action	CSO	6/78
Colorado	N/A	Royal Gorge Grazing Statement Action	CSO	6/78
Idaho	Coeur d' Alene	Grandmother Mountain Exchange	321	4/78
Idaho	Boise/Shoshone	PP&L Transmission Line	321	10/25/77
Idaho	Salmon	Donkey Hills Exchange	321	8/16/78
Idaho	Boise	Riddle Exchange	321	8/16/78
Idaho	N/A	Agricultural ES	321	8/23/78
Nevada	N/A	Oil and Gas Lease Areas	370	7/21/78
Nevada	N/A	Highway Fee Use Permit	370	7/5/78
Nevada	N/A	North Valmy PDES	370	9/28/78
Nevada	N/A	Intermountain Power Project	321/370	8/20/78
Nevada	Ely	Mt. Wheeler 69 kV Right-of-Way	321	9/14/78
New Mexico	Roswell	APD Oil and Gas	370	7/31/78
New Mexico	N/A	Navajo Exchanges	321	8/30/78
New Mexico	N/A	Sohio Pipeline	370	8/14/78
New Mexico	Chaves County	Petroleum Devel. Corp. Mescalem Sands Roadless Area, New Mexico (932)		11/14/78
Oregon	N/A	PP&L Transmission Line	370	10/25/77
Texas	N/A	Sohio Pipeline	370	11/14/77
Utah	Moab/Richfield	Emery Powerplant Units 3 and 4	321	7/20/78
Utah	N/A	Palmer Oil and Gas	370	6/78
Utah	N/A	Intermountain Power Project	321	8/20/78
Bureauwide	N/A	APD-Lease w/i 60-Day Expir. (OAD 78-38, Change 1)	370	7/31/78

Appendix D

THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 (P.L. 94-579)

Bureau of Land Management Wilderness Study

Sec. 603. (a) Within fifteen years after the date of approval of this Act, the Secretary shall review those roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 201(a) of the Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964 (78 Stat. 890; 16 U.S.C. 1131 et seq.) and shall from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness: Provided, that prior to any recommendations for the designation of an area as wilderness the Secretary shall cause mineral surveys to be conducted by the U.S. Geological Survey and the Bureau of Mines to determine the mineral values if any, that may be present in such areas: Provided further, that the Secretary shall report to the President by July 1, 1980, his recommendations on those areas which the Secretary has prior to November 1, 1975, formally identified as natural or primitive areas. The review required by this subsection shall be conducted in accordance with the procedures specified in section 3(d) of the Wilderness Act.

(b) The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendations with respect to designation as wilderness of each such area, together with a map thereof and a definition of its boundaries. Such advice by the President shall be given within two years of the receipt of each report from the Secretary. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress.

(c) During the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness, subject, however, to the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was being conducted on the date of approval of this Act: Provided, that, in managing the public land the Secretary shall by regulation or otherwise take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection. Unless previously withdrawn from appropriation under the mining laws, such lands shall continue to be subject to such appropriation during the period of review unless withdrawn by the Secretary under the procedures of section 204 of this Act for reasons other than preservation of their wilderness character. Once an area has been designated for preservation as wilderness, the provisions of the Wilderness Act which apply to national forest wilderness areas shall apply with respect to the administration and use of such designated area, including mineral surveys required by section 4(d)(2) of the Wilderness Act, and mineral development, access, exchange of lands, and ingress and egress for mining claimants.

APPENDIX E

SECTION 2(c) OF THE WILDERNESS ACT OF SEPTEMBER 3, 1964 (P.L. 88-577)

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practical its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological or other features of scientific, educational, scenic, or historical values.

[FR Doc. 79-1105 Filed 1-11-79; 8:45 am]

[4410-01-M]

DEPARTMENT OF JUSTICE

UNITED STATES CIRCUIT JUDGE NOMINATING COMMISSION

Eastern Fifth Circuit Panel

The Nominating Panel for the Eastern Fifth Circuit of the United States Circuit Judge Nominating Commission (Chairman DuBose Ausley) will meet in the Federal Building, 56 Forsyth Street, Atlanta, Georgia at 9:00 a.m. February 8, 9, and 10, 1979.

The purpose of these meetings will be to interview candidates and they will be closed to the public pursuant to Pub. L. 92-463, Section 10(D) as amended. (CF 5 U.S.C. 552b (c)(6).)

JOSEPH A. SANCHES,
Advisory Committee Management Officer.

JANUARY 5, 1979.

[FR Doc. 79-1216 Filed 1-11-79; 8:45 am]

[4510-24-M]

DEPARTMENT OF LABOR

Bureau of Labor Statistics

BUSINESS RESEARCH ADVISORY COUNCIL'S COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH

Meeting

The BRAC Committee on Occupational Safety and Health will meet on Tuesday, January 30, 1979, at 10 a.m. in Room 4454 A and B of the General Accounting Office Building, 441 G Street, N.W., Washington, D.C. The agenda for the meeting is as follows:

1. Review of Program.
2. Program Developments and Releases.
3. Future Activities.
4. Report of Interagency Task Force on Workplace Safety and Health.

This meeting is open to the public. It is suggested that persons planning to attend this meeting as observers contact Kenneth G. Van Auken, Executive Secretary, Business Research Advisory Council on Area Code (202) 523-1559.

Signed at Washington, D.C. this 4th day of January 1979.

JANET L. NORWOOD,
Acting Commissioner of Labor Statistics.

[FR Doc. 79-1224 Filed 1-12-79; 8:45 am]

[4510-03-M]

Employment and Training Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER THE RURAL DEVELOPMENT ACT

Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 USC 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.
2. Employment trends in the same industry in the local area.
3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.
4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).
5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice. Comments received after the two-week period may not be considered. Send comments to: Administrator, Employment and Training Administration, 601 D Street NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 12th day of January 1979.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

APPLICATIONS RECEIVED DURING THE WEEK ENDING JANUARY 5, 1979

NAME OF APPLICANT AND LOCATION OF ENTERPRISE/PRINCIPAL PRODUCT OR ACTIVITY

Reactive Metal & Alloys Corporation, Pittsburgh, Pennsylvania: Manufacture of rare earth metals, alloys and steel desulfurization compounds.

Nevamar Corporation, Odenton, Maryland: Manufacture of decorative high pressure laminates.

National Art Co., Inc., Greenwood, Mississippi: Manufacture of picture frames and framed graphics.

Seacoast Building Centers, Inc., Conway, South Carolina: Retail lumber and building material.

A. R. Wood Manufacturing Company, Luverne, Minnesota: Manufacture of agricultural equipment.

The Rockland Corporation, Siloam Springs, Arkansas: Manufacture of industrial washing detergents and cleaning equipment and related accessories.

Greenwood Sugar Cooperative, Inc., Thibodaux, Louisiana: Manufacture of sugar and raw sugar products.

Norton Concrete Company Kaufman, Hunt, Wood and Lamar Counties, Texas: Manufacture of ready-mix concrete.

M&M Investment Company, Tahlequah, Oklahoma: Motel.

Diversified Industries Corporation, Riverton, Wyoming: Motel.

The Vail Club, Ltd., Vail, Colorado: Hotel.

High Country Corporation, Craig, Colorado: Motel.

United Packing Company, Sanger, California: Sorting, grading and packing of fresh tree fruit and vine commodities.

Shaw Real Estate, Castroville, California: Shopping Center.

Port Brownsville Shipyard, Inc., Brownsville, Texas: Construction of fishing boats and barges.

Garibaldi Management Company, Garibaldi, Oregon: Recreational marina.

HyPlains Dressed Beef, Inc., Dodge City, Kansas: Purchase, slaughter and processing of beef cattle.

[FR Doc. 79-980 Filed 1-11-79; 8:45 am]

[4510-43-M]

Mine Safety and Health Administration

[Dcket No. M-78-34]

BETHLEHEM MINES CORP.

inal Action Granting a Petition for Modification of Application of Mandatory Safety Standard

The Mine Safety and Health Administration (MSHA) has granted the petition (43 FR 2773) of Bethlehem Mines Corporation to modify the application of 30 CFR 75.305 to its No. 116 Mine located in Raleigh County, W. Va., in accordance with Section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164. MSHA has determined that an alternative method exists that will guarantee at all times no less than the same measure of protection given miners of the mine by the standard.

MSHA based its determination on the following findings:

1. An attempt by MSHA investigators to travel the 7 left airway of the mine resulted in reaching a point some 40 feet in by the drift opening, where further advancement was not advisable because of the condition of the entries.

2. A letter received in MSHA's field office, dated April 3, 1978, as part of the proposed ventilation plan stated the need for this airway and plans for cleaning the airway are in progress; also, 40 feet of the airway has already been cleaned and resupported.

Because of these findings, the Administrator for Coal Mine Safety and Health, under authority delegated by the Secretary of Labor, ordered that the petition be granted conditioned upon compliance with the terms set forth in the petition and that records of the monitoring be kept available for interested persons.

A copy of the decision is available for inspection by the public at the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: December 22, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-1222 Filed 1-12-79; 8:45 am]

[4510-43-M

[Docket No. M-78-37]

OLGA COAL CO.

Final Action Granting a Petition for Modification of Application of Mandatory Safety Standard

The Mine Safety and Health Administration (MSHA) has granted in part the petition (43 FR 8193) of Olga Coal Co. to modify the application of 30 CFR 75.305 to its Olga Mine located in McDowell County, West Virginia, in accordance with Section 101(c) of the Federal Mine Safety and Health Act of 1977, Public Law 95-164. MSHA has determined that an alternative method exists that will guarantee at all times no less than the same measure of protection given miners of the mine by the standard.

MSHA based its determination on the following findings:

1. An investigation was made of the return air courses for the 15 Dip Section on April 5, 1978, by MSHA field investigators, along with others, and the conditions observed were as follows:

a. The return air courses of the 15 Dip Section pass through the following areas: Nos. 2 North Section, 3 North Section and 1 East Section and were mined in 1940.

b. The roof has fallen in a number of entries and intersections making the return air courses in these areas virtually impassable and most hazardous to travel and examine.

c. The existing falls have no effect on the velocity or quantity of air passing through the return air courses. These return air courses are not designated as escapeways.

2. The investigators recommended that the following precautions be taken in addition to those stated in the petition:

a. Air measurement stations shall be established where the air enters and exits the areas designated in the petition.

b. Methane or other harmful, noxious, or poisonous gases shall not be permitted to accumulate in these return air courses in excess of the legal limits. An increase of 0.5 per centum methane above the last previous methane reading shall require an immediate investigation of the affected airways. If, at any time, the air quantity at any of the measuring stations indicates a reduction of air quantity of 10 percent, an immediate investigation of the affected area will be conducted.

Because of these findings, the Administrator for Coal Mine Safety and Health, under authority delegated by the Secretary of Labor, ordered that the petition be granted, conditioned upon compliance with the terms and conditions stated above.

A copy of the decision is available for inspection by the public at the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: December 22, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-1223 Filed 1-12-79; 8:45 am]

[4510-26-M]

Occupational Safety and Health Administration

ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH

Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) will meet on Wednesday, January 31, and Thursday, February 1, 1979 in the Departmental Auditorium, Conference Room B, Constitution Avenue between 12th and 14th Streets, N.W., Washington, D.C. 20009.

The meetings are open to the public and will begin at 9:00 a.m.

The meeting agenda includes the following:

Discussion and development of recommendations on physical qualifications for crane and derrick operators; discussion and development of recommendations on the application of the coke oven standard to non-coke oven employees, and review and development of recommendations on a draft standard for abrasive blasting.

Written data, views or arguments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the committee and will be included in the record of the meeting.

Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Oral presentations will be scheduled at the discretion of the chairman, depending on the extent to which time permits. Communications may be mailed to:

Ken Hunt,
Office of Information and Consumer Affairs,
Occupational Safety and Health Administration,
Third Street and Constitution Avenue, NW,
Room N-3635,
Washington, D.C. 20210,
Phone: 202-523-8024.

Materials provided to members of the Committee are available for inspection and copying at the above address.

Signed at Washington, D.C. this 9th day of January 1979.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 79-1257 Filed 1-11-79; 8:45 am]

[4510-29-M]

Pension and Welfare Benefit Programs

UNITED MINE WORKERS OF AMERICA

Proposed Exemption for Certain Activities Involving the 1950 Benefit Plan and Trust

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act). The proposed exemption would permit the trustees of the United Mine Workers of America 1950 Benefit Plan and Trust (the 1950 Benefit Plan) to offer their opinion to assist in the resolution of certain disputes arising in connection with the provision of health and other benefits through employee welfare benefit plans established by individual employers pursuant to the National Bituminous Coal Wage Agreement of 1978 (the 1978 Agreement). The proposed exemption, if granted, would affect the trustees of the 1950 Benefit Plan, the participants and beneficiaries of the 1950 Benefit Plan, the administrators, participants and beneficiaries of the employee benefit plans established pursuant to the 1978 Agreement (the 1978 plans), the United Mine Workers of America (the Union), the members of the Bituminous Coal Operators' Association, Inc. (the Employers), and other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department on or before February 12, 1979.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective from March 27, 1978 through the date of the termination of the 1978 Agreement.[1]

ADDRESS: All written comments and requests for a hearing (at least six copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20016, Attention: L-1214. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

William J. Flanagan of the Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, 202-523-7931. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption from the restrictions of section 406(a)(1) (C) and (D) and 406(b)(1) of the Act. The proposed exemption was requested in an application filed by the Trustees of the 1950 Plan, pursuant to section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

SUMMARY OF FACTS AND REPRESENTATIONS

The application and supplementary information submitted by the applicants contain facts and representations which are summarized below. Interested persons are referred to the application and supplementary information on file with the Department for the complete representations of the applicants.

The 1950 Benefit Plan is an employee welfare benefit plan within the meaning of section 3(1) of the Act. Prior to December 1974, all pension, health and death benefits for employees of signatory employers of the National Bituminous Coal Wage Agreement were provided by the United Mine Workers Welfare and Retirement Fund of 1950. By and for the duration of the collective bargaining agreement approved in 1974, the functions of this Fund were divided among a number of plans and trusts. The UMWA 1950 Pension Trust and Pension Plan provided pension benefits for eligible employees who retired before January 1, 1976. The application indicates that health, life insurance and death benefits for these employees and their spouses and dependents were supplied by the UMWA 1950 Benefit Plan and Trust. The 1974 Benefit Plan and Trust provided health and other benefits for active miners and for retired miners receiving pension benefits under the 1974 Pension Plan, generally those miners who retired after December 31, 1975.[2]

In 1978, the manner in which health, life insurance and death benefits were to be provided was further modified by collective bargaining. The parties agreed that on or before June 1, 1978, each signatory employer would establish an employee welfare benefit plan ("the separate welfare plans" or "1978 plans") through one or more insurance carriers. Each such plan covers that employer's active employees and those pensioners under the 1974 Pension Plan whose last classified employment was with such employer. The 1974 Benefit Plan and Trust now provides health and other benefits only to pensioners covered by the 1974 Pension Plan who would not otherwise receive health and welfare benefits because their former employer is no longer in business. The 1950 Benefit Plan now provides health and other benefits to pensioners under the 1950 Pension Plan, to certain disabled miners, and, under certain circumstances, to the surviving spouse and dependents of deceased miners.

The applicants represent that each of the separate welfare plans contains identical eligibility criteria, and that these criteria are similar to those formerly contained in plans administered by the Trustees. The applicants further represent that the benefit coverage provided by the separate welfare plans is identical to the benefit coverage provided by the 1950 Benefit Plan. The applicants state that bargaining parties sought to assure uniform application of the eligibility criteria among the 1978 plans, and consistent interpretation of the benefit coverage provisions between the 1950 Benefit Plan and the 1978 plans, and that therefore, the union and the Employers, as settlors of the 1950 Benefit Plan and Trust, have amended the 1950 Benefit Plan and Trust instrument to authorize the trustees of the 1950 Benefit Plan to resolve disputes concerning eligibility and benefit coverage which arise under either the 1950 Benefit Plan or the 1978 plans.[3] Specifically, it

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[1] The 1978 Agreement is, by its terms, subject to termination by either the Union or the Employers after March 31, 1981.

[2] The four trusts were administered by three-member boards of trustees pursuant to section 302(c)(5) of the Labor Management Relations Act of 1947, 29 U.S.C. § 186(c)(5). Each of these boards consisted of the same three trustees.

[3] The applicants represent that the trustees consider their determinations to be advisory in nature with regard to the 1978 plans. The applicants further indicate that the extent to which such decisions are consid-

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appears, from the information provided by the applicants, that the trustees propose to participate in the resolution of three types of disputes: (1) generic disputes relating to the nature of benefits to be provided under identical language of the 1950 Benefit Plan and the 1978 plans; (2) generic disputes involving the eligibility criteria shared by the 1978 plans; and (3) eligibility disputes involving individual participants of the 1978 plans.

The trustees have filed an application seeking an exemption which will permit them to participate in the resolution of these disputes, and to use resources of the 1950 Benefit plan for that purpose. The trustees are fiduciaries with respect to the 1950 Benefit Plan as defined in section 3(21)(A) of the Act, and parties in interest with respect to the 1950 Benefit Plan as defined in section 3(14) (A) and (B) of the Act. The union is a party in interest with respect to the 1950 Benefit Plan as defined in section 3(14)(D) of the Act. The signatory Employers are parties in interest with respect to the 1950 Benefit Plan as defined in section 3(14)(C) of the act.[4] To the extent that the trustees, in performing advisory functions in connection with the 1978 plans, may be causing the 1950 Benefit Plan to render services to the union or to the signatory Employers, or to both, the rendering of such services is a prohibited transaction pursuant to sections 406(a)(1) (C) and (D), and possibly 406(b)(1) of the Act.

The applicants represent that the requested exemption is in the interest of the 1950 Benefit Plan and its participants and beneficiaries. The applicants suggest that the 1950 Benefit Plan and its participants will benefit from trustee clarifications of the benefit coverage provisions shared by the 1950 Benefit Plan and the 1978 plans.[5] In addition, the applicants indicate that employer contributions to the 1950 Benefit Plan as provided by the 1978 Agreement are dependent upon fulfillment of the peripheral conditions of that agreement.

The applicants also represent that the requested exemption would be protective of the rights of the participants and beneficiaries of the 1950 Benefit Plan. The application represents that the trustees will receive no additional compensation for the performance of these functions, and that they will devote no less time to their duties relating solely to the administration of the 1950 Benefit Plan. Although the 1950 Benefit Plan would have to bear the administrative cost of the additional functions, and the applicants state that they are unable to estimate such costs precisely, the applicants represent that they expect such costs to be relatively small in comparison to the cost of administering the entire 1950 Plan. The applicants further indicate that, regardless of the amount of administrative costs, the level of benefits provided by the 1950 Benefit Plan, as set by the 1978 Agreement, is guaranteed by the signatory Employers. Finally, the applicants note that, even if the requested application were granted, the trustees would remain subject to the general fiduciary responsibility provisions of section 404 of the Act.

The exemption proposed herein differs from the exemption requested by the applicants in two ways. First, the exemption requested by the applicants would have no expiration date, whereas the exemption proposed herein would expire upon the termination of the present collective bargaining agreement. The Department is proceeding in this manner because future collective bargaining agreements between the UMWA and the Employers may alter the present arrangements for providing benefits in such a way as to make the exemption unnecessary or inappropriate. Of course, the trustees or any other party may in the future apply for another exemption if one is deemed necessary. Second, the proposed exemption contains the condition that the trustees must keep records adequate to ascertain both the costs incurred in rendering the described services and the portion of such costs which may be attributed to resolving each of the three types of disputes which the trustees might resolve i.e., generic questions relating to nature of benefits, generic questions of eligibility, and individual questions of eligibility. This condition is intended to help ensure that the trustees will be in a position to monitor the costs of such services. At the same time, the trustees will be creating a data base which can be used in connection with the analysis of any future plan modifications.

NOTICE TO INTERESTED PARTIES

The Employers and the UMWA, as settlors of the 1950 Plan, will be notified by letter containing a copy of the notice of pendency of the proposed exemption as published in the FEDERAL REGISTER. The participants and beneficiaries of the 1950 Plan will be notified by publication in the UMWA Journal of a copy of the notice of pendency of the proposed exemption as published in the FEDERAL REGISTER. Both types of notification will also advise these persons of their rights to comment and to request a hearing within the period of time specified above. Both types of notification will be given no later than January 22, 1979 and published in the FEDERAL REGISTER.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest from certain other provision of the Act, including the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the Plan solely in the interests of the participants and beneficiaries of the Plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under sections 406(a)(1) (A), (B) and (E), 406(a)(2), 406(b) (2) and (3), and 407(a) of the Act;

(3) Before any exemption may be granted under section 408(a) of the Act, 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;

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

WRITTEN COMMENTS AND HEARINGS REQUESTS

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the

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ered to be binding on the 1978 plans is a matter to be determined solely by the 1978 plans and the respective settlors.

[4] It does not appear that either the 1978 plans, or the participants and beneficiaries of those plans, are parties in interest with respect to the 1950 Benefit Plan.

[5] With regard to the generic benefit coverage disputes, the application represents that the trustees are peculiarly suited to resolve such disputes due to their experience in dealing with the identical language of the 1950 Benefit Plan. Similarly, with regard to both the generic and individual eligibility disputes, the application states that the trustees have developed an extensive body of knowledge and precedent in dealing with previous eligibility standards for the 1950 Benefit Plan and the 1974 Trust and Plan. The applicants submit that, in light of the trustees' expertise and experience, allowing the trustees to perform these dispute resolution functions is the most efficient and least burdensome method of adinistering the system established by the 1978 Agreement.

record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the addresses set forth above.

PROPOSED EXEMPTION

Based on the facts and representations set forth in the application, the Department is considering granting the exemption set forth below under the authority of section 408(a) of the Act, and in accordance with ERISA Procedure 75-1. The exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application be true and complete, and that the application accurately describe all material term of the transaction which is the subject of this exemption.

Effective March 27, 1978, and until the date of termination of the 1978 National Bituminous Coal Wage Agreement, the restrictions of section 406(a)(1)(C) and (D), and 406(b)(1) of the Act shall not apply to the resolution by the trustees of the 1950 United Mine Workers of America Benefit Plan and Trust of disputes involving the nature of benefit to be provided under plans established pursuant to Article XX of the National Bituminous Coal Wage Agreement of 1978 (1978 plans), generic questions of eligibility under 1978 plans, and individual questions of eligibility under 1978 plans, provided that such trustees maintain, and make available to the Department of Labor upon request, records adequate to ascertain both the cost of rendering such services and the portion of such costs which may be attributed to the resolution of each of the three types of disputes which the trustees may consider.

Signed at Washington, D.C., this 5th day of January 1979.

IAN D. LANOFF,
Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-832 Filed 1-12-79; 8:45 am]

[4510-28-M]

Office of the Secretary

[TA-W-4298]

BROCKWAY GLASS CO., INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4298: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 26, 1978 in response to a worker petition received on that date which was filed by the American Flint Glass Workers' Union on behalf of workers and former workers producing glass tableware at the Clarksburg, West Virginia plant of Brockway Glass Company, Incorporated. The Notice of Investigation incorrectly identified the petitioners.

The Notice of Investigation was published in the FEDERAL REGISTER on November 3, 1978 (43 FR 51475-76). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Brockway Glass Company, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivison have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Imports of glassware (machine and handmade) increased from $93,778,000 in 1976 to $108,846,000 in 1977. Imports increased from $86,786,000 in the first nine months of 1977 to $111,453,000 in the first nine months of 1978.

Imports of machine made glassware, in terms of value, increased from $7,106,000 in 1976 to $9,754,000 in 1977. Imports declined from $8,260,000 in the first nine months of 1977 to $8,028,000 in the first nine months of 1978. The ratios of imports to domestic production, in terms of value, remained less than 1.5 percent from 1973 through 1977.

Imports of machine made glassware, in terms of quantity, increased from 32,026 thousand pieces in 1976 to 41,471 thousand pieces in 1977. Imports declined from 36,460 thousand pieces in the first nine months of 1977 to 25,713 thousand peices in the first nine months of 1978.

The Department conducted a survey of customers who purchased glassware from Brockway Glass Co. The survey revealed that, in general, customers did not purchase imported glassware.

According to a press release by the company, the unprofitability and imminent closing of the plant can be attributed to a "slow growth market and a reduced demand for decorated glass tumblers used in fast food and other sales promotions".

In July, 1977, the market for premium glassware faced serious difficulties. The Massachusetts Department of Public Health declared that decorations on promotional glasses sold through a fast food chain contained lead and were a potential health hazard. Sales of premium glassware, which in 1976 represented a substantial portion of total sales by the Glassware Division of Brockway, decreased significantly in 1977 and still further in 1978.

Major customers, including fast food chains, who purchased these promotional glasses, considerably reduced their purchases from Brockway from 1977 to 1978. These customers did not buy imported glassware.

CONCLUSION

After careful review, I determine that all workers of the Clarksburg, West Virginia plant of Brockway Glass Company, Incorporated, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22d day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 79-122 Filed 1-11-79; 8:45 am]

[4510-28-M]

[TA-W-4269]

THE BUNKER HILL CO., ELECTROLYTIC ZINC PLANT

Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4269: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 17, 1978 in response to a worker petition received on October 3, 1978 which was filed on behalf of workers and former workers producing refined zinc metal and zinc alloys at the Electrolytic Zinc Plant of The Bunker Hill Company, Kellogg, Idaho.

The Notice of Investigation was published in the FEDERAL REGISTER on October 27, 1978 (43 FR 50271). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of The Bunker Hill Company,

Metals Week, Metal Bulletin, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

The plant was shut down due to a strike from May 6, 1977 to September 19, 1977. The earliest possible impact date is September 11, 1977, one week prior to the end of the strike. Since the plant reopened after the strike, average production employment at the plant has increased in each quarter compared to the previous quarter. No production employees have been laid off since before the strike. Average salaried employment at the plant has remained the same or increased in each quarter compared to the previous quarter for the past eight quarters.

CONCLUSION

After careful review, I determine that all workers of the Electrolytic Zinc Plant of The Bunker Hill Company, Kellogg, Idaho, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-1226 Filed 1-11-79; 8:45 am]

[4510-28-M]

[TA-W-4290]

DAN RIVER, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4290: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 25, 1978 in response to a worker petition received on October 17, 1978 which was filed on behalf of workers and former workers producing corduroy material at the Clanton, Alabama plant of Dan River, Incorporated.

The Notice of Investigation was published in the FEDERAL REGISTER on November 3, 1978 (43 FR 51475). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Dan River, Incorporated, the American Textile Manufacturers Institute, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Production of corduroy fabric at the Clanton, Alabama plant was discontinued and most workers were permanently separated from employment when the plant closed in October 1977.

Company-wide production of corduroy fabric has increased in quantity since the closing of the Clanton plant, indicating that production was transferred to other Dan River facilities. Sales of finished corduroy fabric produced at Dan River increased in quantity in the first nine months of 1978 compared with the same period in 1977.

CONCLUSION

After careful review, I determine that all workers at the Clanton, Alabama plant of Dan River, Incorporated are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this December 22, 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 79-1227 Filed 1-11-79; 8:45 am]

[4510-28-M]

[TA-W-4058, 4059]

DAY'S INCORP.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4058 and 4059: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on August 15, 1978 in response to worker petitions received on August 14, 1978 which were filed by the United Garment Workers of America on behalf of workers and former workers producing men's slacks and ski-jackets at the Tacoma, Washington (TA-W-4058) and Bremerton, Washington (TA-W-4059) plants of Day's, Incorporated. The investigation revealed that Day's produced a variety of ski-wear for men, women, and children, including ski-jackets.

The Notice of Investigation was published in the FEDERAL REGISTER on August 29, 1978 (43 FR 38635-38636). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Day's, Incorporated, its customers, the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certifiction of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Imports of men's and boy's dress and sport trousers and shorts increased absolutely during 1977 compared to 1976 and during the first six months of 1978 compared to the first six months of 1977. Imports declined relative to domestic production during 1977 compared to 1976.

U.S. imports of snow suits and coat/legging sets increased absolutely and relative to domestic production during 1977 compared to 1976 and increased absolutely during the first half of 1978 compared to the first half of 1977.

Most customers of men's slacks and men's, women's and children's skiwear sold by Day's who were surveyed did not increase purchases of imports of such products during periods in which they were reducing purchases from Day's.

CONCLUSION

After careful review, I determine that all workers of the Tacoma, Washington and Bremerton, Washington plants of Day's Incorporated are

denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-1228 Filed 1-11-79; 8:45 am]

[4510-28-M]

[TA-W-3953]

FOXCO INDUSTRIES, LTD.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3953: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on July 6, 1978 in response to a worker petition received on July 5, 1978 which was filed on behalf of workers and former workers producing single and double-knit natural and synthetic fabric at Foxco Industries, Ltd., New York, New York.

The investigation revealed that Foxco also sold some printed woven fabric.

The Notice of Investigation was published in the FEDERAL REGISTER on July 18, 1978 (43 FR 30927). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Foxco Industries, Ltd., its customers, the American Textile Manufacturers Institute, the U.S. Department of Commerce, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Foxco Industries, Ltd., New York, New York, produces knitted and woven fabrics for the apparel industry. The petitioners appear to allege that increased imports of wearing apparel contributed importantly to the decline in sales or production and employment at Foxco Industries, Ltd., New York, New York. Imported apparel cannot be considered like or directly competitive with fabric. Imports of fabric must be considered in determining import injury to workers producing fabric.

Imports of all finished fabric (bleached, dyed and printed) decreased in quantity absolutely from 464 million square yards in 1976 to 453 million square yards in 1977, then increased from 187 million square yards in the first half of 1977 to 255 million square yards in the first half of 1978. The ratio of imports to domestic production remained low but increased from 1.8 percent in 1976 to 1.9 percent in 1977.

Foxco does not purchase imported fabric or commission foreign contractors. Foxco's major customers which reduced purchases from the company in 1977 compared to 1976 or in the first half of 1978 compared to the first half of 1977 were surveyed. Customers who responded generally did not increase their purchases of imports while reducing purchases from Foxco.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that all workers of Foxco Industries, Ltd., New York, New York, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 79-1229 Filed 1-11-79; 8:45 am]

[4510-28-M]

[TA-W-3806]

GAFREY FABRICS, INC.

Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3806: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on June 5, 1978 in response to a worker petition received on May 30, 1978 which was filed on behalf of workers and former workers producing fabrics for the garment industry at Gafrey, Inc., New York, New York.

The investigation revealed that the full name of the company is Gafrey Fabrics, Inc.

The Notice of Investigtion was published in the FEDERAL REGISTER on June 20, 1978 (43 FR 26498). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Foxco Industries, Ltd., the parent company, its customers, the American Textile Manufacturers Institute, the U.S. Department of Commerce, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by such workers' firm or any appropriate subdivision thereof contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Gafrey Fabrics, Inc., New York, New York, produced knitted fabric. The petitioners appear to allege that increased imports of wearing apparel contributed importantly to the decline in sales or production and employment at Gafrey Fabrics, Inc., New York, New York. Imported apparel cannot be considered like or directly competitive with knitted fabric. Imports of fabric must be considered in determining import injury to workers producing knitted fabric.

Imports of all finished fabric (bleached, dyed and printed) decreased in quantity absolutely from 464 million square yards in 1976 to 453 million square yards in 1977, then increased from 187 million square yards in the first half of 1977 to 255 million square yards in the first half of 1978. The ratio of imports to domestic production remained low but increased from 1.8 percent in 1976 to 1.9 percent in 1977.

All of Gafrey's production was commissioned by Foxco Industries, Ltd., the parent company. Foxco (TA-W-3953) experienced decreased sales in 1977 compared to 1976, and in the first half of 1978 compared to the first half of 1977. Foxco does not purchase imported fabric or commission foreign contractors. Foxco's major customers which reduced purchases from Foxco in these periods were surveyed. Customers who responded generally did not increase their purchases of imports while reducing purchases from Foxco.

Gafrey ceased production approximately April 28, 1978. No workers were employed by the company after May 12, 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that all workers of Gafrey Fabrics, Inc., New York, New York, are denied eligibility to apply for adjustment as-

sistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 79-1230 Filed 1-11-79; 8:45 am]

[4510-28-M]

[TA-W-4110]

GOULD, INC., MILLVILLE, N.J.

Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4110: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on August 24, 1978 in response to a worker petition received on August 22, 1978 which was filed by the Distributive Workers of America on behalf of workers and former workers producing electrical connectors at the Millville, New Jersey plant of Gould, Incorporated, Electrical Components Division.

The Notice of Investigation was published in the FEDERAL REGISTER on September 5, 1978 (43 FR 39457). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Gould, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, *Electronic News*, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivison have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A survey by the Department revealed that none of the customers of Gould, Incorporated's Millville and Tampa plants purchased imported connectors in 1976, 1977 or the first eight months of 1978. None of the customers indicated any significant import competition in the domestic market.

Gould, Incorporated transferred production of connectors from its Millville plant to its Tampa plant, resulting in the closing of the Millville plant.

The petition alleges that electrical connectors production was transferred to Canada. Gould subcontracted the drilling of some of the connectors to a Canada firm. This type of connector has never been drilled at the Millville plant. Subsequent to the transfer of connector production to Tampa, Gould continued to subcontract this drilling operation to the Canadian firm.

CONCLUSION

After careful review, I determine that all workers of Gould, Incorporated, Millville, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 22nd day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-1231 Filed 1-11-79; 8:45 am]

[4510-28-M]

[TA-W-3872]

GRAVINER, INC., MOUNTAINSIDE, N.J.

Negative Determination Regarding Application for Reconsideration

On November 9, 1978, the petitioner requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers producing smoke detectors at the Mountainside, New Jersey, plant of Graviner, Inc. The determination was published in the FEDERAL REGISTER on October 31, 1978, (43 FR 50754).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears, on the basis of facts not previously considered, that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The petitioner claims that Graviner, Inc., manufactured smoke detectors notwithstanding the fact that the Department denied the petitioner's application because workers at Graviner, Inc., were engaged only in the testing and marketing of imported smoke detectors. The Department determined that such services are not "articles" within the meaning of Section 222 of the Trade Act. The petitioner predicates his claim on two facts; namely, (1) a capacitor was installed on each smoke detector at the Mountainside, New Jersey, plant and (2) the Underwriters Laboratories, UL, listed states that the final manufacturing point for all Graviner smoke detectors is Mountainside, New Jersey. The petitioner further claims that the control units were manufactured primarily in the United States.

The Department reviewed the investigative case file and made further investigation and learned that the capacitor was added in order to comply with UL's standards and that this installation was more in the nature of making an adjustment in order to meet UL requirements for marketing and sale in the U.S. market, than an integral part of the production process. The investigation further revealed that the control unit was a separate unit and basically a power supply which included a battery and an AC power source enclosed in a box and connected to the smoke detector by wires. Parts for the control unit were not manufactured at the Mountainside plant but purchased on the open market.

The separation of a marketing manager and salesman in 1978 resulted from Graviner's decision to terminate its smoke detector marketing effort in the face of declining sales.

CONCLUSION

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C. December 22, 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 79-1232 Filed 1-11-79; 8:45 am]

[4510-28-M]

[TA-W-3954]

GRECO KNIT FINISHERS, INC., NEW YORK, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3954: investigation regarding certification eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on July 6, 1978 in response to a worker

petition received on July 5, 1978 which was filed on behalf of workers and former workers producing single and double-knit natural and synthetic fabric at Greco Knit Finishers, New York, New York.

The investigation revealed that the formal name of the company is Greco Knit Finishers, Inc., and that some woven fabric was printed and finished by the company.

The Notice of Investigation was published in the FEDERAL REGISTER on July 18, 1978 (43 FR 30927). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Foxco Industries, Ltd., the parent company, its customers, the American Textile Manufacturers Institute, the U.S. Department of Commerce, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or porduction.

Greco Knit Finishers, Inc., New York, New York, produces knit and woven fabric. The petitioners appear to allege that increased imports of wearing apparel contributed importantly to the decline in sales or production and employment at Greco Knit Finishers, Inc., New York. Imported apparel cannot be considered like or directly competitive with fabric. Imports of fabric must be considered in determining import injury to workers producing fabric.

Imports of all finished fabric (bleached, dyed and printed) decreased in quantity absolutely from 464 million spuare yards in 1976 to 453 million square yards in 1977, then increased from 187 million square yards in the first half of 1977 to 255 million square yard in the first half of 1978. The ratio of imports to domestic production remained low but increased from 1.8 percent in 1976 to 1.9 percent in 1977.

All of Greco's production was commisssioned by Foxco Industries, Ltd., the parent company. Foxco (TA-W-3953) experienced decreased sales in 1977 compared to 1976, and in the first half of 1978 compared to the first half of 1977. Foxco does not purchase imported fabric or commission foreign contractors. Foxco's major customers which reduced purchases from Foxco in these periods were surveyed. Customers who responded generally did not increase their purchases of imports while reducing purchases from Foxco.

Greco ceased production in May 1978. No workers were employed by the company after May 12, 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that all workers of Greco Knit Finishers, Inc., New York, New York, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 79-1223 Filed 1-11-79; 8:45 am]

[4510-28-M]

[TA-W-4352]

GTE SYLVANIA, INC., BATAVIA, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4352: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 7, 1978 in response to a worker petition received on November 3, 1978 which was filed by the International Union of Electrical, Radio and Machine Workers on behalf of workers and former workers producing parts for television sets at the Batavia, New York plant of GTE Sylvania, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on November 17, 1978 (43 FR 53852). No public hearing was requested and none was held.

The determination was based upon information obtained prinicpally from officials of GTE Sylvania, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

On January 17, 1977, the Department issued a certification of eligibility to apply for adjustment assistance applicable to workers of Batavia, New York plant of GTE Sylvania engaged in employment related to the production of color televisions (TA-W-1169). That certification expires on January 17, 1979—two years from its date of issuance.

The ultimate separations of workers involved in the production of color television components at the Batavia plant will be a direct result of Sylvania's decision to transfer the major portion of Batavia's television production to foreign locations in order to maintain price competitiveness. Thus, increased imports of color televisions, which resulted in the transfer of Sylvania's television production, continue to have an adverse impact on workers at the Batavia plant.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with color televisions produced by GTE Sylvania, Inc., contributed importantly to the separation of workers of the Batavia, New York Plant. In accordance with the provisions of the Act, I make the following certification:

"All workers of the Batavia, New York plant of GTE Sylvania engaged in employment related to the production of color televisions who became totally or partially separated from employment on or after January 17, 1979 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 22nd day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-1234 Filed 1-11-79; 8:45 am]

[4510-28-M]

[TA-W-4133]

MANSFIELD TIRE AND RUBBER COMPANY, MANSFIELD, OHIO

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4133: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 5, 1978 in response to a worker petition received on September 5, 1978 which was filed by Local 17 of the United Rubber, Cork, Linoleum, and Plastic Workers of America, AFL-CIO on behalf of workers and former workers producing tires and tubes at the Mansfield, Ohio plant of Mansfield Tire and Rubber Company. The investigation revealed that the plant primarily produces tires and tubes for

passenger cars, trucks, farm equipment and other vehicles.

The Notice of Investigation was published in the FEDERAL REGISTER on September 26, 1978 (43 FR 43589). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Mansfield Tire and Rubber Company, its customers, manufacturers, the Rubber Manufacturers Association, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. The Department's investigation revealed that all of the requirements have been met.

U.S. imports of passenger, truck, and tractor tires increased in 1976 compared to 1975 and increased in 1977 compared to 1976.

Company imports of truck tires increased in 1977 compared to 1976 and further increased in the first nine months of 1978 compared to the same period of 1977.

A survey of customers of the subject firm revealed that some customers increased purchases of imported tires, while decreasing purchases from the subject firm, in 1977 compared to 1976 and in the first quarter of 1978 compared to the same period of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with tires and tubes for passenger cars, trucks, farm equipment and other vehicles produced at the Mansfield, Ohio plants of Mansfield Tire and Rubber Company contributed importantly to the decline in sales and to the separation of workers at those plants. In accordance with the provisions of the Act, I make the following certification:

All workers of the Mansfield, Ohio plants of Mansfield Tire and Rubber Company who became totally or partially separated from employment on or after August 30, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this December 22, 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 79-1235 Filed 1-11-79; 8:45 am]

[4510-28-M]

[TA-W-4240]

MIRANDO MANUFACTURING COMPANY, INCORPORATED, ELIZABETH, NEW JERSEY

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4240: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

the investigation was initiated on October 4, 1978 in response to a worker petition received on October 2, 1978 which was filed on behalf of workers and former workers producing men's and boys' jackets at the Mirando Manufacturing Company in Elizabeth, New Jersey. The investigation revealed that only men's and boys' cloth outercoats were produced in 1977 and through April, 1978, and that only men's leather jackets have been produced since May, 1978.

The Notice of Investigation was published in the FEDERAL REGISTER on October 20, 1978 (43 FR 49060-49061). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Mirando Manufacturing Company, Incorporated, its manufacturer, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been meet, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

In 1977 and through April in 1978 Mirando produced only cloth outercoats for a single manufacturer. In May, 1978, Mirando ceased production of cloth outercoats and began production of leather jackets for a different manufacturer. Production, in value, increased from 1976 to 1977 and in the first ten months of 1978 compared with the same period of 1977.

CONCLUSION

After careful review, I determine that all workers of Mirando Manufacturing Company, Incorporated in Elizabeth, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this December 22, 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 79-1236 Filed 1-11-79; 8:45 am]

[4510-28-M]

[TA-W-4349]

PEMBROKE, INC., EGG HARBOR CITY, NEW JERSEY

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4349: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 3, 1978 in response to a worker petition received on November 2, 1978 which was filed on behalf of workers and former workers producing tailored topcoats for the military. The investigation revealed that the plant primarily produces AG44 military overcoats.

The Notice of Investigation was published in the FEDERAL REGISTER on November 17, 1978 (43 FR 53851). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Pembroke, Inc., the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the total or partial separation, or threat thereof, and to the absolute decline in sales or production.

Military overcoats produced by Pembroke, Inc. are included in the import category Men's Tailored Uniform Overcoats and Topcoats. There have been no imports of articles in this category by the Armed Forces of the United States. The Defense Appropriation Acts (32 C.F.R. 6-300) annually

restrict the procurement of clothing items to U.S. sources, where available.

Conclusion.

After careful review, I determine that all workers of Pembroke, Inc., Egg Harbor City, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., December 22, 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 79-1237 Filed 1-11-79; 8:45 am]

[4510-28-M]

[TA-W-4430]

RIVERSIDE SERVICE CORPORATION, BUFFALO, NEW YORK

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4430: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 27, 1978 in response to a worker petition received on November 20, 1978 which was filed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America on behalf of workers and former workers providing trucking service, delivering freight for Riverside Service, Buffalo, New York. The investigation revealed that the correct company name is Riverside Service Corporation.

The Notice of Investigation was published in the FEDERAL REGISTER on December 5, 1978 (43 FR 56952). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Riverside Service Corporation, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. The Department has determined that services are not "articles" within the meaning of Section 222 of the Act, and that independent firms for which the subject firm provides services cannot be considered to be the "workers' firm".

The Riverside Service Corporation (Riverside) was founded in 1919 and incorporated in the state of New York. Riverside consists of a terminal, which includes a repair facility and warehouse, and general offices.

Workers of Riverside Service Corporation are engaged exclusively in the transportation of freight and do not produce an article within the meaning of Section 222(3) of the Act.

Riverside and its customers have no controlling interest in one another.

All workers engaged in providing transport services for the Riverside Service Corporation are employed by that firm. All personnel actions and payroll transactions are controlled by the Riverside Service Corporation. All employee benefits are provided and maintained by the Riverside Service Corporation. Workers are not, at any time, under employment or supervision by customers of the Riverside Service Corporation. Thus, the Riverside Service Corporation must be considered to be the "workers' firm".

Conclusion.—After careful review, I determine that all workers of Riverside Service Corporation, Buffalo, New York, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this December 22, 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 79-1238 Filed 1-11-79; 8:45 am]

[4510-28-M]

[TA-W-4243; TA-W-4247]

ROBBY KENT LIMITED, NEW YORK, NEW YORK AND SHERRY GALE CASUALS INCORPORATED, NEW YORK, NEW YORK

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4243 & 4247: investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigations were initiated on October 4, 1978 in response to worker petitions received on September 25, 1978 which were filed on behalf of workers and former workers producing sweaters at Robby Kent Limited and Sherry Gale Casuals, Incorporated, both of New York, New York. The investigation revealed that the companies produced ladies' sweaters.

The Notice of Investigation was published in the FEDERAL REGISTER on October 20, 1978 (43 FR 49060-1). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Robby Kent Limited and Sherry Gale Casuals, Incorporated, its customers, the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, Industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's sweaters increased both absolutely and relative to domestic production from 1975 to 1976. Imports of sweaters in 1977 were greater than the average level of imports for the years 1973 through 1976. The ratio of imports of sweaters to domestic production (IP ratio) exceeded 140 percent in 1976 and 1977. The IP ratio in 1977 was higher than the average IP ratio for the period 1973 through 1976.

Robby Kent Limited and Sherry Gale Casuals, Incorporated were two separate apparel jobbers under common ownership before they went out of business on October 31, 1978. The sales data was kept on a combined basis for both Robby Kent and Sherry Gale.

A Department of Labor survey of customers of Sherry Gale Casuals, Incorporated, which represented the bulk of the combined sales, revealed that, from 1976 to 1977 and during the first three quarters of 1978 when compared to the same period in 1977, several customers decreased purchases from Sherry Gale and increased purchases of imported women's sweaters.

CONCLUSION.

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' sweaters produced at Robby Kent Limited and Sherry Gale Casuals, Incorporated, both of New York, New York contributed importantly to the decline in sales or production and to the total or partial separation of workers of those firms. In accordance with the provisions of the Act, I make the following certification:

All workers of Robby Kent Limited and Sherry Gale Casuals, Incorporated both of New York, New York who became totally or partially separated from employment on or after November 25, 1977 and before November 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All workers totally or partially separated from employment on or after November 1, 1978 are denied eligibility on or after November 1, 1978 are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C. this December 22, 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 79-1239 Filed 1-11-79; 8:45 am]

[4510-28-M]

[TA-W-4134]

ROCHESTER ENTERPRISES, SHERIDAN, MONTANA

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4134: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 5, 1978 in response to a worker petition received on September 5, 1978 which was filed on behalf of workers and former workers producing copper concentrates at Rochester Enterprises, Sheridan, Montana.

The Notice of Investigation was published in the FEDERAL REGISTER on September 26, 1978 (43 FR 43589). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Rochester Enterprises, its customers, the U.S. Department of the Interior, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of refined copper increased from 384 thousand short tons in 1976 to 391 thousand short tons in 1977 and rose from 164 thousand short tons in January-June 1977 to 327 thousand short tons in January-June 1978. The ratio of imports to domestic copper production increased from 21.0 percent in 1976 to 22.2 percent in 1977 and rose from 15.0 percent in January-June 1977 to 35.9 percent in January-June 1978.

Price competition from imports of refined copper has adversely affected production and employment at Rochester Enterprises. Imports of copper are affected by the differential between the domestic price for copper and the price established by the LME (London Metal Exchange). When the LME price drops more than the estimated transportation cost of 5 cents per pound below the domestic producers price, the demand for imported copper increases. During the last nine months of 1977 and the first six months of 1978, the average LME price had fallen almost 8 cents per pound below the average domestic producers price.

The major factor contributing to depressed prices is an oversupply of domestic and imported copper. U.S. inventories of refined copper were higher in every month of 1977, except December, when compared to the same month in 1976. Inventories in December 1977 were less than one percent below December 1976 levels. In the first nine months of 1978, inventory levels surpassed levels in the same months of 1977, except for March which was only marginally below March 1977.

The abundant supply of copper stocks in the forseeable future provides no reason for domestic consumers of copper to maintain ties with domestic producers for purposes of a guarantee against copper shortages. Consequently, in 1977 and in the first half of 1978, when many domestic copper producers curtailed production because of the depressed market price for copper, imports of refined copper increased in 1977 compared to 1976 and doubled in the first half of 1978 compared to the same period in 1977.

Price pressure from imported copper has reduced the ability of domestic producers to profitably mine domestic ore and convert it to copper concentrate and refined copper.

Estimated costs of production at Rochester Enterprises for its copper concentrates vis-a-vis what Rochester Enterprises was able to receive made the entire operation very marginal and as a consequence Rochester Enterprises was forced to cease production of copper concentrates in October 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with copper concentrates produced at Rochester Enterprises, Sheridan, Montana, contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Rochester Enterprises, Sheridan, Montana, engaged in the production of copper concentrates who became totally or partially separated from employment on or after July 13, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., December 22, 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 79-1240 Filed 1-11-79; 8:45 am]

[4510-28-M]

[TA-W-3415]

ROGERS PEET COMPANY, PARAMUS, NEW JERSEY

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3415: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 27, 1978 in response to a worker petition received on March 9, 1978 which was filed on behalf of workers and former workers engaged in the retail sale of men's and women's ready-to-wear apparel at the Paramus, New Jersey facility of Rogers Peet Company.

The Notice of Investigation was published in the FEDERAL REGISTER on April 11, 1978 (43 FR 15205). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Rogers Peet Company and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

Evidence developed during the Department's investigation revealed that Rogers Peet Company was a chain of four retail clothing stores located in New York City and New Jersey. Rogers Peet Company was founded and incorporated in Delaware in 1962. Rogers Peet Company was a wholly-owned subsidiary of Cluett Peabody and Company, Inc., a manufacturer of men's and women's apparel. The Paramus, New Jersey store of Rogers Peet closed in December 1977. Rogers Peet Company closed in January 1978.

Rogers Peet Company, Inc. sold men's and women's apparel manufactured by Cluett Peabody, by other domestic clothing manufacturers and by foreign manufacturers. Total purchases by all of the retail stores of the Rogers Peet Company constituted an insignificant percentage of total sales by the three major men's apparel manufacturing subsidiaries of Cluett Peabody in 1976 and 1977. In addition, in the 1976-1977 period the predomi-

nant volume of Rogers Peet's clothing purchases were from domestic and foreign manufacturers other than Cluett Peabody.

Employees of Rogers Peet stores were engaged in the retail sales of clothing purchased predominantly from domestic sources other than Cluett Peabody and from foreign manufacturers. Since only a small percentage of Cluett Peabody's sales were to Rogers Peet and since Rogers Peet's retail stores handled clothing purchased predominantly from sources other than Cluett Peabody, it has been determined that Rogers Peet Company is not an "appropriate subdivision" of Cluett Peabody within the meaning of Section 222 of the Trade Act of 1974. Furthermore, the retail stores of Rogers Peet did not produce any articles and the Department of Labor has previously determined that the performance of services is not included within the term "articles" as used in Section 222 (3) of the Act.

Conclusion

After careful review, I determine that the Paramus, New Jersey retail store of Rogers Peet Company is not an "appropriate subdivision" of Cluett Peabody and Company, Inc. within the meaning of Section 222 of the Trade Act of 1974. Moreover, the services provided by Rogers Peet Company's retail stores are not "articles" within the meaning of Section 222 (3) of the Trade Act.

Signed at Washington, D.C. December 22, 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 79-1241 Filed 1-11-79; 8:45 am]

[4510-28-M]

[TA-W-4256]

UNITED SCREW & BOLT CORP., CLEVELAND, OHIO

Certification Regarding eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4256: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 10, 1978 in response to a worker petition received on October 4, 1978 which was filed by the United Auto Workers on behalf of workers and former workers producing sheet metal screws, recessed heads, oval heads slotted heads, washer heads, pan heads, and other screws at the Cleveland, Ohio fastener plant of United Screw and Bolt Corporation.

The Notice of Investigation was published in the FEDERAL REGISTER on October 20, 1978 (43 FR 49061). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of United Screw and Bolt Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of bolts and large screws increased from 474,084 thousands of pounds in 1976 to 491,140 thousands of pounds in 1977. In the first six months of 1978 imports increased to 287,314 thousands of pounds compared to 255,849 thousands of pounds for the same 1977 period. The ratio of imports to domestic production increased from 53.8 percent in 1976 to 54.7 percent in 1977 and increased to 60.7 percent in the first half of 1978 compared to 53.6 percent for the same period in 1977.

Imports of small screws increased from 108,250 thousands of pounds in 1976 to 166,968 thousands of pounds in 1977. In the first nine months of 1978, imports continued to increase to 134,991 thousands of pounds compared to 133,571 thousands of pounds in the first six months of 1977. The ratio of imports to domestic production increased from 25.7 percent in 1976 to 37.7 percent in 1977.

The Department conducted a survey of some of the customers purchasing large and small screws from United Screw and Bolt Corporation. The survey indicated that a major customer reduced purchases from the subject firm and increased purchases from foreign sources from 1976 to 1977 and in the first nine months of 1978 compared to the same 1977 period.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with industrial fasteners including sheet metal screws, recessed heads, oval heads, slotted heads, washer heads and pan heads produced at the Cleveland, Ohio fastener plant of United Screw and Bolt Corporation, contributed importantly to the decline in sales or production and to the total or partial separation of workers of that plant. In accordance with the provisions of the Act, I make the following certification:

"All workers of the Cleveland, Ohio fastener plant of United Screw and Bolt Corporation, who became totally or partially separated from employment on or after October 2, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this December 22, 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 79-1242 Filed 1-11-79; 8:45 am]

[7510-01-M]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (79-10)]

NASA ADVISORY COUNCIL (NAC)

AERONAUTICS ADVISORY COMMITTEE

Meeting

The Informal Ad Hoc Advisory Subcommittee on Advanced Aeronautical Propulsion Technology Requirements of the NAC Aeronautics Advisory Committee will meet January 30-31, 1979, in Conference Room 625, Federal Office Building 10B, NASA Headquarters, 600 Independence Avenue, SW, Washington, DC. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including Subcommittee members and participants).

The Subcommittee was established to assist the NASA in identifying and examining advanced propulsion technology requirements for future aeronautical vehicles, and to recommend program additions, deletions or changes in scope or emphasis which may be found necessary to support the overall NASA aeronautical research and technology objectives. The chairperson is Dr. Maurice Shank and there are five members on the Subcommittee.

For further information please contact Mr. Richard Rudey, Code RT-3, NASA Headquarters, Washington, DC 20546 (202/755-3000).

AGENDA

JANUARY 30, 1979

8:30 a.m. Introductory Remarks
9:30 a.m. Overview of Ongoing NASA Aeronautical Propulsion and Related Programs
11:00 a.m. Overview of NASA Aeronautics R&T 5-Year Plan
4:00 p.m. Committee Discussions on 5-Year Plan

JANUARY 31, 1979

8:30 a.m. Overview of Army, Navy and Air Force Aeronautical Propulsion Plans and Programs

10:30 a.m. Committee Discussion and Formulation of Recommendations
3:00 p.m. Adjourn

ARNOLD W. FRUTKIN,
Associate Administrator for External Relations.

JANUARY 8, 1979.

[FR Doc. 79-1200 Filed 1-11-79; 8:45 am]

[7510-01-M]

[Notice (79-11)]

SPACE SCIENCE STEERING COMMITTEE, PHYSICAL SCIENCE SPACELAB AND LDEF AD HOC ADVISORY SUBCOMMITTEE

Establishment

Pursuant to Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), and after consultation with the Committee Management Secretariat, General Services Administration, NASA has determined that the establishment of the Physical Science Spacelab and LDEF Ad Hoc Advisory Subcommittee for the evaluation of proposals for Physics, Astronomy, and Planetary Science Spacelab and Long duration Exposure Facility (LDEF) payloads is in the public interest, in connection with the performance of duties imposed upon NASA by law. The Space Science Steering Committee, under which the Subcommittee will operate, is a NASA internal committee, composed wholly of Government employees.

The function of this Subcommittee will be to obtain the advice of the scientific community on proposals in the specialized areas identified by the name of the Subcommittee.

ARNOLD W. FRUTKIN,
Associate Administrator for External Relations.

JANUARY 8, 1979.

[FR Doc. 79-1201 Filed 1-11-79; 8:45 am]

[7555-01-M]

NATIONAL SCIENCE FOUNDATION

ADVISORY COMMITTEE FOR SCIENCE EDUCATION

Notice of Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Science Education;
Date and time: January 31, February 1 and 2, 1979—1/31—8 p.m. to 9:30 p.m.; 2/1—9 a.m. to 5 p.m.; 2/2—9 a.m. to 12 noon.
Place: National Science Foundation, 1800 G Street, NW, Washington, D.C., 1/31 and 2/1—Room 540. 2/2—Room 642.
Type of meeting: Open.
Contact person: Dr. Alphonse Buccino, Executive Secretary, Advisory Committee for Science Education, Room W-660, National Science Foundation, Washington, D.C. 20550. Telephone: (202) 282-7947. Anyone who plans to attend should notify Dr. Buccino prior to the meeting.
Summary minutes: May be obtained from the Committee Management Coordinator, Division of Financial and Administrative Management, Room 248, National Science Foundation, Washington, D.C. 20550.
Purpose of committee: To provide advice and recommendations concerning the impact of all Foundation activities relating to education in the sciences in U.S. schools, colleges, universities, and other organizations performing educational activities in the sciences.
Agenda:

January 31, 1979—8:00 p.m. to 9:30 p.m.

8:00 p.m.—Orientation of new members
9:30 p.m.—Adjourn

February 1, 1979—9:00 a.m. to 5:00 p.m.

9:00 a.m.—Introductory Remarks
9:30 a.m.—Science Education Program review and discussion
12:00 Noon—Recess
1:30 p.m.—Oversight, presentation of CAUSE oversight report and discussion of issues and options
5:00 p.m.—Adjourn

February 2, 1979—9:00 a.m. to 12 Noon

9:00 a.m.—Individual oversight subcommittee meetings
10:00 a.m.—Recommendations for creating an operational oversight system
10:30 a.m.—Discussion of annual report
11:00 a.m.—Discussion of issues initiated by the Committee
12:00 Noon—Adjourn

M. REBECCA WINKLER,
Committee Management Coordinator.

[FR Doc. 79-1085 Filed 1-11-79; 8:45 am]

[7555-01-M]

SUBCOMMITTEE ON NEUROBIOLOGY

Notice of Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Neurobiology of the Advisory Committee of Behavioral and Neural Sciences.
Date and time: January 28, 29 & 30, 1979: 9:00 a.m. to 5:00 p.m. each day.
Place: Conference Center, Elkhorn at Sun Valley, Idaho 83353.
Type of meeting: Closed.
Contact person: Dr. Janett Trubatch, Program Director, Neurobiology Program, Room 320, National Science Foundation, Washington, DC 20550, telephone (202) 634-4036.
Purpose of subcommittee: To provide advice and recommendations concerning support for research in Neurobiology.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committeee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Committee Management Coordinator.

JANUARY 9, 1979.

[FR Doc. 79-1084 Filed 1-11-79; 8:45 am]

[7555-01-M]

SUBCOMMITTEE ON POPULATION BIOLOGY AND PHYSIOLOGICAL ECOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Population Biology and Physiological Ecology of teh Advisory Committee for Environmental Biology.
Date and time: February 1 and 2, 1979; 8:30 a.m. to 5:00 p.m. each day.
Place: Room 321, National Science Foundation, 1800 G St NW, Washington, D.C. 20550.
Type of meeting: Closed.
Contact person: Dr. Donald W. Kaufman, Associate Program Director, Population Biology and Physiological Ecology Program, Room 336, Na-

tional Science Foundation, Washington, D.C. 20550, telephone (202) 632-7317.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in population biology and physiological ecology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Committee Management Coordinator.

JANUARY 9, 1979.

[FR Doc. 79-1086 Filed 1-11-79; 8:45 am]

[7555-01-M]

SUBCOMMITTEE ON REGULATORY BIOLOGY OF THE ADVISORY COMMITTEE FOR PHYSIOLOGY, CELLULAR & MOLECULAR BIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Regulatory Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology.

Dates and time: February 7, (1:00 to 7:00 p.m.) and February 8 and 9, 1979, (8:30 a.m. to 5:00 p.m.).

Place: Conference Room 338, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Robert B. Sanders, Program Director, Regulatory Biology Program, Room 333, National Science Foundation, Washington, D.C. 20550, Telephone (202) 632-4298.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in regulatory biology.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Committee Management Coordinator.

JANUARY 9, 1979.

[FR Doc. 79-1087 Filed 1-11-79; 8:45 am]

[7555-01-M]

SUBCOMMITTEE ON PSYCHOBIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Psychobiology of the Advisory Committee for Behavioral and Neural Sciences.

Date: February 5 and 6, 1979.

Time: 8:30 a.m. to 5:00 p.m. each day.

Place: Room 321, National Science Foundation, 1800 G. Street, NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Fred Stollnitz, Program Director, Psychobiology Program, Room 320), National Science Foundation, Washington, D.C., 20550, telephone (202) 632-4264.

Summary minutes: May be obtained from the Committee Management Coordinator, Division of Financial & Administrative Management, Room 248, National Science Foundation, Washington, D.C. 20550.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Psychobiology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Committee Management Coordinator.

JANUARY 9, 1979.

[FR Doc. 79-1088 Filed 1-11-79; 8:45 am]

[7555-01-M]

ADVISORY COUNCIL; TASK GROUP NO. 7

Meeting

In accordance with the Federal Advisory Committee Act, P. L. 92-463, the National Science Foundation announces the following meeting:

NAME: Task Group No. 7 of the NSF Advisory Council.

PLACE: Room 1224, National Science Foundation, 1800 G Street, NW, Washington, D.C. 20550.

DATE: Monday, January 29 and Tuesday, January 30, 1979.

TIME: 9 a.m. until 5 p.m., both days.

TYPE OF MEETING: Open.

CONTACT PERSON: Ms. Margaret L. Windus, Executive Secretary, NSF Advisory Council, National Science Foundation, Room 518, 1800 G Street, NW, Washington, D.C. 20550. Telephone: (202) 632-4368.

PURPOSE OF TASK GROUP: The purpose of the Task Group, composed of members of the NSF Advisory Council, is to provide the full Advisory Council with a mechanism to consider numerous issues of interest to the Council that have been assigned by the National Science Foundation.

SUMMARY MINUTES: May be obtained from the Committee Management Coordinator Division of Financial and Administrative Management;

National Science Foundation, Room 248, 1800 G Street, NW, Washington, D.C. 20550.

AGENDA: The Task Group is asked to study the effects on basic research of existing mechanisms for assuring technical, financial, and social accountability, and to recommend ways in which the balance between accountability and effectiveness in research can be optimized.

Dated: January 10, 1979.

M. REBECCA WINKLER,
Committee Management Coordinator.

[FR Doc. 79-1290 Filed 1-11-79; 8:45 am]

[7555-01-M]

ADVISORY COUNCIL; TASK GROUP NO. 8

Meeting

In accordance with the Federal Advisory Committee Act, P.L. 92-463, the National Science Foundation announces the following meeting:

NAME: Task Group #8 of the NSF Advisory Council.

PLACE: Room 523, National Science Foundation, 1800 G Street, NW, Washington, D.C. 20550.

DATE: Friday, February 2, 1979.

TIME: 9:00 a.m. until 5:00 p.m.

TYPE OF MEETING: Open.

CONTACT PERSON:

Ms. Margaret L. Windus, Executive Secretary, NSF Advisory Council, National Science Foundation, Room 518, 1800 G Street, NW, Washington, D.C. 20550. Telephone: (202) 632-4368.

PURPOSE OF TASK GROUP: The purpose of the Task Group, composed of members of the NSF Advisory Council, is to provide the full Advisory Council with a mechanism to consider numerous issues of interest to the Council that have been assigned by the National Science Foundation.

SUMMARY MINUTES: May be obtained from the Committee Management Coordinator, Division of Financial and Administrative Management, National Science Foundation, Room 248, 1800 G Street, NW, Washington, D.C. 20550.

AGENDA: The Task Group is asked to consider whether support mechanisms in addition to individual project grant support may be necessary to maintain the vitality of research in universities during the next 15 or 20 years of changing demographic conditions.

Dated: January 10, 1979.

M. REBECCA WINKLER,
Committee Management Coordinator.

[FR Doc. 79-1290 Filed 1-11-79; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-516 and STN 50-517]

LONG ISLAND LIGHTING CO. AND NEW YORK STATE ELECTRIC & GAS CORP. (JAMESPORT NUCLEAR POWER STATION, UNITS 1 AND 2)

Issuance of Construction Permits

Notice is hereby given that, pursuant to the Partial Initial Decision dated May 9, 1978 and the Initial Decision, dated December 26, 1978, of the Atomic safety and Licensing board, the Nuclear Regulatory Commission (the Commission) has issued Construction Permits Nos. CPPR-175 and CPPR-176 to the Long Island Lighting Company and New York State Electric & Gas Corporation for construction of two pressurized water nuclear reactors at the applicants' site on the north shore of Long Island in the towns of Riverhead and Southhold, New York. The proposed reactors, known as the Jamesport Nuclear Power Station, Units 1 and 2, are each designed for a rated power of 3411 megawatts thermal with a net electrical output of 1150 megawatts.

The Licensing Board's Decisions are subject to review by an Atomic Safety and Licensing Appeal board prior to their becoming final. Any decision or action taken by an Atomic Safety and Licensing Appeal Board in connection with the two Decisions may be reviewed by the Commission.

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the construction permits. The application for the construction permits complies with the standards and requirements of the Act and the Commission's rules and regulations.

The construction permits are effective as of their date of issuance. The earliest date for the completion of Unit 1 is July 1, 1986 and the latest date for completion is July 31, 1990; the earliest date for the completion of Unit 2 is July 1, 1988 and the latest date for completion is July 31, 1992. Each permit shall expire on the latest date for completion of the facility for which it is issued.

A copy of (1) the Partial Initial Decision, dated May 9, 1978; (2) the Initial Decision, dated December 26, 1978; (3) Construction Permits Nos. CPPR-175 and CPPR-176; (4) the report of the Advisory Committee on Reactor Safeguards, dated November 13, 1975; (5) the Office of Nuclear Reactor Regulation's Safety Evaluation Report dated October 1975 and Supplements 1, 2 and 3 thereto, dated April 1976, August 1976 and January 1977, respectively; (6) the Preliminary Safety Analysis Report and amendments thereto; (7) the applicants' Environmental Report dated September 1974 and supplements thereto; (8) the Draft Environmental Statement dated February 1975; and (9) the Final Environmental Statement dated October 1975, are available for public inspection at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. and the Riverhead Free Library, 330 Court Street, Riverhead, New York. A copy of the construction permits may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management.

Copies of the Safety Evaluation Report (Document No. NUREG-75/095), its Supplements (NUREG-0057) and the Final Environmental Statement (Document No. NUREG-75/079) may be purchased, at current rates, from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 4th day of January, 1979.

For the Nuclear Regulatory Commission.

ROBERT L. BAER,
Chief, Light Water Reactors Branch No. 2, Division of Project Management.

[FR Doc. 79-1098 Filed 1-11-79; 8:45 am]

[7590-01-M]

[Docket No. 50-437]

OFFSHORE POWER SYSTEMS

Availability of NRC final Environmental Statement (Part III) Comparison of Risks From the Accidental Releases of Radioactivity to the Environment for Floating and Land-Based Nuclear Power Plants

Pursuant to the National Environment Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in Appendix M of 10 CFR Part 50 and 10 CFR Part 51, notice is hereby given that a Final Environmental State (FES), Part III providing a comparison of overall risk from accidental releases of radioactivity to the environment for floating and land-based plants has been prepared by the Commission's Office of

Nuclear Reactor Regulation. The FES also presents an integrated cost-benefit analysis for the floating nuclear plant concepts and reflects on a cumulative basis, the elements of review in Parts I, II, and III. This Statement (NUREG-0502) is Part III of the environmental review related to the issuance of a manufacturing license to Offshore Power Systems.

NUREG-0502 is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.; the Jacksonville Public Library, 122 North Ocean Street, Jacksonville, Florida 32204; the Stockton State College Library, Pomona, New Jersey 08240; and the New Orleans Public Library, Business and Science Division, 219 Loyola Avenue, New Orleans, Louisiana 70141. The report is also being made available at the Florida State Clearinghouse Bureau of Intergovernmental Relations, Division of State Planning, Department of Administration, 660 Apalachee Parkway, Tallahassee, Florida 32304 and at the Metropolitan Clearinghouse Jacksonville Area Planning Board, 330 East Bay Street, Jacksonville, Florida 32202.

Notice of Availability of the Draft Environmental Statement, Part III, was published in the FEDERAL REGISTER on October 18, 1976 (41 FR 45899). Revision 1 to NUREG-0127 was issued May 11, 1978 (43 FR 20283). Comments received from Federal, State and local officials and interested members of the public on NUREG-0127 and Revision 1 thereto have been included as appendices in NUREG-0502 (FES, Part III).

Other NRC documents previously issued relating to this environmental review include: (1) Draft Environmental Statement (DES) Part I, July 1974; (2) DES Part II, (NUREG-75/113), November 1975; (3) DES Part III (NUREG-0127), October 1976 and Revision 1, March 1978; (4) FES, Part I, (NUREG-75/091), October 1975; (5) FES, Part II, (NUREG-0056) September 1976; (6) Draft Addendum to FES Part II, March 1978; and (7) Final Addendum to FES, Part II, June 1978. A copy of items 1, 2, 3 and 6 may be obtained by request addressed to the U. S. Nuclear Regulatory Commission, Division of Document Control, Washington, D.C. 20555. Items 4, 5 and 7 and copies of this FES, Part III (NUREG-0502) may be purchased from the National Technical Information Service, Springfield, Virginia 22161. (Printed copy: $13.25; microfiche: $3.00).

Dated at Bethesda, Maryland this 29th day of December 1978.

For the Nuclear Regulatory Commission.

RONALD L. BALLARD,
Chief, Environmental Projects Branch 1, Division of Site Safety and Environmental Analysis.

[FR Doc. 79-1099 Filed 1-11-79; 8:45 am]

[7590-01-M]

[Docket No. P-564A]

PACIFIC GAS AND ELECTRIC CO. (STANISLAUS NUCLEAR PROJECT, UNIT NO. 1)

Order

JANUARY 5, 1979.

I.

On December 28, 1978, the Southern California Edison Company (Edison), not a party to this proceeding, appeared specially and filed a motion to quash a subpoena duces tecum which had been served upon Edison by DWR. This motion was supported by points and authorities and the affidavit of Lowell John Dosch.

This motion to quash will be heard and considered by the Board at 10:00 a.m., local time, Wednesday, January 24, 1979, in the State Building, Room 1202 (First Floor), 310 McAllister Street, San Francisco, California 94102.

II.

The continuation of the September 25-27, 1978, prehearing conference in this proceeding will be resumed at 9:00 a.m., local time, Tuesday, January 23, 1979, in the State Building, Room 1202 (First Floor), 310 McAllister Street, San Francisco, California 94102.

The Board will consider the following matters, among others, at this resumed prehearing conference:

1. DWR motion of September 14, 1978 regarding discovery and scheduling, as modified by DWR motions dated December 1, 1978.
2. Prehearing conference briefs filed by all parties December 1978, and January 1979.
3. Issues related to the Stanislaus Commitments, Mendocino Advice Letter of Attorney General, Stanislaus Advice Letter and correspondence from Attorney General, Mooted Issues, if any, Pending Hearings in Other Fora.
4. Reports on status of discovery, including document production and analysis of information derived or anticipated from such discovery.
5. Consideration of suggestions to expedite discovery and schedule evidentiary hearings.
6. Consideration of other pending motions or requests.

It is so ordered.

Dated at Bethesda, Maryland this 5th day of January 1979.

For the Atomic Safety and Licensing Board.

MARSHALL E. MILLER,
Chairman.

[FR Doc. 79-1100 Filed 1-11-79; 8:45 am]

[7590-01-M]

[Docket Nos. 50-361 and 50-362]

SOUTHERN CALIFORNIA EDISON CO. AND SAN DIEGO GAS AND ELECTRIC CO. (SAN ONOFRE NUCLEAR GENERATING STATION, UNITS 2 AND 3)

Order Extending Construction Completion Dates

Southern California Edison Company and San Diego Gas and Electric Company are the holders of Construction Permit Nos. CPPR-97 and CPPR-98 issued by the Atomic Energy Commission[1] on October 18, 1973 for the San Onofre Nuclear Generating Station. These facilities are presently under construction at the applicants' site at Camp Pendleton, San Diego County, California. By letter dated March 31, 1978, Southern California Edison Company filed a request for an extension of the latest construction completion dates for the facilities from January 1, 1979 to June 1, 1980 for Unit 2 and from January 1, 1980 to June 1, 1981 for Unit 3. The extension was requested because construction has been delayed due to (1) unanticipated review effort incurred prior to issuance of the Construction Permits; (2) delays in obtaining approval from the California Coastal Zone Conservation Commission for the facilities; (3) delays due to a labor strike and (4) greater than anticipated time required for erection of walls and dome of the containment.

This action involves no significant hazards consideration, good cause has been shown for the delay, and the requested extension is for a reasonable period, the bases for which are set forth in the staff evaluation dated December 28, 1978. The preparation of an environmental impact statement for this particular action is not warranted because there will be no significant environmental impact attributable to the Order other than that which has already been predicted and described in the Commission's Draft Environmental Statement for the San Onofre Nuclear Generating Station, Units 2 and 3, published in November 1972 and the Final Environmental Statement published in March 1973. A

[1] Effective January 20, 1975, the Atomic Energy Commission became the Nuclear Regulatory Commission and permits in effect on that day continued under the authority of the Nuclear Regulatory Commission.

Negative Declaration and an Environmental Impact Appraisal have been prepared and are available, as are the above stated documents, for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the local public document room established for the San Onofre Nuclear Generating Station, Units 2 and 3 at the Mission Viejo Branch Library, 24851 Chrisanta Drive, Mission Viejo, California 92676.

It is hereby ordered, That the latest completion date for CPPR-97 be extended from January 1, 1979 to June 1, 1980 and the latest date for CPPR-98 be extended from January 1, 1980 to June 1, 1981.

Date of Issuance: December 28, 1978.

For the Nuclear Regulatory Commission.

ROGER S. BOYD,
Director, Division of Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 79-1101 Filed 1-11-79; 8:45 am]

[7590-01-M]

[Docket Nos. 50-361 and 50-362]

SOUTHERN CALIFORNIA EDISON CO. AND SAN DIEGO GAS AND ELECTRIC CO. (SAN ONOFRE NUCLEAR GENERATING STATION, UNIT NOS. 2 & 3)

Negative Declaration Supporting: Extension of Construction Permit

The U.S. Nuclear Regulatory Commission (the Commission) has reviewed the Southern California Edison Company and San Diego Gas and Electric Company (permittees) request to extend the expiration date of the construction permit for the San Onofre Nuclear Generating Station, Unit Nos. 2 and 3 (CPPR-97 and CPPR-98) which are located in San Diego County in the State of California. The permittees requested an eighteen month extension to the permits through June 1, 1980 for CPPR-97 and through June 1, 1981 for CPPR-98, to allow for completion of construction of the facilities.

The Commission's Division of Site Safety and Environmental Analysis has prepared an environmental impact appraisal relative to these changes to CPPR-97 and CPPR-98. Based on this appraisal, the Commission has concluded that an environmental impact statement for this particular action is not warranted because there will be no significant environmental impact attributable to the proposed action other than that which has already been described in the Commission's Final Environmental Statement-Construction Permit stage or evaluated in the environmental impact appraisal.

The environmental impact appraisal is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Mission Viejo Branch Library, 24851 Chrisanta Drive, Mission Viejo, California.

Dated at Bethesda, Maryland, this 28th day of December 1978.

For the Nuclear Regulatory Commission.

DONALD E. SELLS,
Acting Chief, Environmental Projects Branch 2, Division of Site Safety and Environmental Analysis.

[FR Doc. 79-1102 Filed 1-11-79; 8:45 am]

[7590-01-M]

[Docket No. 50-280]

VIRGINIA ELECTRIC AND POWER CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 46 to Facility Operating License No. DPR-32, issued to Virginia Electric and Power Company (the licensee), which adds license conditions related to operation of the Surry Power Station, Unit No. 1 (the facility) located in Surry County, Virginia. This amendment is effective as of the date of issuance.

This amendment specifies license conditions related to steam generator tube inspections for Surry Unit 1. Operating limits on these plant parameters were previously governed by NRC Order for Modification of License dated June 23, 1978, which is superseded by the amendment. The only change to the operating limits previously imposed for steam generator tube inspections is the date for the next inspection.

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 12, 1978 as supplemented December 20 and 29, 1978, (2) Amendment No. 46 to License No. DPR-32; 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 Swem Library, College of William and Mary, Williamsburg, Virginia. 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 Operating Reactors.

Dated at Bethesda, Maryland, this 29th day of December, 1978.

For the Nuclear Regulatory Commission.

CHARLES M. TRAMMELL,
Acting Chief, Operating Reactors Branch #1, Division of Operating Reactors.

[FR Doc. 79-1103 Filed 1-11-79; 8:45 am]

[7590-01-M]

[Docket Nos. 50-338SP & 50-339SP]

VIRGINIA ELECTRIC AND POWER CO. (VEPCO) (NORTH ANNA POWER STATION, UNITS 1 AND 2)

Assignment of Atomic Safety and Licensing Appeal Board; Proposed Amendment to Operating License NPF-4

Notice is hereby given that, in accordance with the authority in 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this spent fuel pool proceeding.

Alan S. Rosenthal, Chairman
Dr. John H. Buck
Dr. Lawrence R. Quarles

Dated: January 5, 1979.

MARGARET E. DU FLO,
Secretary to the Appeal Board.

[FR Doc. 79-1104 Filed 1-11-79; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Man-

agement and Budget on January 5, 1979 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes:

The name of the agency sponsoring the proposed collection of information;

The title of each request received;

The agency form number(s), if applicable;

The frequency with which the information is proposed to be collected;

An indication of who will be the respondents to the proposed collection;

The estimated number of responses;

The estimated burden in reporting hours; and

The name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the clearance office, Office of Management and Budget, Washington, D.C. 20503, (202-395-4529), or from the reviewer listed.

NEW FORMS

U.S. CIVIL SERVICE COMMISSION

Financial disclosure statement proposed, SF-278A
On occasion
Public officials, 1 responses; 1,500 hours
Marsha Traynham, 395-6140

DEPARTMENT OF COMMERCE

Bureau of Census
Mattresses, matching foundations, and convertible sofas, MA-25E
Annually
Bedding manufacturers, 150 responses; 150 hours
Office of Federal Statistical Policy and Standard, 673-7956

Bureau of Census
1979 residential finance survey (pretest)—1980 census followon survey, D1608(X) through D1613(X)
Single-time
Residential property owners nationwide, 4,600 responses; 1,683 hours
Office of Federal Statistical Policy and Standard, 673-7956

Economic Development Administration
Preliminary plan for interview guide for Indian economic development evaluation, ED-446Q
Single-time
Members of Indian tribes, 380 responses; 190 hours
C. Louis Kincannon, 395-3211

REVISIONS

VETERANS ADMINISTRATION

Application for medical benefits VA 10-10
On occasion
Veterans, 1,750,000 responses; 291,666 hours
Caywood, D.P., 395-6140

DEPARTMENT OF COMMERCE

Economic Development Administration
Minority business enterprise utilization report ED-530 (parts A and B)
On occasion
State and local governments, 2,400 responses; 1,600 hours
Budget Review Division, 395-4775

Bureau of Census
Mining machinery and mineral processing equipment (domestic and export shipments) MA-35F
Annually
Manufacturing establishments, 168 responses; 112 hours
Office of Federal Statistical Policy and Standard, 673-7956

Bureau of Census
Selected heating equipment (shipments and inventories) MA-34N
Annually
Manufacturers of heating equipment, 350 responses; 175 hours
Office of Federal Statistical Policy and Standard, 673-7956

Bureau of Census
Asphalt and tar roofing and siding products (shipments) MA-29A
Monthly
Manufacturers of asphalt and tar roofing products, 100 responses; 50 hours
Office of Federal Statistical Policy and Standard, 673-7956

EXTENSIONS

DEPARTMENT OF COMMERCE

Bureau of Census
Survey of plant capacity MQ-C1
Annually
Manufacturing establishments, 9,000 responses; 13,500 hours
Office of Federal Statistical Policy and Standard, 673-7956

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education
Financial status report and performance report (BEH) OE-9037-1
Annually
LEA's, SEA's, other public and private agencies, 1,173 responses; 14,706 hours
Budget Review Division, 395-4775

DEPARTMENT OF LABOR

Labor Management and Service Administration
Eligibility data from LMSA1010
On occasion
Veterans, reservists, nat'l guard mem., exam. rejectees, 3,500 responses; 875 hours
Strasser, A., 395-6132

DEPARTMENT OF THE TREASURY

Bureau of Customs
Certification of manufacture and delivery customs 7577-A, 7577-B
On occasion
Manufacturers/producers/exporters, 55,000 responses; 9,185 hours
Geiger, Susan B., 395-5867

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 79-1221 Filed 1-11-79; 8:45 am]

[6325-01-M]

OFFICE OF PERSONNEL MANAGEMENT

COMMITTEE ON PRIVATE VOLUNTARY AGENCY ELIGIBILITY

Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92-463, the Office of Personnel Management announces the following meeting:

NAME: Committee on Private Voluntary Agency Eligibility.

DATE AND TIME: January 31, 1979, 9:30 a.m.

PLACE: Office of Personnel Management, 1900 E Street, N.W., Washington, D.C.

ROOM: 7B09.

TYPE OF MEETING: Open. Any interested person may file a written statement with the Committee in advance of or at the meeting.

CONTACT PERSON:

Margaret Davis, Office of the Assistant to the Director, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415. Telephone: 202-632-5564.

PURPOSE OF COMMITTEE: To make recommendations to the Director of the Office of Personnel Management regarding eligibility of national voluntary agencies to participate in the Federal fund-raising program.

AGENDA: Review of applications for fund-raising privileges which have been submitted by voluntary organizations to the Office of Personnel Management in accordance with the Federal Fund-Raising Manual.

Dated: January 8, 1979.

GEORGE J. MCQUOID,
Assistant to the Director.

[FR Doc. 79-1256 Filed 1-11-79; 8:45 am]

[3190-01]

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

TRADE POLICY STAFF COMMITTEE

Generalized System of Preferences: Information on Imports During First Ten Months of 1978

This notice is for information only, and has no legal effect. It is provided in order to inform the public of certain import statistics covering the period of January through October, 1978. These statistics are relevant to the "competitive-need" limits set forth in section 504(c) of the Trade Act of 1974 (19 U.S.C. 2464(c)), pertaining to the Generalized System of Preferences (GSP). Those limits provide, in effect, that any GSP beneficiary country that exported to the United States during the most recent calendar year a quantity of any one GSP eligible article in excess of (1) $25 million, adjusted annually to reflect changes in the U.S. Grosss National Product, or (2) 50 percent of total U.S. imports of the article, is to cease receiving duty-free treatment under GSP for such article not later than 60 days after the close of that calendar year.

Based on preliminary data, subject to revision, the dollar limit cited in the preceding sentence is expected to be approximately $37.5 million for calendar year 1978.

An Executive order will be issued on or before March 1, 1979, making the adjustments that are required by section 504(c) of the Trade Act, on the basis of official data covering all of calendar year 1978. Such data are not currently available. It should be emphasized that the information set forth below covers only the first ten months of 1978. While this is not complete information on which adjustments will be based, it is being published now in order to provide the maximum possible advance indication as to adjustments that may be made to meet the requirements of section 504(c) of the Trade Act.

List I below shows how the "competitive-need" list of countries ineligible to receive GSP benefits for particular articles might look if that list were based on data covering the period January through October, 1978. In fact, the "competitive-need" list that will be issued and become effective on or about March 1 will be based on data for the full twelve months of 1978, so that List I below is indicative only and is subject to changes.

List II below shows countries which, on the basis of data for the first ten months of 1978, were close to exceeding the "competitive-need" limits for particular articles, but which had not actually exceeded those limits.

The column headed "TSUS" in the List below sets forth item numbers of the Tariff Schedules of the United States (19 U.S.C. 1202), representing categories of imported articles.

LIST I

GSP eligible articles for which a beneficiary country supplied—

(a) 50 per cent or more of U.S. imports in January—October 1978, or

(b) Imports valued at $37.5 million or more during that perios.

LIST I

TSUS/Country		Percent	$ Million
106.60	India	53	
106.70	Cayman Islands	100	
107.48	Argentina	51	
107.80	Argentina	53	
113.01	Thailand	51	
114.05	Republic of Korea	51	
121.55	India	60	
121.56	Argentina	56	
126.71	Republic of China	51	
130.35	Argentina	61	
130.40	Mexico	97	
135.51	Mexico	92	
135.80	Nicaragua	97	
135.90	Mexico	96	
136.00	Dominican Republic	93	
136.80	Mexico	60	
136.92	Israel	57	
137.40	Mexico	62	
137.71	Mexico	76	
137.75	Costa Rica	84	
138.05	Mexico	65	
140.21	Mexico	81	
140.25	Mexico	66	
141.35	Turkey	65	
141.55	Dominican Republic	90	
141.70	Republic of China	97	
141.77	Mexico	57	
145.53	Turkey	84	
145.60	Republic of China	79	
146.12	Argentina	52	
146.22	Turkey	59	
146.44	Phillippine Republic	71	
147.33	Jamica	94	
147.36	Israel	100	
147.80	Mexico	83	
147.88	Mexico	93	
148.12	Mexico	95	
148.25	Mexico	60	
148.35	Mexico	95	
148.72	Chile	94	
148.77	Republic of Korea	81	
152.00	Panama	74	
152.43	Dominican republic	84	
152.54	Brazil	57	
153.08	Brazil	52	
154.40	Republic of China	55	
154.55	Republic of China	53	
154.60	Republic of China	66	
155.20	Dominican Republic	17	107
155.20	Brazil	10	63
155.20	Philippine Republic	20	125
155.35	Barbados	60	
156.40	Brazil	20	65
156.53	Egypt	100	
161.69	Mexico	71	
162.11	Syria	51	
168.15	Trinidad	82	
176.33	Malaysia	62	
177.12	Panama	100	
177.72	Cayman Islands	92	

LIST I—Continued

TSUS/Country		Percent	$ Million
182.90	Panama	53	
184.65	Republic of China	77	
186.20	Brazil	83	
186.40	Mexico	100	
190.63	Mexico	61	
192.85	Mexico	63	
200.08	Hong Kong	96	
200.91	Honduras	56	
202.40	Philippine Republic	52	
202.62	Mexico	99	
203.20	Philippine Republic	58	
206.45	Philippine Republic	50	
206.47	Republic of China	65	
206.60	Mexico	63	
206.93	Republic of China	58	
220.10	Portugal	71	
220.15	Portugal	77	
220.20	Portugal	77	
220.25	Portugal	67	
220.35	Portugal	99	
220.37	Portugal	85	
220.41	Portugal	100	
220.48	Portugal	59	
220.50	Portugal	51	
222.10	Hong Kong	67	
222.34	Philippine Republic	66	
240.02	Philippine Republic	78	
240.10	Nicaragua	69	
240.12	Brazil	56	
240.16	Republic of China	100	
240.19	Republic of China	57	
240.21	Mexico	54	
240.30	Mexico	57	
240.34	Republic of China	58	
240.40	Mexico	50	
240.50	Republic of China	100	
240.56	Honduras	100	
245.00	Romania	64	
245.30	Brazil	69	
245.45	Romania	72	
252.25	Argentina	55	
254.50	Hong Kong	59	
254.53	Hong Kong	55	
256.60	Republic of Korea	66	
256.85	Mexico	91	
304.04	Philippine Republic	100	
304.40	Thailand	100	
304.44	Brazil	74	
304.58	Sierra Leone	63	
305.22	India	85	
305.28	Thailand	58	
305.30	Thailand	53	
306.52	Peru	99	
303.30	Brazil	92	
308.55	Republic of Korea	95	
319.01	India	98	
319.03	India	96	
319.05	India	99	
319.07	India	97	
335.50	India	67	
347.30	India	86	
355.04	Mexico	63	
355.20	Republic of China	100	
360.35	India	88	
364.09	Ghana	67	
365.05	Haiti	71	
389.61	Hong Kong	66	
403.58	Israel	65	
403.79	Mexico	59	
408.75	Romania	100	
416.05	Mexico	74	
417.22	Mexico	98	
418.24	India	77	
420.78	Turkey	84	
420.98	Brazil	92	
422.24	Mexico	99	
422.76	Mexico	91	
425.84	Netherlands Antilles	100	
426.12	Republic of China	54	
426.34	Republic of China	98	
427.16	Argentina	93	
437.16	India	87	
437.24	Brazil	63	
437.64	Brazil	61	
446.10	Malaysia	74	
455.16	Republic of China	100	
455.30	Israel	74	

LIST I—Continued

TSUS/Country		Percent	$ Million
460.60	India	99	
461.15	Bermuda	62	
465.15	Cayman Islands	53	
465.70	Argentina	100	
466.05	Jamaica	63	
472.48	Cyprus	61	
473.32	Cyprus	100	
473.50	Mexico	100	
473.52	Mexico	100	
473.56	Mexico	92	
473.82	Republic of Korea	93	
490.32	Argentina	55	
493.21	Republic of China	64	
511.31	Mexico	91	
514.11	Dominican Republic	82	
514.54	Mexico	67	
515.54	Mexico	53	
516.24	India	75	
516.71	India	91	
516.73	India	100	
516.74	India	91	
516.76	India	90	
517.24	Malagasy Republic	57	
518.41	Mexico	71	
520.35	Thailand	65	
522.71	Somalia	100	
523.51	India	100	
531.21	Mexico	73	
533.26	Romania	73	
535.31	Mexico	66	
544.11	Romania	51	
545.31	Republic of China	68	
545.37	Republic of China	77	
545.53	Mexico	56	
545.65	Mexico	80	
545.81	India	63	
545.85	Republic of China	55	
546.21	Republic of China	57	
547.41	Hong Kong	78	
603.45	Republic of Korea	81	
610.66	Israel	100	
610.71	Israel	93	
612.03	Chile	58	
612.06	Peru	12	62
612.06	Chile	31	156
612.06	Zambia	15	78
612.15	Mexico	52	
612.40	Cayman Island	100	
613.15	Mexico	57	
622.40	Brazil	99	
626.22	Peru	66	
628.05	Mexico	88	
628.50	Peru	55	
632.60	Peru	98	
642.09	Chile	51	
646.04	Republic of China	64	
646.82	Republic of China	59	
646.86	Hong Kong	54	
646.98	Mexico	95	
649.23	Peru	58	
649.75	Republic of China	69	
650.83	Hong Kong	93	
650.87	Hong Kong	93	
650.89	Hong Kong	62	
651.01	Hong Kong	63	
651.13	Hong Kong	51	
651.45	Republic of China	57	
651.51	Hong Kong	59	
651.62	Peru	100	
652.84	Mexico	57	
652.93	Mexico	55	
653.02	Mexico	63	
653.25	Peru	82	
653.47	Republic of China	65	
653.49	Republic of China	63	
653.70	Hong Kong	84	
653.85	Republic of China	72	
653.93	Republic of China	71	
657.24	Republic of China	77	
657.30	Republic of China	50	
660.42	Brazil	20	44
660.44	Mexico	18	56
662.18	Republic of Korea	74	
662.35	Mexico	53	
672.10	Hong Kong	84	
674.56	Mexico	60	
676.23	Argentina	71	
676.52	Hong Kong	12	62

LIST I—Continued

TSUS/Country		Percent	$ Million
678.50	Republic of Korea	5	42
678.50	Republic of China	5	43
683.15	Mexico	52	
683.80	Hong Kong	74	
684.10	Republic of China	75	
684.50	Hong Kong	31	55
684.70	Republic of China	14	50
685.24	Republic of Korea	8	44
685.24	Hong Kong	21	118
685.24	Republic of China	10	59
685.90	Mexico	16	73
686.24	El Salvador	60	
687.30	Malaysia	55	
687.37	Republic of Korea	51	
688.10	Republic of China	63	
688.12	Mexico	53	
688.30	Republic of Korea	53	
688.40	Hong Kong	24	40
690.15	Mexico	94	
692.27	Mexico	10	115
696.35	Republic of China	59	
702.14	Republic of Korea	74	
702.15	Republic of China	85	
702.20	Republic of Korea	72	
702.35	Mexico	51	
702.45	Mexico	98	
702.47	Mexico	64	
703.20	Portugal	68	
703.30	Mexico	100	
703.65	Mexico	72	
703.75	Mexico	71	
704.34	Republic of China	91	
704.95	Republic of Korea	60	
706.40	Hong Kong	70	
706.47	Republic of China	52	
708.57	Republic of Korea	73	
713.15	Mexico	51	
713.19	Mexico	97	
722.14	Hong Kong	73	
722.55	Hong Kong	80	
724.35	Republic of Korea	51	
725.32	Republic of China	50	
726.70	Mexico	50	
726.90	Mexico	53	
727.31	Republic of Korea	50	
730.25	Turkey	98	
730.27	Philippine Republic	62	
730.29	Brazil	53	
730.41	Brazil	98	
731.10	Republic of China	55	
731.50	Republic of China	52	
732.52	Mexico	53	
732.62	Republic of China	72	
734.10	Republic of China	87	
734.25	Hong Kong	63	
734.30	Hong Kong	70	
734.34	Hong Kong	56	
734.51	Republic of China	85	
734.56	Haiti	77	
734.60	Republic of China	92	
734.75	Republic of Korea	71	
734.87	Republic of China	63	
735.09	Republic of China	50	
735.11	Republic of China	54	
737.25	Republic of Korea	53	
737.30	Republic of Korea	62	
737.35	Hong Kong	63	
737.50	Hong Kong	63	
737.80	Hong Kong	59	
737.95	Hong Kong	39	92
737.95	Republic of China	17	42
740.10	Hong Kong	10	38
740.30	Hong Kong	64	
740.75	Republic of Korea	60	
741.15	Republic of China	50	
741.20	Hong Kong	97	
741.25	Hong Kong	51	
741.50	Hong Kong	53	
745.08	Hong Kong	97	
748.40	Republic of Korea	53	
750.05	Hong Kong	56	
750.35	Republic of China	82	
750.50	Republic of Korea	50	
751.05	Republic of China	70	
751.10	India	57	
751.15	Republic of China	62	
751.20	Republic of China	69	
756.40	Hong Kong	56	

LIST I—Continued

TSUS/Country		Percent	$ Million
760.65	Republic of China	89	
772.03	Hong Kong	58	
772.35	Republic of China	75	
772.97	Hong Kong	55	
774.20	India	54	
774.35	Republic of China	100	
774.60	Hong Kong	19	46
790.07	Hong Kong	51	
790.39	Republic of China	78	
790.59	Republic of China	63	
790.61	Republic of China	71	
790.62	Republic of China	61	
790.70	Republic of Korea	89	
791.17	Argentina	68	
791.76	Republic of Korea	36	97
791.80	Republic of China	83	
792.50	Philippine Republic	68	
792.60	Hong Kong	81	
792.75	Hong Kong	90	

LIST II

GSP beneficiary countries which supplied—

(a) 47 percent or more, but less than 50 percent, of U.S. imports of a GSP eligible article in January-October 1978, or

(b) Imports of a GSP eligible article valued at $35 million or more, but less than $37.5 million, during that period.

LIST II

TSUS/Country		Percent	$ Million
111.92	Philippine Republic	47	
121.15	Mexico	47	
121.35	Argentina	48	
131.35	Hong Kong	48	
145.09	Costa Rica	48	
147.85	Brazil	47	
156.40	Ivory Coast	11	36
206.53	Republic of China	49.2	
222.44	Philippine Republic	49.9	
245.20	Brazil	47	
305.20	India	47	
308.06	Republic of Korea	49.2	
308.06	Hong Kong	49.8	
365.84	Republic of China	49.2	
370.17	Portugal	47	
418.78	Mexico	47	
419.60	Chile	49.5	
421.90	Fiji	48	
429.22	Brazil	47	
534.74	Republic of China	47	
613.18	Israel	47	
646.88	Hong kong	47	
648.63	Mexico	48	
651.53	Republic of China	48	
652.36	Republic of Korea	48	
660.25	Israel	49.3	
676.52	Mexico	7	36
686.30	Republic of Korea	48	
686.30	Republic of China	48	
687.42	Republic of China	49.9	
694.40	Singapore	15	35
731.30	Republic of China	47	
734.54	Republic of Korea	47	
734.54	Republic of China	49.0	
748.12	Haiti	49.4	
748.15	Republic of China	47	
750.65	Republic of Korea	48	
755.25	Hong Kong	49.2	
756.23	India	49.0	
774.60	Republic of China	14	35
791.76	Argentina	13	35

WILLIAM B. KELLY, Jr.,
Chairman.

[FR Doc. 79-1212 Filed 1-11-79; 8:45 am]

[4810-31-M]

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 79-1]

CLOSED MEETINGS

Public Availability of Reports

Pursuant to the provisions of the Federal Advisory Committee Act 5 U.S.C. App. I (Pub. L. 92-463), the Advisory Committees of the Bureau of Alcohol, Tobacco and Firearms, which held closed meetings through December 31, 1978, have prepared summary reports on activities of those meetings. Copies of the reports have been filed and are available for public inspection at two locations:

The Library of Congress, Room 256, Main Building, 10 First Street SE., Washington, D.C.

The Bureau of Alcohol, Tobacco and Firearms, Federal Building, 12th and Pennsylvania Avenue NW., Room 8233, Washington, D.C.

Signed: January 3, 1979.

JOHN G. KROGMAN,
Acting Director.

[FR Doc. 79-1065 Filed 1-11-79; 8:45 am]

[4810-22-M]

Customs Service

[520974]

AMERICAN MANUFACTURER'S PETITION

Receipt of an American Manufacturer's Petition to Reclassify Sheets of Acrylic Resin

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Notice of receipt of American manufacturer's petition.

SUMMARY: The Customs Service has received a petition from an American manufacturer of sheets of acrylic resin requesting that imports of these articles be reclassified under item 771.45, Tariff Schedules of the United States (TSUS), regardless of dimension or thickness. The current Customs practice is to classify certain sheets of acrylic resin measuring over 15 inches in width and 18 inches in length under item 771.42, TSUS. Articles classified under item 771.42, TSUS, are dutiable at the rate of six percent ad valorem and are eligible for duty-free treatment under the Generalized System of Preferences (GSP). Articles classified under item 771.45, TSUS, are dutiable at the rate of 8.5 cents per pound and are eligible for duty-free treatment under the GSP unless imported from the Republic of China.

DATES: Interested persons may comment on this petition, and comments must be received on or before February 12, 1979.

ADDRESS: Comments, preferably in triplicate, should be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Donald F. Cahill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

BACKGROUND

A petition has been filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), by Rohm and Haas Company, an American manufacturer of sheets of acrylic resin. The petitioner requests that imports of these sheets, regardless of dimension or thickness, be classified under the provision for sheets, wholly or almost wholly of plastics, not of cellulosic plastics materials, of acrylic resin, in item 771.45, Tariff Schedules of the United States (TSUS), which carries a duty of 8.5 cents per pound. The current Customs practice is to classify sheets of acrylic resin measuring over 15 inches in width and 18 inches in length under the provision for other sheets, wholly or almost wholly of rubber or plastics, not of cellulosic plastics materials, flexible, in item 771.42, TSUS, which carries a duty of six percent ad valorem, provided the sheets can be easily bent, turned, or twisted by hand without being broken, cracked, or permanently distorted upon returning by themselves to their original shape. Articles imported from beneficiary developing countries are eligible for duty-free treatment under the Generalized System of Preferences (GSP) if classified under either item 771.42, TSUS, or 771.45, TSUS, except that articles from the Republic of China classified under item 771.45, TSUS, are not eligible for GSP treatment. The petitioner believes that classification of acrylic resin sheets under item 771.42, TSUS, is erroneous for a number of reasons.

First, the petitioner contends that the provision for acrylic resin materials in item 771.45, TSUS, is an *eo nomine* provision which includes all forms of acrylic resin products unless there is a clear manifestation of a contrary Congressional intent. The petitioner states that there is no evidence of such a contrary intent, and further notes that item 771.42, TSUS, (relating to flexible sheets) is not a heading superior to item 771.45, TSUS; rather, it is a co-equal heading and does not qualify, modify, restrict, or invade item 771.45, TSUS. Even if item 771.42, TSUS were a superior heading, the petitioner claims that no article covered by item 771.45, TSUS, should be classified in item 771.42, TSUS, because the *eo nomine* classification in item 771.45, TSUS, would modify a less specific heading applicable to sheets generally.

The petitioner also argues that sheets of acrylic resin are not "flexible" within the definition of item 771.42, TSUS, stating that since their commercial introduction in 1935, sheets of acrylic resin have been characterized as "rigid plastic sheets" without regard for their size or thickness. To support this position the petitioner cites the explanatory notes provided in the Tariff Classification Study, November 15, 1960, for Schedule 7, Part 12—Rubber and Plastic Products, which explain on page 451 that the rates specified in item 771.42, TSUS, were to apply to polyvinyl chloride film and sheets in imitation of patent and fancy leather. The petitioner contends that the specific reference to these materials, which are more flexible than sheets of acrylic resin, indicates that item 771.42, TSUS, was not intended to apply to articles which the plastics industry considers to be rigid. These are defined as plastic products having a flexural modulus (a measure of flexibility) in excess of 100,000 psi. The petitioner believes that the legislative history of items 771.42 and 771.45, TSUS, establishes that the authors of these items were aware of the commercial distinction between rigid and flexible plastic sheets. Therefore, the petitioner contends that the dictionary definition of a flexible sheet as one that can be easily bent must yield to industry standards of defining flexibility. Under these standards, sheets of acrylic resin are not considered flexible, and thus classification under item 771.42 would be improper.

COMMENTS

Pursuant to § 175.21(a) of the Customs Regulations (19 CFR 175.21(a)), the Customs Service invites written comments (preferably in triplicate) on this petition from all interested parties.

The American manufacturer's petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with §§ 103.8(b) and 175.21(b) of the Customs Regulations (19 CFR 103.8(b), 175.21(b)) during regular business hours at the Regulations and Legal Publications Division, Headquarters, U.S. Customs Service, Room 2335,

1301 Constitution Avenue, NW., Washington, D.C. 20229.

AUTHORITY

This notice is being published in accordance with § 175.21(a) of the Customs Regulations (19 CFR 175.21(a)).

LEONARD LEHMAN,
Assistant Commissioner, Regulations and Rulings.

JANUARY 8, 1979.

[FR Doc. 79-1211 Filed 1-11-79; 8:45 am]

[4810-22-M]

CERTAIN TEXTILES AND TEXTILE PRODUCTS FROM PAKISTAN

Preliminary Countervailing Duty Determination

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Preliminary Countervailing Duty Determination.

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in a preliminary determination that the Government of Pakistan has given benefits which are considered bounties or grants within the meaning of the countervailing duty law on the manufacture, production or exportation of men's and boys' apparel and textile mill products of cotton, wool and manmade fibers. A final determination will be made by July 5, 1979. Interested persons are invited to comment on the action.

EFFECTIVE DATE: January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Donald W. Eiss, Office of Tariff Affairs, U.S. Treasury Department, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20220; telephone (202-566-8256).

SUPPLEMENTARY INFORMATION: On August 28, 1978, a notice of "Receipt of Countervailing Duty Petition and Initiation of Investigation" was published in the FEDERAL REGISTER (43 FR 38485-38486). The notice stated that a petition had been received from the Amalgamated Clothing and Textile Workers Union alleging that payments or bestowals conferred by the Government of Pakistan upon the manufacture, production or exportation of men's and boys' apparel and textile mill products of cotton, wool and manmade fibers constitute the payment or bestowal of a bounty or grant, directly or indiretly, within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to in this notice as the "Act").

For purposes of this notice, "textile mill products" include yarns, fabrics, household textiles, miscellaneous products of textile mills and certified handloomed and folklore products, made of cotton, wool and manmade fibers, as specified in U.S. bilateral textile agreements and described by the Tariff Schedules of the United States Annoted (TSUSA) item numbers set forth in the Appendix to the FEDERAL REGISTER notice published on October 13, 1978 (43 FR 47340). "Men's and boys' apparel" includes those items described by TSUSA item numbers in the Appendix to the above-cited FEDERAL REGISTER notice.

In the Notice of Initiation cited above, two programs contained in the petition were identified as *prima facie* not constituting the bestowal of a "bounty or grant." Those practices are:

(1) The exemption from the payment of sales tax on exported items and on raw materials used in the manufacture of items which are later exported.

(2) The remission from import duties on imported raw materials and component parts which are later exported as a part of a finished product.

On the basis of an investigation conducted pursuant to § 159.47(c) of the Customs Regulations (19 CFR 159.45(c)), the following programs have also been preliminarily determined not to operate in such a way as to be considered "bounties or grants" within the meeting of the Act. They are:

(1) Accelerated depreciation allowances for new plants and equipment and for machinery used for extra-shifts. This program is available to, and is utilized by, firms in Pakistan regardless of whether they produce for export or for domestic consumption. Since the program is available to all firms in Pakistan, and does not contain any preferential provisions for export-oriented firms, this program does not constitute a "bounty or grant."

(2) Loans for capital equipment and projects made through government entities such as the Pakistan Industrial Credit and Investment Corporation, the Industrial Development Bank of Pakistan, the Investment Corporation of Pakistan and the Pakistan Industrial Development Corporation. These loans are in fact the method by which the Government of Pakistan distributes the bilateral and multilateral assistance it receives. The loans are made on identical terms regardless of whether the market orientation of the applicant is domestic or export. Further, there is no evidence at this stage that the Government of Pakistan has directed these loans to firms or industries which are export oriented. Due to the lack of any apparent preferential aspect of these loans for export oriented firms, it is determined preliminarily that this program does not constitute a "bounty or grant."

The following programs have been preliminarily determined not to have been utilized by the Pakistani textile industry.

(1) Tax credit schemes to encourage investment in designated areas of Pakistan. Virtually all firms manufacturing the products under investigation are ineligible to receive the credits in that they do not operate plants located in the designated areas. The few firms located in the designated areas were located there before the inception of the tax credit scheme and are also not eligible.

(2) Reduced corporate income taxes for companies established between July 1, 1975 and June 30, 1981 in specified areas of Pakistan. This program, which was listed separately in the Notice on Initiation has been determined to be a part of the regional development tax scheme discussed immediately above. For the reasons cited above, this program has also been determined not to have been utilized by the Pakistani textile industry.

Based upon the information available to date, two programs have been determined to constitute the bestowal of a "bounty or grant" upon the manufacture, production or exportation of certain textiles and textile products from Pakistan. They are:

(1) Reductions in income tax liabilities, depending upon the share of total sales which is exported.

(2) Short-term export financing (up to 90 days) at rates lower than those offered on loans of the same terms made to non-exporters.

It has been determined that both of these programs are available to, and have been utilized by, firms manufacturing the products under investigation. It is the contention of the Government of Pakistan that the utilization of each of these programs has been so limited that the benefits bestowed to any one manufacturer, or the industry as a whole, are clearly *de minimis*. It has been determined that for the purposes of this preliminary determination, insufficient information has been supplied to justify the acceptance of this contention. The Treasury Department will undertake to investigate these programs further prior to the issuance of a Final Determination in the case in order to calculate more precisely the level of utilization of each of these programs by firms in the Pakistani textile industry.

Before a final determination is made, consideration will be given to any relevant data, views, or arguments submitted in writing with respect to this preliminary determination. Sub-

missions should be addressed to the Commissioner of Customs, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, in time to be received by this office not later than February 12, 1979. Any request for an opportunity to present views orally should accompany such submission and a copy of all submissions should be delivered to any counsel that has heretofore represented any party to these proceedings.

This preliminary determination is published pursuant to section 303(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 (Revision 15), March 16, 1978, the provisions of Treasury Department Order 165, Revised, November 2, 1954, and § 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a preliminary countervailing duty determination by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

JANUARY 8, 1979.

[FR Doc. 79-1191 Filed 1-11-79; 8:45 am]

[4810-22-M]

CERTAIN TEXTILES AND TEXTILE PRODUCTS FROM THAILAND

Preliminary Countervailing Duty Determination

AGENCY: United States Customs Service, Treasury Department.

ACTION: Preliminary Countervailing Duty Determination.

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in a preliminary determination that the Government of Thailand has not given benefits which are considered to be bounties or grants on the manufacture or exportation of men's and boys' apparel and textile mill products of cotton, wool, and manmade fibers. A final determination will be made by July 5, 1979. Interested persons are invited to comment on this action.

EFFECTIVE DATE: January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Leon McNeill, Technical Branch, Duty Assessment Division, Office of Operations, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On August 28, 1978, a notice of "Receipt of Countervailing Duty Petition and Initiation of Investigation" was published in the FEDERAL REGISTER (43 FR 38492). The notice stated that a petition had been received alleging that payments or bestowals conferred by the Government of Thailand upon the manufacture, production or exportation of men's and boys' apparel and textile mill products of cotton, wool, and manmade fibers constitute the payment or bestowal of a bounty or grant, directly or indirectly, within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to in this notice as "the Act").

For purposes of this notice "textile mill products" include yarns, fabrics, household textiles, miscellaneous products of textile mills, and certified handloomed and folklore products, made of cotton, wool and manmade fibers, as specified in the U.S. bilateral textile agreements and described by the Tariff Schedules of the United States Annotated (TSUSA) item numbers set forth in the Appendix to the FEDERAL REGISTER notice published on October 13, 1978 (43 FR 47340). "Men's and boys' apparel" includes those items described by TSUSA item numbers in the Appendix to the above-cited FEDERAL REGISTER notice.

On the basis of an investigation conducted under § 159.47(c) of the Customs Regulations (19 CFR 159.47(c)), it has been preliminarily determined that no practice of the Government of Thailand provides benefits constituting bounties or grants within the meaning of section 303 of the Act to manufacturers of textiles and textile products which export to the United States. One practice—an exemption for three to eight years from corporate income taxes for certain companies approved by the Board of Investment—was found to have provided benefits to one manufacturer during 1977. However, that company does not export to the United States, and accordingly that benefit does not constitute a bounty or grant.

Based on the information currently available, it preliminarily has been determined that certain practices of the Government of Thailand on their face do not constitute a bounty or grant. These practices are:

(1) Advisory technical and training services provided to manufacturers by the Ministry of Industry. The full cost of such services is charged directly to those companies which benefit from the program. The services are not free, as alleged in the petition.

(2) Rebate of a business tax imposed on raw materials used in export production. Inasmuch as the rebate is limited to taxes assessed on physical components of the exported product, allowance of the rebate is consistent with past Treasury policy toward indirect taxes.

It preliminarily has been determined that certain practices of the Government of Thailand either are not applicable or have not been utilized by the textile industry. These practices are:

1. Fiscal benefits granted by the Board of Investment for locating in certain specified areas of the country, including (a) a 100 percent tax holiday or a partial exemption of a tax for a certain time period; (b) reduction of business taxes on sales of products for a maximum of five years; (c) following expiration of the tax holiday, deduction from taxable income of double the actual cost of transport, water and electricity; (d) deduction from taxable income of up to 25 percent of capital investment in plant and amenities; and (e) reduction of income tax by 50 percent for five years following the expiration of the initial 100 percent tax holiday period.

2. Benefits granted to companies in areas controlled by the Industrial Estate Authority, including the provision of power and water at subsidized rates and availability of land at low rental or acquisition cost.

3. Relief from "business taxes" (levied on gross monthly receipts and collected at the point of origin) on equipment through either an outright exemption, a reduction from income tax or a cash rebate for companies producing for export.

4. Exemption from exchange controls or remittance of profits and dividends.

Before a final determination is made, consideration will be given to any relevant data, views or arguments submitted in writing with respect to this preliminary determination. Submissions should be addressed to the Commissioner of Customs, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, in time to be received by his office not later than February 12, 1979. Any request for an opportunity to present views orally should accompany such submission and a copy of all submissions should be delivered to any counsel that has heretofore represented any party to these proceedings.

This preliminary determination is published pursuant to section 303(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 (Revision 15), March 16, 1978, the provisions of Treasury Department Order No. 165, Revised, November 2, 1954, and section 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a preliminary countervailing duty determination by the Com-

missioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

JANUARY 8, 1979.

[FR Doc. 79-1192 Filed 1-11-79; 8:45 am]

[4810-22-M]

CERTAIN TEXTILES AND TEXTILE PRODUCTS FROM SINGAPORE

Preliminary Countervailing Duty Determination

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Preliminary Countervailing Duty Determination.

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in a peliminary determination that the Government of Singapore has not given benefits which are considered bounties or grants within the meaning of the countervailing duty law on the manufacture, production or exportation of men's and boys' apparel and textile mill products of cotton, wool and manmade fibers. A final determination will be made by July 5, 1979. Interested persons are invited to comment on this action.

EFFECTIVE DATE: January 9, 1979.

FOR FURTHER INFORMATION CONTACT:

Leon McNeill, Duty Assessment Division, Technical Branch, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, telephone (202-566-5492).

SUPPLEMENTARY INFORMATION: On August 28, 1978, a notice of "Receipt of Countervailing Duty Petition and Initiation of Investigation" was published in the FEDERAL REGISTER (43 FR 38489). The notice stated that a petition had been received alleging that payments or bestowals conferred by the Government of Singapore upon the manufacture, production or exportation of men's boys' apparel and textile mill products of cotton, wool and manmade fibers constitute the payment or bestowal of a bounty or grant, directly or indirectly, within the meaning of Section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to in this notice as the "Act").

For purposes of this notice, "textile mill products" include yarns, fabrics, household textiles, miscellaneous products of textile mills, and certified handloomed and folklore products, made of cotton, wool and manmade fibers, as specified in United States bilateral textile agreements and described by the Tariff Schedules of the United States Annotated (TSUSA) item numbers set forth in the Appendix to the FEDERAL REGISTER notice published on October 13, 1978 (43 FR 47340). "Men's and boys' apparel" includes those items described by TSUSA item numbers in the Appendix to the above-cited FEDERAL REGISTER notice.

On the basis of an investigation conducted pursuant to § 159.47(c) of the Customs Regulations (19 CFR 159.47(c)), it preliminarily has been determined that certain practices of the Government of Singapore do not constitute a bounty or grant because they are not used by the textile industry. These practices are:

(1) Exemption from corporate income tax for companies designated as a "pioneer" industry. Such status has been granted to textile companies in the past, but none has received any benefits under this program since 1976. Tax incentives are available only to "pioneer" companies and those eligible for the specific programs described below.

(2) Reduced corporate income tax for export-oriented companies. Companies granted "export enterprise status" are entitled to a concessionary tax rate on profits above a specified base. Only one textile firm has been granted such status, but its profits did not reach the level required for preferential treatment.

Based on the information currently available, it preliminarily has been determined that certain practices of the Government of Singapore do not consititute a bounty or grant within the meaning of the countervailing duty law. These practices are:

(1) Exemption from corporate income tax for companies increasing their investment in equipment. Any company may be granted limited tax relief on the increase of profits generated by at least S$ (Singapore dollars) 10 million. This program is not considered counteravailable because it is universally available to qualified firms. In any case, no textile company has ever received this benefit.

(2) Accelerated depreciation allowance. All manufacturers in Singapore are eligible to make use of this program, a 3-year depreciation plan, in lieu of normal depreciation practices. This program is not considered counteravailable because it is universally available to qualified firms.

Furthermore, it has been preliminarily determined that certain practices alleged in the petition do not exist in Singapore. These alleged practices are:

(1) Government loans available at preferential rates. No loans have been provided by either the Government of Singapore or the Economic Development Board (EDB).

(2) Preferential rental, tax, and utility rates for companies locating in designated industrial zones and free-trade zones. There are no such zones supported by the Government of Singapore. Most textile companies are located in Jurong Industrial Estate, a commercially-run industrial park. No direct incentives are given to locate there and space is equally available to all industries. Some apparel firms are located on sites leased by the Housing Development Board (HDB), but without any incentives. No textile or apparel firms are located in free trade zones and no such benefits exist there.

(3) Loans at preferential rates to exporters made by the Development Board of Singapore (DBS) and other sources. Loans have been provided by DBS and under the Small Industry Finance Scheme, but these are made at commercial rates.

Certain practices of the Government of Singapore were found to provide benefits to manufacturers and exporters of men's and boys' apparel and textile mill products. These practices are:

(1) Tax benefits derived from the double deduction from gross corporate income of expenses incurred in promoting export sales by participation in certain overseas trade fairs. The value of this benefit has been calculated by multiplying the amount of the deduction allowed eligible companies which exported to the United States in 1977 by the standard corporate income tax rate, and spreading this amount over the companies' total export sales.

(2) Short-term financing at preferential interest rates provided by the Monetary Authority of Singapore (MAS). The MAS operates a program which allows exporters to discount the value of pre-export and export issuance bills of exchange (which are, essentially, sales and purchase contracts) with commercial banks at a rate lower than the one commercially available. In turn, these banks rediscount the bills of exchange with the MAS. The benefit conferred by this program is equal to the interest savings of those participating exporters which had business dealings with the United States in 1977, spread over the value of their total exports in that year.

The benefits bestowed under these two programs involve an aggregate amount of less than five one-hundredths of one percent (.05%) of the value of the merchandise exported and are, therefore, considered to be *de minimis*. Accordingly, such benefits do not constitute bounties or grants within the meaning of the countervailing duty law. Therefore, it has been preliminarily determined that the Government of Singapore does not pay or bestow, directly or indirectly, bounties or grants withn the meaning of Section 303 of the Act upon the manufacture, production or exporta-

tion of men's and boys' apparel and textile mill products of cotton, wool and manmade fibers from Singapore.

Before a final determination is made, consideration will be given to any relevant data, views, or arguments submitted in writing with respect to this preliminary determination. Submissions should be addressed to the Commissoner of Customs, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, in time to be received by this office not later than February 12, 1979. Any request for an opportunity to present views orally should accompany such submission and a copy of all submissions should be delivered to any counsel that has heretofore represented any party to these proceedings.

This preliminary determination is published pursuant to section 303(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 (Revision 15), March 16, 1978, the provisions of Treasury Department Order 165, Revised, November 2, 1954, and section 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a preliminary countervailing duty determination by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

JANUARY 8, 1979.

[FR Doc. 79-1193; Filed 1-11-79; 8:45 am]

[4810-22-M]

CERTAIN TEXTILES AND TEXTILE PRODUCTS FROM MALAYSIA

Preliminary Countervailing Duty Determination

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Preliminary Countervailing Duty Determination.

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in a preliminary determination that the Government of Malaysia has given benefits which constitute bounties or grants within the meaning of the countervailing duty law on the manufacture, production, or exportation of men's and boys' apparel and textile mill products of cotton, wool, and manmade fibers. A final determination will be made not later than July 5, 1979. Interested persons are invited to comment on this action.

EFFECTIVE DATE: January 11, 1979.

FOR FURTHER INFORMATION CONTACT:

Holly Kuga, Duty Assessment Division, Office of Operations, U.S. Customs Service, Washington, D.C. 20229; (202) 566-5492.

SUPPLEMENTARY INFORMATION: On August 28, 1978, a "Notice of Receipt of Countervailing Duty Petition and Initiation of Investigation" was published in the FEDERAL REGISTER (43 FR 38479). The notice stated that a petition had been received alleging that payments or bestowals conferred by the Government of Malaysia upon the manufacture, production, or exportation of men's and boys' apparel and textile mill products of cotton, wool and manmade fibers constitute the payment or bestowal of a bounty or grant, within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to in this notice as "the Act").

For purposes of this notice, "textile mill products" include yarns, fabrics, household textiles, miscellaneous products of textile mills, and certified handloomed and folklore products, made of cotton, wool and manmade fibers, as specified in U.S. bilateral textile agreements, and as described by the Tariff Schedules of the United States Annotated (TSUSA) item numbers set forth in the appendix to the FEDERAL REGISTER notice published on October 13, 1978 (43 FR 47340). "Men's and boys' apparel" includes those items described by TSUSA item numbers in the appendix to the above-cited FEDERAL REGISTER notice.

Information was not received from the Government of Malaysia in time to be properly analyzed prior to this determination. Accordingly, based on information contained in the petition and on investigation conducted pursuant to § 159.47(c) of the Customs Regulations (19 CFR 159.47(c)), it has been preliminarily determined that the following benefits granted by the Government of Malaysia constitute the payment or bestowal of bounties or grants within the meaning of section 303 of the Act:

1. Tax relief for up to 8 years for companies designated as being in a "pioneer" industry by the Federal Industrial Development Authority (FIDA).
2. Investment tax credits for other companies fulfilling certain conditions regarding investment.
3. Tax relief for companies satisfying specified conditions regarding employment levels and location.
4. Preferential loan rates, low lease and rental fees and subsidized utility rates for companies locating in designated industrial estates.
5. Tax relief for a period up to 8 years for enterprises qualifying under the "Locational Incentive Scheme".
6. Tax relief for companies qualifying under the "Increased Capital Allowance Incentive".

The incentives described above would be considered a bounty or grant if the cumulative size of the benefits, when viewed in conjunction with the proportion of total production which is exported, dictates such a conclusion. Information presently available does not permit the making of firm conclusions on this question.

7. Tax exemptions for companies that have surpassed their previous year's export sales level.
8. Accelerated depreciation allowance for companies exporting 20 percent or more of their total production.
9. Income tax deductions for expenses incurred in promoting exports.
10. Duty-free imports of machinery and other benefits for companies locating in free trade zones.
11. Subsidized premium rates for export insurance.

Accordingly, it is preliminarily determined that bounties or grants, within the meaning of section 303 of the Act, are being paid or bestowed, directly or indirectly, upon the manufacture, production, or exportation of men's and boys' apparel and textile mill products of cotton, wool and manmade fibers from Malaysia. A final determination will be made on or before July 5, 1979.

Before a final determination is made, consideration will be given to any relevant data, views or arguments submitted in writing with respect to this preliminary determination. Submissions should be addressed to the Commissioner of Customs, 1301 Constitution Avenue NW., Washington, D.C. 20229, in time to be received by his office not later than February 12, 1979. Any request for an opportunity to present views orally should accompany such submission and a copy of all submissions should be delivered to any counsel that has heretofore represented any party to these proceedings.

This preliminary determination is published pursuant to section 303(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 (Revision 15), March 16, 1978, the provisions of Treasury Department Order 165, Revised, November 2, 1954, and § 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a preliminary countervailing duty determination by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

JANUARY 8, 1979.

[FR Doc. 79-1194 Filed 1-11-79; 8:45 am]

[4810-22-M]

CERTAIN TEXTILES AND TEXTILE PRODUCTS FROM MEXICO

Preliminary Countervailing Duty Determination

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Preliminary Countervailing Duty Determination.

SUMMARY: The notice is to inform the public that a countervailing duty investigation has resulted in a preliminary determination that the Government of Mexico has given benefits which may constitute bounties or grants on the manufacture or exportation of men's and boys' apparel and textile mill products of cotton, wool and manmade fibers. A final determination will be made no later than July 5, 1979. Interested persons are invited to comment on this action.

EFFECTIVE DATE: January 9, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles F. Goldsmith, Economist, Office of Tariff Affairs, U.S. Treasury Department, 15th and Pennsylvania Avenue, N.W., Washington, D.C. 20220, telephone (202) 566-2323.

SUPPLEMENTARY INFORMATION: On August 28, 1978, a notice of "Receipt of Countervailing Duty Petition and Initiation of Investigation" was published in the FEDERAL REGISTER (43 FR 38482). The notice stated that a petition had been received alleging that payments or bestowals conferred by the Govenment of Mexico upon the manufacture, production or exportation of men's and boys' apparel and textile mill products of cotton, wool and manmade fibers constitute the payment or bestowal of a bounty or grant, directly or indirectly, within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to in this notice as the "Act").

For purposes of this notice, "textile mill products" include yarns, fabrics, household textiles, miscellaneous products of textile mills and certified handloomed and folklore products, made of cotton, wool and manmade fibers, as specified in U.S. bilateral textile agreements and described by the Tariff Schedules of the United States Annotated (TSUSA) item numbers set forth in the Appendix to the FEDERAL REGISTER notice published on October 13, 1978 (43 FR 47340). "Men's and boys' apparel" includes those items described by TSUSA item numbers in the Appendix to the above-cited FEDERAL REGISTER notice.

On the basis of an investigation conducted pursuant to section 159.47(c) of the Customs Regulations (19 CFR 159.47(c)), it has been preliminarily determined that certain programs of the Government of Mexico provide benefits to manufacturers and/or exporters of the subject merchandise which may constitute bounties or grant within the meaning of the Act. These benefits have been conferred under the following programs:

(1) Loans at rates more favorable than those commercially available, designed to finance production for sales to foreign markets. These loans are provided by the Fund for Development of Manufactured Export Products (FOMEX) which is operated by the Central Bank (Banco de Mexico). Further information will be sought to determine the extent to which these loans are utilized by the investigated companies and the benefit they provide in terms of interest rate differential compared to commercial loans in Mexico.

(2) A tax rebate certificate program known as "CEDI". (In the initiation notice, this program was referred to as a partial rebate to exporters of a "mercantile" tax. The response indicated that use of such terminology was not accurate.) The CEDI is designed to offset the cascade effect of the turnover taxes paid in the production process. Further details will be necessary to determine whether indirect taxes charged on items physically incorporated into the final product equal or exceed this rebate. If such taxes are found to equal or exceed the CEDI rebate, the rebate will not be regarded as a bounty or grant.

(3) Services provided by FOMEX and other government entities such as the Mexican Foreign Trade Institute (IMCE) which assist Mexican companies in developing foreign markets, including the compensation of exporters for costs incurred abroad in obtaining credit and direct help to Mexican companies in connection with their export transactions and shipping problems. Information will be sought regarding the nature and cost of the services provided by these organizations.

(4) Special benefits for companies located in so-called "free zones." Such benefits may include duty-free imports of machinery and low rental and utility rates. Details concerning the benefits that may be available will be necessary in order to evaluate this program.

Additionally, it has been preliminarily determined that low-interest loans provided by the Guarantee Fund for the Development of Small-and-Medium-Sized Industries (FOGAIN) do not constitute bounties or grants. This benefit is available to all enterprises and is in no way contingent upon or relates to the exportation of merchandise produced by firms receiving the benefit. Since available information indicates that the *ad valorem* size of the benefit is small and only a small proportion of merchandise produced by firms enjoying this benefit is exported, no bounty or grant is preliminarily determined to exist. However, more information concerning this program will be sought before a final determination is made.

It has also been preliminarily determined that certain incentives provided by the Government of Mexico are not bounties or grants since available information indicates that they are not utilized by producers or exporters of the merchandise in question. These incentives are:

(1) Corporate tax benefits granted by the "Comision Intersecretarial" to certain firms. This body includes the Secretariat of National Properties and Industrial Growth, to which these benefits had previously been attributed.

(2) Exemptions of 10 to 40 percent from income tax for a period of three to ten years depending upon the location of the enterprise.

(3) Exemption of 50 to 100 percent from the stamp tax normally imposed on all contracts and business documents and transactions for certain companies. Available information indicates that the stamp tax is imposed only on non-mercantile contracts or documents and is not related to the sale of goods. A manufacturer pays a stamp tax only on certain official documents outside of his usual business transactions.

(4) Tax incentives on the state level which involve, for example, partial or full exemption from real estate taxes and various municipal and state taxes on industrial licenses.

(5) Low-interest loans for industry provided by the Industrial Equipment Fund (FONEI).

It has further been preliminarily determined that certain practices of the Government of Mexico do not constitute the payment or bestowal of a bounty or grant since it appears that these programs are not in effect. These practices are:

(1) Low-interest loans provided by the National Fund for Industrial Development (FOMIN). The Government of Mexico has stated that loans are not given by that organization. More information will be necessary to determine the assistance, if any, provided by this organization.

(2) Corporate income tax exemption of 100 percent of income derived from exports for the first three years of operation, which is gradually reduced to 50 percent. The Government of Mexico has stated that there is no such provision in its tax laws.

(3) Subsidized premiums on export insurance provided by the government-owned Mexican Credit Insurance

Company (COMESEC). Available information indicates that COMESEC does not grant any special insurance premium rate.

(4) Rebates of up to 50 percent on railroad freight rates in Mexico to exporters. The Government of Mexico has stated that such an incentive does not exist.

(5) Federal tax incentives that involve partial or full exemption from real estate taxes and various fees on industrial licenses. The Government of Mexico has stated that there is no such provision in its federal tax laws.

Before a final determination is made, consideration will be given to any relevant data, views, or arguments submitted in writing with respect to this preliminary determination. Submissions should be addressed to the Commissioner of Customs, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, in time to be received by his office no later than February 12, 1979. Any request for an opportunity to present views orally should accompany such submission and a copy of all submissions should be delivered to any counsel that has heretofore represented any party to these proceedings.

This preliminary determination is published pursuant to section 303(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 (Revision 15), March 16, 1978, the provisions of Treasury Department Order No. 165, Revised, November 2, 1954, and section 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a preliminary countervailing duty determination by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

JANUARY 8, 1979.

[FR Doc. 79-1195 Filed 1-11-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Notice No. 6]

Assignment of Hearings

JANUARY 9, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

No. MCC-10150, Victory Freight Lines, Inc.—Investigation and Revocation of Certificates, now assigned for hearing on January 12, 1979, at Birmingham, Alabama is canceled.

No. MC 114457 (Sub-No. 445F), Dart Transit Company, now assigned January 15, 1979, at St. Paul, Minnesota, is postponed indefinitely.

No. MC 133689 (Sub No. 187F), Overland Express, Inc., now assigned for hearing on February 26, 1979, at St. Paul, MN. and will be held in Court Room 584, Federal Building.

No. MC 82841 (Sub-No. 229F), Hunt Transportation, Inc. now assigned January 25, 1979 at Dallas, Texas is postponed indefinitely.

No. MC 135231 (Sub-No. 27F), North Star Transport, Inc., now assigned for hearing January 11, 1979 at St. Paul, Minnesota is canceled and application dismissed.

No. MCF 13593, Nebraska Transport Co., Inc.,—Control—G & H Truck Lines, Inc., now assigned for hearing on February 6, 1979 at Scottsbluff, Nebraska and will be held in Territorial Room, Scottsbluff Inn.

No. MC 113678 (Sub No. 749F), Curtis Inc., now assigned for hearing on February 27, 1979, at Los Angeles, California and will be held in Room 3123, Federal Building.

No. MC 124896 (Sub No. 61F), Williamson Truck Lines, Inc., now assigned for hearing on February 22, 1979, at Kansas City, MO. and will be held in Federal Building, Room 609.

No. MC 116254 (Sub No. 210F), Chem-Haulers, Inc., now assigned for hearing on February 23, 1979, at Kansas City, Missouri and will be held in Room 609, Federal Building.

No. MC 116254 (Sub No. 205F), Chem-Haulers, Inc., now assigned for hearing on February 26, 1979, at Kansas City, Missouri and will be held in Room 609, Federal Building.

No. MC 116254 (Sub No. 206F), Chem-Haulers, Inc., now assigned for hearing on February 27, 1979, at Kansas City, Missouri and will be held in Room 609, Federal Building.

No. MC 116254 (Sub No. 204F), Chem-Haulers, Inc., now assigned for hearing on February 28, 1979, at Kansas City, Missouri and will be held in Room 609, Federal Building.

No. MC 119493 (Sub No. 210F), Monkem Company, Inc., now assigned for hearing on March 1, 1979, at Kansas City, Missouri and will be held in Room 609, Federal Building.

No. MC 121568 (Sub-No. 10), Humboldt Express, Inc., now being assigned for continued hearing on January 29, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-1251 Filed 1-11-79; 8:45 am]

[7035-01-M]

[Decision No. MC-29643 (Sub-No. 10F)]

WALSH TRUCKING SERVICE INC., EXTENSION—CLINTON COUNTY, N.Y. (MASSENA, N.Y.)

Decided: December 15, 1978.

Applicant filed a petition for reconsideration of the decision of the Commission, Review Board Number 2, entered October 5, 1978. We believe the proceeding should be reopened for reconsideration on the present record.

In its decision Review Board Number 2, deleted, as unnecessary, a "restriction against traffic moving from or to points in Canada." It concluded instead that the grant of authority should be in interstate commerce only. In the petition for reconsideration, applicant contends that by limiting the grant of authority to "interstate" traffic only, it is prevented from handling traffic in foreign commerce which does not move from or to points in Canada. It argues that the review board failed to recognize that Albany, NY, is a port into and out of which traffic moves in foreign commerce by water carrier. Applicant indicates that this traffic is available to it and it intends to participate in the traffic.

Additionally, applicant argues that it indicated that it now holds one-way general commodity authority from New York, NY, to Clinton County, NY under its subnumber 8 certificate and that one of the reasons for seeking the involved authority is to be able by joinder with certain regular route authority it holds authorizing service between New York, NY and Albany, NY to transport southbound traffic from Clinton, via Albany, to New York. Since some of the traffic will move over highways traversing New Jersey, it will be interstate traffic. Applicant requests that a decision should be issued indicating that the grant of authority in this proceeding includes the right to tack.

After reviewing the record in the light of the above-described petition, we believe the review board's decision should be modified and the proceeding will be reopened to affect this modification. Contrary to review board's conclusions, petitioner requires authority to operate in foreign commerce. With respect to applicant's contention that a decision should be issued indicating that the grant of authority in this proceeding includes the right to tack regular-route authority and irregular-

route authority and such tacking is permissible. See *Gateway Elimination,* 119 M.C.C. 530, 574 (1974). No specific authorization of such tacking is required.

Inasmuch as applicant's intention to tack the authority sought with its existing authority was not published in the FEDERAL REGISTER, it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of applicant's intention to tack. Therefore, a notice of applicant's intention to tack will be published in the FEDERAL REGISTER and issuance of a certificate will be withheld for a period of 30 days from the date of publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in this proceeding setting forth in detail the precise manner in which it has been prejudiced.

Inasmuch as the authority described in the appendix duplicates applicant's other authority to a certain extent, we will impose a non-duplicating condition.

We find on reconsideration: The present and future public convenience and necessity require operation by petitioner, in interstate or foreign commerce as a common carrier by motor vehicle, over irregular routes, performing the service described in the appendix. Applicant is fit, willing, and able properly to perform the granted service and to conform to the requirements of the Interstate Commerce Act and the Commissioner's regulations. An appropriate certificate should be granted. This decision is not a major Federal action significantly affecting the quality of the human environment.

It is ordered: The application and petition for reconsideration, except to the extent granted are denied.

The decision entered October 5, 1978, in this proceeding, to the extent inconsistent with this decision, is vacated.

If applicant does not comply with the appropriate requirements set forth in the Code of Federal Regulations (49 CFR 1043, 1044, and 1307) within 90 days after the date of service in this decision, the grant of authority will be void, and the application will stand denied.

By the Commission, Division 2, Acting as an Appellate Division, Commissioners Stafford, Gresham and Christian. Commissioner Stafford dissenting in part.

H. G. HOMME, Jr.,
Secretary.

COMMISSIONER STAFFORD, dissenting in part:

I agree with the majority in all respects except one, i.e., the failure to impose a restriction against the transportation of traffic moving from or to points in Canada.

This restriction was part of the original application and I see no reason to lifting the restriction which in effect grants applicant more authority than it sought.

APPENDIX

SERVICE AUTHORIZED

To operate as a common carrier by motor vehicle, in interstate of foreign commerce, over irregular routes, of general commodities (except classes A and B explosives, articles of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Albany, NY, on the one hand, and, on the other, points in Clinton County, NY.

CONDITIONS

The above grant of authority and carrier's existing operating authority that it duplicates shall not be construed as conferring more than a single operating right.

A notice of applicant's intention to tack the authority granted with its regular-route authority in No. MC-F-13184 authorizing service between Albany and New York, NY will be published in the FEDERAL REGISTER, and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in this proceeding setting forth in detail the precise manner in which it has been prejudiced by the lack of proper notice of applicant's intention to tack.

[FR Doc. 79-1252 Filed 1-11-79; 8:45 am]

[6820-98-M]

NATIONAL COMMISSION ON AIR QUALITY

PUBLIC HEARING

The National Commission on Air Quality hereby gives notice, pursuant to authority vested by Section 323 of the Clean Air Act as amended, of a public hearing scheduled for February 12, 1979. The hearing will be conducted in the Auditorium of the California State Building located at 107 South Broadway, Los Angeles, California. The hearing will begin at 9:30 a.m. and may be continued on the following day, February 13, if interest in presenting testimony warrants doing so.

The purpose of the hearing is to solicit public comment with respect to the appropriate focus of the Commission during its life. The Commission is required by law to submit to the Congress any recommendations for legislative changes and regulatory modifications necessary to most effectively pursue national air quality objectives. This will be the second public hearing conducted by the Commission on this issue. The first hearing was held in Washington, D.C. on January 8, 1979.

Specifically, the Commission invites public comment regarding the following issues and how the Commission should organize its plan of study to address them:

Effects of air pollution on health and health care costs;

Impact of air pollution and air pollution controls on regional economic development;

Costs of compliance with the requirements of the Clean Air Act, as amended, as interpreted by the Environmental Protection Agency;

Effectiveness of present statutory requirements and success of current regulatory efforts in accomplishing the general purposes set forth in the Clean Air Act, as amended;

Appropriate automobile emission standards and best available technologies needed to meet them;

Most appropriate and cost-effective means of preserving air quality in areas in which the air is now cleaner than the national ambient air quality standards;

Most appropriate and cost-effective means of enhancing air quality in those areas in which established air quality standards are not met; and

Special problems of small business and governmental agencies in obtaining reductions of emissions from existing sources to offset increased emissions from new sources.

The Commission also invites comment on such issues as alternatives to regulation as a means of reducing pollution, the special problems inherent in efforts to diminish pollution levels in high altitude areas, and the practical relationship of established environmental regulations to other governmental policies such as encouraging the increased use of coal as a substitute for oil and natural gas.

Because of an expectation that there will be more who wish to testify than time would normally allow, witnesses may be requested to limit their oral statements to a maximum of ten minutes in order to ensure sufficient time for questions and answers. Both witnesses and those unable to testify at the February 12 hearing may submit material of any length for inclusion in the hearing record, and will be afforded an opportunity after the hearing to submit additional material for the record. The Commission may determine that an additional hearing to be held in the near future is desirable.

Pursuant to the established rules of the Commission, each witness scheduled to testify at any Commission hearing must provide at least twenty-five copies of prepared testimony in advance of the hearing. Those wishing to have their statements available for the media, however, should provide at least twenty-five copies in addition to

the twenty-five required by the Commission rules.

Those wishing to testify should notify Paul Freemen at (202) 634-7138 by February 5, 1979 in order to schedule a time for submission of prepared oral testimony, and should send at least twenty-five copies of such testimony to the Office of the Mayor, Room 305, City Hall, Los Angeles, California 90012. Such testimony is to be sent to the attention of Mr. Graham Smith, for receipt by the morning of February 9.

The National Commission on Air Quality is a 13-member Commission created by the 1977 Clean Air Act Amendments. It is required to report to Congress on the effectiveness of that law and on alternative approaches to controlling air pollution. The Commission Chairman is Senator Gary Hart (D.-Colorado) and the Vice Chairman is State Representative Thomas McPherson of Florida.

National Commission on Air Quality,

WILLIAM H. LEWIS, Jr.,
Director.

JANUARY 12, 1979.

[FR Doc. 79-1415 Filed 1-11-79; 11:03 am]

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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Interstate Commerce Commission	8

[6155-01-M]

1

BOARD FOR INTERNATIONAL BROADCASTING.

TIME AND DATE: 9:30 a.m., January 19, 1979.

PLACE: Board for International Broadcasting Conference Room, suite 430, 1030 15th Street NW., Washington, D.C. 20005.

STATUS: Closed, pursuant to 5 U.S.C. 552b(c)(1) 1 CFR 460.4 (c) and (h) of the Board's rules (42 FR 9388, Feb. 16, 1977).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the U.S. Government.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Arthur D. Levin, Budget and Administrative Officer, Board for International Broadcasting, 1030 15th Street NW., Washington, D.C. 20005, 202-254-8040.

[S-65-79 Filed 1-10-79; 3:57 pm]

[6335-01-M]

2

COMMISSION ON CIVIL RIGHTS.

DATE AND TIME: Monday, January 15, 1979—9 a.m.-12 noon; 1:30 p.m.-5:30 p.m. Tuesday, January 16, 1979—1 p.m.-4 p.m., Press Conference 10 a.m., Cumberland Room, Holiday Inn.

PLACE: Room 512, 1121 Vermont Avenue NW., Washington, D.C.

STATUS: Portion open to public; portion closed to public.

MATTERS TO BE CONSIDERED: Open to public—January 15, 9 a.m.-12 noon, Briefing on Higher Education Desegregation Pursuant to *Adams* v. *Califano*.

MATTERS TO BE CONSIDERED: Open to public—January 15, 1:30-5:30 p.m.

I. Approval of agenda.
II. Approval of minutes from last meeting: 1. Approval of conference call minutes.
III. Staff Director's report: (a) Status of funds; (b) Personnel report; and (c) Office Directors reports.
IV. Report on civil rights developments in the Mid-Atlantic region.
V State Advisory Committee re-charters: (a) Idaho; (b) Missouri; (c) New Mexico; (d) South Dakota; (e) Tennessee; (f) Vermont; and (g) Wyoming.
VI. Response to Houston Police Chief Caldwell.
VII. Report on State of Civil Rights—1978.
VIII. Report on enforcement effort housing report recommendations: 1. House subcommittee request for excerpts from unpublished housing report.
IX. Closed to public—Recommendation regarding 1980 fiscal year budget submission—age and handicap jurisdiction.

MATTERS TO BE CONSIDERED: January 16, 10 a.m. (open to public) Press conference, Cumberland Room, Holiday Inn.

January 16, 1 p.m.-4 p.m. (open to public):

X. *Bakke* clearinghouse material.
XI. Report on comments on proposed policy interpretation of title IX.
XII. Approval of letter to President Carter on Conference on Security and Cooperation in Europe.
XIII. Report on affirmative action project design.
XIV Report on affirmative action initiative for fiscal year 1979.
XV North Dakota Advisory Committee report and recommendation re Native American justice issues.

FOR FURTHER INFORMATION CONTACT:

Loretta Ward, Public Affairs Unit, 202-254-6697.

[S-62-79 Filed 1-10-79; 2:36 pm]

[6355-01-M]

3

CONSUMER PRODUCT SAFETY COMMISSION.

DATE AND TIME: 9:30 a.m., Wednesday, January 17, 1979.

LOCATION: Third floor hearing room, 1111 18th Street NW., Washington, D.C. 20207.

STATUS: Part open, part closed.

MATTERS TO BE CONSIDERED:

AGENDA

OPEN TO THE PUBLIC

1. *Briefing on Power Lawn Mowers.*—The staff will brief the Commission on possible actions on the proposed safety standard for power lawn mowers which CPSC published in May 1977. The Commission plans to decide on the standard at the January 25 Meeting.

CLOSED TO THE PUBLIC

2. *Briefing on Recent Court of Appeals Decision.*—The staff will brief the Commission on a recent decision by the Court of Appeals for the District of Columbia Circuit in a Freedom of Information Act case, *Consumers Union* v. *CPSC et al.* (closed under exemption 10: involvement in a civil action).

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheldon D. Butts, Assistant Secretary, Office of the Secretary, Consumer Product Safety Commission, suite 300, 1111 18th Street NW., Washington, D.C. 20207, 202-634-7700.

Agenda approved January 9, 1979.

[S-59-79 Filed 1-10-79; 11:37 am]

[6355-01-M]

4

CONSUMER PRODUCT SAFETY COMMISSION.

DATE AND TIME: 9:30 a.m., Thursday, January 18, 1979.

LOCATION: Third floor hearing room, 1111 18th Street NW., Washington, D.C. 20207.

STATUS: Open.

MATTERS TO BE CONSIDERED:

AGENDA

OPEN TO THE PUBLIC

1. *Aluminized Polyester-Film Kites.*—The Commission will consider a staff recommendation to propose a rule under the Federal Hazardous Substances Act to ban certain aluminized polyester-film kites. The kites may pose an electric shock and fire hazard.
2. *Replies to General Order Concerning Nitrobenzene in Consumer Products.*—The staff has asked the Commission for guidance on future action as a result of replies to a general order requiring manufacturers

of consumer products containing nitrobenzene to provide certain information to the Commission. The staff has recommended that the Commission take no further action at this time.

3. *Draft Memorandum of Understanding with EPA on Pesticides.*—The Commission will consider a draft memorandum of understanding which would set forth the responsibilities of both CPSC and EPA concerning child-resistant packaging and pesticides.

4. *Exemption of Erythromycin from Child-Resistant Packaging Requirements.*—The Commission will consider two matters related to erythromycin ethylsuccinate: (a) petition PP 78-2, which seeks exemption of the drug in 200 mg. tablets in packages of no more than 80 tablets, and (b) a final rule to exempt up to 8 grams of the drug in oral suspension.

5. *Proposed Exemption of Colestipol from Child-Resistant Packaging Requirements.*—The Commission will consider a draft FEDERAL REGISTER document which would propose to exempt colestipol in power form from special packaging requirements of the Poison Prevention Packaging Act, thereby granting petition PP 78-4.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheldon D. Butts, Assistant Secretary, Office of the Secretary, Consumer Product Safety Commission, suite 300, 1111 18th Street NW., Washington, D.C. 20207, 202-634-7700.

Agenda approved January 9, 1979.

[S-60-79 Filed 1-10-79; 11:37 am]

[6740-02-M]

5

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published January 8, 1979, 44 FR 1030.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., January 10, 1979.

CHANGE IN THE MEETING: The following items have been added:

ITEM NUMBER AND DOCKET NUMBER AND COMPANY

CAP-5. ER77-530, Ohio Edison Co.
CAG-12. CP78-443, El Paso Natural Gas Co.
ER-9. E-9592, Roscoe E. Dean, Jr. and William D. Lovin, *Complainants* v. *Georgia Power Co.*, defendant.
CI-2. Southern Union Gathering Co., FERC Gas Rate Schedule No. 1.
M-2. Clarification of Commission's policy respecting indefinite price escalator clauses in existing interstate and intrastate contracts and bilateral schedule modification of these contracts.
M-3. RM78-17, procedures for review by the Federal Energy Regulatory Commission of adjustment request denials by the Secretary of Energy.
M-4. RM79- procedures for adjustment of rules and ordes issued by the Federal Energy Regulatory Commission under the NGPA.
M-5. Interim rule on S 314 of NGPA, offers and right of first refusal.
M-6. Staff recommendation on the Revenue Act of 1978 which reduces the Statutory Corporate Federal Income Tax rate from 48 percent to 46 percent.
M-7. RM79- treatment of certain production related costs for gas to be transported through the Alaska Natural Gas Transportation system.
M-8. RM79- certification of pipeline transportation agreements for certain high-priority uses.

KENNETH F PLUMB,
Secretary.

[S-63-79 Filed 1-10-79; 3:11 pm]

[6740-02-M]

6

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published January 3, 1979, 44 FR 983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., January 4, 1979.

CHANGE IN THE MEETING: The following item has been added:

ITEM NUMBER AND DOCKET NUMBER AND COMPANY

M-8. RM 79- Certification of pipeline transportation agreements for certain high-priority uses.

KENNETH F PLUMB,
Secretary.

[S-64-79 Filed 1-10-79; 3:11 pm]

[6730-01-M]

7

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 10 a.m., January 17, 1979.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Monthly report of actions taken pursuant to authority delegated to the Managing Director.
2. Agreement No. 10265-1: Modification of a cooperative working arrangement to expand its geographic scope to include Argentina and Uruguay.
3. Agreement No. 10135-6: Modification of the Far East and Pacific Westbound Conferences Member Lines Discussion Agreement to extend its term of approval for an unlimited period.
4. Independent ocean freight forwarder application—Manufacturers forwarding.
5. Notice of inquiry as to exemption from requirements of shipping statutes.
6. Compliance with section 21 orders: Baltic Shipping Co.

Portions closed to the public:

1. Docket No. 77-26: Independent ocean freight forwarder license E. L. Mobley, Inc., discussion of the record.
2. Docket No. 77-4: Agreement Nos. 9902-3, 9902-4, 9902-5, and 9902-6, modification of Euro-Pacific Joint Service Agreement, discussion of the record.
3. Docket No. 72-35: Pacific Westbound Conference—Investigation of rates, rules and practices pertaining to the movement of wastepaper and woodpulp from United States west coast ports to ports in Japan, discussion of the record.
4. Docket No. 76-14: Agreement No. 10116-1, extension of pooling agreement in the eastbound and westbound trades between Japanese ports and ports in California, Oregon, and Washington, discussion of the record.
5. Processing of section 15 agreements.

CONTACT PERSON FOR MORE INFORMATION:

Francis C. Hurney, Secretary, 202-523-5725.

[S-61-79 Filed 1-10-79; 11:55 am]

[7035-01-M]

8

INTERSTATE COMMERCE COMMISSION.

TIME AND DATE: 9:30 a.m., Tuesday, January 16, 1979.

PLACE: Hearing room "C" Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, D.C. 20423.

STATUS: Open regular conference.

MATTER TO BE CONSIDERED: Section 5a application No. 9-A, National Bus Traffic Association, Inc., agreement.

CONTACT PERSON FOR MORE INFORMATION:

Douglas Baldwin, Director, Office of Communications, 202-275-7252.

The Commission's professional staff will be available to brief news media representatives on conference issues at the conclusion of the meeting.

[S-58-79 Filed 1-10-79; 10:14 am]

Vol. 44—No. 9
1-12-79
BOOK 2:
PAGES
2757-3019

Federal Register

BOOK 2 OF 2 BOOKS
FRIDAY, JANUARY 12, 1979
PART II

DEPARTMENT OF ENERGY

Energy Information Administration

■

REPORTING SYSTEM CLEARANCE

[6450-01-M]

DEPARTMENT OF ENERGY

Energy Information Administration

REPORTING SYSTEM CLEARANCE

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of reporting system clearance.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) announces that it has received clearance from the Office of Management and Budget to implement the Financial Reporting System (FRS). The FRS form (designated as EIA-28), reporting instructions and glossary have been mailed to the initial group of respondents.

DATES: Designated respondents must file the EIA-28 by February 1, 1979, for the 1977 reporting period and by August 1, 1979 for the 1978 reporting period.

FOR FURTHER INFORMATION CONTACT:

Arthur T. Andersen, Director, Financial Reporting System, Energy Information Administration, Room 8443, 12th & Pennsylvania Avenue, N.W., Washington, D.C. 20461 (202) 633-8806.

SUPPLEMENTARY INFORMATION:

I. Historical Development of EIA-28
II. Office of Management and Budget (OMB) Clearance of EIA-28
III. Companies Required to Report
IV. Future Plans for Reporting Requirements
V. Forms, Instructions, and Glossary

I. Historical Development of EIA-28

EIA-28 was filed for clearance with the OMB on June 16, 1978. Announcement of this was included in a Federal Register Notice (43 FR 27056, June 22, 1978). That notice contains a complete description of FRS history to that date.

II. Office of Management and Budget (OMB) Clearance of EIA-28

Pursuant to comments received, OMB requirements and further FRS staff analysis, certain changes were made to the form, and clearance was subsequently granted October 10, 1978. The clearance is applicable to the collection of data for the years 1977 and 1978 from the 27 companies named below. The 1977 information is due at DOE February 1, 1979 and 1978 information is due August 1, 1979.

III. Companies Required To Report

The first group of companies required to file EIA-28 comprises 27 companies chosen from the top 50 domestic oil and gas producers which have at least 1% of domestic production or reserves of oil, gas, coal, or uranium, or 1% of domestic refining capacity or petroleum product sales. These companies are as follows:

Armerada Hess Corp.
American Petrofina
Ashland Oil, Inc.
Atlantic Richfield Co.
Burlington Northern, Inc.
Cities Service Co.
Coastal States Gas Corp.
Continental Oil Co.
Exxon Corp.
General Electric Co.
Getty Oil Co.
Gulf Oil Corp.
Kerr-McGee Corp.
Marathon Oil Co.
Mobil Corp.
Occidental Petroleum Corp.
Phillips Petroleum Co.
Shell Oil Co.
Standard Oil Co. of California
Standard Oil Co. (Indiana)
Standard Oil Co. (Ohio)
Sun Co.
Superior Oil Co.
Tenneco, Inc.
Texaco, Inc.
Union Oil Co. of California
Union Pacific Corp.

IV. Future Plans for Reporting Requirements

Future EIA plans for the FRS include regular annual reporting by each of the 27 named companies. OMB has deferred clearance for collecting 1974-1976 data, pending an evaluation of the submissions for 1977. Accordingly, EIA will request OMB clearance for collection of 1974-1976 data following such evaluation of the 1977 submissions. During 1979, EIA intends to request clearance to expand the group of reporters to a total of approximately 300 energy-producing companies in all phases of the energy industry, including petroleum, coal and nuclear. The specific companies to be included in the expanded group will be identified in 1979.

V. Forms, Instructions, and Glossary

The forms, instructions, and glossary for the FRS are printed for information purposes on the following pages of this Federal Register notice.

Issued at Washington, D.C. on January 2, 1979.

Lincoln E. Moses,
Administrator, Energy Information Administration.

Department of Energy, Energy Information Administration, Energy Company Financial Reporting System (FRS)

FORM EIA-28

Instructions

General Instructions

Purpose and Legislative Authority
Filing Requirements for 1974-1978 and Thereafter
Other Filing Requirements
Confidentiality
Data Entry
Use of Exhibits
Amendments to FRS Reported Data

FRS Overview

Relation to Reporting Company's Accounting Principles
FRS Segments and FASB 14
Eliminations at More Than One Level
FRS Segment Allocations and Nontraceable Columns
One-Line Consolidations
Income Tax Expense
Petroleum Supply and Trading
Allocating Amounts to Geographic Areas
Significance Standards (Materiality)
Operating Statistics and Financial Data

Detailed Instructions for Each Schedule

5110—Reporting Company
Consolidating Statement of Income
5111—Reporting Company
Research and Development Expenditures
5112—Reporting Company
Analysis of Income Taxes
5113—Reporting Company
Analysis of Income Taxes by Segments
5114—Reporting Company
Analysis of U.S. Federal Deferred Income Taxes
5115—Reporting Company
Analysis of Other Tax Benefits
5120—Reporting Company
Consolidating Balance Sheet
5121—Reporting Company
Investments/Advances to Unconsolidated Affiliates
5122—Reporting Company
Joint Venture Participation
5130—Reporting Company
Consolidating Statement of Sources/Uses of Funds
5141—Reporting Company
Unconsolidated Affiliates
5142—Reporting Company
Consolidated Joint Ventures
5210—Domestic and Foreign Petroleum Segments
Consolidating Statement of Income
5211—Petroleum Production and Refining/Marketing Segments
General Operating Expenses
5212—Petroleum Refining-Marketing Segments
Acquistions of Raw Materials and Refined Products
5213—Petroleum Production and Refining/Marketing Segments
Dispositions of Raw Materials
5214—Petroleum Refining/Marketing Segments
Dispositions of Refined Products
5215—Domestic and Foreign Petroleum Segments
Primary Transportation Expenses

5220—Domestic and Foreign Petroleum Segments
Selected Consolidating Balance Sheet Items
5221—Domestic and Foreign Petroleum Segments
Net Property and Other Capitalized Cost Balances
5222—Domestic and Foreign Petroleum Segments; Changes in
Net Property and Other Capitalized Cost Balances
5223—Domestic and Foreign Petroleum Segments; Exploration,
Development, and Production Expenditures Capitalized
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Development, and Production Statistics
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Refining Statistics
5243—Domestic Petroleum Segment
Motor Fuel Marketing Statistics
5244—Domestic and Foreign Petroleum Segment
Transportation Statistics
5245—Petroleum Purchases, Sales, and Exchanges
5246—Domestic and Foreign Petroleum Segments
Proved Petroleum Reserves
5310—Domestic and Foreign Coal Operatings
Statement of Income
5320—Domestic and Foreign Coal Operations
Summary Financial Indicators
5341—Domestic Coal Operations
Reserves and Production Statistics
5342—Domestic and Foreign Coal Operations
Other Coal Operating Statistics
5410—Domestic and Foreign Nuclear Fuel Operations
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5420—Domestic and Foreign Nuclear Fuel Operations
Summary Financial Indicators
5441—Domestic and Foreign Nuclear Fuel Operations
Nuclear Fuel Operating Statistics
5510—Domestic and Foreign Other Energy Operations
Statement of Income
5520—Domestic and Foreign other Energy Operations
Summary Financial Indicators
5541—Domestic and Foreign Other Energy Operations
Other Energy Operating Statistics
5610—Domestic and Foreign Non-Energy Operations
Statement of Income
5620—Domestic and Foreign Non-Energy Operations
Summary Financial Indicators

General Instructions

PURPOSE AND LEGISLATIVE AUTHORITY

The legislative authority for the Energy Company financial Reporting System (FRS), Form EIA-28, is provided by Section 205(h) of the Department of Energy Organization Act of 1977 (Public Law 95-91) and Section 13(b) of the Federal Energy Administration Act (Public Law 93-275); as amended. These laws require the collection of information needed to address major energy policy concerns and to analyze the adequacy of energy supply and development efforts.

The data collected will included revenues, profits, funds flows, and investments in total, as well as by type of energy (e.g., petroleum, coal, and nuclear) by function (e.g., producing, refining, and marketing), and by geographic area. The data will be used to construct an automated data base which will provide a wide range of statistical and analytical reports.

These reports will be used to evaluate the competitive environment within which energy products are developed and supplied and to analyze the nature of institutional arrangements which affect the competitive environment.

FILING REQUIREMENTS FOR 1974-1978 AND THEREAFTER

The FRS schedules are designed to collect information for annual periods beginning in 1974. However, some of the reporting requirements for these years have been abbreviated to minimize burden and to allow sufficient time for reporting companies to make modifications to their own internal financial reporting systems.

Requests for Exception From Reporting Requirements

Requests for exception from reporting requirements should be filed with the Office of Hearings and Appeals, Department of Energy, in accordance with the provisions of 10 CFR 205 (D).

Abreviated Filing Requirements for 1977 and 1978

For the years 1977 and 1978, certain data on some schedules are not required; one schedule is not required at all. These requirements are as follows:

Schedule	Data not required for 1977 and 1978
5122	Column I
5211	Lines 22.00-24.00
5214	Lines 07.00-12.00
5241	Lines 66.00-73.00
5245	Entire schedule

1974-1976 Filing Requirements; Planned, But Not Approved

EIA-28 is approved by the Office of Management and Budget (OMB) through December 1979 to collect information from the reporting companies covering only 1977 and 1978. Although OMB clearance was requested for the collection of information for the years 1974-76, OMB has chosen not to act on this request until a Department of Energy evaluation of the initial submission of 1977 data is complete.

OMB has requested that this evaluation of 1977 data be completed by June 1979, and that barring the discovery of unforeseen problems with the reporting form, the objective of receiving 1974-76 data from the reporting companies by September 1979 can be completed as planned.

OMB feels that this evaluation will allow final 1974-76 reporting requirements to reflect actual experience with the report form. Furthermore, OMB has stated that it agrees with the need to collect selected information for 1974-76 from the reporting companies.

Filing requirements planned by DOE for the 1974-76 information, but not now in effect as explained above, are provide below. This information is provided to assist reporting companies in planning records retention and work schedules.

Note that certain schedules are not required at all; other schedules are only required in part. These requirements are as follows:

Schedule	Planned (Not Approved) Data for 1974, 1975 & 1976
5110	Lines 01.00, 07.00, & 08.00 (all columns); all other lines (column A only)
5111	Line 12.00 (all columns)
5112	Entire schedule
5113	Not required
5114	Not required
5115	Not required
5120	Lines 00.07, 08.00, & 09.00 (all columns), all other lines (column A only)
5121	Not required
5122	Not required
5130	Entire schedule
5141	Not required
5142	Not required
5210	Lines 10.00, 16.00, & 17.00 (all columns)
5211	Lines 12.00, 21.00, 30.00, 31.00-35.00, 69.00, 73.00, 74.00-84.00 (all columns); all other lines (column A only), except 36.00-65.00
5212	Not required
5213	Not required
5214	Not required
5215	Not required
5220	Lines 04.00, 05.00, 06.00 (all columns)
5221	Entire schedule
5222	Entire schedule
5223	Lines 12.00, 25.00, 26.00, 27.00, 28.00. (all columns); all other lines (column A only)

Schedule	Planned (Not Approved) Data for 1974, 1975 & 1976
5320	Lines 04.00, 05.00, 06.00, & 10.00-14.00 (all columns)
5310	Lines 04.00, 19.00, & 20.00 (all columns)
5420	Lines 13.00, 14.00, 15.00, & 19.00-28.00 (all columns)
5410	Lines 16.00, 38.00, & 39.00 (all columns)
5520	Lines 04.00, 05.00, 06.00 & 10.00-14.00
5510	Lines 06.00, 17.00, & 18.00 (all columns)
5620	Lines 04.00, 05.00, 06.00 & 10.00 (all columns)
5610	Lines 01.00, 07.00, & 08.00 (all columns)
5241	Entire Schedule
5242	Lines 01.00-07.00, 14.00, 21.00, 28.00, 29.00 & 30.00-37.00 (all columns)
5243	Lines 01.00-04.00, (all columns)
5244	Not required
5245	Not required
5246	Lines 01.00, 06.00, 08.00, 10.00, 12.00, 14.00, 19.00, 21.00, 23.00, 25.00, 26.00, 31.00, 33.00, 35.00, 37.00 and 38.00 (all columns)
5341	Lines 04.00, 08.00, 12.00, and 13.00 (all columns); line 21.00 (columns A only); lines 22.00-31.00(column A only); lines 35.00, 39.00, 44.00, and 45.00 (all columns); lines 46.00-49.00 (all columns)
5342	Lines 01.00-16.00 (all columns)
5441	Entire schedule except lines 05.00-06.00, 10.00-15.00, 17.00, & 43.00-49.00
5541	Entire schedule except lines 08.00 and 09.00

Filing Due Dates

Filing due dates for the years 1974 through 1978 and future years are as follows:

February 1, 1979	1977
August 1, 1979	1978
September 1, 1979 (planned, not approved).	1974-1976
Five months after the end of the fiscal year.	Future years

Extensions of Time To File

If the entire FRS form is not expected to be completed by the applicable due date, requests for a partial submission and/or extension will be considered if the Administrator of the Energy Information Administration has been notified in writing at least one month in advance of the applicable due date. Such notification letter must: (1) detail why the due date cannot be met, (2) indicate which specific FRS schedules and data elements will be filed on time, and (3) indicate which specific FRS schedules and data elements will not be filed on time and the expected actual filing date(s).

OTHER FILING REQUIREMENTS

Who Must File

Section 205(h) of the Department of Energy Organization Act specifies that FRS data will be collected from all major energy producing companies and a representative sample of smaller energy producing companies so as to provide a statistically accurate profile of each line of commerce in the United States energy industry.

The Administrator of the Energy Information Administration has designated companies required to report. Respondents have been notified of their reporting requirement.

Where to File

Submit three (3) copies of the completed FRS to the following address: Department of Energy, Energy Information Administration, Code 2906, Washington, D.C. 20461.

Certification

The FRS Certification Statement on each of the submitted copies must be signed by an officer of the reporting company, or a designee the reporting company.

CONFIDENTIALITY—PUBLIC DISCLOSURE

The information contained on EIA-28 may be confidential information which is protected from disclosure to the public by 18 U.S.C. 1905. However, before a determination can be made that particular information is protected from disclosure by 18 U.S.C 1905, reporting companies must certify that the information has not previously been made publicly available and that, if made public, the information would divulge methods or processes entitled to protection by 18 U.S.C. 1905 as trade secrets or other proprietary information. Reporting companies should state briefly and specifically, in a letter accompanying their submissions, why the information concerned is a trade secret or other proprietary information, whether such information is customarily treated as confidential, and the type of competitive harm that would result to the reporting company from disclosure of the information. This letter should be certified in the same manner as the form itself.

Disclosure to "Named Agencies"

The following guidelines are applicable in making EIA-28 data available to the Attorney General, the Federal Trade Commission, the Secretary of the Interior, and the Comptroller General (the "Named Agencies"):

1. EIA will provide disaggregated EIA-28 data to a Named Agency in response to a written request from it which meets the following conditions:

(a) Contains a statement that the data requested is necessary to the requesting agency in carrying out its lawful duties and responsibilities.

(b) Contains an undertaking not to disseminate or disclose the disaggregated information provided by EIA outside the Named Agency except for disclosures determined by the Named Agency to be made (i) in connection with proceedings in which the Named Agency is or might become involved, (ii) in response to a Freedom of Information Act request, or (iii) in response to a written request from the General Accounting Office or from the Congress or any Committee of the Congress having jurisidiction.

(c) Contains an undertaking that in responding to a Freedom of Information Act request encompassing disaggregated data obtained from EIA, the Named Agency (i) will not make a discretionary release of any disaggregated information obtained from EIA which is exempt from mandatory disclosure under the Freedom of Information Act and (ii) will consult with and give great deference to the views of EIA in determining whether any information obtained from EIA falls within the exemptions from mandatory disclosure; provided, however, that where the pertinent regulations of the Named Agency authorize the referral of Freedom of Information Act requests for records originating in another agency to that agency, the Named Agency shall refer any request for EIA data to EIA for response.

(d) Contains an undertaking that prior to disclosing any disaggregated data received from EIA in any manner outside the Named Agency, the Named Agency shall give EIA and the orginator of such data ten-days' written notice of the proposed disclosure.

2. Prior to honoring a request from a Named Agency for access to disaggregated EIA-28 data, EIA will give the originator of such data ten-days' written notice before making the data available.

DATA ENTRY

Rounding

All amounts (including dollars, barrels, cubic feet, tons, acres, pounds, etc.) must be rounded to the nearest thousand and expressed in thousands of units unless otherwise indicated. For example, 2,533,500 tons must be reported as 2,534 M tons; similarly, 157,498,680,000 cubic feet must be reported as 157,499 MMCF.

Estimates

Where the reporting company's records cannot produce data in the fashion required by FRS, use of estimates is encouraged if the respondent feels a meaningful estimate can be made

without significant distortion of results.

Where estimates are used, attach an explanation on a separate sheet of paper as part of Exhibit B identifying where estimates are used and indicating how such estimates were made.

USE OF EXHIBITS

In addition to the data required on the FRS schedules themselves, the following information must be attached as exhibits:

Exhibit A. Background information on the company's accounting and financial reporting practices. Provide the following information:

1. Is equity income recognized in accounts other than line 09.00 of Schedule 5110? If yes, see the section of the instructions entitled "FRS Overview: One-Line Consolidations," which requires a complete explanation of the amounts and financial statement accounts involved.

2. Indicate whether the full cost or successful efforts method of accounting is used for the company's petroleum exploration and development activities. Indicate the cost center(s) used: lease, field, geologic province, country, hemisphere, worldwide, U.S. vs. total foreign, or other (specify).

3. Which method is used to value inventories for each of the FRS segments? If more than one method is used in a segment indicate the proportion of inventory for each method.

4. Briefly describe the financial statement treatment for the following types of exchanges: Crude-for-crude, product-for-product, and crude-for-product.

5. Describe how gain or loss on disposition of property, plant, and equipment is reflected in the financial statements.

6. Describe how dry hole costs (if applicable) are reflected in the capital expenditure and sources of funds sections of Schedule 5130. Are expenditures which ultimately lead to dry holes first capitalized and then charged to expense, or if they occur during the reporting period, are they charged directly to expense without first being reflected as an application of funds? Provide amounts.

Exhibit B. Supplemental analysis of items appearing in the financial schedules where required.

Exhibit C. Summaries and explanations of eliminations made in FRS consolidations.

Exhibit D. Explanations of the nature of amounts included in the nontraceable columns.

Exhibit E. A copy of the reporting company's SEC Form 10-K or a copy of its audited financial statements is requested.

Exhibit F. Any other information or explanations the reporting company believes are needed to understand its reported FRS data.

Each exhibit must be clearly labeled to indicate the specific item of data (schedule, line, and column) for which a supplementary explanation is provided. Also, mark an "X" in the "footnote" column on each schedule to indicate that a supplementary explanation has been provided for an item of data on that line.

AMENDMENTS TO FRS REPORTED DATA

Circumstances

An amended FRS report must be filed if: (a) there has been a determination that information previously filed is materially inaccurate or misleading (see the section of the instructions entitled "FRS Overview—Significance Standards"), or (b) financial or statistical reporting standards are changed, rendering prior reports noncomparable to current reports.

In the case of changes in statistical reporting standards imposed by the Federal Government, amendments must be filed for the year of the change and one preceding year.

If an amended filing is required, submit only those schedules affected. However, all pages of the affected schedules must be submitted.

Since an FRS filing covers only 1 year, sufficient reports must be filed to amend all prior years affected. This will be limited to 5 years, unless unusual circumstances exist.

When Due

In the case of (a) above, the amendment is due within 90 days of such determination. In the case of (b) above, the amendment is due at the time of filing the first report embodying the new reporting principle(s).

FRS OVERVIEW

RELATION TO REPORTING COMPANY'S ACCOUNTING PRINCIPLES

In completing the FRS schedules, reporting companies should follow the accounting principles they currently use to prepare their annual certified financial statements. All of the detailed FRS financial schedules aggregate up into Schedules 5110 and 5120.

Specifically, schedules 5110 and 5120 contain a "Consolidated" column, representing the reporting company's certified consolidated financial statements. However, there may by some differences between the FRS line items in this column and the classifications in the reporting company's published financial statements. Such differences must be explained and reconciled on a separate sheet of paper attached as part of Exhibit B.

FRS SEGMENTS AND FASB 14

The FRS is designed to present a company's operations as separate functional lines of business (referred to as "segments"), as though each were a separate entity, entering into transactions with other segments and third parties. In FRS, the reporting company's consolidated financial statements are disaggregated to separate financial statements for each applicable "functional line of business" (i.e., each applicable FRS segment). These disaggregations are generally made in accordance with Financial Accounting Standards Board (FASB) Statement No. 14.

However, the FRS goes beyond FASB 14 in that the FRS segments are often further disaggregations of a line of business than those defined by FASB 14. In addition, while the FRS attributes certain items to specific segments (such as income taxes), FASB 14 treats them as corporate items. In all other respects, the principles outlined in FASB 14 should be followed for FRS purposes.

The reporting company may not have a separate entity for consolidation purposes corresponding to each of the FRS segments. Therefore, to complete the FRS schedules, it may be necessary to disaggregate information from specific operations within the reporting company's consolidation into the FRS segments (functional lines of business) and then perform a new consolidation based on the FRS segments, including appropriate eliminations at each level of subconsolidation as required.

ELIMINATIONS AT MORE THAN ONE LEVEL

In preparing FRS eliminations, two factors must be kept in mind. First, the FRS segments are not consolidated all at once. For example, the three foreign petroleum segments are first consolidated on Schedule 5210 and then these consolidated foreign petroleum segments are consolidated with the consolidated domestic petroleum segments on the same schedule. Finally, the consolidated domestic and foreign petroleum segments are consolidated with the other industry segment groups on Schedule 5110. Therefore, there are three levels of consolidation for petroleum financial statements; eliminations must be developed separately for each level of consolidation.

The second factor to keep in mind is that certain eliminations may be required due to the FRS rules for defining what business functions are within each of the defined segments. Of particular note in this regard are the rules established for the petroleum supply and trading activity. (These rules are explained in the section entitled "Petroleum Supply and Trading."

Some examples of where to report eliminations are as follows:

Eliminations reported on Schedule 5110 in column B are only the eliminations arising from transactions among Petroleum, Coal, Nuclear, Other Energy, and Non-Energy (columns D through H, respectively). Eliminations arising from transactions *within* these columns must be reported on the appropriate segment schedule.

Eliminations arising from transactions between the Domestic Petroleum Production Segment and the Domestic Refining/Marketing Segment must be reported on Schedule 5210 in column G.

Eliminations arising from transactions between the Domestic/Refining/Marketing Segment and the Foreign Refining/Marketing Segment must be reported on Schedule 5210 in column B.

Eliminations arising from transactions between the Domestic Refining/Marketing Segment and the Domestic Chemical Segment must be reported on Schedule 5110 in column B.

FRS SEGMENT ALLOCATIONS AND NONTRACEABLE COLUMNS

In disaggregating consolidated financial statements for FRS, most items of revenue and expense can be readily assigned to a particular functional line of business, i.e., FRS segment. However, there will be some items (such as general corporate items) which may be more difficult to assign to a particular FRS segment.

If, on the basis of operating realities, these items cannot be assigned to a segment, they should be reported as nontraceable. It is the function of an item and not its geographic location that determines how it should be reported (i.e., within an FRS segment or as nontraceable). That is, some expenses occurring at the corporate office location may in fact be assignable to a particular FRS segment and therefore should not be reported as nontraceable.

ONE-LINE CONSOLIDATIONS

"One-line" consolidations of equity in affiliate earnings should be reflected in FRS submissions in the same way they are reflected in the company's published financial statements. For example, if such equity in earnings is reflected as a reduction in cost of raw materials acquired, then it should be reflected as such in the FRS income statements and in any supporting schedules.

A detailed description of the method(s) of accounting for such affiliates must be provided on a separate sheet of paper attached as a part of Exhibit A. This description of accounting method(s) must identify the specific account(s) in both the consolidated and segment financial statements that are reflected by the "one-line" consolidation and the dollar amounts involved.

If any of these affiliates are large enough, they must be reported separately on Schedule 5121. (See instructions to Schedule 5121 for size criteria.)

INCOME TAX EXPENSE

Income tax expense is a very significant item of corporate expense and is determined to a great degree by the operations of particular segments. That is, items such as operating profits and losses, investment tax credits, foreign tax credits, book/tax timing differences, and statutory depletion can each be identified with individual segments. It is an objective of FRS to show the tax impacts of such items within each segment.

Therefore, the basic principle underlying the determination of income tax expense for individual FRS segments is that each and every component of consolidated income tax expense must either be identified with an allocated to a particular segment or be classified as nontraceable. The objective is to achieve an income tax expense for each individual segment that reflects the benefits accruing to the consolidated entity in the segment where the benefits are generated.

In general, the following steps will be necessary to determine income tax expense for each segment:

Classify the timing differences and permanent differences according to the segment in which they originate. For tax calculation purposes, the nontraceable classifications are considered segments and should be assigned amounts that cannot be associated with the segments. (See Schedules 5112, 5113, and 5114).

Ascertain "book" taxable income and "tax" taxable income for each segment.

Allocate a pro-rata portion of consolidated U.S. income tax expense before credits to each segment on the basis of the ratio that a particular segment's taxable income bears to the consolidated entity's taxable income. If a segment's taxable income is negative and the consolidated entity has a positive tax expense, the segment must reflect a negative tax expense.

Report the tax credits that are utilized by the consolidated entity in the segments where they are generated. Tax credits generated which cannot be utilized by the consolidated entity due to limitations are carried forward. If and when recognized by the consolidated entity, they will be reflected as a tax benefit in the segment where they were originally generated.

Below are listed some additional principles which apply to the allocation of tax expense to the segments:

None of the tax expense allocation principles are intended to affect *consolidated* income tax expense. If however, there appears to be some conflict caused by these principles, include a note explaining the conflict as part of Exhibit F and/or contact the FRS staff to discuss the matter.

If deferred taxes "turn around", the consolidated entity's negative deferred tax expense will have to be allocated in some manner. One way that would minimize burden would be to allocate the amount based on the pro-rata amount of the applicable reversing timing differences.

Foreign income tax expense will usually be attributable to a subsidiary which is in a single FRS segment. If not, an allocation will have to be made based on the applicable taxable income of the subsidiary split on a segment basis.

If unusual circumstances occur which would generate segment income tax results which are unreasonable, contact the FRS staff to discuss the matter.

The example presented on the following page illustrates FRS treatment of segment income tax expense.

PETROLEUM SUPPLY AND TRADING

To ensure the collection of comparable data, the FRS must use one standard method for reporting supply and trading operations, even though respondent companies can and do organize their raw material and product supply and trading operations in different ways.

FRS defines the following segments *within* petroleum. These segments are the main columnar components of Schedules 5210 and 5220:

Domestic Production	column I
Domestic Refining/Marketing	column J
Federally Regulated Crude/Liquid Pipelines	column K
Federally Regulated Natural Gas Pipelines	column L
Federal Regulated Refined Product Pipelines	column M
Foreign Production	column Q
Foreign Refining/Marketing	column R
International Marine	column S

Although many respondent companies may use similar segment designations for their financial reporting purposes, the specific FRS segment definitions must be used.

Specifically, for FRS purposes:

Segments are separate profit centers.

Transfers of material between segments are treated as sales valued at arms-length market prices. (See foreign unconsolidated affiliate, 7 paragraphs below.)

Supply, trading, and transportation operations are downstream activities,

i.e., they are included within Domestic Refining/Marketing and Foreign Refining/Marketing.

The Domestic and Foreign Production Segments can sell natural gas and natural gas liquids to domestic/foreign third parties, domestic/foreign unconsolidated affiliates, and other domestic/foreign segments of the company, respectively.

The Domestice and Foreign Refining/Marketing Segments purchase all of the company's remaining domestic and foreign production, respectively, except for material used within the Domestic and Foreign Production Segments for production purposes.

TAX ALLOCATION EXAMPLE

	Consolidated (a)	Non-traceable (b)	Petroleum (c)	Coal (d)
YEAR NO. 1				
Pre-tax income (loss)	80.0	(20.0)	200.0	(100.0)
Income tax expense:				
Before investment tax credit	40.0	(10.0)	100.0	(50.0)
Investment tax credit recognized	20.0		6.6	13.4
Net income tax expense	20.0	(10.0)	93.4	(63.4)
Net income (loss)	60.0	(10.0)	106.6	(36.6)
Investment tax credit:				
Generated	30.0		10.0	20.0
Recognized	20.0		6.6	13.4
Carried forward	10.0		3.4	6.6
YEAR NO. 2				
Pre-tax income (loss)	180.0	(20.0)	250.0	(50.0)
Income tax expense:				
Before investment tax credit	90.0	(10.0)	125.0	(25.0)
Investment tax credit recognized	45.0	3.0	29.1	13.9
Net income tax expense	45.0	(13.0)	95.9	(38.9)
Net income (loss)	135.0	(7.0)	154.1	(11.1)
Investment tax credit:				
Generated	40.0	3.0	27.0	10.0
Used this year	35.0	2.6	23.6	8.8
Carried forward to next year	5.0	0.4	3.4	1.2
Carried forward from previous year	10.0		3.4	6.6
Utilized this year*	10.0		3.4	6.6
Carried forward to next year				

*Amounts of investment tax credit recognized this year which are carried forward from a previous year are recognized pro-rata based on amounts originally generated.

The Domestic and Foreign Refining/Marketing Segments conduct all import and export sales within their respective geographic domains. For example, domestic source products to be sold abroad must first be reported as a sale from Domestic Refining/Marketing to Foreign Refining/Marketing, and then as a sale by Foreign Refining/Marketing to the actual foreign purchaser.

The Domestic and Foreign Production Segments can purchase natural gas and natural gas liquids from third parties.

A segment which acquires imported crude or product pays all transportation costs. For example, when Domestic Refining/Marketing acquires imported crude from Foreign Refining/Marketing, the f.o.b. shipping point cost of the crude should be reflected on Schedule 5212; the cost of primary transportation should be reflected separately on Schedule 5215 as a cost to Domestic Refining/Marketing. Both components of cost then flow forward as general operating expenses on Schedule 5211.

For example, if the reporting company has an interest in a foreign unconsolidated affiliate, such as Aramco, from which crude oil is acquired for ultimate use in the United States, the acquisition of such crude would first be reported by the Foreign Refining/Marketing Segment on Schedule 5212 line 13.00. Then, this crude oil would be "sold" (at no profit) to the Domestic Refining/Marketing Segment. This second transaction would be reported as a purchase on Schedule 5212, line 02.00 and as a sale on Schedule 5213, line 32.00. The expense of transportation would be borne by the Domestic Refining/Marketing Segment; Foreign Refining/Marketing would reflect only the f.o.b. shipping point cost of the purchase from Aramco.

Production of raw materials is valued at the actual value received for sales to third parties. Where there are no comparable arms-length transactions, field posted prices may be used for all other sales and transfers. If third-party realizations for specific raw material streams are below posted prices, the same lower prices should be used to value internal movements of those raw materials.

ALLOCATING AMOUNTS TO GEOGRAPHIC AREAS

Within the industry catagories of Petroleum, Coal, Nuclear, Other Energy, and Non-Energy, the FRS requires a breakdown between domestic and foreign. Domestic and foreign data (e.g., expenditures and asset holdings) are sometimes further broken down geographically:

Domestic. Alaskan (onshore and offshore) and other domestic (onshore and offshore).

Foreign. Canada, OECD Europe, Africa (northern Africa and other Africa), Middle East, Other Eastern Hemisphere (Asian landmass and other), and Other Western Hemisphere.

Refer the FRS Glossary for specific definitions of these geographic areas.

SIGNIFICANCE STANDARDS (MATERIALITY)

Significance standards are needed to avoid undue respondent burden. Such standards must be established with the ultimate use of the data in mind, but since it is not possible to describe in advance all the posible uses of each piece of FRS data or all the possible combinations in which they might be used with other data, only general guidelines can be given.

A definition of "material" is contained in Rule 1-02 of Securities and Exchange Commission Regulation S-X (and in Rule 405 under the Securities Act and Rule 12b-2 under the Exchange Act). However, this definition is based on a "prudent man" principle, which is of limited practical help in deciding many questions of materiality for FRS purposes.

To provide more explicit guidance, a 5% significance standard has been established for FRS reporting. This

standard should be used to test the materiality of any item within its immediate category. The test should be made on both a vertical (line) and horizontal (row) basis.

For example, on Schedule 5211 if lease rents (line 07.00) is less than 5% of total exploration costs (line 12.00), then lease rents could be combined with other exploration costs on line 11.00.

Similarly, Schedule 5211 requires separate disclosure of depreciation of suport equipment and facilities. Some companies may not now have such a category stated separately. In accordance with FRS significance standards, such depreciation need not be stated separately if less than a 5% overstatement or understatement would be caused in the depreciation accounts where this amount would normally be reported.

The 5% significance standard must be applied both on a separate and a cumulative basis (i.e., separate reporting is required, for example, when three items, each of which causes a 4% overstatement of some expense account, would cause a 12% overstatement in the aggregate).

OPERATING STATISTICS AND FINANCIAL DATA

Operating statistics will be used in conjunction with financial data to compare, among other things, effort with results. For this reason:

Only operating statistics from *consolidated* operations must be reported on Schedules 5241 through 5246, 5341, 5342, 5441, and 5541 (and, in the case of consolidated joint ventures, on Schedule 5142) so that the statistical data parallel the financial data.

Operating statistics from *unconsolidated* operations and operations consolidated on a "one-line" basis must be reported on Schedule 5141.

REPORTING COMPANY, CONSOLIDATING STATEMENT OF INCOME

SCHEDULE 5110

GENERAL

Report consolidated results of operations for the period in column A. Reported amounts must agree with the company's certified consolidated income statement except for reclassifications needed to complete the required line items. Itemize these reclassifications on a separate sheet of paper and attach as part of Exhibit B.

Report amounts directly assignable (See "FRS Overview" section of the instructions) to Petroleum, Coal, Nuclear, Other Energy, and Non-Energy in columns D through H. Such amounts must agree with those reported on Schedules 5210, 5310, 5410, 5510, and 5610 as referenced by the column headings. Refer to the detailed instructions for these schedules for more specific guidance.

Report amounts not directly assignable (See "FRS Overview" section of the instructions) to Petroleum, Coal, Nuclear, Other Energy, and Non-Energy as nontraceable in column C. Provide a detailed explanation of amounts classified as nontraceable on a separate sheet of paper and attach as part of Exhibit D.

Explain all reported eliminations on a separate sheet of paper and attach as part of Exhibit C. Include a description of the nature of and reason for these entries.

DO NOT allocate line items 11.00, 13.00, and 16.00 to the segments. Report these items only in columns A and C.

Line 01.00—Operating Revenues

Report operating revenues brought forward from the corresponding lines on Schedules 5210, 5310, 5410, 5510 and 5610.

Line 02.00—General Operating Expenses

Report general operating expenses brought forward from the corresponding lines on Schedules 5210, 5310, 5410, 5510 and 5610. Include selling expenses.

General operating expenses include all expenses related to both unaffiliated third-party sales and intersegment sales or transfers.

Line 03.00—Depreciation, Depletion, and Amortization (DD&A)

Report total DD&A, including DD&A of support equipmnt and facilities, brought forward from Schedules 5210, 5310, 5410, 5510 and 5610.

Line 04.00—Valuation Charges

Report valuation charges (e.g., valuation allowances and dry hole charges in the Petroleum Production Segments) related to impairment or abandonment of non-producing properties as brought forward from Schedules 5210, 5310, 5410, 5510, and 5610. (Refer to the Glossary for the definition of valuation charges.)

Line 05.00—General and Administrative

Report general and administrative expenses brought forward from Schedules 5210, 5310, 5410, 5510, and 5610. DO NOT include selling expenses, which should be reported as a general operating expense on line 02.00 above.

Line 06.00—Research and Development

Report all research and development (R&D) expenses for the period, excluding applicable DD&A brought forward from Schedules 5210, 5310, 5410, 5510 and 5610. The amount reported in column A must equal the amount reported in Schedule 5111, line 16.00.

Report R&D in the segment wherein it is recorded in the reporting company's records. For example, coal liquefaction R&D may, in fact, be reported in the domestic Petroleum Refining/Marketing Segment. However, it would be reported in the coal gasification/liquefaction column on Schedule 5111.

Line 07.00—Total Operating Expenses

Total lines 02.00 through 06.00.

Line 08.00—Operating Income

Line 01.00 less line 07.00.

Line 09.00—Equity in Earnings of Unconsolidated Affiliates

Report equity in earnings of unconsolidated affiliates recorded during the period. Include equity in earnings of joint venture companies in accordance with the company's normal reporting practices. Include the effect, if any, of adjustments due to impairment of value to investments carried at equity.

Equity in earnings of unconsolidated affiliates which operate in more than one FRS segment should be reported in the segment corresponding to the affiliate's primary business activity, unless data from corporate records are available to make an allocation among the applicable FRS segments. Describe the allocation method used on a separate sheet of paper and attach as part of Exhibit B.

Line 10.00—Dividend Income From Cost Basis Unconsolidated Affiliates

Report dividend income recognized from unconsolidated affiliates accounted for on the cost basis.

Dividend income from cost basis unconsolidated affiliates which operate in more than one FRS segment should be reported in the segment corresponding to the affiliate's primary business activity, unless data from corporate records are available to make an allocation among the applicable FRS segments. Describe the allocation method used on a separate sheet of paper and attach as part of Exhibit B.

Line 11.00—Other Dividend and Interest Income

Report other dividend income (i.e., portfolio dividends) and interest income for the period. Only include dividends received from marketable securities reported on Schedule 5120, line 01.00. DO NOT assign other dividend and interest income to the segments in columns D through H.

Line 12.00—Gain/(Loss) on Disposition of Property, Plant, and Equipment

Report the net gain or less recognized for the period on disposition of property, plant, and equipment in accordance with the company's normal practice for certified financial statement reporting. That is, if such gains or losses are not significant and are classifed otherwise, no reclassification need be made. A note to this effect must be included in Exhibit B, explaining why Schedule 5222, column C, foreign plus domestic, does not tie to this line in column D). Miscellaneous charges or credits to DD&A reserve accounts for normal assets retirements need not be adjusted.

Line 13.00—Interest Expense and Financial Changes

Report all interest expense and financial charges, including interest expense for capitalized leases. DO NOT assign interest expenses and financial charges to Petroleum, Coal, Nuclear, Other Energy, or Non-Energy in columns D through H.

Line 14.00—Minority Interest in Income

Report minority interest in income of consolidated affiliates in accordance with the company's normal reporting practice. Amounts should be reported net of income taxes. Assign amounts to segments in proportion to the operating income generated by the respective segments.

Line 24.00—Net Income

Total lines 21.00, 22.00, and 23.00.

Line 15.00—Foreign Currency Translation Effects

Report the effects of converting the financial statements of consolidated foreign affiliates to a U.S. dollar reporting basis. Include the gain or loss from currency trading and from transactions with foreign entities.

For allocations to the segments, report only the net gain or loss recognized during the period from foreign currency translations applicable to balance sheet accounts assigned to the segments. See instructions to Schedule 5120. The balance not allocated to the segments should be reported as nontraceable in column C. The amount reported in column A must equal the amount reported in the company's consolidated statement of income.

Line 16.00—Other Revenue and (Expense)

Report all other non-operating income and expenses recognized during the period for certified financial statement reporting purposes and not reflected elsewhere on this schedule. DO NOT assign these incomes and expenses to the segments in columns D through H.

If amounts reported on this line exceed 5% of the pre-tax income for any column, provide an analysis of such amounts on a separate sheet of paper and attach as part of Exhibit B.

Lines 17.00 and 18.00—Current and Deferred Taxes

Report current and deferred Federal, State, local, and foreign income taxes in column A as reported in the company's certified financial statements. With respect to columns B through H, compute current and deferred tax expenses as described in the "FRS Overview" section of the instructions under "Income Tax Expense". Also, see Schedules 5112 through 5114.

Line 19.00—Total Income Tax

Total lines 17.00 and 18.00

Line 20.00—Total Other Revenue and (Expense)

Total lines 09.00 through 16.00, and 19.00.

Line 21.00—Income Before Extraordinary Items and Effects of Accounting Changes

Total lines 08.00 and 20.00

Lines 22.00 and 23.00—Extraordinary Items and Cumulative Effects of Accounting Changes

Report extraordinary items and cumulative effects of accounting changes if applicable.

REPORTING COMPANY (RESEARCH AND DEVELOPMENT FUNDING AND EXPENDITURES)

SCHEDULE 5111

GENERAL

Report research and development (R&D) funds and expenditures for the period that can be assigned to the project classifications identified in columns B through L. Other funds and expenditures must be reported on column M. Assign R&D funds and expenditures to the specified project classifications on the basis of the nature of the project, NOT on the basis of the business segment that provided the funds or carried out the research and development activities. See Glossary for definitions.

SOURCE OF R&D FUNDS

Line 01.00—Federal Government

Report receipts from the the U.S. Federal Government for work done by the company on R&D contracts or subcontracts and R&D portions of procurement contracts and subcontracts.

Line 02.00—Internal Company

Report funds provided by the company for research and development performed by deducting non-company sources of R&D funds from total R&D expenditures.

Line 03.00—Other Sources

Report receipts of funds from all other sources for R&D work done by the company. Include grants from nonprofit organizations and any other third parties.

Line 04.00—Total Sources

Total lines 01.00 through 03.00.

R&D EXPENDITURES

Lines 05.00 through 10.00—Basic and Applied Research and Development

Report R&D expenses for basic and applied research and development (as defined in Glossary) performed within the company and contracted or subcontracted to third parties.

Line 11.00—Capitalized Expenditures

Report all capitalized expenditures for materials, supplies, laboratory equipment, and other costs of facilities and equipment within the company's R&D function.

Line 12.00—Total R&D Expenditures

Total lines 05.00 through 11.00.

R&D EXPENSE

Use this section to reconcile the amount reported on line 12.00, column A, to total R&D expense reported on Schedule 5110, line 06.00, column A, and to the disclosure of R&D expense appearing in reporting company's Form 10-K.

Line 13.00—Total R&D Expenditures

Report amount from line 12.00, column A, above.

Line 14.00—Less: Capitalized Items

Enter all expenditures reported on lines 05.00 through 12.00 that were capitalized (line 11.00, column A).

Line 15.00—Less: Amount Paid for by Others

Enter all expenditures reported on lines 05.00 through 12.00 paid for by others if such amounts are not included in the sources of R&D funds in line 04.00.

Line 16.00—Total R&D Expense, Excluding DD&A

Line 13.00, less the total of lines 14.00 and 15.00. This amount must equal the amount reported on Schedule 5110, line 06.00, column A.

Line 17.00—Plus DD&A

Report DD&A applicable to R&D.

Line 18.00—Total

Total line 16.00 and line 17.00.

REPORTING COMPANY, ANALYSIS OF INCOME TAXES

SCHEDULE 5112

GENERAL

This schedule is designed principally to provide a disaggregation of consolidated income tax information into the FRS segments. The purpose of this disaggregation and the principles to be used in performing the disaggregation are described in the "FRS Overview" section of the instructions under "Income Tax Expense".

INCOME TAXES (AS PER FINANCIAL STATEMENTS)

Lines 01.00 through 17.00

These lines provide details of consolidated income tax expense per the reporting company's financial statements. Lines 11.00, 16.00, and 17.00 correspond to Schedule 5110, column A, lines 17.00, 18.00, and 19.00.

RECONCILIATION OF ACCRUED U.S. FEDERAL INCOME TAX EXPENSE TO STATUTORY RATE

Line 18.00

Enter the amount arrived at by: (1) striking a subtotal after line 16.00 on Schedule 5110, column A, (2) adding back line 14.00 on Schedule 5110, column A, (3) and adding it to operating income (line 08.00 on Schedule 5110) to arrive at consolidated pretax income or (loss).

Line 19.00

Enter the portion of foreign source income not subject to U.S. Federal income tax. Foreign source income is earned by both U.S. corporations (those incorporated in the U.S.) and by foreign corporations (those incorporated in a foreign country). The earnings of the latter are not subject to U.S. income tax until remitted to the U.S. Therefore, enter on this line (1) income earned by foreign corporations, reduced by earnings remitted to the U.S., and (2) Sub-part F income or foreign corporations.

Line 20.00

Line 18.00 less line 19.00.

Line 21.00

Enter U.S. State and local income taxes included in consolidated income tax expense.

Line 22.00

Enter on this line the amount of foreign income taxes deducted as an expense in arriving at taxable income for the U.S. Federal tax accural.

Income subject to U.S. tax may also be subject to foreign tax (see line 19.00 above). In computing the amount of U.S. Federal tax due, the taxpayer must elect to classify the foreign taxes either as a deduction or a credit. Therefore, the amount reported on this line is the deduction elected to be taken.

Line 23.00

Enter the net of line 20.00 minus the sum of lines 21.00 and 22.00

Line 24.00 (column A)

Enter the amount arrived at by multiplying the amount on line 23.00 by the statutory U.S. Federal income tax rate of 48%.

Line 25.00 (column A)

Enter in the amount of foreign tax credit recognized in arriving at the current year's income tax expense.

Line 26.00 (column A)

Enter the amount of U.S. Federal investment tax credits which are recognized in arriving at the current year's Federal income tax expense.

Line 27.00 (column A)

Enter the amount of tax savings recognized due to statutory depletion.

Line 28.00 (column A)

Enter any other items needed to complete this reconciliation. If the amount on this line exceeds 5% of the amount of line 24.00, provide a detailed breakdown of line 28.00 so that the unexplained amount is less than 5% of line 24.00. Attach the detailed breakdown on a separate sheet of paper as part of Exhibit B.

Line 29.00 (column A)

Enter the amount of the U.S. Federal tax provision which will equal the net of lines 01.00 and 02.00, plus the net of lines 12.00 and 13.00 above.

Lines 24.00 through 29.00 (column B)

Enter the percentage arrived at by dividing the amount in column A by the amount on line 23.00 above.

REPORTING COMPANY, ANALYSIS OF INCOME TAXES BY SEGMENTS

SCHEDULE 5113

This schedule provides segment-by-segment details of the current and deferred taxes reported to total in the segment income statements. Column A corresponds to the current tax expense in the segment income statements; column F corresponds to the deferred tax expense.

Instructions for determining these amounts are included in the "FRS Overview" section of the instructions under "Income Tax Expense".

The amounts reported on line 36.00, Schedule 5113, must equal the amounts reported on the corresponding lines on Schedule 5112, i.e., columns A, B, C, D, E, F, G, H, I, and J on line 36.00, Schedule 5113, must equal lines 11.00, 01.00, 02.00, 03.00, 10.00, 16,00, 12.00, 13.00, 14.00, and 15.00 of Schedule 5112, respectively.

Lines 35.00 and 34.00 of Schedule 5113 represent the taxes applicable to amounts included in columns B and C of Schedule 5110, respectively.

REPORTING COMPANY, ANALYSIS OF U.S. FEDERAL DEFERRED INCOME TAXES

SCHEDULE 5114

This schedule provides segment-by-segment disaggregation of line 12.00, Schedule 5112; i.e., the components of U.S. Federal deferred income taxes before deferred investment tax credits.

Lines 01.00 through 36.00

These lines represent the FRS segments. The principles for allocating amounts to the segments are explained in the "FRS Overview" section of the instructions under "Income Tax Expense".

Column A

Each line of column A of Schedule 5114 has a corresponding line in column G of Schedule 5113. Line 36.00, column A, corresponds to line 12.00 of Schedule 5112.

Column E

Report any timing differences (between financial statements and tax returns) in recognizing provisions for losses due to such items as anticipated expropriation, unfavorable long-term contract commitments, etc.

Column F

If the amount in column F on line 36.00 exceeds 5% of line 36.00, column A, attach a detailed schedule identifying (by segment) the nature of the components of this amount so that the unidentified amount is less than 5% of line 36.00, column A. Attach the detailed breakdown on a separate sheet of paper as part of Exhibit B.

REPORTING COMPANY, ANALYSIS OF OTHER TAX BENEFITS

SCHEDULE 5115

This schedule is designed to provide an analysis (by segment) of certain tax benefits.

Column A

Line 36.00 corresponds to line 27.00 of Schedule 5112.

Columns B and C

Line 36.00 will correspond to lines 02.00 and 13.00 of Schedule 5112 only if all amounts generated are recognized in the same year by the reporting company. Amounts carried forward or carried back will account for any differences.

Column E

Line 36.00, column E, will correspond to line 25.00 of Schedule 5112.

REPORTING COMPANY, CONSOLIDATING BALANCE SHEET

SCHEDULE 5120

GENERAL

Report the consolidated balance sheet as of the end of the period in column A. Reported amounts must agree with the company's certified consolidated balance sheet, except for reclassifications needed to complete the required line items. Itemize these reclassifications on a separate sheet of paper and attach as part of Exhibit B.

Report amounts directly assignable to Petroleum, Coal, Nuclear, Other Energy, and Non-Energy in columns D through H. Such amounts must agree with those reported on Schedules 5220, 5320, 5420, 5520, and 5620 as referenced in the column headings. Refer to the detailed instructions for each of these schedules for more specific guidance.

Report amounts not directly assignable (see "FRS Overview" section of the instructions) to particular segments as nontraceable in column C. DO NOT allocate costs of assets maintained for general corporate purposes to particular segments. Provide a detailed explanation of amounts classified as nontraceable on a separate sheet of paper and attach as a part of Exhibit D.

Report consolidation eliminations in column B. Include only those eliminations applicable to transactions among Petroleum, Coal, Nuclear, Other Energy, and Non-Energy, as indicated in columns D through H. Eliminations required within each of these five columns should be reported on Schedules 5220, 5320, 5420, 5520, or 5620 as appropriate. Explain the eliminations reported on this schedule on a separate sheet of paper attached as part of Exhibit C. Include a brief description of the nature of and reason for the entries.

DO NOT assign amounts reported on lines 01.00 and 05.00 to columns D through H. Report these items only in column A and C. Report lines 14.00 through 25.00 in column A only.

Line 01.00—Cash and Marketable Securities

Report in total all amounts classified as cash and marketable securities for certified financial statement reporting. DO NOT allocate cash and marketable securities to columns D through H.

Line 02.00—Trade Accounts and Notes Receivable

Report third party and unconsolidated affiliate trade accounts and notes receivable net of reserves for uncollectible accounts as they are recorded in the company's financial records for certified financial statement reporting. DO NOT include amounts reported on Schedule II of Form 10-K. DO NOT include intersegment receivables or receivables from consolidated affiliates.

Lines 03.00 and 04.00—Inventories

Report end-of-period inventories according to the valuation method used for certified financial statement reporting. Report separately inventories held for resale, including raw materials inventories held for processing and subsequent sale (line 03.00), and materials and supplies inventories (line 04.00).

If LIFO reserves are not specifically identifiable with respect to inventories held for resale, allocate them on a prorata basis.

Line 05.00—Other Current Assets

Report in total all other assets classified as current for certified financial statement reporting, such as prepaid expenses, deferred charges, and nontrade notes and accounts receivable. DO NOT assign these other current assets to the segments in columns D through H.

Line 06.00—Total Current Assets

Total lines 01.00 through 05.00, columns A and C only.

Line 07.00—Gross Property, Plant, and Equipment

Report all capitalized costs reported as property, plant, and equipment.

Line 08.00—Accumulated DD&A

Report accumulated depreciation, depletion, and amortization (DD&A) and valuation charges relating to capitalized costs reported on line 07.00. (Refer to the Glossary for the definition of valuation charges.)

Line 09.00—Net Property, Plant, and Equipment

Line 07.00 less line 08.00.

Line 10.00—Investments and Advances to Unconsolidated Affiliates

Report investments in and advances to unconsolidated affiliates as recorded on the company's financial records.

Investments and advances to unconsolidated affiliates which operate in more than one FRS segment should be reported in the segment corresponding to the affiliate's primary business activity, unless data from corporate records are available to make an allocation among the applicable FRS segments. Describe the allocation method used on a separate sheet of paper and attach as part of Exhibit B.

Line 11.00—Other Noncurrent Assests

Report all other assets classified as non-current.

Line 12.00—Total Noncurrent Assets

Total lines 09.00 through 11.00.

Line 13.00—Total Assets

Total lines 06.00 and 12.00, columns A and C only.

Line 14.00—Trade Accounts and Notes Payable

Report total trade account and note payable balances.

Line 15.00—Other Current Liabilities

Report all other non-trade accounts and notes payable, accrued expenses, current income taxes payable, and other liabilities classified as current.

Line 16.00—Long Term Debt

Report long-term debt.

Line 17.00—Deferred Income Tax Credits

Report the non-current portion of tax effects of accumulated book-to-tax timing differences.

Line 18.00—Other Deferred Credits

Report all other deferred credits of a non-current nature. Include the non-current portion of income applicable to future periods. If significant in amount provide an analysis on a separate sheet of paper and attach as a part of Exhibit B.

Line 19.00—Other Long Term Items

Report all other liabilities classified as long-term.

Line 20.00—Minority Interest in Consolidated Affiliates

Report minority interest in equity of consolidated affiliates.

Line 21.00—Total Liabilities

Total lines 14.00 through 20.00.

Lines 22.00 and 23.00—Stockholders' Equity

Report retained earnings and other equity.

Line 24.00—Total Stockholders' Equity

Total lines 22.00 and 23.00.

Line 25.00—Total Liabilities and Stockholders' Equity

Total lines 21.00 and 24.00.

REPORTING COMPANY, INVESTMENTS AND ADVANCES TO UNCONSOLIDATED AFFILIATES

SCHEDULE 5121

GENERAL

Information on individual unconsolidated affiliates must be reported on this schedule only if any amount reported in columns E through K with respect to an individual affiliate exceeds $10 million.

Use additional sheets as necessary. Continue numbering the lines sequentially.

Do not complete columns L and M for non-energy unconsolidated affiliates.

Column A—Affiliate's Name and Code

List the name of each unconsolidated affiliate meeting the above criteria. Use continuation sheets if necessary. Enter in column A a four-digit code corresponding to the number of the line on which the unconsolidated affiliate is reported. For example, enter "0015" for an unconsolidated affiliate reported on line 15.00.

Column B—Business/Geographic Code

Indicate the *two* primary businesses and the *two* principal geographic areas of operation each affiliate listed in column A in order of magnitude. Use the Business/Geographic Code described in the table on the following page. If only one code is applicable use a zero in place of the second number(s).

Column C—Percent Owned

Report the company's percentage common stock ownership in each company listed in column A.

Column D—Accounting Method Code

Indicate the method by which the company accounts for its investment in each affiliate listed in column A. Use the Accounting Method Code described below:

FRS BUSINESS/GEOGRAPHIC CODES

(SCHEDULES 5121 AND 5122)

Use the following four-digit code to indicate the *two* primary business activities and *two* principal geographic areas of operation for each unconsolidated affiliate and joint venture reported in Schedules 5121 and 5122:

First Two Digits Code:	*Primary Business Activity*
1	Petroleum Production
2	Petroleum Refining/Marketing
3	Federally Regulated Pipelines
4	International Marine
5	Coal
6	Nuclear
7	Other Energy
8	Non-Energy (Chemicals)
9	Non-Energy (Other)
Second Two Digits Code:	***Location of Principal Operations***
1	United States
2	Canada
3	OECD Europe
4	Africa (North)
5	Africa (Other)
6	Middle East
7	Other Eastern Hemisphere (Asia)
8	Other Eastern Hemisphere (Other)
9	Other Western Hemisphere

Example: 5623=Unconsolidated affiliate with primary operations in Coal and Nuclear, located in Canada and OECD Europe.

Code	*Accounting Method*
1	Cost Basis
2	Equity Method
3	Other (explain in Exhibit A; see also section entitled "One-Line Consolidations" under "FRS Overview").

Column E—Investments and Advances (Beginning Balance)

Report the beginning-of-period balance of this account.

Column F—Equity in Earnings

Report the company's equity in the net income of each affiliate accounted for by the equity method.

Column G—Equity Method Dividends

Report dividends received from each affiliate that is accounted for by the equity method.

Column H—New Investment and Repayment of Advances

Report new investments (net of advance repayments) made during the reporting period to affiliates.

Column I—Other Changes in Investments and Advances

Report all other changes in investments and advances to the affiliate not included in columns F through H. Explain these changes on a separate sheet of paper attached as a part of Exhibit B.

Column J—Investments and Advances (Ending Balance)

Report the ending balance of this account.

Column K—Cost Method Dividends

Report dividends received from affiliates accounted for by the cost method.

Column L—Total Affiliate Sales

Report total consolidated sales (revenues) for each separately listed affiliate.

Column M—Total Affiliate Assets

Report total consolidated assets for each separately listed affiliate.

REPORTING COMPANY, JOINT VENTURE PARTICIPATION

SCHEDULE 5122

GENERAL

Information on individual joint ventures must be reported on this schedule only if the reporting company's accounts for a particular venture's expenditures (column F plus column G) exceed $10 million during the period or the company's gross investment in the venture (column H) exceeds $30 million at the end of the period. Use continuation sheets if necessary. Continue numbering the lines sequentially.

If no joint ventures exceed these thresholds, report the required information for the reporting company's five largest joint ventures in terms of the reporting company's accounts for venture expenditures (column F plus column G).

Report joint ventures with unaffiliated third parties and unconsolidated affiliates. Include partnerships. DO NOT include activities reported on Schedule 5121.

See Glossary for definition of "joint venture."

Column A—Joint Venture's Name and Code

List the name of each joint venture that meets the selection criteria described above. Use continuation sheets if necessary.

Enter in column A a four-digit code corresponding to the number of the line on which the joint venture is reported. For example, enter "0015" for a joint venture reported on line 15.00.

Column B—Business/Geographic Code

Enter the code (from the table presented with the instructions for Schedule 5121) corresponding to the two primary business activities and two primary locations of the venture.

Column C—Participation

Enter the percentage participation of the company in the venture as of the end of the period. Specify whether this percentage refers to assets (A) or expenditures (E), e.g., 40% A.

Column D—Consolidation Method Code

Enter the code from the following list to indicate whether or not the re-

porting company is the operator of the joint venture and to indicate the method used to consolidate the joint venture financial results with the financial results of the reporting company.

Code:	Method of Consolidation
1	Fully consolidated (operator)
2	Proportionately consolidated (operator)
3	Other (operator)
4	Fully consolidated (non-operator)
5	Proportionately consolidated (non-operator)
6	Other (non-operator)

Column E

Report the year in which the joint venture was formed. For example, if the joint venture was formed in 1974, enter "74".

Column F

Enter the balance in the reporting company's accounts of venture expenditures that were capitalized during the period.

Column G

Enter the balance in the reporting company's accounts of venture expenditures that were expensed during the period.

Column H

Enter the balance in the reporting company's account of venture revenues.

Column I

Enter accumulated DD&A as of the end of the reporting period.

Column J

Enter the balance of the reporting company's gross investment in the venture.

REPORTING COMPANY, CONSOLIDATING STATEMENT OF SOURCES AND USES OF FUNDS

SCHEDULE 5130

SOURCES OF FUNDS

Report consolidated sources of funds (lines 01.00 through 13.00) for the reporting company. Amounts must agree with certified financial statement reporting, except for reclassifications needed to complete the required line items. Itemize these reclassifications on a separate sheet of paper attached as a part of Exhibit B.

USES OF FUNDS

In completing lines 14.00 through 42.00, use column C for additions to the nontraceable assets reported in column C of Schedules 5220, 5320, 5420, 5520, and 5620.

Lines 14.00 through 17.00—Additions to Property, Plant, and Equipment (Petroleum Production Segments)

Report capitalized expenditures for exploration, development, and production as reported on Schedule 5223. Include *all* support equipment and facilities on line 17.00. Assign amounts reported in column E to the geographic areas indicated by columnns F through K.

Lines 18.00 and 19.00—Additions to Property, Plant, and Equipment (Refining/Marketing Segments)

Report capitalized expenditures for refining and marketing as reported on Schedule 5222. Assign amounts reported in column E to the geographic areas indicated by columns F through K.

Lines 20.00 through 23.00—Additions to Property, Plant, and Equipment (Refining/Marketing Primary Transportation)

Report capitalized expenditures for primary transportation property, plant, and equipment used in refining and marketing operations as reported on Schedule 5222. *Exclude* Federally Regulated Pipelines Segment transportation and International Marine Segment transportation reported on lines 24.00 through 27.00. Assign amounts reported in column E to the geographic areas indicated by columns F through K.

Line 20.00—Pipeline Transportation

Report capitalized expenditures for primary pipeline transportation of petroleum products. Include trunk lines, pump and heater stations, storage tanks along lines, delivery facilities, and transmission lines. DO NOT include facilities accounted for as part of other refining and marketing activities.

Line 21.00—Marine Transportation

Report capitalized expenditures for primary marine transportation of petroleum products. Include costs of facilities for inland waterways and ocean-going marine (Jones Act) operations. DO NOT include marine facilities accounted for as part of other refining and marketing activities, such as facilities used in offshore production or terminals associated with refining activities. Include in-progress ship construction.

Line 22.00—Other Transportation

Report capitalized expenditures for other primary facilities used to transport petroleum products (other than by marine or pipeline modes) to the extent that such facilities can be assigned to a refining and marketing transportation and supply function.

Line 23.00—Total Primary Transportation

Total lines 20.00 through 22.00.

Lines 24.00 through 26.00—Additions to Property, Plant, and Equipment (Federally Regulated Pipeline Segments)

Report capitalized expenditures for Federally Regulated Pipeline operations as reported on Schedule 5222. Report crude/liquid pipelines (line 24.00), natural gas pipelines (line 25.00), and refined product pipelines (line 26.00) separately. Use columns A and D only. "Federally regulated" refers to pipeline operations regulated by the Federal Energy Regulatory Commission (formerly the U.S. Interstate Commerce Commission or U.S. Federal Power Commission).

Line 27.00—Additions to Property, Plant and Equipment (International Marine Segment)

Report capitalized expenditures for international marine operations, excluding Jones Act tankers and related equipment, as reported on Schedule 5222.

Line 28.00—Additions to Property, Plant, and Equipment (Total Petroleum)

Total lines 14.00 through 27.00 (less line 23.00).

Lines 29.00 through 33.00—Additions to Property, Plant, and Equipment (Other Industry Segments)

Report capitalized expenditures that can be assigned to the Coal, Nuclear, Other Energy, and Non-Energy.

Line 34.00—Nontraceable Assets

Report capitalized expenditures that cannot be assigned to the segments identified in lines 14.00 through 33.00. This is a breakdown of additions to property, plant, and equipment included in columnn C of Schedule 5120.

Line 35.00—Total Additions to Property, Plant, and Equipment

Total lines 28.00 through 34.00.

Lines 36.00 through 40.00—Traceable Investments and Advances to Unconsolidated Affiliates

Report funds used for investments in and advances to unconsolidated affiliates that can be assigned to the various FRS foreign and domestic segments. If these funds cannot be directly assigned to specific segments, determine the appropriate segment based on the primary business activity of the affiliate, unless data from corporate records are available to make an allo-

cation among the applicable FRS segments. Describe the allocation method used on a separate sheet of paper and attach as part of Exhibit B.

Line 41.00—Nontraceable Investments and Advances to Unconsolidated Affiliates

Report funds used as investments in and advances to unconsolidated affiliates that cannot be assigned to particular segments.

Line 42.00—Total Investments and Advances

Total lines 36.00 through 41.00.

Lines 43.00 through 45.00—Other Investments, Dividends, and Reductions in Long Term Debt

Report funds used for the line items indicated.

Line 46.00—Other Uses of Funds

Report all other uses of funds for the period. If this amount exceeds 5% of the amount reported on line 13.00, provide a detailed anaylsis on a separate sheet of paper attached as part of Exhibit B.

Line 47.00—Total Uses of Funds

Total lines 35.00 and 42.00 through 46.00, column A.

INCREASE/(DECREASE) IN WORKING CAPITAL

Report the net increase/(decrease) in working capital. This amount must equal the difference between line 13.00 and line 47.00, column A.

REPORTING COMPANY, UNCONSOLIDATED AFFILIATES

SCHEDULE 5141

GENERAL

Report the required information for each unconsolidated affiliate listed in Schedule 5121, except for non-energy unconsolidated affiliates.

Line 01.00—Unconsolidated Affiliate

Enter the name and code of the unconsolidated affiliate listed on Schedule 5121 for which this Schedule 5141 is being submitted.

Lines 02.00 through 10.00—Names of Co-owners

Report the names of each major (10% or greater ownership interest) co-owner of the affiliate, including the name of the reporting company. Also, report the percentage ownership of each co-owner in the affiliate. DO NOT report such information for affiliates registered with the Securities and Exchange Commission.

Lines 11.00 through 49.00—Operating Statistics (Total Affiliate)

Report each petroleum affiliate's net wells completed, net working interest production, and net proved reserves on lines 11.00 through 19.00.

Report the other statistical data specified for the affiliate on lines 20.00 through 49.00. Refer to the instructions for Schedules 5241, 5242, 5244, 5246, 5341 and 5441 for definitions of line items 20.00 through 49.00.

Lines 50.00 and 51.00—Energy Research and Development

Complete these lines only if the unconsolidated affiliate is primarily engaged in energy research and development activities, i.e., if 75% or more of its expenses are assignable to research and development efforts.

Report separately the total domestic and foreign research and development expenditures on line 50.00.

Report on line 51.00 the predominant type of research and development activities in which the affiliate is engaged. Use the following code to identify the type of activities:

Code:	Type of Activity
1	Petroleum
2	Coal
3	Nuclear
4	Oil Shale
5	Tar Sands
6	Geothermal
7	Solar
8	Other Energy

REPORTING COMPANY, CONSOLIDATED JOINT VENTURES

SCHEDULE 5142

GENERAL

Report the required information for each joint venture listed in Schedule 5122, except for non-energy joint ventures.

DO NOT include activities reported on Schedule 5141. Report only joint ventures which involve unaffiliated third parties.

Line 01.00—Joint Venture

Enter the name and code of the joint venture listed on Schedule 5122 for which this Schedule 5142 is being submitted.

Lines 02.00 through 10.00—Names of Co-Venturers

Report the names of each major (10% or greater ownership interest) co-venturer and the percentage ownership of each.

Lines 11.00 through 49.00—Operating Statistics (Company Share)

Report the company's share of each petroleum joint venture's net wells completed, net working interest production, and net proved reserves on lines 11.00 through 19.00.

Report the company's share of the other statistical data specified for the joint venture on lines 20.00 through 49.00. Refer to the instructions for Schedules 5241, 5242, 5244, 5246, 5341, and 5441 for definitions of line items 20.00 through 49.00.

Lines 50.00 and 51.00—Energy Research and Development

Complete these lines only if the joint venture is primarily engaged in energy research and development activities, i.e., if 75% or more of its expenses are assignable to research and development efforts.

Report separately the total domestic and foreign research and development expenditures on line 50.00.

Report on line 51.00 the predominant type of research and development activities in which the venture is engaged. Use the following code to identify the type of activities:

Code:	Type of Activity
1	Petroleum
2	Coal
3	Nuclear
4	Oil Shale
5	Tar Sands
6	Geothermal
7	Solar
8	Other Energy

DOMESTIC AND FOREIGN PETROLEUM SEGMENTS, CONSOLIDATING STATEMENT OF INCOME

SCHEDULE 5210

GENERAL

Report consolidating results of operations assignable to domestic and foreign petroleum operations.

Refer to the Glossary for definitions of activities considered as domestic or foreign; Production or Refining/Marketing; Federally Regulated Pipelines; and International Marine.

In general, revenues and expenses should be associated with costs incurred within a segment, but refer of the "FRS Overview" section of the instructions for more detailed explanation of the FRS segments and the petroleum supply and trading function.

Refer to the instructions for Schedule 5211 to identify general operating expense items included in the Production and Refining/Marketing Segments.

Column C—Nontraceable (Domestic and Foreign)

Report amounts that can be assigned to petroleum operations, but cannot be further assigned to specific domestic or foreign segments.

Columns H and P—Nontraceable (Petroleum)

Report amounts that can be assigned to domestic or foreign petroleum operations, but cannot be further assigned specifically to the Production, Refining/Marketing, Federally Regulated Pipeline, or International Marine Segments.

Columns I and Q—Production

Report as raw materials revenues (1) the value of production transferred to the Refining/Marketing Segment and (2) the sales of natural gas and plant products to third parties or unconsolidated affiliates. DO NOT include the value of production used for production purposes, e.g., reinjected gas and crude burned on the lease (see Schedule 5213).

Columns K, L and M—Federally Regulated Pipelines

Report income statement information only if it applies to Federally regulated pipeline operations governed by the Federal Energy Regulatory Commission (formerly the U.S. Interstate Commerce Commission or Federal Power Commission).

Report crude/liquid, natural gas, and refined product pipeline operations as separate segments.

Column S—International Marine

Report income statement information only if it applies to International Marine Segment operations. Include only high seas transportation activities serving a foreign port (i.e., exclude Jones Act shipping).

Include revenues and expenses for voyages by company-owned, leased or chartered vessels carrying cargo for others as well as for the company's own use.

DO NOT include foreign transportation charges paid to third parties for shipments or deliveries of the reporting company's own goods. These costs should be reported in the Refining/Marketing Segment (column R).

OPERATING REVENUES

Report all operating revenues included on Schedule 5110 (line 01.00, column D) in the categories indicated on lines 01.00 through 10.00 (domestic and foreign) as follows:

Line 01.00—Raw Materials

Report the value of the sale or intersegment transfer of crude and condensate, natural gas, plant products, and semi-finished and blending stocks by the domestic and foreign segments. These amounts must agree with the corresponding amounts reported on Schedule 5213, column A, lines 09.00 and 17.00 (domestic); and lines 31.00 and 37.00 (foreign).

Line 02.00—Refined Products

Report all revenues derived from the sale of motor gasoline, distillate fuels, residual fuels, and other refined products by the domestic and foreign segments. These amounts must agree with the corresponding amounts reported on Schedule 5214, column B, line 20.00 (domestic) and line 27.00 (foreign).

Line 03.00—Transportation

Report all revenues derived from Federally Regulated Pipeline Segment operations in column K for transporting crude/liquids, in column L for transporting natural gas, and in column M for transporting refined products.

Report all revenues derived from International Marine Segment operations in column S.

Report all other transportation revenues under the appropriate column heading. For example, the revenues of a domestic intra-state pipeline would be reported in column J.

Line 04.00—Management Fees and Processing Revenues

Report all management fees and processing revenues, domestic and foreign. Include amounts paid to the consolidated reporting company for processing crude oil or other raw materials for the accounts of third parties. Management fees include only those fees for operating oil and gas facilities for host country governments or their agencies.

Line 05.00—Not Used

Line 06.00—Not Used

Lines 07.00 and 08.00—Consumer Excise Taxes

Report all domestic and foreign consumer excise taxes collected by the consolidated company on line 07.00 regardless of whether such amounts are reported in the company's certified financial statements.

If consumer excise taxes are *excluded* from reported operating revenues, also report the amount of excise taxes collected as a deduction (in brackets) on line 08.00.

If consumer excise taxes are *included* in reported operating revenues, enter "0" on line 08.00. Instead, report domestic excise taxes on Schedule 5211, line 59.00; include foreign excise taxes on Schedule 5210, line 11.00.

Line 09.00—Other

Report all other domestic and foreign operating revenues not included on lines 01.00 through 08.00. Include all revenues derived from tire, battery, and accessory (TBA), anti-freeze, undercoating and other sales.

Line 10.00—Total Operating Revenues

Total lines 01.00 through 09.00.

Lines 11.00 through 30.00

Refer to the instructions for Schedule 5110 for revenue and expense definitions applicable to Schedule 5210, lines 11.00 through 30.00 (domestic and foreign). Amounts reported in column A must agree with amounts reported in column D on Schedule 5110. Note that other revenue and expense (lines 18.00 through 26.00) excludes portfolio dividend and interest income, and interest expense and financial charges since these items are considered to be corporate in nature (see Schedule 5110, columns A and C).

PETROLEUM PRODUCTION AND REFINING MARKETING SEGMENTS, GENERAL OPERATING EXPENSES

SCHEDULE 5211

GENERAL

Report costs that can be assigned to petroleum exploration, development, production, and refining/marketing operations that were treated as expenses for certified financial statement reporting. DO NOT include capitalized expenditures; these are reported separately on Schedules 5221, 5222, and 5223.

DOMESTIC PRODUCTION SEGMENT

Segregate reported amounts by the indicated domestic geographic areas based on operating location. Refer to the Glossary for detailed definitions of these areas.

Include only expenses assignable to the Domestic Production Segment. Allocations performed at the district or field level as part of the company's normal reporting system are acceptable and need not be adjusted for this schedule.

EXPLORATION

Line 01.00—Acquisition of Unproved Acreage

Report all expenses incurred for acquiring unproved acreage. Include expenses associated with acquiring leases, mineral rights, and fee lands incident to oil and gas exploration.

DO NOT include expenses related to carrying leases to maintain the company's leasehold interests. These expenses should be reported on line 07.00 (lease rents).

Lines 02.00 through 04.00—Drilling and Equipping of Wells

Report cumulative expenditures expensed for drilling and equipping exploratory wells completed during the period.

Include all expenses incurred from the inception of these completed wells.

Include expenses related to developing successful exploratory wells.

Do NOT include expenses related to activities beyond the christmas tree, as these should be reported under lease equipment on lines 18.00 through 21.00 below.

Line 05.00—Work-in-Progress Adjustment

Report the increase or (decrease) in cumulative expenditures expensed for drilling and equipping exploratory wells-in-progress between the beginning and end of the reporting period.

Line 06.00—Total Drilling and Equipping of Wells

Total lines 02.00 through 05.00. This must equal expenditures expensed during the period.

Line 07.00—Lease Rents

Report expenses related to carrying leases necessary for the company to maintain its leasehold interests.

Line 08.00—Geological and Geophysical

Report all geological and geophysical expenses including, but not limited to, expenses related to salaries, equipment, and supplies for scouts, and geological and geophysical crews.

Include expenses associated with surface and subsurface studies and geochemcial analyses.

Line 09.00—Test Hole Contributions

Report all test well, bottom hole, and dry hole cash contributions expensed during the period. DO NOT reclassify acreage contributions. Refer to the Glossary for definitions of these items.

Line 10.00—Land Department, Leasing, and Scouting

Report all expensed land department, leasing, and scouting costs not considered to be geological and geophysical costs, but related directly to exploratory activities.

Line 11.00—Other Exploration Expenses

Report all other expenses, including direct overhead costs assigned at the field or district level, directly associated with exploration activities.

Line 12.00—Total Exploration Expenses

Total lines 01.00 and 06.00 through 11.00.

DEVELOPMENT

Lines 13.00 through 15.00—Drilling and Equipping of Wells

Report cumulative expenditures expensed for drilling and equipping successful development wells and dry holes completed during the period.

Include all expenses incurred from the inception of these completed wells.

Include expenses related to casing, tubing, and wellhead fittings associated with development wells; costs of roads and grading; costs of drilling platforms; and all expenses incident to development drilling.

Include expenses associated with old wells drilled deeper, redrilled wells, and recompletions.

Exclude expenses for well workovers.

Refer to Glossary definitions of the various descriptive well terms used above.

Line 16.00—Work-in-progress Adjustment

Report the increase or (decrease) in cumulative expenditures expensed for drilling and equipping development wells-in-progress between the beginning and end of the reporting period.

Line 17.00—Total Drilling and Equipping of Wells

Total lines 13.00 through 16.00. This must equal expenditures expensed during the period.

Line 18.00—Lease Equipment

Report all expenses related to acquiring and maintaining lease equipment.

Line 19.00—Lease (Acquisition of Producing Acreage)

Report all expenses incurred in acquiring producing acreage. Include expenses associated with acquiring leases, mineral rights, and fee lands incident to oil and gas development.

Line 20.00—Other Development Expenses

Report all other development expenses not included on lines 13.00 through 19.00.

Line 21.00—Total Development Expenses

Total of lines 17.00 through 20.00.

PRODUCTION (LIFTING)

Refer to the Glossary for definitions of production and production costs. Report amounts expensed during the period as follows (Lines 22.00 through 24.00 are reserved for possible future use):

Line 25.00—Total Well Operation, Maintenance, and Workover Expenses

Report lifting and other expenses that can be assigned to the production of oil and gas. Exclude expenses for exploratory and development activities.

Production costs include labor, supervision in the field, repair and maintenance (See below for workovers), fuel, power and water, small tools and supplies, cost of treating oil, teaming and trucking, insurance, taxes other than income taxes (see instructions for lines 27.00 and 28.00, below, for ad valorem taxes and production or severance taxes paid to State and local governments), buildings, lease or field facilities, and other property used in production operations, bailing, shooting, fracturing, and acidizing (when not part of original competion work), abandonments, and expenditures for maintaining field offices.

Include all expenses of cleaning out and working over wells for the purpose of restoring or increasing the production from the same producing horizon. Costs of old wells drilled deeper, redrilled wells, and recompletions in different producing horizons are included in drilling and equipping development wells (see lines 13.00 through 17.00).

Report all expenses for operations and maintenance of fluid injection and other improved recovery programs, including well operations and maintenance for improved recovery wells. Include workovers of improved recovery wells. Refer to Glossary for definitions of "improved recovery."

Include the value of all materials used, except the reporting company's own raw material production used on the lease which is reported on Schedule 5213, lines 02.00 and 24.00.

Line 26.99—Gas Processing Facilities

Include all expenses for the operation and maintenance of natural gas cycling and processing plants included on line 22.00 of Schedule 5223.

Line 27.00—Ad Valorem Taxes

Include all expenses for ad valorem taxes on producing properties, equipment, buildings, lease or field facilities, and other property used in production operations. Exclude ad valorem taxes on undeveloped properties and on buildings and equipment used for exploratory purposes. (Include these items in other exploration costs on line 11.00 above.)

Line 28.00—Severance Taxes

Include payments of production or severance taxes to State and local Governments. DO NOT reduce the revenues from crude oil or natural gas produced at the wellhead by such amounts.

Line 29.00—Other Production Expenses

Report overhead expense, especially at the district and field levels, and other expenses not included elsewhere, which are assigned to the production function. Include domestic royalty expenses.

Line 30.00—Total Production (Lifting)

Total lines 25.00 through 29.00.

Line 31.00

Total lines 12.00, 21.00, and 30.00.

Line 32.00—DD&A of Support Equipment and Facilities

Report the amount of DD&A applicable to support equipment and facilities. Report this amount as a deduction (credit).

Lines 33.00 and 34.00—Natural Gas and Natural Gas Liquids

Report on line 33.00 all expenses incurred by the Domestic Production Segment in purchasing natural gas and natural gas liquids for processing and resale. Include inventory changes.

Report on line 34.00 all selling and related expenses incurred directly by the Domestic Production Segment in disposing of natural gas and natural gas liquids to third parties and unconsolidated affiliates.

Line 35.00—Total Domestic Production Segment General Operating Expenses

Total lines 31.00 through 34.00. Note that line 32.00 is a negative amount and will therefore be excluded from total Domestic Production Segment general operating expenses reported here on line 35.00 and on Schedule 5210, line 11.00, column I.

DOMESTIC REFINING MARKETING SEGMENT

Report the expenses that can be assigned to the Domestic Refining/Marketing Segment as described below.

Operating expenses must be segregated among the indicated raw material, refined product, and marketing categories.

The marketing function includes the operation of terminals, bulk plants, retail outlets, and transportation facilities used for delivering refined products. Canning plant operations (e.g., blending, compounding, and canning lube oil products) should be included in refinery operating expenses.

DO NOT include the expenses of petrochemical operations since such operations must be included in the Chemical Segment and reported on Schedules 5610 and 5620 columns F through J.

Line 36.00—Raw Material Purchases

Report purchases by the Domestic Refining/Marketing Segment of crude oil, condensate, natural gas, plant products, semifinished products, and blending stocks as reported on Schedule 5212, line 05.00, column A.

Line 37.00—Raw Material Transportation

Report total domestic expenses incurred in transporting raw materials for the company's own use as reported on Schedule 5215, line 19.00.

Line 38.00—Raw Material Exchange Differentials

Report all domestic raw material exchange differentials. Include differentials arising from differences in the quality, quantity, and location of raw materials.

Include in "raw material exchange differentials" those differentials arising from "product for raw material" exchanges if raw materials were *received* by the reporting company.

Report multi-party exchanges in accordance with the reporting company's normal accounting practices.

Line 39.00—Changes in Raw Material Inventories

Report the net change in domestic inventories of crude, condensate, natural gas, plant products, semifinished products, and blending stocks between the beginning and end of the reporting period.

Line 40.00—Other Raw Material Supply Expense

Report all other domestic raw material supply expenses not included in lines 36.00 through 39.00.

Line 41.00—Total Raw Material Supply Expense

Total lines 36.00 through 40.00.

Line 42.00—Less: Raw Materials Input to Refining

Report the value of total raw materials input to domestic refining.

Line 43.00—Net Raw Material Supply

Line 41.00 minus line 42.00.

Line 44.00—Raw Materials Input to Refining

Report the value of total raw materials input to domestic refining. This amount must agree with the amount reported on line 42.00 above.

Line 45.00—Credit Amount of Raw Material Used As Refinery Fuel

Report the value of raw materials input to domestic refining (line 42.00) that were subsequently used as refinery fuel. This figure should be reported as a deduction (credit).

Line 46.00—Refinery Process Energy Expense

Report all domestic refinery process energy expenses, including cost of own fuel, purchased fuel, electricity, and steam used in the process of refining. Include amounts reported on line 45.00.

Line 47.00—DOE Crude Entitlements

Report net crude oil entitlements recorded under the provisions of the Department of Energy's Crude Oil Equalization Program.

Line 48.00—Other Refining Operating Expenses

Report all other domestic refining operating expenses. (All foreign refining operating expenses, including raw material acquistions, must be reported on Schedule 5210, line 11.00, column R).

Line 49.00—Refined Product Purchases

Report domestic refined product purchases as reported on Schedule 5212, line 05.00, column F.

Line 50.00—Refined Product Exchange Differentials

Report all domestic refined product exchange differentials. Include differentials arising from differences in the quality, quantity, and location of refined products.

Include in "refined product exchange differentials" those differentials arising from "raw material for product" exchanges if refined products were *received* by the reporting company.

Report multi-party exchanges in accordance with the reporting company's normal accounting practices.

Line 51.00—Changes in Refined Product Inventories

Report the change between the beginning-of-period and end-of-period domestic inventories of refined products held for resale. Report inventory changes for other merchandise on line 56.00.

Line 52.00—Refined Product Transportation

Report all identifiable refined product transportation expenses as reported on Schedule 5215, line 20.00. Report amounts as they apply to the domestic marketing operations of the company.

Line 53.00—Other Refined Product Supply Expenses

Report all other domestic refined product supply general operating expenses not included on lines 44.00 through 52.00.

Include all taxes applicable to refined product supply (other than income taxes and consumer excise taxes). Also include any canning and blending operation expenses not assigned to other marketing expenses (line 62.00).

DO NOT include any amounts incurred in Federally regulated pipeline operations.

Line 54.00—Total

Total lines 44.00 through 53.00.

Line 55.00—Purchases of Other Products (including TBA)

Reporting domestic purchases of other products held for resale, including tires, batteries, and accessories (TBA) and other merchandise.

Line 56.00—Changes in Other Product Inventories (including TBA)

Report the change between the beginning-of-period and end-of-period domestic inventories of other products held for resale. Include tires, batteries, and accessories (TBA) and other merchandise. Report inventory changes for refined products on line 51.00.

Amounts reported should be net of valuation reserves. (Refer to instructions for Schedule 5120, lines 03.00 and 04.00, regarding inventory reporting requirements.)

Line 57.00—Advertising

Report all Domestic Refining/Marketing Segment advertising expenses for the period. Include all costs related to advertising the company's name, products or services in newspapers, periodicals, or other advertising media.

Line 58.00—DOE Residual Fuel Entitlements

Report net entitlements recorded under the provisions of the Department of Energy's Residual Fuel Entitlements Program.

Line 59.00—Consumer Excise Taxes

If consumer excise taxes are included in total operating revenues on Schedule 5210, line 10.00, report the same amount of excise taxes here on line 59.00.

Line 60.00—Credit Card Operating Expense

Report direct expenses of credit card operations including costs of recordkeeping and billing personnel and equipment.

Line 61.00—Company-Operated (Salaried) Retail Operating Expenses

Report direct operating expenses of company-operated retail outlets including rent, real estate taxes, utilities, payroll, repairs, and maintenance.

Line 62.00—Other Marketing Expenses

Report all other domestic marketing operation expenses not included on lines 55.00 through 61.00. Include expenses of any canning and blending operations that might be assigned to the marketing function.

Line 63.00—Total Marketing Expenses

Total lines 55.00 through 62.00

Line Line 64.00—Expense of Transportation Services for Others

Report all domestic transportation expenses applicable to the transportation revenues reported on Schedule 5210, line 03.00, column J. This expense represents the cost of transporting goods for third parties and unconsolidated affiliates. This amount must agree with the amount reported on Schedule 5215, line 21.00.

Line 65.00—Total Domestic Refining/Marketing Segment General Operating Expenses

Total lines 43.00, 54.00, 63.00, and 64.00. This amount must agree with the amount reported on Schedule 5210, line 11.00, column J.

FOREIGN PRODUCTION SEGMENT

Report all Foreign Production Segment general operating expenses in the categories listed. Refer to the above instructions for the Domestic Production Segment (lines 01.00 through 35.00) for detailed definitions of the above categories covered by lines 66.00 through 83.00.

Note that "other exploration", "other development", and "other production" for foreign operations include cost items that are identified in more detail on lines 01.00 through 31.00 for domestic operations.

The total amount reported on line 83.00, column A, must agree with the amount reported on Schedule 5210, line 11.00, column Q.

FOREIGN REFINING/MARKETING SEGMENT

Report all Foreign Refining/Marketing Segment general operating expenses as a single entry on Schedule 5210, line 11.00, column R.

PETROLEUM REFINING/MARKETING SEGMENTS ACQUISITIONS OF RAW MATERIALS AND REFINED PRODUCTS

SCHEDULE 5212

GENERAL

Read the "FRS Overview" section of the instructions concerning petroleum supply and trading before completing this schedule.

Report acquisitions (domestic and foreign volumes; domestic values) of raw materials and refined products as specified. Refer to the Glossary for definitions of classifications appearing in the column headings.

Report all volumes in thousands of 42 U.S. gallon barrels (MB), except for natural gas, which is to be reported in millions of cubic feet (MMCF). DO NOT report raw material volume totals in column A.

Report domestic and foreign volumes and domestic values for purchase/sale agreements and brokerage activities in accordance with the company's normal accounting practices. DO NOT report exchanges; these are reported on Schedule 5245.

Report transfers of raw materials from the Production Segment to the Refining/Marketing Segment as purchases by the Refining/Marketing Segment as explained in the "FRS Overview" section of the instructions concerning petroleum supply and trading.

Include intersegment tansactions.

DOMESTIC

Report the dollar value (lines 01.00 through 05.00) and volume (lines 06.00 through 10.00) of raw material and refined product purchases. Raw material transporation costs should not be included. Instead they should be reported on Schedule 5211, line 37.00, unless purchases were made f.o.b. destination and transportation cannot be separated from material costs.

Line 01.00—Domestic Production Segment

Report the value of raw material purchased by the Domestic Refining/Marketing Segment from the Domestic Production Segment, including all company-owned domestic production for the period.

Line 02.00—Foreign Refining/Marketing Segment

Report the value of foreign source raw material and refined products purchased by the Domestic Refining/Marketing Segment from the Foreign Refining/Marketing Segment and landed at domestic locations. These amounts should also be reported as dispositions by the Foreign Refining/Marketing Segment on Schedule 5213 (raw materials) or 5214 (refined product), as appropriate.

Lines 03.00 and 04.00—Domestic Unconsolidated Affiliates and Unaffiliated Third Parties

Report purchases from domestic unconsolidated affiliates and unaffiliated third parties on lines 03.00 and 04.00, respectively. Include purchase/sale agreements and brokerage activities in accordance with the company's normal accounting practices.

Line 05.00—Total Cost of Purchases

Total lines 01.00 through 04.00. The total in each column must equal all domestic acquistions of raw material and refined products during the period, excluding the reporting company's refinery output.

Lines 06.00 through 10.00—Volumes Purchased

Report the volumes of raw material and refined product purchases reported on lines 01.00 through 05.00 above.

FOREIGN

Lines 11.00 through 18.00—Volumes Purchased

Report volumes of raw material and refined product acquired by the company's Foreign Refining/Marketing Segment. Note that refined products need only be reported in column F; detailed breakdowns by product type are not required.

Assign volumes purchased from foreign unaffiliated third parties to the categories sepcified on lines 14.00 and 15.00 to the extent that vendors can be identified as entities which are either wholly-owned by a foreign government or operate as a foreign government unit. All other voumes purchased by the company's Foreign Refining/Marketing Segment from foreign unaffiliated third parties should be reported on line 16.00.

Amounts reported here on line 12.00 should also be reported as dispositions by the Domestic Refining/Marketing Segment on Schedules 5213 (raw material) or 5214 (refined products), as appropriate.

PETROLEUM PRODUCTION AND REFINING/MARKETING SEGMENTS, DISPOSITIONS OF RAW MATERIALS

SCHEDULE 5213

GENERAL

Read the "FRS Overview" section of the instructions concerning petroleum supply and trading before completing this schedule.

Report all sales and other dispositions of petroleum raw materials (crude oil, natural gas, natural gas liquids, semi-finished products, and blending stocks). Refer to the Glossary for definitions of the material classifications appearing in the column headings. Report these amounts net of sales discounts.

Report all volumes in thousands of 42 U.S. gallon barrels (MB), except for natural gas, which is to be reported in millions of cubic feet (MMCF).

Report volumes and values of purchase/sale agreements and brokerage activities in accordance with the company's normal accounting practices.

DOMESTIC DISPOSITIONS

Line 01.00—Total Value of Production and Purchases

Report the domestic volume and value of all raw material production. Include purchases of natural gas and plant products. That portion of production used by the Domestic Production Segment for production is not recognized as an expense, but is reported separately on line 02.00 below.

Line 02.00—Less: Amounts Used in Production

Report as a deduction (credit) the domestic volume and value of raw material production used in the production process.

Line 03.00—Raw Material Inventory Changes

Report the domestic volume and value of changes in Domestic Production Segment raw material inventories between the beginning and end of the reporting period.

Line 04.00—Domestic Production Segment Sales

Total lines 01.00 through 03.00. This amount must agree with the amount reported on line 09.00 below.

Line 05.00—Domestic Refining/Marketing Segment

Report all sales of raw materials by the Domestic Production Segment to the Domestic Refining/Marketing Segment.

Line 06.00—Other Domestic Segments

Report natural gas and natural gas liquid sales by the Domestic Production Segment to other domestic segments of the reporting company.

Line 07.00—Unconsolidated Affiliates

Report natural gas and natural gas liquid sales by the Domestic Production Segment that are made to unconsolidated affiliates.

Line 08.00—Third Parties

Report natural gas and natural gas liquid sales by the Domestic Production Segment that are made to unaffiliated third parties.

Line 09.00—Total Domestic Production Segment Dispositions

Total lines 05.00 through 08.00. The amount in column A must agree with the amount reported on Schedule 5210, line 01.00, column I. The amount in each column on line 09.00 must agree with the amounts reported above on line 04.00 in each column.

Lines 10.00 through 13.00—Sales to Other Company Segments

Report volumes and values of all raw materials sold or transferred by the Domestic Refining/Marketing Segment to the segments indicated.

Feedstocks reported on line 11.00 should be net of any raw materials returned to the Domestic Refining/Marketing Segment by the Domestic Chemical Segment.

Amounts reported on line 13.00 relating to Federally Regulated Pipeline Segment operations should represent only materials used as fuel by that segment (e.g., natural gas to run pipeline pumps and compressors).

Lines 14.00 and 15.00—Unconsolidated Domestic Affiliates

Report all raw material dispositions by the Domestic Refining/Marketing Segment to unconsolidated domestic affiliates whose primary operations are in the petroleum industry (line 14.00) or other industries (line 15.00).

Exclude sales by the Domestic Production Segment to unconsolidated domestic affiliates reported on line 07.00.

Line 16.00—Domestic Unaffiliated Third Parties

Report all raw material sales made by the Domestic Refining/Marketing Segment to domestic unaffiliated third parites.

Exclude sales by the Domestic Production Segment to unaffiliated domestic third parties reported on line 08.00.

Line 17.00—Total Domestic Refining/Marketing Segment Sales

Total lines 10.00 through 16.00. The amount reported in column A must agree with the amount reported in Schedule 5210, line 01.00, column J.

Lines 18.00 and 19.00—Own Domestic Refineries and Other Refineries (for own account)

Report raw materials input to or used in company-owned domestic refineries and input to others' refineries for the reporting company's account. Include raw materials processed into refined products and raw materials consumed as fuel in the refining process.

These raw materials must be valued at their cost to the Domestic Refining/Marketing Segment.

Line 20.00—Other (Including Transportation Cost Centers)

Report raw materials consumed within the Domestic Refining/Marketing segment not reported on lines 18.00 and 19.00 above. Include consumption by such users as non-Federally regulated pipelines and domestic marine (i.e., those users that are classified by FRS as part of the Domestic Refining/Marketing Segment.

These raw materials must be valued at their cost to the Domestic Refining/Marketing Segment.

Line 21.00—Total Internal Use and Input

Total lines 18.00 through 20.00.

Line 22.00—Total Domestic Refining/Marketing Segment Dispositions

Total lines 17.00 and 21.00.

FOREIGN DISPOSITIONS

Report sales and other dispositions by the Foreign Production and Foreign Refining/Marketing Segments on lines 23.00 through 41.00 in the same manner as domestic sales and other dispositions are reported on lines 01.00 through 22.00.

Note that line 34.00 includes raw materials consumed as fuel by the International Marine Segment.

PETROLEUM REFINING/MARKETING SEGMENT, DISPOSITION OF REFINED PRODUCTS

SCHEDULE 5214

GENERAL

Read the "FRS Overview" section of the instructions concerning petroleum supply and trading before completing this schedule.

Report all refined product dispositions by the company and its consolidated affiliates. Refer to the Glossary for definitions of product classifications appearing in the column headings.

Report all volumes in thousands of 42 U.S. gallon barrels (MB).

Report all sales amounts net of sales discounts.

Report exchanges pursuant to the reporting company's normal accounting practice; those not recorded as sales, must be reported on Schedule 5245.

Exclude consumer excise taxes from all dollar amounts reported.

Note that petrochemical manufacturing operations must be reported separately on Schedules 5620 and 5610.

DOMESTIC DISPOSITIONS

Lines 01.00 through 05.00—Domestic Intra-Company Sales

Report all refined product sales and transfers from the Domestic Refining/Marketing Segment to each of the other company segments indicated.

Amounts reported on line 02.00 should be net of any refined products returned to the Domestic Refining/Marketing Segment from petrochemical plants.

Amounts reported on line 05.00 should include refined products consumed as fuel in operations of Federally regulated pipelines.

Lines 06.00—Total Domestic Intra-Company Sales

Total lines 01.00 through 05.00. Amounts reported should include all dispositions of refined products by the Domestic Refining/Marketing Segment, other than to third parties.

Lines 07.00 through 12.00—Wholesale-Resellers

Report motor gasoline sales to wholesale-resellers separately for branded and unbranded motor gasoline.

Report rack sales on the basis of individual deliveries *into* customer tank wagons or transports. Report tank wagon sales on the basis of individual deliveries to customers *via* company tank wagons or transports

Report common carrier tank wagon deliveries on lines 08.00 and 11.00 if paid for by the reporting company and on lines 07.00 and 10.00 if paid for by the customer.

Report company tank wagon or transport deliveries of branded motor fuels to company-operated outlets, lessee dealers, and open dealers on line 14.00, below.

Report company tank wagon or transport deliveries of branded motor fuels to other purchasers (e.g., branded independent marketers) on line 08.00.

Line 13.00—Total Wholesale-Resellers

Total lines 07.00 through 12.00, columns C and D, for motor gasoline; report sales of distillate fuels, residual fuels, and other refined products to wholesale-resellers in columns E through J.

Lines 14.00 through 16.00—Ultimate Consumption

Report refined product sales to the ultimate consumer categories indicated.

Report on line 14.00 sales to "company retail outlets" (see Glossary). Motor gasoline sales are further disaggregated on Schedule 5243. Report sales to other non-automotive retail outlets (such as marinas and airports) on line 15.00. Report industrial and commercial sales on line 16.00.

Lines 17.00 and 18.00—Domestic Unconsolidated Affiliates

Report sales by the Domestic Refining/Marketing Segment to domestic unconsolidated affiliates operating in the chemical industry (line 17.00) and other industries (line 18.00).

Line 19.00—Total Domestic Third-Party Sales

Total lines 13.00 through 18.00.

Line 20.00—Total Domestic Dispositions

Total lines 06.00 and 19.00. The amount reported in column (B) must agree with the amount reported in Schedule 5210, line 02.00, column J.

FOREIGN DISPOSITIONS

Report all sales, tranfers, and other dispositions of refined products by the Foreign Refining/Marketing Segment on lines 21.00 through 27.00 in the same manner as domestic dispositions are reported on lines 01.00 through 20.00

Report total volumes and values in column A and B. DO NOT report dispositions by product type. Amounts reported on line 22.00 should include refined products used as fuel by the International Marine segment.

The amount reported on line 27.00, column B, must agree with the amount reported on Schedule 5210, line 02.00, column R.

DOMESTIC AND FOREIGN PETROLEUM SEGMENTS, PRIMARY TRANSPORTATION EXPENSES

SCHEDULE 5215

GENERAL

Schedule 5215 summarizes all primary transportation expenses incurred by the Domestic Refining/Marketing Segment, whether it be through its own internally-operated transportation facilities or purchased from third parties or other segments.

The total transportation expense includes the operation of facilities serving third parties, including pipelines not included in the Federally Regulated Pipeline Segment.

DOMESTIC PRIMARY PETROLEUM TRANSPORTATION EXPENSES

Lines 01.00 through 16.00—By Source

Report primary transportation expenses according to how it was incurred (i.e., by source).

Lines 17.00 through 22.00—By Application

Report primary transportation expenses according to how the transportation was used (i.e., either for own use (raw materials or refined products) or for others).

Report on line 21.00 (transportation expense for others) the expenses incurred by the reporting company to produce the transportation revenues reported on Schedule 5210, line 03.00. DO NOT treat these transportation revenues as a deduction from transportation expenses.

FOREIGN PRIMARY PETROLEUM TRANSPORTATION EXPENSES

Line 23.00—Amounts Charged by International Marine Segment to the Foreign Refining/Marketing Segment

Report the amount charged by the International Marine Segment to the Foreign Refining/Marketing Segment.

DOMESTIC AND FOREIGN PETROLEUM SEGMENTS, SELECTED CONSOLIDATING BALANCE SHEET ITEMS

SCHEDULE 5220

GENERAL

Report balance sheet amounts recorded in the company's certified financial statements. Specific definitions are provided below with regard to the domestic and foreign segments within petroleum (i.e., Production, Refining/Marketing, Federally Regulated Pipelines (crude and liquid, natural gas, and refined product), and International Marine).

Definitions of "foreign" and "domestic" appear in the Glossary.

Report in column C as nontraceable balance sheet items not directly attributable to either domestic or foreign operations.

Report in column H as nontraceable amounts that are considered by the company to relate directly to domestic petroleum operations, but that do not fall under the categories "Production," "Refining/Marketing," or "Federally Regulated Pipelines".

All amounts reported in column A must agree with the corresponding amounts reported on Schedule 5120, column D.

Line 01.00—Trade Accounts and Notes Receivable

Report third party and unconsolidated affiliate trade accounts and notes receivable (net of reserves for uncollectable amounts) as they are recorded in the company's financial records for certified financial statement reporting.

DO NOT include amounts reported on Schedule II of Form 10-K. DO NOT include intersegment receivables or receivables from consolidated affiliates.

Amounts reported on this line may include net exchange imbalances if it is the company's policy to record such amounts as trade receivables in its certified financial statements.

Report only those amounts that are specifically attributable to domestic and foreign petroleum operations.

Lines 02.00 and 03.00—Inventories

Report end-of-period inventories separately for raw materials and products (line 02.00) and materials and supplies (line 03.00) according to the valuation methods used in the reporting company's certified financial statements.

Exchange imbalances may be reported either in inventory or as a receivable in accordance with the company's normal external reporting practices.

Allocate valuation reserves (e.g., LIFO reserves) to the Production, Refining/Marketing, Federally Regulated Pipeline, and International Marine Segments on the basis of the relative value of the inventories of each segment to total inventories, unless the company separates valuation reserves for each category of inventories in its books of account.

Production Segment. Report inventories of crude oil, natural gas, natural gas liquids, and semi-finished and blending stocks held by the Production Segment for resale or refinery input.

Refining/Marketing Segment. Report inventories of crude oil, condensate, natural gas, plant products, and semi-finished and blending material inventories held by the Refining/Marketing Segment for resale or refinery imputs. Include line-fill. Include all refined product inventories, such as inventories of gasolines, distillates, residual fuels, and other outputs of the refining process not requiring further processing to be salable as a finished product. DO NOT include inventories of chemicals or petrochemicals. Include inventories of tires, batteries, and accessories held for resale.

Line 04.00—Gross Property, Plant, and Equipment

Report all capitalized non-current costs directly associated with the company's petroleum operations as follows:

Production Segment. Report capitalized costs of exploration, development, and production activities and of support equipment and facilities. See the instructions to Schedule 5223 for the composition of these costs.

Refining/Marketing Segment. Report capitalized costs pertaining to refining, marketing and primary transportation operations as defined in the instructions to Schedule 5222, lines 08.00 through 11.00.

Federally Regulated Pipeline Segment. Report capitalized costs pertaining to Federally Regulated Pipelines as reported to the Federal Energy Regulatory Commission (formerly the U.S. Interstate Commerce Commission or Federal Power Commission).

International Marine Segment. Report capitalized costs pertaining to international marine operations. Include company-owned vessels, capitalized leases on vessels, and in-progress ship construction. DO NOT include costs pertaining to domestic inland waterway or ocean-going vessels subject to the Jones Act.

Line 05.00—Accumulated DD&A

Report DD&A and valuation charges relating to capitalized costs reported on line 04.00.

Line 06.00—Net Property, Plant, and Equipment

Line 04.00 less line 05.00.

Line 07.00—Investments in and Advances to Unconsolidated Affiliates

Report investments in and advances to unconsolidated affiliates as they are recorded in the company's financial records. In the case of a multi-segment affiliate, determine the appropriate segment based on the affiliate's primary business activity.

Line 08.00—Other Non-current Assets

Report all other non-current assets which are directly associated with the company's petroleum operations.

Line 09.00—Total Non-current Assets

Total lines 06.00 through 08.00.

DOMESTIC AND FOREIGN PETROLEUM SEGMENTS, NET PROPERTY AND OTHER CAPITALIZED COST BALANCES

SCHEDULE 5221

GENERAL

Report the end-of-period balances (at net book value) of demestic and foreign petroleum properties and other capitalized costs. These balances should be assigned to the segments and geographic areas indicated by the lines and columns, respectively.

Refer to the instructions for Schedule 5222 for detailed definitions of the line items specified.

Amounts reported in columns A, B, an G must agree with the corresponding amounts reported in column H of Schedule 5222.

DOMESTIC AND FOREIGN PETROLEUM SEGMENTS, CHANGES IN NET PROPERTY AND OTHER CAPITALIZED COST BALANCES

SCHEDULE 5222

GENERAL

Report beginning-of-period balances at net book value (column A), additions at cost (column B), and book value of disposals, including retirements and abandonments (column D), representing retirements and sales at cost, in the manner prescribed for reporting on Schedule V of Form 10-K.

Gains or losses on disposals reported in column C should reflect the difference between the net book value of sales and retirements and proceeds recorded during the year.

Report the current period depreciation, depletion, and amortization[1] (column E) and valuation allowances and dry hole charges[2] (column F) in

[1] If depreciation, depletion, and amortization (DD&A) balances cannot be identified separately with respect to the asset categories presented, they may be allocated based on the historical costs of asset balances in a category relative to the total asset cost for the lowest level of aggregation in which DD&A is computed.

[2] Refer to the Glossary for definitions of "valuation allowance" and "dry hole charge".

accordance with Form 10-K reporting requirements.

Adjustments reported in column G should include the net book value of transfers between classifications.

Ordinary retirements charged or credited to reserve accounts in conformity with the company's normal accounting practices need not be separately reported. However, the gain or loss from property disposals should be reported separately if greater than 1% of the segment's pretax income.

Column H must equal the net total of columns A, B, D, E, F, and G.

DOMESTIC PRODUCTION SEGMENT

Lines 01.00 through 06.00—Domestic Production Segment

Report amounts as described above with respect to mineral interestes in proved and unproved properties, as well as related equipment and facilities, support equipment and facilities, and uncompleted wells, equipment, and facilities. Include facilities for natural gas liquid plant operations (line 03.00). Refer to the Glossary for descriptions of amounts to be included in these categories.

Line 07.00—Total Domestic Production Segment

Total lines 01.00 through 06.00.

DOMESTIC REFINING/MARKETING SEGMENT

Line 08.00—Refining

Report amounts pertaining to facilities associated with the refining of petroleum materials. Include facilities for utilities, warehousing, storage, and general and administrative facilities that pertain directly to refinery operations.

Exclude facilities relating to petrochemical operations.

Include transportation facilities normally associated with refining.

Line 09.00—Marketing

Report amounts associated with the marketing of petroleum products. Include terminals, bulk plants, retail outlets, any associated canning and blending activities and other facilities *directly* associated with marketing activities. Include transportation facilities normally associated with marketing.

Line 10.00—Transportation

Report amounts associated with transportation of petroleum products, excluding International Marine Segment operations (see line 34.00) and Federally Regulated Pipeline Segment operations (see line 12.00, 13.00, and 14.00).

To the extent they can be identified separately from refining and marketing costs, include capitalized costs related to pump and heater stations, storage tanks, delivery facilities, transmission lines, and costs of facilities for inland waterway and domestic ocean-going marine operations, and construction of domestic vessels in progress.

DO NOT include facilities normally associated with other departments such as facilities used in offshore production or terminals associated with refining activities.

Line 11.00—Total Refining/Marketing Segment

Total lines 08.00 through 10.00.

Lines 12.00, 13.00 and 14.00—Federally Regulated Pipelines

Report amounts pertaining to Federally regulated pipelines as governed by the Federal Energy Regulatory Commission (formerly the U.S. Interstate Commerce Commission and Federal Power Commission). Segregate these amounts between crude/liquid pipelines (line 12.00), natural gas pipelines (line 13.00), and refined product pipelines (line 14.00).

Lines 15.00 and 16.00—Refinery Refurbishment, Expansion and New Construction

Segregate costs reported in line 08.00, column B, as to expenditures made for expansion and refurbishment of existing refining facilities (line 15.00) and expenditures pertaining to new refinery construction (line 16.00). Include the cost of land for new construction and expansion.

Line 17.00—Other Refinery Additions

Report all other amounts applicable to refining additions.

Line 18.00—Total Refinery Additions

Total lines 15.00 through 17.00. (Must equal line 08.00, column B).

Lines 19.00 and 20.00—Retail Outlet Refurbishment, Expansion and New Construction

Segregate costs reported in line 09.00, column B as to expenditures made for expansion and refurbishment of existing marketing facilities and expenditures pertaining to construction of new facilities. Include the cost of land for new construction and expansion.

Line 21.00—Other Marketing Additions

Report all other amounts applicable to marketing additions.

Line 22.00—Total Marketing Additions

Total lines 19.00 through 21.00. (Must equal line 09.00, column B).

FOREIGN PRODUCTION AND FOREIGN REFINING/MARKETING SEGMENTS

Lines 23.00 through 33.00

Report amounts pertaining to the Foreign Production Segment (lines 23.00 through 29.00) and the Foreign Refining/Marketing Segment (lines 30.00 through 33.00) in accordance with the instructions outlined above.

INTERNATIONAL MARINE SEGMENT

Line 34.00

Report amounts pertaining to international marine operations. Include vessels owned or leased by the company engaged in international transportation of petroleum products not subject to the Jones Act. Include construction in progress of ocean-going vessels.

DOMESTIC AND FOREIGN PETROLEUM PRODUCTION SEGMENTS, EXPLORATION, DEVELOPMENT, AND PRODUCTION EXPENDITURES CAPITALIZED

SCHEDULE 5223

GENERAL

Report all costs capitalized during the period that are associated with the domestic and foreign exploration, development, and production operations and with support equipment and facilities.

Segregate reported amounts by the indicated domestic and foreign geographic areas based on operating location. Refer to the Glossary for detailed definitions of these areas.

Capitalized expenditures not directly associated with the Domestic Production Segment or the Foreign Production Segment should not be included. No arbitrary allocations should be made. However, allocations which are performed at the district or field level as part of the company's normal reporting system are acceptable and need not be adjusted for this report.

Report only those amounts representing the net company interest in capitalized costs.

Amounts relating to petroleum production activities that are expensed during the period are to be reported separately on Schedule 5211.

DOMESTIC EXPLORATION

Line 01.00—Acquisition of Unproved Acreage

Report the net company interest in direct domestic expenditures incurred for acquiring unproved acreage. Include lease bonuses; options to purchase or lease properties; title costs; recording, broker, and legal fees; advance initial royalties; and any other direct outlays necessary to acquire leases, mineral rights, and fee lands incident to oil and gas exploration.

DO NOT include minimum royalties or annual rentals which should be reported as lease rents on line 07.00.

Lines 02.00 through 04.00—Drilling and Equipping of Wells

Report cumulative domestic expenditures capitalized for drilling and equipping exploratory wells completed during the period, reduced by the amount of outside cash contributions such as bottom hole or dry hole contributions.

Include all expenditures capitalized since the inception of these completed wells.

Include expenditures for casing, tubing, and other equipment, including equipment installed for development of successful exploratory wells, such as downhole pumping equipment, platforms, and the wellhead assembly, as well as the costs of roads, grading, etc.

DO NOT include costs related to equipment beyond the christmas tree, as these should be reported under lease equipment on lines 18.00 through 21.00 below.

Reduce costs of exploratory dry holes by salvage of equipment capable of re-use.

Line 05.00—Work-in-Progress Adjustment

Report the increase or (decrease) in expenditures capitalized for drilling and equipping domestic exploratory wells-in-progress between the beginning and end of the reporting period.

Line 06.00—Total Drilling and Equipping of Wells

Total lines 02.00 through 05.00. This must equal the expenditures capitalized during the period.

Line 07.00—Lease Rents

Report domestic delay rentals, minimum royalties, and annual rentals capitalzed. Include all rentals (other than bonuses reported on line 01.00 above) and other costs of carrying leases necessary for the company to maintain its leasehold interests.

Line 08.00—Geological and Geophysical

Report all capitalized domestic geological and geophysical expenditures including, but not limited to, costs incurred for salaries, equipment and supplies for scouts, and geological and geophysical crews.

Include costs of surface and subsurface studies and geochemical analyses.

Include costs of core drilling where the intention in advance of drilling is not to complete the well as a producing well or where productive completion is not possible.

Line 09.00—Test Hole contributions

Report all domestic test well, bottom hole, and dry hole contributions capitalized during the period. DO NOT include the costs of acreage contributions which should be reported as acquisition of nonproducing acreage (line 01.00).

Line 10.00—Land Department, Leasing, and Scouting

Report all capitalized domestic land department, leasing, and scouting costs not considered to be geological and geophysical costs, but related directly to exploratory activities.

Line 11.00—Other Capitalized Exploration Costs

Report all other capitalized domestic costs, including direct overhead costs assigned at the field or district level, directly associated with exploration activities. Include costs associated with exploratory capital equipment constructed or purchased.

Line 12.00—Total Capitalized Exploration Costs

Total line 01.00 and 06.00 through 11.00.

DOMESTIC DEVELOPMENT

Lines 13.00 through 15.00—Drilling and Equipping of Wells

Report cumulative domestic expenditures capitalized for drilling and equipping development wells (reduced by the amount of outside cash contributions such as bottom hole or dry hole) completed during the period.

Include all expenditures capitalized since the inception of these completed wells.

Include casing, tubing, and wellhead fittings associated with development wells; costs of roads and grading; costs of drilling platforms; and all costs incident to development drilling.

Include costs of old wells drilled deeper, redrilled wells, and recompletions.

Exclude costs of service wells, which should be reported on lines 19.00 and 20.00.

Exclude costs of well workovers.

Reduce cost by salvage value of equipment capable of re-use.

Line 16.00—Work-in-Progress Adjustment

Report the increase or (decrease) in expenditures capitalized for drilling and equipping domestic development wells-in-progress between the beginning and end of the reporting period.

Line 17.00—Total Drilling and Equipping of Wells

Total lines 13.00 through 16.00 This must equal the expenditures capitalized during the period.

Line 18.00—Lease Equipment (Primary Recovery)

Report the net company interest in capitalized domestic expenditures for primary recovery programs.

Lines 19.00 and 20.00—Lease Equipment (Improved recovery)

Report the net company interest in capitalized domestic expenditures for improved recovery systems. Include injection of unheated fluids through injection wells and improved recovery by means other than unheated fluid injection, such as steam injection, in-situ combustion, etc.

Segregate these amounts between statutory tertiary recovery programs as defined by the Department of Energy (line 19.00) and other improved recovery programs (line 20.00).

In general, improved recovery refers to all methods for supplementing natural reservoir pressure.

Line 21.00—Total Lease Equipment

Total lines 18.00 through 20.00.

Line 22.00—Gas Processing Facilities

Report capitalized domestic expenditures for gas processing facilities.

Line 23.00—Acquisition of Producing Acreage

Report the net company interest in domestic expenditures capitalized during the period for acquiring producing acreage (i.e., the consideration given to the seller determined in accordance with generally accepted accounting principles for purchases of assets, including all necessary outlays directly associated with the purchase, such as legal fees and commissions).

Line 24.00—Other Capitalized Development Costs

Include all other domestic development costs, including: access facilities to district installation (as opposed to individual wells) such as roads, bridges, canals, and other improvements; camp and district facilities; fuel gas systems; observation wells, salt water disposal wells, and water supply wells, directly assignable and other overhead costs; and expenditures for capital equipment used for development not otherwise accounted for. Exclude costs of equipment and buildings used by personnel engaged in general producing activities as distinguished from development operations.

Line 25.00—Total Capitalized Development Costs

Total lines 17.00 and 21.00 through 24.00.

DOMESTIC PRODUCTION (LIFTING)

Line 26.00—Production (Lifting)

Report the net company interest in domestic production (lifting) costs capitalized during the period.

Production (lifting) costs, in general, are those costs incurred to operate and maintain wells and related equipment and facilities, and include depreciation of support facilities and equipment.

Production (lifting) costs include labor to operate wells and equipment, repairs and maintenance to sustain operating capability, materials, supplies and fuel consumed, and property taxes and insurance applicable to proved properties and wells and related equipment and facilities.

Line 27.00—Support Equipment and Facilities

Report the net company interest in domestic expenditures capitalized for support equipment and facilities, including seismic, drilling, construction and grading equipment, vehicles, repair shops, supply points, and division, district, and field offices.

Line 28.00—Total Capitalized Exploration, Development, and Production Expenditures

Total lines 12.00, 25.00, 26.00, and 27.00.

FOREIGN PETROLEUM PRODUCTION SEGMENT

Report in the required categories all costs capitalized during the period that are associated with foreign exploration, development, and production operations and with support equipment and facilities.

DOMESTIC AND FOREIGN PETROLEUM SEGMENTS, EXPLORATION, DEVELOPMENT, AND PRODUCTION STATISTICS

SCHEDULE 5241

GENERAL

Report exploration, development, and production statistics for domestic and foreign petroleum operations as indicated.

Reported amounts must relate only to the reporting company and its consolidated affiliates.

Information on the operation of unconsolidated affiliates must be reported on Schedules 5121 and 5141.

ACREAGE, WELLS, AND DRILLING (LINES 01.00-38.00)

Report information pertaining to acreage, wells, and drilling as indicated. Refer to the Glossary for definitions of all line items and for definitions of the geographic areas listed in the column headings.

Note that information on the number of wells completed should not reflect an end-of-pocket well count, but instead should reflect the wells completed at any time *during* the period, regardless of when drilling was initiated. The number of wells refers to the number of holes drilled.

Estimates are permitted for reporting farmins and farmouts.

As part of Exhibit B for lines 09.00, 12.00, 17.00, and 20.00, report the number of dry wells that are "new field discovery wells". See Glossary.

"Gross" acreage, wells, and drilling footage refer to the total number of acres, wells, and feet drilled for all properties in which the company has a working interest.

"Net" acreage, wells, and drilling footage refer to the company's share of the total working interest.

PRODUCTION

Lines 39.00 through 45.00—Working Interest Production

Report the company's gross and net working interest production. Refer to the Glossary for the definitions of "gross working interest production" and "net working interest production."

Production of natural gas should include only marketable production of gas on as "as sold" basis. Include dry, residue, and wet gas, depending on whether liquids have been extracted before the company passed title. Exclude flared gas and injected gas.

Report natural gas liquids separately for leasehold production and contract production. (See Glossary).

Lines 46.00 through 51.00—Gross Company-Operated Production

Report 100% of crude oil, natural gas, and natural gas liquid production from company-operated properties by the indicated categories.

Lines 52.00 through 54.00—Non-Working Interest Production

Report the company's non-working interest production of crude oil, natural gas, and natural gas liquids, i.e., the reporting company's royalty interests in the working interest production of others.

FOREIGN ACCESS (LINES 55.00-57.00)

Report production of crude and condensate, natural gas, and natural gas liquids applicable to long-term supply agreements with foreign governments or authorities in which the company acts as producer.

DOMESTIC IMPROVED RECOVERY PRODUCTION (LINES 58.00-65.00)

Report the company's net working interest production of crude and condensate in the indicated categories. Refer to the Glossary for definitions of individual line items. Statutory tertiary includes only production qualified under the incentive program defined in the Code of Federal Regulations (10 CFR 212.78).

DOMESTIC PRODUCTION BY TIER (LINES 66.00-73.00)

Report the company's net working interest "upper tier", "lower tier", and "world price" production of crude oil in accordance with current Department of Energy Crude Oil Equalization Program definitions.

DOMESTIC AND FOREIGN PETROLEUM SEGMENTS, PETROLEUM REFINING STATISTICS

SCHEDULE 5242

GENERAL

Report refining statistics for domestic and foreign petroleum operations as indicated.

Reported amounts must relate only to the reporting company and its consolidated affiliates.

Information on the operation of unconsolidated affiliates must be reported on Schedules 5121 and 5141.

Refer to the Glossary for definitions of geographic areas listed in column headings.

Lines 01.00 through 03.00—Number of Refineries

Report the number of operable petroleum refineries 100% owned by the company and by its consolidated affiliates (line 01.00), the number of consolidated refineries less than 100% owned (line 02.00), and the total number of wholly and partially owned refineries (line 03.00) by geographic area at the end of the period. DO NOT include natural gas processing or petrochemical plants.

Lines 04.00 through 07.00—Runs to Stills

Report the company's share of runs to stills on a calendar day basis for the period. Condensate may be included in volumes reported. Include runs to fractionators.

Lines 04.00 and 05.00—At Own Refineries

Report volumes run for the company at the refineries included in line 03.00. Report volumes processed for company use or sale (line 04.00), and volumes processed for others (line 05.00).

Line 06.00—By Other Refineries

Report volumes processed for the company's account by refineries not included in line 03.00.

Line 07.00—Total Runs to Stills

Total lines 04.00 through 06.00.

Lines 08.00 through 14.00—Total Refinery Output at Own Refineries (for own account)

Report refinery output by product type for the period. The product slate should relate to the total runs for the company's account (line 04.00). Refer to the Glossary for product definitions.

Lines 15.00 through 21.00—Total Refinery Output at Own Refineries (for others)

Report refinery output for others by product type for the period. The product slate should relate to the total runs for others (line 05.00).

Lines 22.00 through 28.00—Total Refinery Output at Others' Refineries (for own account)

Report refinery output of others for the reporting company's account by product type for the period. The product slate should relate to the total runs by others for the company's account (line 06.00).

Line 29.00—Total Refinery Output

Total of lines 14.00, 21.00 and 28.00.

Lines 30.00 through 37.00—Capacity

Report the company's share of total refinery capacity and changes in capacity during the year for the refineries reported in line 03.00.

Lines 38.00 through 41.00—Announced Future Capacity Changes

Report planned changes in existing refinery capacity that have been formally announced by the company. Line 41.00 should reflect capacity to be sold, taken out of service, or converted to other use.

DOMESTIC PETROLEUM SEGMENT, MOTOR FUEL MARKETING STATISTICS

SCHEDULE 5243

Report domestic motor fuel marketing statistics as indicated for motor gasoline.

Reported amounts must relate only to the reporting company and its consolidated affiliates.

Information on the operation of unconsolidated affiliates must be reported on Schedules 5121 and 5141.

RETAIL MOTOR FUEL SALES (LINES 01.00 THROUGH 04.00)

Report the total annual volumes of motor gasoline sold and the number of retail outlets pumping the indicated average monthly gallonage (columns A through E) by the indicated categories. See Glossary for definitions.

ACQUISITIONS AND DISPOSITIONS OF RETAIL OUTLETS OWNED BY OR UNDER LEASE TO THE REPORTING COMPANY

Line 05.00—Number at Beginning of Period

Report the number of active and inactive-retail outlets owned by or under lease to the reporting company (i.e., outlets reported on lines 01.00 and 02.00, above) at the beginning of the period in columns F and G, respectively.

Lines 06.00 through 12.00—Activity During the Period

Report the number of active and inactive retail outlets that were newly constructed, purchased, sold, or newly leased; the number or leased active and inactive retail outlets for which the leases expired and were not renewed; and other activity and reclassifications during the period in column F (active outlets) and column G (inactive outlets).

Line 13.00—Number at End of Period

Report the number of active and inactive retail outlets at the end of the period in columns F and G, respectively.

DOMESTIC AND FOREIGN PETROLEUM SEGMENTS, PETROLEUM TRANSPORTATION STATISTICS

SCHEDULE 5244

Report transportation statistics for domestic and foreign petroleum operations as indicated.

Reported amounts must relate only to the reporting company and its consolidated affiliates.

Information on the operation of unconsolidated affiliates must be reported on Schedules 5121 and 5141.

MARINE (INTERNATIONAL MARINE ONLY)

Report the number of vessels and their total capacity (columns A and B, respectively) in the categories indicated on lines 01.00 through 10.00. Include only international marine vessels.

Report on line 01.00 those vessels owned and leased (if the lease is capitalized for financial reporting purposes).

Long-term charters include all executed charter agreements for which the initial non-cancellable term is in excess of one year. Other charters include terms of 6 months to 1 year and excludes single voyage charters.

See "Vessels" in the Glossary for definitions of vessel types (ULCC, VLCC, specialty (LPG/LNG), and other).

PIPELINE

Report pipeline transportation data as indicated for the Domestic Petroleum Segment only. Segregate date reported between Federally regulated pipelines and pipelines which are not Federally regulated. Include feeder lines. DO NOT include information pertaining to gathering lines.

Lines 11.00 through 22.00—Consolidated Pipelines (100% Owned)

Report information on these lines only for pipelines that are 100% owned by the company or by any of its consolidated affiliates.

Lines 11.00 through 13.00—Mileage

Report the total miles of pipelines carrying crude/liquids, natural gas, and refined product.

Lines 14.00 and 16.00—Capacity

Report the thru-put capacity for the period for pipelines carrying crude/liquids, natural gas, and refined product.

Lines 17.00 through 19.00—Volume Transported for Own Account

Report volumes transported for the company's account during the period.

Lines 20.00 through 22.00—Volume Transported for Others

Report all other volumes transported during the period.

Lines 23.00 through 34.00—Consolidated Pipelines (Partially Owned)

Report information on these lines for pipelines in which the company or any of its consolidated subsidiaries have an ownership interest of less than 100%. For purposes of this schedule, pipeline ownership refers only to ownership of the physical asset—not to interests in companies (outside the consolidated group) that separately own pipelines. These latter interests, if any, must be reported on Schedule 5121. (See instructions for reporting thresholds).

Lines 23.00 through 25.00—Mileage

Report the total miles of pipelines partially owned by the reporting company by the specified categories.

Lines 26.00 and 28.00—Gross Capacity

Report the total capacity of pipelines partially owned by the reporting company by the specified categories.

Lines 29.00 and 31.00—Net Capacity.

Report the portion of the capacity entered on lines 26.00 through 28.00 which represents the company's ownership interest.

Lines 32.00 through 34.00—Volume Transported for Own Account

Report total volumes transported for the company's account during the period by the specified categories.

PETROLEUM PURCHASES, SALES, AND EXCHANGES [1]

SCHEDULE 5245

GENERAL

Report activities related to exchanges, purchase/sale agreements, and other purchases and sales (including brokerage activities) for the period by the categories indicated. Include all activities where either the receipt or delivery takes place in the U.S.

Report transactions between (1) the reporting company or its consolidated affiliates, and (2) unconsolidated affiliates or unaffiliated third parties only.

Report separately the total volumes and dollars of receipts and deliveries on a gross basis by category.

For exchanges involving three or more parties, report receipts and deliveries for the company's account.

For purposes of reporting, Group I and Group II companies consist of the following firms:

GROUP I

Atlantic Richfield
Exxon
Gulf
Mobile
Royal Dutch/Shell Group
Standard Oil of California
Standard Oil (Indiana)
Texaco

GROUP II

Amerada Hess
American Petrofina
Ashland
British Petroleum
Burlington Northern
Cities Service
Coastal States
Continental Oil
General Electric
Getty
Kerr-McGee
Marathon
Occidental
Phillips
Standard Oil (Ohio)
Sun
Superior
Tenneco
Union Oil of California
Union Pacific

[1] This schedule is not required until 1979.

DOMESTIC AND FOREIGN PETROLEUM SEGMENTS, PROVED PETROLEUM RESERVES

SCHEDULE 5246

GENERAL

Report proved reserves of crude oil, natural gas, and natural gas liquids (and changes therein) by the indicated categories and geographic areas.

Refer to the Glossary under "reserves" for the definitions of "net working interest reserves", "gross working interest reserves", "non-working interest (royalty) reserves", and "proportional interest in investee reserves".

Also refer to the Glossary under "reserves, changes in" for the definitions of "revisions of previous estimates", "improved recovery", "statutory tertiary portion of improved recovery", "purchases of minerals-in-place", "extensions, discoveries, and other additions", "production", and "sales of minerals-in-place".

"Foreign access" refers to proved reserves of crude and condensate, natural gas, and natural gas liquids applicable to long-term supply agreements with foreign governments or authorities in which the company acts as producer.

SUMMARY FINANCIAL INDICATORS AND STATEMENTS OF INCOME, COAL, NUCLEAR, OTHER ENERGY, AND NON-ENERGY OPERATIONS

SCHEDULES 5310, 5320, 5410, 5420, 5510, 5520, 5610 and 5620

GENERAL

Report balance sheet and income statement information on the company's operations in the following industries:

Industry	Schedule reference: Balance sheet	Schedule reference: Income statement
Coal Operations	5320	5310
Nuclear Operations*	5420	5410
Other Energy Operations (including oil shale, tar sands, geothermal, coal liquefaction and gasification, and other energy industries)	5520	5510
Non-Energy Industries (including chemical, petrochemical, and all industries other than petroleum, coal, nuclear, and other energy)	5620	5610

* Estimate for each separate line item of operating revenues, the portion attributable to the U.S. Federal Government. Report this estimate as part of Exhibit B.

Before completing these schedules, refer to the instructions for Schedule 5110 (income statement) and Schedule 5120 (balance sheet).

Amounts reported in column (A) of the Selected Balance Sheet Item section of Schedules 5320, 5420, 5520, and 5620, must agree with amounts reported on Schedule 5120, columns (E) through (H), on the corresponding lines.

Similarly, amounts reported in column (A) of Schedules 5310, 5410, 5510 and 5610 must agree with amounts reported on Schedule 5110 columns (E) through (H), on the corresponding lines.

Refer to the Glossary for definitions of specific terms.

DOMESTIC COAL OPERATIONS, RESERVES AND PRODUCTION STATISTICS

SCHEDULES 5341 AND 5342

GENERAL

Report domestic coal reserves, production, and sales data as indicated.

Reported amounts must relate only to the reporting company and its consolidated affiliates.

Information on the operation of unconsolidated affiliates must be reported on Schedules 5121 and 5141.

RANK

The term "coal" as used in Schedules 5341 and 5342 is defined to include bituminous, subbituminous, and lignite coal. Data relating to anthracite coal should be excluded from all reported figures. Bituminous, subbituminous, and lignite coal are defined in accordance with the American Society for Testing and the Materials Institute Specification for Classification of Coal by Rank.

RESERVES (SCHEDULE 5341)

Report domestic coal reserves (lines 01.00 through 17.00) and changes therein (lines 22.00 through 31.00) in accordance with the categories specified. Include coal reserves the company controls, owns, or leases. DO NOT include coal reserves the company leases to others.

Since no single uniform industrial standard exists to ascertain the amount of coal reserves a company controls, use the reserve definitions and classifications currently followed in company records. Describe *in detail* on separate sheets of paper attached as part of Exhibit E the methods and definitions used to develop these reserve data and how these methods/definitions differ from the suggested definitions for coal reserves provided in the FRS Glossary. Specify whether the reported coal reserves refer to in-place coal or recoverable reserves. If in-place coal is reported, specify the estimated recoverability factor for both surface and underground coal.

SULPHUR CONTENT (LINES 01.00—13.00, AND LINES 32.00–44.00)

The following guidelines are suggested to classify coal as low, medium, or high sulphur. Report any differences between these guidlines and company recordkeeping in Exhibit F.

Low Sulphur

Bituminous coal with total sulphur content less than or equal to 0.85 percent by weight.

Subbituminous and lignite coal with total sulphur content less than or equal to 0.45 percent by weight.

Medium Sulphur

Bituminous coal with total sulphur content greater than 0.85 percent by weight and less than or equal to 1.85 percent by weight.

Subbituminous coal with total sulphur content greater than 0.45 percent by weight and less than or equal to 1.05 percent by weight.

Lignite with total sulphur content greater than 0.45 percent by weight and less than or equal to 0.85 percent by weight.

High Sulphur

Bituminous coal with total sulphur content greater than 1.85 percent by weight.

Subbituminous coal with total sulphur content greater than 1.05 percent by weight.

Lignite with total sulphur content greater than 0.85 percent by weight.

GRADE (SCHEDULE 5341, LINES 14.00—17.00)

Report the amount of coal reserves that can be used (1) for only metallurgical processing, (2) for either steam or metallurgical consumption, or (3) only by non-metallurgical consumption. Indicate on a separate sheet of paper attached asa a part of Exhibit F the criteria use to make these classifications or any specific comments pertaining to the classifications.

COAL COMMITTED UNDER CONTRACT (SCHEDULE 5341, LINES 18.00—21.00)

Report the total amount of coal the company is committed to supply by contract or similar legal obligation to electric utilities, steel companies, and other companies. Coal committed to contract must be disaggregated by geographic recion according to the location of the mine or potential mine which will supply the customer. DO NOT classify the data by customer location. However, if coal is committed to customer and the location of the mine that will be used to fulfill this commitment is unknown, report this fact on a separate sheet and attach as part of Exhibit F.

GEOGRAPHIC BREAKDOWNS (SCHEDULE 5341)

Use the following regional definitions for reporting the information required on Schedule 5341:

Eastern Region. Consists of the Northern Appalachian and Southern Appalachian Coal Basins. The following States comprise the Eastern Region:

Alabama	Pennsylvania
Georgia	Virginia
Ohio	Tennessee
Maryland	North Carolina
Eastern Kentucky	West Virginia

Eastern Kentucky is defined to include th following counties: Bell, Boyd, Breathitt, Carter, Clay, Clinton, Elliott, Estill, Floyd, Greenup, Harlan, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Less, Leslie, Letcher, Lewis, McCreary, Madison, Magoffin, Martin, Menifee, Morgan, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Rowan, Wayne, Whitley, and Wolfe.

Midwest Region. Consists of the Illinois and Mighigan Coal Basins. The following States comprise the Midwest Region:

Illinois	Michigan
Indiana	Western Kentucky

Wesern Kentucky is defined to include the following counties: Butler, Christian, Crittenden, Caldwell, Daviess, Edmonson, Grayson, Hancock, Hart, Henderson, Hopkins, Logan, McLean, Muhlenberg, Ohio, Todd, Union, Warren, and Webster.

Western Region. Consists of the Northern Rocky, Southern Rocky, Western Interior, and West Coast Coal Basins. The following States comprise the Central Western Region:

Iowa	Idaho
Kansas	Colorado
Missouri	Utah
Oklahoma	Arizona
Arkansas	New Mexico
Texas	Alaska
North Dakota	Washington
South Dakota	Oregon
Montana	California
Wyoming	

If any domestic coal reserves or domestic coal production is located in a State not specified above, report this information in Exhibit F. DO NOT include these reserves or production amounts in the figures reported on Schedule 5341.

OUTPUT PER PERSON PER DAY (SCHEDULE 5341, LINE 45.00)

Indicate on a separate sheet how output per person per day is collected. Include also an explanation of what type of employees are included in the calculation (e.g., are clerical workers included?) and attach as part of Exhibit F.

LAND AVAILABLE FOR DEVELOPMENT (SCHEDULE 5341, LINES 46.00–49.00)

Report the number of acrea (lessed or owned) that were available for development at the beginning of the period, any acquistions or dispositions of such acreage, and the number of such acres that were available for development at the end of the period. Provide geographic breakdowns as indicated.

COAL SALES (SCHEDULE 5342, LINES 01.00 THROUGH 16.00)

Report domestic and foreign coal sales separately in thousands of tons as specified:

To Electric Utilities: Report coal sold to electric utilities.

To Steel Companies: Includes coal sold for metallurgical and/or coking purposes.

To Industrial Users: Include broker sales and retail sales.

To Other General Industry: Includes all coal sold to industrial users, excluding coal sales to electric utilities, and metallurgical and coking coal sold to steel companies.

Other Sales: Includes all coal not sold to categories listed above. Includes coal sold to brokers and retailers other than the above users.

NEW UNITS AND ANNOUNCED UNITS (SCHEDULE 5342)

Report the name, MHSA code, and State of each new domestic mine placed in operation during the period. Also report the name, MHSA code (if available), and State of each planned unit announced during the year for which regulatory and/or licensing approvals are still pending. Report this information on lines 17.00 through 27.00 in columns A and B.

Report in column C the date the initial license was requested for each mine listed. Indiacate on a separate sheet of paper (attached as part of Exhibit F) the type of license used to define "date initial license requested."

Report in column D the actural or expected date of operation for each mine listed.

Report in column E the actual or expected annual capacity of each mine listed. In computing capacity, specify as part of Exhibit F the criteria on which the calculations are based. Include any other specific comments pertaining to the measure of mining capacity used.

Report the breakdown of annual capacity by mining method (columns F and G) and by mine type (columns H through K).

Total columns E through K on line 28.00.

CURRENT ANNUAL PRODUCTION CAPACITY

Report the current annual production capacity (domestic and foreign) of the reporting company and its consolidated affiliates. As described above, provide in Exhibit F specific comments pertaining to the measure of mining capacity used.

DOMESTIC AND FOREIGN NUCLEAR FUEL OPERATIONS, NUCLEAR FUEL OPERATING STATISTICS

SCHEDULE 5441

GENERAL

Report required information with regard to the uranium production operations of the company and its consolidated subsidiaries as maintained in the company's records, segregated between domestic and foreign operations.

Reserve and inventory data should be reported as of the end of the period.

Information on the nuclear operations of unconsolidated affiliates should be reported on Schedule 5141, lines 33.00 through 35.00

DOMESTIC AND FOREIGN OTHER ENERGY OPERATIONS, OTHER ENERGY OPERATING STATISTICS

SCHEDULE 5541

GENERAL

Report the required information related to the operations of the reporting company and its consolidated affiliates in the production of energy from oil shale, tar sands, geothermal sources, coal liquefaction and gasification, and other sources. "Other" (column E) excludes petroleum, coal, nuclear, and non-energy operations of the company.

Refer to the Glossary for definitions of the column headings.

Lines 01.00 through 05:00—Acreage at End of Period

Report the total number of acres owned or leased, as indicated, at the end of the period that can be assigned to the segment operations specified in columns A through C and E for domestic operations and F through H and J for foreign operations.

Line 06.00—Annual Capacity (in place at beginning of period)

Report the annual capacitly of existing facilities (in barrels or barrel equivalents) at the beginning of the period for energy production as indicated by the columns.

Line 07.00—Additions During Period

Report additions to annual capacity for energy production during the period as indicated by the columns.

Lines 08.00 and 09.00—Announced Additions to Capacity

Report planned additions (within the next five years) to pilot plants and commercial operations that have been formally announced by the company. Include planned new facilities construction.

DEPARTMENT OF ENERGY

ENERGY INFORMATION ADMINISTRATION

ENERGY COMPANY FINANCIAL REPORTING SYSTEM (FRS)

FORM EIA-28

Glossary

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GLOSSARY

ACQUISITION

The procurement of the legal right to explore for and produce discovered minerals, if any, within a specific area; that legal right may be obtained by mineral lease, concession, or purchase of land and mineral rights, or of mineral rights alone.

ACQUISITION COSTS

Direct costs and indirect costs incurred to acquire legal rights to wasting natural resources. Direct costs include costs incurred to obtain options to lease or purchase mineral rights and costs incurred for the actual leasing (e.g., lease bonuses) or purchasing of the rights. Indirect costs include such costs as: brokers' commissions and expenses; abstract and recording fees; filing and patenting fees; and costs of legal examination of title and documents.

ACREAGE

An area, measured in acres, that is subject to ownership or control by those holding total or fractional shares of working interests. (See definition of Working Interest.) A distinction may be made between "gross" acreage and "net" acreage:

- *Gross.* All acreage covered by any working interest, regardless of the percentage of ownership in the interest.
- *Net.* Gross acreage adjusted to reflect the percentage of ownership in the working interest in the acreage.

AFFILIATE

An "affiliate" of, or a person "affiliated" with, a specific person is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. The term "affiliate" includes any subsidiary or parent of the person specified.

- *Person.* The term "person" means an individual, or any legal entity such as a corporation, a partnership, an association, a joint-stock company, a trust, or an unincorporated organization.
- *Control.* The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

AMORTIZATION

The depreciation, depletion, or charge-off to expense of intangible and tangible assets over a period of time. In the extractive industries, the term is most frequently applied to mean either (1) the periodic charge-off to expense of the costs associated with nonproducing mineral properties incurred prior to the time when they are developed and entered into production or (2) the systematic charge-off to expense of those costs of productive mineral properties (including tangible and intangible costs of prospecting, acquisition, exploration, and development) that had been initially capitalized (or deferred) prior to the time the properties entered into production, and thereafter are charged off as minerals are produced.

BOTTOM-HOLE CONTRIBUTION

A payment (either in cash or in acreage) that is required by agreement when a test well is drilled to a specified depth regardless of the outcome of the well and that is made in exchange for well and evaluation data. (See Dry Hole Contribution and Test Well Contribution.)

BRANDED INDEPENDENT MARKETER

A firm which is engaged in the marketing or distribution of refined petroleum products pursuant to:

- An agreement or contract with a refiner (or a firm which controls, is controlled by, or is under common control with such refiner) to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner (or any such firm); or
- An agreement or contract under which any such firm engaged in the marketing or distribution of refined petroleum products is granted authority to occupy premises owned, leased, or in any way controlled by a refiner (or firm which controls, is controlled by, or is under common control with such refiner).

BRANDED PRODUCT

A refined petroleum product sold by a refiner with the understanding that the purchaser has the right to resell the product under a trademark, trade name, service mark, or other identifying symbol or names owned by such refiner.

BY-PRODUCT

A secondary product obtained during the course of production or manufacture, having relatively small importance as compared with the principal product or products.

CARRIED-INTEREST ARRANGEMENT

An agreement by which a mineral property owned by one party (carried party) is developed by anbother party (carrying party) in exchange for a share in the working interest. Often, the carrying party agrees to drill, equip, and operate one or more wells in consideration for a fraction of the working interest plus the right to recoup the carried party's share of specified costs (or a greater amount) out of the carried party's share of the production proceeds. The carried party does not share in revenue from the property until the amounts advanced have been recovered by the carrying party. A carried-interest is similar to a free-well agreement, except that under the latter, the sharing of revenues begins as soon as commercial production has been secured.

CARRYING COSTS

Costs incurred in order to retain exploration and property rights after acquisiton but before production has occurred. Such costs include legal costs for title defense, ad valorem taxes on nonproducing mineral properties, shut-in royalties, and delay rentals.

CHEMICAL OPERATIONS

All petrochemical and plastics operations.

CHRISTMAS TREE

The valves and fittings installed at the top of a well to control and direct the flow of well fluids.

COAL GASIFICATION

The conversion of coal into a gas which can be burned as a fuel or processed into chemicals or fuels.

COAL LIQUEFACTION

The conversion of coal into a liquid which can be burned as a fuel or processed into chemicals or fuels.

COMPANY RETAIL OUTLET

Any retail outlet selling motor fuel under a reporting company brand name. See definition of Branded Product.

● *Company Operated/Commission Agent.* A company retail outlet which is operated by salaried or commission personnel paid by the reporting company.

● *Lessee Dealer.* An independent marketer who leases the station and land and has use of tanks, pumps, signs, etc. A lessee dealer typically has a supply agreement with a refiner or a distributor and purchases products at dealer tank wagon prices. The term "lessee dealer" is limited to those dealers who are supplied directly by a refiner or any affiliate or subsidiary company of a refiner. "Direct supply" includes use of commission agent or common carrier delivery.

● *Open Dealer.* An independent marketer who owns or leases (from a third party who is not a refiner) the station or land of a retail outlet and has use of tanks, pumps, signs, etc. An open dealer typically has a supply agreement with a refiner or a distributor and purchases products at or below dealer tank wagon prices.

CONDENSATE (LEASE CONDENSATE)

A natural gas liquid recovered from associated and nonassociated gas well gas from lease separators or field facilities, reported in barrels of 42 U.S. gallons at atmospheric pressure and 60° F. For FRS reporting, condensate that is commingled with the crude oil stream should be reported as crude. (See definition of Crude Oil.)

CRUDE OIL

A mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities. For FRS reporting, volumes reported as crude include:

● Liquids technically defined as crude oil;

● Small amounts of hydrocarbons that exist in the gaseous phase in natural underground reservoirs but are liquid at atmospheric pressure after being recovered from oil well (casinghead) gas in lease separators and are commingled with the crude stream without being separately measured (see definition of Condensate); and

● Small amounts of nonhydrocarbons produced with the oil.

Statistical data pertaining to crude oil production and reserves are reported as liquid equivalents at the surface (excluding base sediment and water) measured in terms of stock tank barrels of 42 U.S. gallons at atmospheric pressure, corrected to 60° F.

Where a State regulatory agency specifies a definition of crude oil which differs from that set forth above for statistical purposes, the State definition should be followed.

DELAY RENTAL

A payment that commonly is required annually by the lease contract to be paid by a lessee if commercial production has not yet been obtained in lieu of the lesse's performing specified work on the leased property according to the terms of the mineral lease. Failure to pay the delay rental normally terminates the lease with no penalty to the lessee.

DEPLETION

A term for either (1) a periodic assignment to expense of recorded amounts or (2) an allowable income tax deduction that is related to the exhaustion of mineral reserves. Depletion is included as one of the elements of amortization. When used in that manner, depletion refers only to book depletion. (See Amortization).

● *Book.* The portion of the carrying value (other than the portion associated with tangible assets) prorated in each accounting period, for financial reporting purposes, to the extracted portion of an economic interest in a wasting natural resource.

● *Tax-cost.* A deduction (allowance) under U.S. Federal income taxation normally calculated under a formula whereby the adjusted basis of the mineral property is multiplied by a fraction, the numerator of which is the number of units of minerals sold during the tax year and the denominator of which is the estimated number of units of unextracted minerals remaining at the end of the tax year plus the number of units of minerals sold during the tax year.

● *Tax-percentage (or Statutory).* A deduction (allowance) allowed to certain mineral producers under U.S. Federal income taxation calculated on the basis of a specified percentage of gross revenue from the sale of minerals from each mineral property not to exceed the lesser of 50 percent of the taxable income from the property computed without allowance for depletion. (There are also other limits on percentage depletion on oil and gas production.) The taxpayer is entitled to a deduction representing the amount of tax-cost depletion or percentage (statutory) depletion, whichever is higher.

● *Excess Statutory Depletion.* The excess of estimated statutory depletion allowable as an income tax deduction over the amount of cost depletion otherwise allowable as a tax deduction, determined on a total enterprise basis.

DEVELOPMENT

The preparation of a specific mineral deposit for commercial production; this preparation includes construction of access to the deposit and of facilities to extract the minerals. The development process is sometimes further distinguished between a preproduction stage and a current stage, with the distinction being made on the basis of whether the development work is performed before or after production from the mineral deposit has commenced on a commercial scale.

DEVELOPMENT COSTS

Costs incurred to obtain access to proved reserves and to provide facilities for extracting, treating, gathering, and storing the oil and gas. More specifically, development costs, including depreciation and applicable operating costs of support equipment and facilities and other costs of development activities, are costs incurred to:

● Gain access to and prepare well locations for drilling, including surveying well locations for the purpose of determining specific development drilling sites, clearing ground, draining, road building, and relocating public roads, gas lines, and power lines, to the extent necessary in developing the proved reserves.

● Drill and equip development wells, development-type stratigraphic test wells, and service wells including the costs of platforms and of well equipment such as casing, tubing, pumping equipment, and the wellhead assembly.

● Acquire, construct, and install production facilities such as lease flow lines, separators, treators, heaters, mainfolds, measuring devices, and production storage tanks, natural gas cycling and processing plants, and utility and waste disposal systems.

● Provide improved recovery systems.

DISTILLATE

A general classification for one of the petroleum fractions which, when produced in conventional distillation operations, has a boiling range from 10 percent point at 300° F to 90 percent point at 675° F. Included are kerosene and products known as heating oils and diesel fuels, specifically: No. 1 Fuel Oil; No. 2 Fuel Oil; and Diesel Fuel.

DOMESTIC OPERATIONS

Domsetic operations are those operations located in the United States.

The United States is defined as the 50 States, including their offshore territorial waters, the District of Columbia, and U.S. commonwealths, territories, and protectorates.

For FRS reporting, "domestic" is segregated between Alaska and other domestic (consisting of all domestic other than Alaska).

DRILLING

The act of boring a hole (i) to determine whether minerals are present in commercially recoverable quantities and (2) to accomplish production of the minerals (including drilling to inject fluids.)

● *Exploratory.* Drilling to locate probable mineral deposits or to establish the nature of geological structures; such wells may not be capable of production if minerals are discovered.

● *Development.* Drilling to delineate the boundaries of a known mineral deposit or to enhance the productive capacity of the producing mineral property.

● *Directional.* Drilling that is deliberately made to depart significantly from the vertical.

DRILLING ARRANGEMENT

A contractual agreement under which a working interest owner (the assignor) assigns a part of a working interest in a property to another party (the assignee) in exchange for which the assignee agrees to develop the property. The term may also be applied to an agreement under which an operator assigns fractional shares in production from a property to participants for cash considerations as a means of acquiring cash for developing the property. Under a "disproportionate cost" drilling arrangement, the participants normally pay a greater total share of costs than the total value of the fractional shares of the property received in the arrangements.

DRY HOLE CHARGE

The charge-off to expense of a previously capitalized cost upon the conclusion of an unsuccessful drilling effort.

DRY HOLE CONTRIBUTION

A payment (either in cash or in acreage) that is required by agreement only if a test well is unsuccessful and that is made in exchange for well test and evaluation data. (See Bottom Hole Contribution and Test Well contribution).

ENRICHMENT (URANIUM)

A process whereby the percentage of a given uranium isotope present in a material is artificially increased so that it is higher than the percentage of that isotope naturally found in the material.

EXPLORATION

Exploration involves (i) identifying areas that may warrant examination and (ii) examining specific areas that are considered to have prospects of containing oil and gas reserves, including drilling exploratory wells and exploratory-type stratigraphic test wells. Exploration costs may be incurred both before acquiring the related property (sometimes referred to in part as prospecting costs) and after acquiring the property.

EXPLORATION COSTS

Costs, including depreciation and applicable operating costs of support equipment and facilities and other costs directly identifiable with exploration activities, such as:

● Costs of topographical, geological, and geophysical studies, rights of access to properties to conduct those studies, and salaries and other expenses of geologists, geophysical crews, and others conducting those studies. Collectively, those are sometimes referred to as geological and geophysical or "G&G" costs.

● Costs of carrying and retaining undeveloped properties, such as delay rentals, ad valorem taxes on the properties, legal costs for title defense, and the maintenance of land and lease records.

● Dry hole contributions and bottom hole contributions.

● Costs of drilling and equipping exploratory wells.

● Costs of drilling exploratory-type stratigraphic test wells.

EXTRACTIVE INDUSTRIES

Industries involved in the activities of (a) prospecting and exploring for wasting (non-regenerative) natural resources, (b) acquiring them, (c) further exploring them, (d) developing them, and (e) producing (extracting) them from the earth. The term does not encompass the industries of forestry, fishing, agriculture, animal husbandry, or any others that might be involved with resources of a regenerative nature.

FARM-OUT (-IN) ARRANGEMENT

SAn arrangement, used primarily in the oil and gas industry, in which the owner or lessee of mineral rights (the first party) assigns a working interest to an operator (the second party), the consideration for which is specified exploration and/or development activities. The first party retains an overriding royalty or other type of economic interest in the mineral production. The arrangement from the viewpoint of the second party is termed a "farm-in arrangement."

FEE INTEREST

The absolute, legal possession and ownership of land, property, or rights, including mineral rights. A fee interest can be sold (in its entirety or in part) or passed on to heirs or successors.

FIELD

An area consisting of a single reservoir or multiple reservoirs all grouped on or related to the same individual geological structural feature and/or stratigraphic condition. There may be two or more reservoirs in a field which are separated vertically by intervening impervious strata, or laterally by local geologic barriers, or by both.

FOOTAGE DRILLED

Total footage for wells in various categories, as reported for any specified period, includes (1) the deepest total depth (length of well bores) of all wells drilled from the surface, (2) the total of all bypassed footage drilled in connection with reported wells, and (3) all new footage drilled for directional "sidetrack" wells. Footage reported for directional "sidetrack" wells does not include footage in the common bore which is reported as footage for the original well. In the case of old wells drilled deeper, the reported footage is that which was drilled below the total depth of the old well.

● *Surface Drilling Footage (Uranium).* Includes both exploration and developing drilling:

Exploration drilling includes (a) drilling in search for new ore deposits or extensions to known deposits, and (b) drilling at the location of a discovery up to the time the company decides sufficient ore reserves are present to justify commercial exploitation.

Development drilling includes all drilling of an ore deposit to determine more precisely size, grade, and configuration subsequent time that commercial exploitation is deemed feasible.

● *Deepest Total Depth.* The deepest total depth of a given well is the distance from a surface reference point (usually the Kelly bushing) to the point of deepest penetration measured along the well bore. If a well is drilled from a platform or barge over water, the depth of the water is included in the total length of the well bore.

● *Bypassed Footage.* Bypassed footage is the footage in that section of hole which is abandoned as the result of remedial sidetrack drilling operations.

● *Depth of Deepest Production.* The depth of the deepest production is the length of the well bore measured (in feet) from the surface reference point to the bottom of the open hole or the deepest perforation in the casing of a producing well.

● *Plugged-Back Footage.* Under certain conditions, drilling operations may be continued to a greater depth than that at which a potentially productive formation is found. If production is not established at the greater depth, the well may be completed in the shallower formation. Except in special situations, the length of the well bore from the deepest depth at which the well is completed to the maximum depth drilled is defined as "plugged-back footage".

Plugged-back footage is included in total footage drilled but is not reported separately.

● *Redrill Footage.* Occasionally a hole is lost or junked and a second hole may be drilled from the surface in close proximity to the first. Footage drilled for the second hole is defined as "redrill footage". Under these circumstances, the first hole is reported as a dry hole (exploratory or developmental) and the total footage is reported as dry hole footage. The second hole is reported as an oil well, gas well, or dry hole according to the result. The redrill footage is included in the appropriate classification of total footage but is not reported as a separate classification.

● *Sidetrack Drilling.* Sidetrack drilling is a remedial operation which results in the creation of a new section of well bore for the purpose of (1) detouring around junk, (2) redrilling lost hole, or (3) straightening key seats and crooked holes. Directional "sidetrack" wells do not include footage in the common bore which is reported as footage for the original well.

FOREIGN OPERATIONS

Foreign operations include those operations that are located outside the U.S. (see Domestic Operations). Determination of whether an enterprise's mobile assets, such as offshore drilling rigs or ocean-going vessels, constitute foreign operations should depend on whether such assets are normally identified with operations located outside the U.S.

Foreign operations are segregated into the following areas for FRS reporting purposes:

● OECD Europe: Includes Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom.

● Middle East: Includes Saudi Arabia, the United Arab Emirates, Iraq, Iran, Kuwait, the Iraq-Saudi Arabia Neutral Zone, Qatar, Dubai, Bahrain, Oman, Yemen, Syria, Jordan and Israel.

● Canada.

● Africa: the African continent.

Northern Africa: All of the African countries along the Mediterranean Sea, plus Morocco.

Other Africa: All of the other African countries.

● Other Eastern Hemisphere: Areas eastward of the Greenwich prime meridian to 180° longitude not included in other specified domestic or foreign classifications.

Asia: All countires in "Other Eastern Hemisphere" located on the Asian landmass.

Other: All other countries in "Other Eastern Hemisphere".

● Other Western Hemisphere: Areas westward of the Greenwich prime meridian to 180° longitude not included in other domestic or foreign classifications.

GEOLOGICAL AND GEOPHYSICAL (G & G) COSTS

Costs incurred in making geological and geophysical studies, including, but not limited to, costs incurred for salaries, equipment, and supplies for scouts, geologists, and geophysical crews.

GEOLOGICAL AND GEOPHYSICAL STUDIES

Processes which seek surface or subterranean indications in the earth's structure of formations of a type that experience has shown likely to contain mineral deposits.

The principal types of geological studies include (1) surface-studies: classifications and measurements of outcrops and formations, mapping, and correlation of data with other observations to produce a geological picture of underground formations; (2) subsurface-studies: analyses and correlations of samples of rock extracted from wells or mines drilled or sunk into the earth; (3) core drillings: a modified form of subsurface study that involves a drilling of slim holes into the top layers of the earth's crust for the purpose of extracting rock samples for study and analysis; (4) geochemical analyses: systematic measurements of the chemical properties of soils, waters, or organisms to identify concentrations of hydrocarbons, metals, or other minerals; and (5) logs and seismic studies.

HYDROCARBON

An organic chemical compound of hydrogen and carbon in either the gaseous, liquid, or solid phase. The molecular structure of hydrocarbon compounds varies from the simplest (e.g., methane, a constituent of natural gas) to the very heavy and very complex.

IMPROVED RECOVERY

The operation whereby crude oil or natural gas is recovered using any method other than those that rely primarily on the use of natural reservoir pressure, gas lift or the use of a pump. Improved recovery may be distinguished between "secondary" and "tertiary" recovery:

● *Statutory Tertiary.* Production qualified under the Department of Energy incentive program as defined in 10 CFR 212.78

● *Other Improved Recovery.* Total production (not incremental production) from improved recovery programs other than those covered by 10 CFR 212.78, including secondary and tertiary methods:

Secondary. Improved recovery obtained by the injection of fluids through injection wells into the reser-

voir for the purpose of augmenting reservoir energy; usually, but not necessarily, this is done after the primary recovery phase has been concluded. Secondary revovery includes non-miscible gas injection, waterflooding, and steam soak.

Tertiary. Tertiary recovery is usually initiated after the secondary recovery phase has been concluded. It includes miscible gas injection, chemically assisted waterflooding (micellar, surfactant polymer, caustic, etc.), steam flooding and in situ combustion.

INITIAL PRODUCTION, YEAR OF

The year in which continuous, sustained production of oil and/or gas commenced.

INTANGIBLE DRILLING AND DEVELOPMENT COSTS (IDC)

Costs incurred in preparing well locations, drilling and deepening wells, and preparing wells for initial production up through the point of installing control valves. None of these functions, because of their nature, have salvage value. Such costs would include labor, transportation, consumable supplies, drilling tool rentals, site clearance, and similar costs.

JOBBER (INDENPENDENT JOBBER/ DISTRIBUTOR)

An independent person who purchases at wholesale, receives through transfer, or otherwise obtains motor fuels or fuel oils for purposes of resale to or through retail outlets.

JOINT PRODUCTS

Two or more products produced simultaneously from a common raw material source, with each product having a significant relative sales value. By definition, true joint products are locked together inseparably, either by their nature or by the manner of their production, so that one cannot be produced until a certain stage of production, often called the "splitoff point". Examples of joint products in the extractive industries include crude oil and natural gas, and various combinations of minerals contained in the same ores.

JOINT VENTURE

The joint ownership or operation of any separate and specific business or business related project. Included are partnerships, corporate joint ventures, and joint operating agreements for producing properties.

LEASE BONUS

An amount paid by a lessee to a lessor as consideration for granting a lease, usually as a lump sum; this payment is in addition to any rental or royalty payments.

LIFTING COSTS

The costs associated with the extraction of a mineral reserve from a producing property. (See Production Cost.)

LONG-TERM CONTRACT

A contract with a duration in excess of one year.

MILLING

The grinding or crushing of ore, concentration, and other beneficiation including the removal of valueless or harmful constituents and preparation for market.

MILLING CAPACITY

The maximum rate at which a mill is capable treating ore or producing concentrate.

MINING

Any activity directed to severance and treatment of ore and associated rock. Included are open pit work, quarrying, augering, alluvial dredging and combined operations, including surface and underground operations.

MINERAL

Any of the various naturally occurring substances (such as coal, crude oil, metals, natural gas, salt, sand, stone, sulfur, and water) usually obtained from the earth. The term is used to include all wasting, i.e., nonregenerative, inorganic substances that are extracted from the earth.

MINERAL INTERESTS IN PROPERTIES (HEREINAFTER REFERRED TO AS PROPERTIES)

Include fee ownership or a lease, concession, or other contractual interest representing the right to extract oil or gas subject to such terms as may be imposed by the conveyance of that interests. Properties also include royalty interests, production payments payable in oil or gas, and other nonoperating interests in properties operated by others. Properties include those agreements with foreign governments or authorities under which an enterprise participates in the operation of the related properties or otherwise serves as "producer" of the underlying reserves but properties do not include other supply agreements or contracts that represent the right to purchase (as opposed to extract) oil and gas. Properties shall be classified as proved or unproved as follows:

- *Unproved properties.* Properties with no proved reserves.
- *Proved properties.* Properties with proved reserves.

MINERAL LEASE

An agreement whereby a mineral interest owner (lessor) conveys to another party (lessee) the rights to explore for, develop, and produce specified minerals. The lessee acquires a working interest and the lessor retains a nonoperating interest in the property, referred to as the royalty interest, each of proportions agreed upon.

MINERAL RESOURCE ASSETS

Those costs shown on the balance sheet representing assets which are directly associated with and which derive value from mineral reserves. For the oil and gas industry these costs may include the following:

- Intangible drilling and development costs.
- Capitalized nonproductive costs, delay rentals, and overhead and similar costs.
- Producing and nonproducing leasehold costs.
- Down-hole equipment.
- Well-head equipment.
- Lease production facilities—tanks, flow-lines, separators, above-ground pumps, compressors, etc.
- Gas cycling plants.
- Processing facilities located in a field in which the company owns interests in producing leases.
- Support facilities—power plants, field living quarters, etc.
- Gathering systems to the point of market in the field.
- Offshore platforms.

All costs which involve processing, transportation, refining, distribution, and marketing are not classified as mineral resource assets. Examples may include the following:

- Refineries.
- Transportation equipment and facilities beyond the point of market in the field—including pipelines, barges, trucking equipment.
- Drilling equipment and related facilities used in drilling operations.

For the mining industry these costs may include the following:

- Capitalized costs related to acquisition of mineral rights, leases, or properties; exploration; and development of ore bodies.
- All assets employed in the extraction and conversion process which are necessary to produce mineral product or products which are commercially marketable.
- Processing assets located at or dedicated solely to a mine or mines in which the company has an economic interest, which are designed with specific regard to the particular physical or chemical characteristics of the ores being mined or the scale of operation, and which, by their nature, would have only nominal economic value in the absence of the ores they were designed to treat.

● Supportive facilities such as power generating and distribution facilities, mine transportation facilities, townsites, other infrastructure, etc., which derive value solely because of the existence of the ore body.

All costs which involve processing, manufacturing and fabricating facilities which are not directly associated with, nor derive value from, a particular mineral deposit in which the company has an economic interest, e.g., smelters and refineries which obtain their feed from outside shippers, are not mineral resource assets.

MINERAL RIGHTS

The ownership of the minerals beneath the earth's surface with the right to remove them. Mineral rights may be conveyed separately from surface rights.

MONETARY ASSET

An asset whose amount is fixed, by contract or otherwise, in terms of units of currency. Examples of monetary assets are cash, short- or long-term accounts and notes receivable in cash.

MOTOR GASOLINE

Refers to blended gasoline suitable as fuel for use in spark ignition systems and within ASTM Specifications D 439.

NATURAL GAS

A naturally occurring mixture of hydrocarbon compounds and small quantities of various non-hydrocarbons existing in the gaseous phase or in solution with oil in nautral underground reservoirs at reservoir conditions. The principal hydrocarbons usually contained in the mixture are methane, ethane, propane, butanes, and pentanes. Typical non-hydrocarbon gases which may be contained in reservoir natural gas are carbon dioxide, helium, hydrogen sulphide, nitrogen, etc.

Under reservoir conditions, natural gas and the liquefiable portions thereof occur either in a single gaseous phase in the reservoir or in solution with crude oil and are not distinguishable at that time as separate substances. Natural gas is classified by two categories based on the type of occurrence in the reservoir, as follows:

● *Non-Associated Gas.* Free natural gas not in contact with significant quantities of crude oil in the reservoir.

● *Associated/Dissolved Gas.* The combined volume of natural gas which occurs in crude oil reservoirs either as free gas (associated) or as gas in solution with crude oil (dissolved).

Associated gas is free natural gas, commonly known as gas cap gas, which overlies and is in contact with crude oil in the reservoir. Dissolved gas is natural gas which is in solution with crude oil in the reservoir at reservoir conditions.

Statistical data pertaining to natural gas production and reserves are reported in units of 1000 cubic feet at 14.73 pounds per square inch absolute and 60°F.

NATURAL GAS LIQUIDS

The sum of hydrocarbon liquids defined as lease condensate and liquids recovered at natural gas processing plants.

● *Contract Production.* Natural gas liquids accruing to a company because of its ownership of liquids extraction facilities which it uses to extract liquids from gas belonging to others, thereby earning a portion of the resultant liquids.

● *Leasehold Production.* Natural gas liquids produced, extracted, and credited to a company's interest.

● *Contract Reserves.* Natural gas liquid reserves corresponding to the contract production defined above.

● *Leasehold Reserves.* Natural gas liquid reserves corresponding to the leasehold production defined above.

NATURAL RESERVOIR PRESSURE

The energy within an oil or gas reservoir that causes the oil or gas to rise (unassisted by other forces) to the earth's surface when the reservoir is penetrated by an oil or gas well. The energy may be the result of "dissolved gas drive," "gas cap drive" or "water drive." Regardless of the type of drive, the principle is the same: the energy of the gas or water, creating a natural pressure, forces the oil or gas to the well bore.

NET PROFITS INTEREST

A contractual arrangement under which the beneficiary, in exchange for consideration paid, receives a stated percentage of the net profits from an extractive operation. The contract specifies the items to be take into account in computing net profits. That type of arrangement is considered a nonoperating interest, as distinguished from a working interest, since it does not involve the rights and obligations of operating a mineral property (costs of exploration, development, and operating). The net profits interest does not bear any part of net losses.

NONBRANDED PRODUCT

Any refined petroleum product that is not a branded product.

NONMONETARY ASSET

An asset whose amount is not fixed in terms of units of currency by contract or otherwise, i.e., an asset other than a monetary one. Examples of nonmonetary assets are inventories, investments in common stocks, and property, plant, and equipment.

NONOPERATING INTEREST

Any mineral lease interest (e.g., royalty, production payment, net profits interest) that does not involve the rights and obligations of operating a mineral property.

NONPRODUCING

A term often used in reference to a property, well, or mine from which production of commercially recoverable quantities of wasting natural resources has not yet commenced.

NONTRACEABLE

Those revenues, costs, assets, and liabilities which cannot be directly attributed to a line of business or which cannot be assigned to a line of business by use of a reasonable allocation method developed on the basis of operating level realities.

NUCLEAR FUEL OPERATIONS

All nuclear fuel operations, excluding reactor and reactor component manufacturing or containment construction.

OFFSHORE

That geographic area which lies seaward of the coastline. In general, the coastline is the line of ordinary low water along with that portion of the coast which is in direct contact with the open sea or the line marking the seaward limit of inland water.

If a State agency uses a different basis for classifying onshore and offshore areas, the State classification should be used.

Cook Inlet in Alaska is classified as offshore.

OIL SHALE

A sedimentary rock containing a solid organic material, kerogen.

OTHER ENERGY OPERATIONS

Energy operations not included in Petroleum, Coal, or Nuclear. Other Energy includes oil shale, tar sands, geothermal, and coal liquefaction and gasification.

PAYOUT

The point at which costs of drilling and equipping a property have been recovered from production proceeds less operating costs.

PERMANENT DIFFERENCES

Differences between taxable income and pretax accounting income arising from transactions that, under applicable tax laws and regulations, will not

be offset by corresponding differences or "turn around" in other periods.

PETROCHEMICALS

Organic and inorganic compounds and mixtures that include but are not limited to organic chemicals, cyclic intermediates, plastics and resins, synthetic fibers, elastomers, organic dyes, organic pigments, detergents, surface active agents, carbon black and ammonia.

PETROLEUM

Hydrocarbon mixtures broadly defined to include crude oil, lease condensate, natural gas, products of natural gas processing plants (plant products), refined products, and semi-finished products and blending materials.

PLANT PRODUCTS

Natural gas liquids recovered from natural gas processing plants (and in some cases from field facilities), including ethane, propane, butanes, butane-propane mixtures, natural gasoline, plant condensate and lease condensate.

PRE-DISCOVERY COSTS

All costs incurred in an extractive industry operation prior to the actual discovery of minerals in commercially recoverable quantities; normally includes prospecting, acquisition, and exploration costs, and may include some development costs.

PRE-PRODUCTION COSTS

Costs of prospecting for, acquiring, exploring, and developing mineral reserves, incurred prior to the point when production of commercially recoverable quantities of minerals commences.

PRIMARY RECOVERY

The crude oil or natural gas recovered by any method that may be employed to produce them where the fluid enters the well bore by the action of natural reservoir pressure (energy or gravity).

PRIMARY TRANSPORTATION

Conveyance of large shipments of petroleum raw materials and refined products usually by pipeline, barge, or ocean-going vessel. all crude oil transportation is primary, including the small amounts moved by truck. All refined product transportation by pipeline, barge, or ocean-going vessel is primary transportation.

PRODUCING PROPERTY

A term often used in reference to a property, well or mine that produces wasting natural resources. The term means a property that produces in paying quantities (that is, one for which proceeds from production exceed operating expenses).

PRODUCTION

The lifting the oil and gas to the surface and gathering, treating, field processing (as in the case of processing gas to extract liquid hydrocarbons), and field storage. The production function shall normally be regarded as terminating at the outlet valve on the lease or field production storage tank; if unusual physical or operational circumstances exist, it may be more appropriate to regard the production function as terminating at the first point at which oil, gas, or gas liquids are delivered to a main pipeline, a common carrier, a refinery, or a marine terminal.

● *Gross Company-Operated Production.* Total production from all company operated properties including all working and non-working interests.

● *Net Working Interest Production.* Total production accruing to the reporting company's working interests less royalty oil and volumes due others.

PRODUCTION COSTS

Production costs are those costs incurred to operate and maintain wells and related equipment and facilities, including depreciation and applicable operating costs of support equipment and facilities and other costs of operating and maintaining those wells and related equipment and facilities. They become part of the cost of oil and gas produced. Examples of production costs (sometimes called lifting costs) are:

● Costs of labor to operate the wells and related equipment and facilities.

● Repairs and maintenance.

● Materials, supplies, and fuel consumed and services utilized in operating the wells and related equipment and facilities.

● Property taxes and insurance applicable to proved properties and wells and related equipment and facilities.

● Severance taxes.

Depreciation, depletion, and amortization of capitalized acquisition, exploration, and development costs are not production costs but also become part of the cost of oil and gas produced along with production (lifting) costs identified above.

Production costs include the following sub-categories of costs:

● Well operations and maintenance.

● Well workovers

● Operating fluid injection and improved recovery programs

● Operating gas processing plants

● Ad valorem taxes

● Production or severance taxes

● Other, including overhead

PRODUCTION PAYMENT

A contractual arrangement providing a mineral interest that gives the owner a right to receive a fraction of production or of proceeds from the sale of production, until a specified quantity of minerals (or a definite sum of money, including interest or a definite sum of money, plus interest) has been received. It is considered a non-operating interest, since the owner bears no part of exploration, development, and operating costs. Usually, there is no recourse if production is insufficient to satisfy the amount of the production payment.

Production payments are classified according to the manner in which the rights were created:

● *Carved-out.* A production payment created out of the working interest in a mineral property. The working interest owner "carves out" and transfers the production payment contractual right to the transferee in return for cash or other consideration but retains the operating rights and responsibilities.

● *Retained.* Production payment retained under a contract in which the transferor divests a working interest in the producing property to the transferee and subsequently becomes the recipient of production payments delivered by the transferee.

PROSPECTING

The search for an area of probable mineralization; the search normally includes topographical, geological, and geophysical studies of relatively large areas undertaken in an attempt to locate specific areas warranting detailed exploration. Prospecting usually occurs prior to the acquisition of mineral rights.

PROSPECTING COSTS

Direct and indirect costs incurred to identify areas of interest that may warrant detailed exploration. Such costs include those incurred for: topographical, geological, and geophysical studies; rights of access to properties in order to conduct such studies; salaries, equipment, instruments, and supplies for geologists, geophysical crews, and others conducting such studies; and overhead that can be identified with those activities.

RESEARCH AND DEVELOPMENT

Basic and applied research in the sciences and engineering and the design and development of prototypes and processes, excluding quality control, routine product testing, market research, sales promotion, sales service, research in the social sciences or psychology, and other non-technological activities or technical services.

Basic research, applied research, and development are distinguished as follows:

● *Basic Research.* Original investigations for the advancement of scientific knowledge not having specific known commercial objectives, although such investigations may be in the fields of present or potential interest to the reporting company or others.

● *Applied Research.* Investigations directed to the discovery of new scientific knowledge having specific commercial objectives with respect to products or processes. This definition differs from that of basic research chiefly in terms of the objectives of the reporting company or the organization sponsoring the activity.

● *Development.* Technical activities of a nonroutine nature concerned with translating research findings or other scientific knowledge into products or processes. This does not include routine technical services to customers or other activities excluded from the above definition of research and development.

REFINED PETROLEUM PRODUCTS

Refined petroleum products include but are not limited to gasolines, kerosene, distillates (including No. 2 fuel oil), liquified petroleum gas, asphalt, lubricating oils, diesel fuels, and residual fuels.

RESERVES (COAL): (SUGGESTED DEFINITION FOR SCHEDULES 5341 AND 5342)

Coal reserve estimates comprising the demonstrated coal reserve base include only proved (measured) and probable (indicated).

● *Proved (Measured) Reserves.* Reserves or resources for which tonnage is computed from dimensions revealed in outcrops, trenches, workings, and drill holes and for which the grade is computed from the results of detailed sampling. The sites for inspection, sampling, and measurement are spaced so closely and the geologic character is so well defined that size, shape, and mineral content are well established. The computed tonnage and grade are judged to be accurate within limits which are stated, and no such limit is judged to be different from the computed tonnage or grade by more than 20 percent.

● *Probable (Indicated) Reserves.* Reserves or resources for which tonnage and grade are computed partly from specific measurements, samples, or production data and partly from projection for a reasonable distance on geologic evidence. The sites available for inspection, measurement, and sampling are too widely or otherwise inappropriately spaced to permit the mineral bodies to be outlined completely or the grade established throughout.

RESERVES (OIL AND GAS)

Estimated quantities of future recoverable oil and gas. For FRS purposes, reserves include only proved developed or proved undeveloped.

● *Proved Reserves.* The estimated quantities of crude oil, natural gas, and natural gas liquids which geological and engineering data demonstrate with reasonable certainty to be recoverable in future years from known reservoirs under existing economic and operating conditions.

Reservoirs are considered *proved* if economic producibility is supported by either acutal production or conclusive formation test. The area of a reservoir considered proved includes (1) that portion delineated by drilling and defined by gas-oil and/or oil-water contacts, if any; and (2) the immediately adjoining portions not yet drilled, but which can be reasonably judged as economically productive on the basis of available geological and engineering data. In the absence of information on fluid contacts, the lowest known structural occurrence of hydrocarbons controls the lower proved limit of the reservoir.

Reserves which can be produce economically through application of improved recovery techniques (such as fluid injection) are included in the "proved" classification when successful testing by a pilot project, or the operation of an installed program in the reservoir, provides support for the engineering analysis on which the project or program was based.

Estimates of proved reserves do not include the following: (1) oil that may become available from known reservoirs but is classified separately as "indicated additional reserves"; (2) crude oil, natural gas, and natural gas liquids, the recovery of which is subject to reasonable doubt because of uncertainty as to geology, reservoir characteristics, or economic factors; (3) crude oil, natural gas, and natural gas liquids, that may occur in undrilled prospects; and (4) crude oil, natural gas, and natural gas liquids, that may be recovered from oil shales, coal, gilsonite and other such sources.

● *Proved Developed Reserves.* Reserves which can be expected to be recovered through existing wells with existing equipment and operating methods. Proved developed reserves include both (1) proved developed producing reserves (those that are expected to be produced from existing completion intervals now open for production in existing wells) and (2) proved developed nonproducing reserves (those that exist behind the casing of existing wells, or at minor depths below the present bottom of such wells, which are expected to be produced through these wells in the predictable future, where the cost of making such oil and gas available for production should be relatively small compared to the cost of a new well). Additional oil and gas expected to be obtained through the application of fluid injection or other improved recovery techniques for supplementing the natural forces and mechanisms of primary recovery should be included as "proved developed reserves" only after testing by a pilot project or after the operation of an installed program has confirmed through production response that increased recovery will be achieved.

● *Proved Undeveloped Reserves.* Reserves which are expected to be recovered from new wells on undrilled acreage, or from existing wells where a relatively major expenditure is required for recompletion. Reserves on undrilled acreage shall be limited to those drilling units offsetting productive units, which are reasonably certain of production when drilled. Proved reserves for other undrilled units can be claimed only where it can be demonstrated with certainty that there is continuity of production from the existing productive formation. Under no circumstances should estimates for proved undeveloped reserves be attributable to any acreage for which an application of fluid injection or other improved recovery technique is contemplated, unless such techniques have been proved effective by actual tests in the area and in the same reservoir.

RESERVES, NET

Includes all proved reserves associated with the company's net working interests. (See Working Interest.)

RESERVES, CHANGES IN

For FRS reporting, the following definitions should be used for changes in reserves.

● *Revisions of Previous Estimates.* Changes in previous estimates of proved reserves, either upward or downward, resulting from new information normally obtained from development drilling and production history or resulting from a change in economic factors. Revisions do not include changes in reserve estimates resulting in proved acreage or from improved recovery techniques.

● *Improved Recovery.* Changes in reserve estimates resulting from application of improved recovery techniques shall be separately shown if significant. If not significant, such changes shall be included in revisions of previous estimates.

● *Purchases or Sales of Minerals-in-Place.* Increase or decrease in the estimated quantity of reserves resulting from the purchase or sale of mineral rights in land with known reserves.

● *Extensions, Discoveries, and Other Additions.* Additions to an enterprise's proved reserves that result from (i) extension of the proved acreage of previously discovered (old) reservoirs through additional drilling in periods subsequent to discovery and (ii) discovery of new fields with proved reserves or of new reservoirs of proved reserves in old fields.

RESERVOIR

A porous and permeable underground formation containing an individual and separate accumulation of producible hydrocarbons (oil and/or gas) that is confined by impermeable rock or water barriers and is characterized by a single natural pressure system.

RESIDUAL FUEL

Topped crude obtained in refinery operations including light and heavy grades 5 and 6, heavy diesel fuel, type S-M diesel fuel, navy grade, navy special, bunker C, and acid sludge.

ROYALTY

A contractual arrangement providing a mineral interest that gives the owner a right to a fractional share of production or proceeds therefrom, that does not contain rights and obligations of operating a mineral property, and that is normally free and clear of exploration, development, and operating costs, except production taxes. (See Nonoperating Interest.)

● *Advance Royalty.* A royalty required to be paid in advance of production from a mineral property that may or may not be recoverable from future production.

● *Basic Royalty.* A royalty interest retained by the owner in fee under a lease contract.

● *Minimum Royalty.* A guaranteed minimum amount of royalty income that a royalty owner is to receive under the terms of the lease agreement, regardless of the royalty owner's share of actual proceeds from the sale of production. A minimum royalty may or may not be recoverable out of future production.

● *Overriding Royalty.* A royalty interest, in addition to the basic royalty, created out of the working interest; it is, therefore, limited in its duration to the life of the lease under which it is created.

● *Shut-In Royalty.* A royalty paid by a lessee as a compensation for a lessor's loss of income because the lessee has deferred production from a property that is known to be capable of producing minerals. Shut in may be caused by a lack of a ready market, by a lack of transportation facilities, or by other reasons. A shut in royalty may or may not be recoverable out of future production.

SALT DOME

A domical arch (anticline) of sedimentary rock beneath the earth's surface, in which the layers bend downward in opposite directions from the crest, and that has a mass of rock salt as its core.

SEMIFINISHED (PETROLEUM) PRODUCTS

Unfinished petroleum stocks except those designated as raw materials. In most cases, these are produced by partial refining or purchased in an unfinished state for conversion to finished products by further refining.

SHALLOW PITTING

Testing a potential mineral deposit by systematically sinking small shafts into the earth and by analyzing the material recovered.

SHORT TON

A unit of weight that equals 2,000 pounds.

SHUT IN

Closed temporarily; wells and mines capable of production may be shut in for repair, cleaning, inaccessibility to a market, etc.

SPENT FUEL (DEPLETED FUEL)

Nuclear reactor fuel that has been used to the extent that it can no longer effectively sustain a chain reaction. Fuel becomes spent when its fissionable isotopes have been partially consumed and fission-product poisons have accumulated in it.

STATUTORY TERTIARY

Refers to costs or production identified and regulated pursuant to 10 CFR 212.78.

SUPPORT EQUIPMENT AND FACILITIES

Support equipment and facilities include, but are not limited to, seismic equipment, drilling equipment, construction and grading equipment, vehicles, repair shops, warehouses, supply points, camps, and division, district, or field offices.

SURFACE DRILLING EXPENSES (URANIUM)

Surface drilling expenses include drilling, drill roads, site preparation, geological and other technical support, sampling and drill hole logging.

SURFACE RIGHTS

Fee ownership in surface areas of land. Also used to describe a lessee's right to use as much of the surface of the land as may be reasonably necessary for the conduct of operations under the lease.

TAKE-OR-PAY CONTRACT

An agreement in which a buyer of minerals agrees to pay for the purchase of a minimum quanity of minerals over a period of time regardless of whether or not the buyer actually "takes" the purchased minerals. Usually, any amount paid in excess of minimum quantities (make-up products).

TANGIBLE DEVELOPMENT COSTS

Costs incurred during the development stage for access, mineral-handling, and support facilities having a physical nature. In mining, such costs would include tracks, lighting equipment, ventilation equipment, other equipment installed in the mine to facilitate the extraction of minerals, and supporting facilities for housing and care of work forces. In the oil and gas industry, tangible development costs would include well equipment (such as casing, tubing, pumping equipment, and well heads), as well as field storage tanks and gathering systems.

TAR SANDS

Bitumen-impregnated sands which yield mixtures of liquid hydrocarbon and which require further processing other than mechanical blending before becoming finished petroleum products.

TEST WELL CONTRIBUTION

A payment made to the owner of an adjacent or nearby tract who has drilled an exploratory well on that tract in exchange for information obtained from the drilling effort. (See Bottom Hole Contribution and Dry Hole Contribution.)

TIMING DIFFERENCES

Differences between the periods in which transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income. Timing differences originate in one period and reverse or "turn around" in one or more subsequent periods. Some timing differences reduce income taxes that would otherwise be payable currently; others increase income taxes that would otherwise be payable currently.

TRANSFER PRICE

The monetary value assigned to products, services, or rights conveyed or exchanged between related parties, including those occurring between units of a consolidated entity.

UNCOMPLETED WELLS, EQUIPMENT, AND FACILITIES COSTS

The costs incurred to:

● Drill and equipment wells that are not yet completed.

● Acquire or construct equipment and facilities that are not yet completed and installed.

UNDEVELOPED

Refers to a mineral property on which development wells or mines have not been drilled or completed to a point that would permit the production of commercial quantities of mineral reserves.

URANIUM EXPLORATION, LAND HELD FOR

Types of land holdings and acquisitions include fee land, mineral fee, leases, patented and unpatented claims, and options to purchase mineral fee. Excludes land acquired or held for production of uranium from known commercial uranium deposits.

URANIUM INVENTORIES

Includes preproduction and postproduction inventories:

● *Preproduction.* Preproduction inventories of U_3O_8 are cumulative tonnage-grade distributions of individual properties prior to production (i.e., the original in-place inventory).

● *Postproduction.* Postproduction inventories reflect in-place distributions of U_3O_8 after subtracting all production during and prior to the reporting period.

VALUATION CHARGE

A loss recognized in connection with an impairment in the value of an unproved property below its acquisition cost. See paragraph 28 of Financial Accounting Standards Board (FASB) Statement No. 19.

VESSELS

The following vessel categories have been established for FRS reporting:

● *Ultra Large Crude Carrier (ULCC).* A crude oil carrying ship exceeding 320,000 dead weight tons.

● *Very Large Crude Carrier (VLCC).* A crude oil carrying ship of between 160,001 and 320,000 dead weight tons.

● *Other Tanker.* A crude oil carrying ship of between 25,000 and 160,000 dead weight tons.

● *Speciality Ships (LPG/LNG).* A ship designed specifically to carry liquefied gases.

WASTING (NON-REGENERATIVE) NATURAL RESOURCES

Naturally occurring substances that are classified as minerals, are present in or on the earth's surface, and are extracted therefrom by man but are not susceptible to man's attempts to replace them in their original state or in a similar state (although they may in a sense be replaced by nature over the long term).

By that definition these resources include, but are not limited to: (1) crude oil and natural gas; (2) metals, such as, copper, gold, iron, lead, nickel, platinum, silver, tin, titanium, tungsten, uranium, and zinc; (3) coal; (4) salt; (5) sulfur; and (6) gravel, sand, and stone.

The natural resources excluded by this definition, because they are susceptible to attempts to replace them in their original state or in a similar state (being characteristically replaced by nature as well), are those that provide the basis for products normally associated with the industries of forestry, fishing, agriculture, and animal husbandry.

WELL

A well is a hole drilled in the earth for the purpose of (1) finding or producing crude oil or natural gas; or (2) providing services related to the production of crude oil or natural gas.

Wells are classified as (1) oil wells; (2) gas wells; (3) dry holes; (4) stratigraphic tests; or (5) service wells. The latter two types of wells are not counted for FRS reporting.

Oil wells, gas wells, and dry holes are classified as exploratory wells or development wells. Exploratory wells are subclassified as (1) new-field wildcats; (2) new-pool wildcats; (3) deeper-pool tests; (4) shallow-pool tests; and (5) outpost (extension) tests. Well classifications reflect the status of wells after drilling has been completed.

● *Completion.* The term "completion" refers to the installation of permanent equipment for the production of oil or gas. If a well is equipped to produce only oil or gas from one zone or reservoir, the definition of a "well" (classified as an oil well or gas well) and the definition of a "completion" are identical. However, if a well is equipped to produce oil and/or gas separately from more than one reservoir, a "well" is not synonymous with a "completion."

● *Completion Date.* The date on which the installation of permanent equipment has been completed (for the production of oil or gas) as reported to the appropriate regulatory agency.

The date of completion of a dry hole is the date of abandonment as reported to the appropriate agency.

The date of completion of a service well is the date on which the well is equipped to perform the service for which it was intended.

● *Development Well.* A well drilled within the proved area of an oil or gas reservoir to the depth of a stratigraphic horizon known to be productive.

● *Directional (Deviated) Well.* A well purposely deviated from the vertical using controlled angles to reach an objective location other than one directly below the surface location. A directional well may be the original hole or a directional "sidetrack" hole which deviates from the original bore at some point below the surface. The new footage associated with directional "sidetrack" holes should not be confused with footage resulting from remedial Sidetrack Drilling.

If there is a common bore from which two or more wells are drilled, the first complete bore from the surface to the original objective is classified and reported as a well drilled. Each of the deviations from the common bore is reported as a separate well.

● *Dry Hole.* An exploratory or development well found to be incapable of producing either oil or gas in sufficient quantities to justify completion as an oil or gas well.

● *Exploratory Well.* A well that is not a development well, a service well, or a stratigraphic test well as those items are defined elsewhere herein.

● *Free Well.* A well drilled and equipped by an assignee as consideration for the assignment of a fractional share of the working interest, commonly under a farm-out agreement.

● *Gas Well.* A well completed for production of natural gas from one or more gas zones or reservoirs. Such wells contain no completions for the production of crude oil.

● *Multiple Completion Well.* A well equipped to produce oil and/or gas separately from more than one reservoir. Such wells contain multiple strings of tubing or other equipment which permit production from the various completions to be measured and accounted for separately.

For statistical purposes, a multiple completion well is reported as one well and classified as either an oil well or a gas well. If one of the several completions in a given well is an oil completion, the well is classified as an oil well. If all of the completions in a given well are gas completions, the well is classified as a gas well.

● *New Field Discovery Well.* The first well drilled on a structural feature and/or stratigraphic condition that indicates the presence of a commercially significant quantity of hydrocarbons which may be produced. The discovery well may be drilled and abandoned without being completed to produce.

● *Oil Well.* A well completed for the production of crude oil from a least one oil zone or reservoir.

● *Oil Well Drilled Deeper.* A previously drilled hole which is reentered and deepened by additional drilling. Such wells are reported as (1) oil or gas wells if completed for the production of oil or gas, or (2) dry holes if sufficient quantities of oil or gas are not found to justify completion at the greater depth.

● *Old Well Worked Over.* A previously drilled hole which is reentered for the purpose of improving or establishing production of oil or gas, but no additional footage is drilled.

● *Service Well.* A well drilled or completed for the purpose of supporting production in an existing field. Well of this class are drilled for the following specific purposes:

Gas injection (natural gas, propane, butane, or flue-gas)
Water injection
Steam injection
Air injection
Salt water disposal
Water supply for injection
Observation
Injection for in-situ combustion

Wells converted to the above purposes are also classified as service wells.

● *Stratigraphic Test Well.* A stratigraphic test is a drilling effort, geologically directed, to obtain information pertaining to a specific geological condition that might lead toward the discovery of an accumulation of hydrocarbons. Such wells are customarily drilled without the intention of being completed for hydrocarbon production. This classification also includes tests identified as core tests and all types of expendable holes related to hydrocarbon exploration.

● *Water Well.* A well drilled to (1) obtain a water supply to support drilling or plant operations or (2) obtain a water supply to be used in connection with an improved recovery program. Water wells of the first type are not reported. Water wells drilled in connection with an improved recovery program are reported as service wells.

WELLHEAD PRICE

The value at the mouth of the well. In general, the wellhead price is considered to be the sales price obtainable from a third party in an arm's length transaction. Posted prices, regulated prices, or prices as defined by lease agreements, contracts or tax regulations should be used where applicable.

WELLS AND RELATED EQUIPMENT AND FACILITIES

Include those costs incurred to:

● Drill and equip those exploratory wells that have found proved reserves and exploratory-type stratigraphic test wells that have found proved reserves.

● Obtain access to proved reserves and provide facilities for extracting, treating, gathering, and storing the oil and gas, including the drilling and equipping of development wells, and development-type stratigraphic test wells (whether successful or unsuccessful) and service wells.

WORKING INTEREST

An interest in a mineral property that entitles the owner(s) of that interest to all or a share of mineral production from the property, usually subject to a royalty.

A working interest permits the owner(s) to explore, develop, and operate the property. The working interest owner(s) bear(s) the costs of exploration, development and operation of the property, and in return they are entitled to a share of the mineral production from the property, or to a share of the proceeds therefrom. It may be assigned to another party in whole or in part, or it may be divided into other special property interests.

● *Gross Working Interest.* The reporting company's working interest plus the proportionate share of any basic royalty interest or overriding royalty interest related to the working interest.

● Net Working Interest. The reporting company's working interest not including any basic royalty or overriding royalty interests.

YELLOWCAKE (U_3O_8)

[1] The final precipitate formed in the milling process. U_3O_8, a common form of triuranium oxide, is the powder obtained by evaporating an ammonia solution of the oxide.

[6450-01-C]

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FINANCIAL REPORTING SYSTEM
CLASSIFICATION INFORMATION

FORM APPROVED
O M B. NO. 33-R-0361
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | PAGE FOOT NOTE | ORIGINAL | REVISION | AS OF | REVISION DATE MO DAY YR | PAGE | OF PAGES

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MAIL TO: DEPARTMENT OF ENERGY
CODE 2906
WASHINGTON D C. 20461

THIS REPORT IS MANDATORY UNDER PUBLIC LAWS 95-91 AND 93-275

PART I. — IDENTIFICATION INFORMATION

IRS EMPLOYER IDENTIFICATION NUMBER

SEC 1934 ACT REG NUMBER

ADDRESS CHANGE INDICATOR
Please check if the address below has changed:

RESPONDENT ADDRESS:

COMPANY NAME
STREET/BOX/RFD
CITY
STATE/ZIP

Please affix mailing label here

Please make corrections below:

CONTACT PERSON
TITLE OF CONTACT PERSON
TELEPHONE NUMBER

PART II. — CERTIFICATION

I certify that the information provided herein and appended hereto is true and accurate to the best of my knowledge information and belief
TITLE 18 USC 1001 makes it a criminal offense for any person knowingly and willingly to make to any agency or department of the United States any false fictitious or fraudulent statements as to any matter within its jurisdiction

NAME:
TITLE:
SIGNATURE: DATE:

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5110

REPORTING COMPANY
CONSOLIDATING STATEMENT OF INCOME

FORM APPROVED
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	CONSOL A	ELIM B	NON TRACEABLE C	PETROLEUM (SCH 5210) D	COAL (SCH 5310) E	NUCLEAR (SCH 5410) F	OTHER ENERGY (SCH 5510) G	NON-ENERGY (SCH 5610) H	CONS
OPERATING REVENUES	01 00									
OPERATING EXPENSES:										
GENERAL OPERATING EXPENSES	02 00									
DD&A	03 00									
VALUATION CHARGES	04 00									
GENERAL & ADMINISTRATIVE	05 00									
RESEARCH AND DEVELOPMENT (SCH 5111)	06 00									
TOTAL OPERATING EXPENSES	07 00									
OPERATING INCOME	08 00									
OTHER REVENUE & (EXPENSE):										
EQUITY IN EARNINGS OF UNCONSOLIDATED AFFILIATES	09 00									
DIVIDEND INCOME FROM COST BASIS UNCONSOLIDATED AFFILIATES	10 00									
OTHER DIVIDEND & INTEREST INCOME	11 00									
GAIN/(LOSS) ON DISPOSITION OF PP&E	12.00									
INTEREST EXPENSE & FINANCIAL CHARGES	13.00									
MINORITY INTEREST IN INCOME (NET INCOME TAX)	14 00									
FOREIGN CURRENCY TRANSLATION EFFECTS	15.00									
OTHER REVENUE & (EXPENSE)	16.00									
INCOME TAXES (SCH 5112):										
CURRENT	17.00									
DEFERRED	18.00									
TOTAL INCOME TAX	19.00									
TOTAL OTHER REVENUE & (EXPENSE)	20.00									
INCOME BEFORE LINES 22.00 & 23.00	21.00									
EXTRAORDINARY ITEMS	22.00									
CUMULATIVE EFFECT OF ACCOUNTING CHANGES	23.00									
NET INCOME	24.00									

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REPORTING COMPANY
RESEARCH & DEVELOPMENT FUNDING AND EXPENDITURES

FORM APPROVED
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	TOTAL A	PETROLEUM: OIL & GAS RECOVERY B	PETROLEUM: OTHER PETROLEUM C	COAL: GASIF/ LIQUEFAC. D	COAL: OTHER COAL E	NUCLEAR F	OIL SHALE G	FOOT NOTE
SOURCE OF R&D FUNDS:									
FEDERAL GOVERNMENT	01 00								
INTERNAL COMPANY	02.00								
OTHER SOURCES	03 00								
TOTAL SOURCES	04 00								
R&D EXPENDITURES:									
BASIC RESEARCH:									
IN HOUSE	05 00								
CONTRACTED OUT	06 00								
APPLIED RESEARCH:									
IN HOUSE	07 00								
CONTRACTED OUT	08 00								
DEVELOPMENT:									
IN HOUSE	09 00								
CONTRACTED OUT	10 00								
CAPITALIZED EXPENDITURES	11 00								
TOTAL R&D EXPENDITURES	12.00								
R&D EXPENSE:									
TOTAL R&D EXPENDITURES (LINE 12 00)	13 00								
LESS: CAPITALIZED ITEMS (LINE 11 00)	14 00								
LESS: AMTS PAID FOR BY OTHERS (NOT INCLUDED IN TOTAL SOURCES LINE 04 00)	15 00								
TOTAL R&D EXPENSE EXCLUDING DD&A (SCH 5110 LINE 06 00 COL A)	16 00								
PLUS DD&A	17 00								
TOTAL	18 00								

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REPORTING COMPANY
RESEARCH & DEVELOPMENT FUNDING AND EXPENDITURES

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EXPIRES 12/31/79

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051
052 (IN THOUSANDS OF DOLLARS)

	FRS LINE #	TAR SANDS H	GEOTHERM I	SOLAR J	OTHER ENERGY K	NON ENERGY L	UNASSIGN M	1291
057 SOURCE OF R&D FUNDS:								
058 FEDERAL GOVERNMENT	01 00							
059 INTERNAL COMPANY	02.00							
060 OTHER SOURCES	03 00							
061 TOTAL SOURCES	04.00							
062 R&D EXPENDITURES:								
063 BASIC RESEARCH:								
064 IN HOUSE	05 00							
065 CONTRACTED OUT	06 00							
066 APPLIED RESEARCH:								
067 IN HOUSE	07 00							
068 CONTRACTED OUT	08 00							
069 DEVELOPMENT:								
070 IN HOUSE	09 00							
071 CONTRACTED OUT	10 00							
072 CAPITALIZED EXPENDITURES	11.00							
073 TOTAL R&D EXPENDITURES	12.00							

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REPORTING COMPANY
ANALYSIS OF INCOME TAXES

FORM APPROVED
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	TOTAL A
INCOME TAXES (AS PER FINANCIAL STATEMENTS):		
CURRENT PAID OR ACCRUED:		
U S FEDERAL BEFORE INVESTMENT TAX CREDIT	01 00	
U S FEDERAL INVESTMENT TAX CREDIT	02.00	
U S STATE & LOCAL INCOME TAXES	03 00	
FOREIGN INCOME TAXES:		
CANADA	04 00	
OECD EUROPE	05 00	
AFRICA	06 00	
MIDDLE EAST	07 00	
OTHER EASTERN HEMISPHERE	08 00	
OTHER WESTERN HEMISPHERE	09 00	
TOTAL FOREIGN	10 00	
TOTAL CURRENT	11.00	
DEFERRED:		
U S FEDERAL BEFORE INVESTMENT TAX CREDIT	12.00	
U S FEDERAL INVESTMENT TAX CREDIT	13 00	
U S STATE & LOCAL INCOME TAXES	14 00	
FOREIGN	15 00	
TOTAL DEFERRED	16 00	
TOTAL INCOME TAX EXPENSE	17 00	
RECONCILIATION OF ACCRUED U S FEDERAL INCOME TAX EXPENSE TO STATUTORY RATE:		
CONSOLIDATED PRETAX INCOME/(LOSS)	18.00	
LESS: FOREIGN SOURCE INCOME NOT SUBJECT TO U S TAX	19 00	
EQUALS: INCOME SUBJECT TO U S TAX	20 00	
LESS: U S STATE & LOCAL INCOME TAXES	21.00	
LESS: APPLICABLE FOREIGN INCOME TAXES DEDUCTED	22.00	
EQUALS: PRE TAX INCOME SUBJECT TO U S TAX	23 00	

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REPORTING COMPANY
ANALYSIS OF INCOME TAXES

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051

052 (IN THOUSANDS OF DOLLARS)

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	FRS LINE #	TOTAL A	PERCENT OF TAXABLE INCOME B
057 ENTER HERE THE COMPUTED EXPECTED			
058 TAX PROVISION BASED ON LINE 23 00	24.00		
059 INCREASE/(DECREASE) IN TAXES DUE TO:			
060 FOREIGN TAX CREDITS RECOGNIZED	25 00		
061 U S FEDERAL INVESTMENT TAX CREDIT RECOGNIZED	26 00		
062 STATUTORY DEPLETION	27 00		
063 OTHER	28 00		
064 ACTUAL U S FEDERAL TAX PROVISION/(REFUND)	29 00		

001 002 051 052 053 054 055 056 057 058 059 060 061 062 063 064

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REPORTING COMPANY
ANALYSIS OF INCOME TAXES BY SEGMENTS

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	CURRENT TAXES: TOTAL COLUMNS B-E A	U.S. FEDERAL BEFORE ITC B	U.S. FEDERAL ITC C	US STATE & LOCAL D	FOREIGN E
CURRENT TAX DETAIL BY SEGMENTS:						
NON ENERGY INDUSTRIES (CONSOLIDATED)	01 00					
OTHER ENERGY:						
FOREIGN SEGMENT	02 00					
DOMESTIC SEGMENT	03 00					
NONTRACEABLE	04 00					
ELIMINATIONS	05 00					
CONSOLIDATED	06 00					
NUCLEAR:						
FOREIGN SEGMENT	07 00					
DOMESTIC SEGMENT	08 00					
NONTRACEABLE	09 00					
ELIMINATIONS	10 00					
CONSOLIDATED	11 00					
COAL:						
FOREIGN SEGMENT	12 00					
DOMESTIC SEGMENT	13 00					
NONTRACEABLE	14 00					
ELIMINATIONS	15 00					
CONSOLIDATED	16 00					

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ANALYSIS OF INCOME TAXES BY SEGMENTS

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	FRS LINE #	DEFERRED TAXES: TOTAL COLUMNS G-J F	U.S. FEDERAL BEFORE ITC G	U.S. FEDERAL ITC H	US STATE & LOCAL I	FOREIGN J
DEFERRED TAX DETAIL BY SEGMENTS:						
NON ENERGY INDUSTRIES (CONSOLIDATED)	01 00					
OTHER ENERGY:						
FOREIGN SEGMENT	02 00					
DOMESTIC SEGMENT	03 00					
NONTRACEABLE	04 00					
ELIMINATIONS	05 00					
CONSOLIDATED	06 00					
NUCLEAR:						
FOREIGN SEGMENT	07 00					
DOMESTIC SEGMENT	08 00					
NONTRACEABLE	09 00					
ELIMINATIONS	10 00					
CONSOLIDATED	11 00					
COAL:						
FOREIGN SEGMENT	12.00					
DOMESTIC SEGMENT	13 00					
NONTRACEABLE	14 00					
ELIMINATIONS	15 00					
CONSOLIDATED	16 00					

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	CURRENT TAXES: TOTAL COLUMNS B-E A	U.S. FEDERAL: BEFORE ITC B	U.S. FEDERAL: ITC C	US STATE & LOCAL D	FOREIGN E
CURRENT TAX DETAIL BY SEGMENTS (CONT'D):						
PETROLEUM:						
FOREIGN PETROLEUM:						
INTERNATIONAL MARINE SEGMENT	17 00					
FOREIGN REFINING/MARKETING SEGMENT	18 00					
FOREIGN PRODUCTION SEGMENT	19 00					
NONTRACEABLE	20 00					
ELIMINATIONS	21 00					
CONSOLIDATED	22 00					
DOMESTIC PETROLEUM:						
FEDERALLY REGULATED						
REFINED PRODUCT PIPELINE SEGMENT	23 00					
FEDERALLY REGULATED						
NATURAL GAS PIPELINE SEGMENT	24 00					
FEDERALLY REGULATED						
CRUDE & LIQUID PIPELINE SEGMENT	25 00					
DOMESTIC REFINING/MARKETING SEGMENT	26 00					
DOMESTIC PRODUCTION SEGMENT	27 00					
NONTRACEABLE	28 00					
ELIMINATIONS	29 00					
CONSOLIDATED	30 00					
DOMESTIC & FOREIGN PETROLEUM:						
NONTRACEABLE	31 00					
ELIMINATIONS	32 00					
CONSOLIDATED	33 00					
CONSOLIDATED COMPANY:						
NONTRACEABLE	34 00					
ELIMINATIONS	35 00					
CONSOLIDATED	36 00					

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REPORTING COMPANY
ANALYSIS OF INCOME TAXES BY SEGMENTS

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	DEFERRED TAXES: TOTAL COLUMNS G-J F	U.S. FEDERAL BEFORE ITC G	U.S. FEDERAL ITC H	US STATE & LOCAL I	FOREIGN J
DEFERRED TAX DETAIL BY SEGMENTS (CONT D):						
PETROLEUM:						
FOREIGN PETROLEUM:						
INTERNATIONAL MARINE SEGMENT	17 00					
FOREIGN REFINING/MARKETING SEGMENT	18 00					
FOREIGN PRODUCTION SEGMENT	19 00					
NONTRACEABLE	20 00					
ELIMINATIONS	21 00					
CONSOLIDATED	22 00					
DOMESTIC PETROLEUM:						
FEDERALLY REGULATED						
REFINED PRODUCT PIPELINE SEGMENT	23 00					
FEDERALLY REGULATED						
NATURAL GAS PIPELINE SEGMENT	24 00					
FEDERALLY REGULATED						
CRUDE & LIQUID PIPELINE SEGMENT	25 00					
DOMESTIC REFINING/MARKETING SEGMENT	26 00					
DOMESTIC PRODUCTION SEGMENT	27 00					
NONTRACEABLE	28.00					
ELIMINATIONS	29.00					
CONSOLIDATED	30 00					
DOMESTIC & FOREIGN PETROLEUM:						
NONTRACEABLE	31 00					
ELIMINATIONS	32.00					
CONSOLIDATED	33.00					
CONSOLIDATED COMPANY						
NONTRACEABLE	34 00					
ELIMINATIONS	35.00					
CONSOLIDATED	36 00					

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REPORTING COMPANY
ANALYSIS OF U.S. FEDERAL DEFERRED INCOME TAXES

FORM APPROVED
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | PAGE FOOTNOTE | ORIGINAL | REVISION | AS OF REVISION DATE MO DAY YR | PAGE OF PAGES

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	ANALYSIS OF U.S. FEDERAL DEFERRED INCOME TAXES: TOTAL COLUMNS B-F A	ACCEL DEPR B	EXPL & DEVELOPMENT C	PRODUCTION PAYMENTS D	LOSS RESERVES E	OTHER F	FOOT NOTE
NON ENERGY INDUSTRIES (CONSOLIDATED)	01 00							
OTHER ENERGY:								
FOREIGN SEGMENT	02 00							
DOMESTIC SEGMENT	03 00							
NONTRACEABLE	04 00							
ELIMINATIONS	05 00							
CONSOLIDATED	06 00							
NUCLEAR:								
FOREIGN SEGMENT	07 00							
DOMESTIC SEGMENT	08 00							
NONTRACEABLE	09 00							
ELIMINATIONS	10 00							
CONSOLIDATED	11 00							
COAL:								
FOREIGN SEGMENT	12 00							
DOMESTIC SEGMENT	13 00							
NONTRACEABLE	14 00							
ELIMINATIONS	15 00							
CONSOLIDATED	16 00							

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REPORTING COMPANY
ANALYSIS OF U.S. FEDERAL DEFERRED INCOME TAXES

FORM APPROVED
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | PAGE FOOTNOTE | ORIGINAL | REVISION | AS OF REVISION DATE MO DAY YR | PAGE OF PAGES

H H H

(IN THOUSANDS OF DOLLARS)

	FRS LINE #	ANALYSIS OF U.S. FEDERAL DEFERRED INCOME TAXES: TOTAL COLUMNS D-F A	ACCEL DEPR B	EXPL & DEVELOPMENT C	PRODUCTION PAYMENTS D	LOSS RESERVES E	OTHER F
PETROLEUM:							
FOREIGN PETROLEUM:							
INTERNATIONAL MARINE SEGMENT	17 00						
FOREIGN REFINING/MARKETING SEGMENT	18 00						
FOREIGN PRODUCTION SEGMENT	19 00						
NONTRACEABLE	20 00						
ELIMINATIONS	21 00						
CONSOLIDATED	22.00						
DOMESTIC PETROLEUM:							
FEDERALLY REGULATED							
REFINED PRODUCT PIPELINE SEGMENT	23 00						
FEDERALLY REGULATED							
NATURAL GAS PIPELINE SEGMENT	24.00						
FEDERALLY REGULATED							
CRUDE & LIQUID PIPELINE SEGMENT	25 00						
DOMESTIC REFINING/MARKETING SEGMENT	26.00						
DOMESTIC PRODUCTION SEGMENT	27.00						
NONTRACEABLE	28.00						
ELIMINATIONS	29.00						
CONSOLIDATED	30 00						
DOMESTIC & FOREIGN PETROLEUM:							
NONTRACEABLE	31.00						
ELIMINATIONS	32.00						
CONSOLIDATED	33.00						
CONSOLIDATED COMPANY:							
NONTRACEABLE	34 00						
ELIMINATIONS	35.00						
CONSOLIDATED	36.00						

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REPORTING COMPANY
ANALYSIS OF OTHER TAX BENEFITS

FORM APPROVED
O.M.B. NO. 38-R-0561
EXPIRES 12/31/79

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	ANALYSIS OF OTHER TAX BENEFITS: EXCESS ALLOWABLE STATUTORY DEPLETION A	GENERATED U.S. FEDERAL ITC: CURRENT B	GENERATED U.S. FEDERAL ITC: DEFERRED C	FOREIGN TAX CREDITS: GENERATED D	FOREIGN TAX CREDITS: RECOGNIZED E	RSPT
NON ENERGY INDUSTRIES (CONSOLIDATED)	01 00						
OTHER ENERGY:							
FOREIGN SEGMENT	02.00						
DOMESTIC SEGMENT	03 00						
NONTRACEABLE	04 00						
ELIMINATIONS	05 00						
CONSOLIDATED	06 00						
NUCLEAR:							
FOREIGN SEGMENT	07 00						
DOMESTIC SEGMENT	08 00						
NONTRACEABLE	09 00						
ELIMINATIONS	10 00						
CONSOLIDATED	11 00						
COAL:							
FOREIGN SEGMENT	12 00						
DOMESTIC SEGMENT	13 00						
NONTRACEABLE	14 00						
ELIMINATIONS	15 00						
CONSOLIDATED	16.00						

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REPORTING COMPANY
ANALYSIS OF OTHER TAX BENEFITS

FORM APPROVED
O.M.B. NO. 38-R-0381
EXPIRES 12/31/79

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	ANALYSIS OF OTHER TAX BENEFITS: EXCESS ALLOWABLE STATUTORY DEPLETION A	GENERATED U.S. FEDERAL ITC: CURRENT B	GENERATED U.S. FEDERAL ITC: DEFERRED C	FOREIGN TAX CREDITS: GENERATED D	FOREIGN TAX CREDITS: RECOGNIZED E
PETROLEUM:						
FOREIGN PETROLEUM:						
INTERNATIONAL MARINE SEGMENT	17 00					
FOREIGN REFINING/MARKETING SEGMENT	18 00					
FOREIGN PRODUCTION SEGMENT	19 00					
NONTRACEABLE	20 00					
ELIMINATIONS	21 00					
CONSOLIDATED	22 00					
DOMESTIC PETROLEUM:						
FEDERALLY REGULATED						
REFINED PRODUCT PIPELINE SEGMENT	23.00					
FEDERALLY REGULATED						
NATURAL GAS PIPELINE SEGMENT	24 00					
FEDERALLY REGULATED						
CRUDE & LIQUID PIPELINE SEGMENT	25.00					
DOMESTIC REFINING/MARKETING SEGMENT	26.00					
DOMESTIC PRODUCTION SEGMENT	27.00					
NONTRACEABLE	28.00					
ELIMINATIONS	29 00					
CONSOLIDATED	30.00					
DOMESTIC & FOREIGN PETROLEUM:						
NONTRACEABLE	31.00					
ELIMINATIONS	32.00					
CONSOLIDATED	33.00					
CONSOLIDATED COMPANY:						
NONTRACEABLE	34.00					
ELIMINATIONS	35.00					
CONSOLIDATED	36.00					

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REPORTING COMPANY
CONSOLIDATING BALANCE SHEET

FORM APPROVED
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

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002 H H H
003 PAGE OF PAGES H H H

004 (IN THOUSANDS OF DOLLARS)

	FRS LINE #	CONSOL A	ELIM B	NON-TRACEABLE C	PETROLEUM (SCH 5220) D	COAL (SCH 5320) E	NUCLEAR (SCH 5420) F	OTHER ENERGY (SCH 5520) G	NON-ENERGY (SCH 5620) H	FOOT NOTE
009 CURRENT ASSETS:										
010 CASH & MARKETABLE SECURITIES	01 00									
011 TRADE ACCOUNTS AND NOTES RECEIVABLE	02.00									
012 INVENTORIES:										
013 RAW MATERIALS & PRODUCTS	03 00									
014 MATERIALS & SUPPLIES	04 00									
015 OTHER CURRENT ASSETS	05 00									
016 TOTAL CURRENT ASSETS	06 00									
017 NON CURRENT ASSETS:										
018 PROPERTY PLANT & EQUIPMENT:										
019 GROSS	07 00									
020 ACCUMULATED DD&A	08 00									
021 NET	09 00									
022 INVESTMENT & ADVANCES TO										
023 UNCONSOLIDATED AFFILIATES (SCH 5121)	10 00									
024 OTHER NON CURRENT ASSETS	11 00									
025 TOTAL NON CURRENT ASSETS	12 00									
026 TOTAL ASSETS	13 00									
027 CURRENT LIABILITIES:										
028 TRADE ACCOUNTS & NOTES PAYABLE	14 00									
029 OTHER CURRENT LIABILITIES	15 00									
030 LONG TERM DEBT	16 00									
031 DEFERRED INCOME TAX CREDITS	17 00									
032 OTHER DEFERRED CREDITS	18 00									
033 OTHER LONG TERM ITEMS	19 00									
034 MINORITY INTEREST IN CONSOLIDATED AFFILIATES	20 00									
035 TOTAL OF LINES 14 00 THROUGH 20 00	21 00									
036 STOCKHOLDER S EQUITY:										
037 RETAINED EARNINGS	22.00									
038 OTHER EQUITY	23.00									
039 TOTAL STOCKHOLDER S EQUITY	24 00									
040 TOTAL OF LINES 21 00 AND 24 00	25 00									

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REPORTING COMPANY
INVESTMENTS AND ADVANCES TO UNCONSOLIDATED AFFILIATES

FORM APPROVED
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

001 H H H RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | PAGE FOOTNOTE | ORIGINAL | REVISION | AS OF REVISION DATE MO DAY YR | PAGE OF PAGES H H H

(IN THOUSANDS OF DOLLARS)

	AFFILIATES NAMES	FRS LINE #	CODE A	BUSINESS/ GEOGRAPHIC CODE B	PERCENT OWNED C	CONSOL METHOD CODE D	INVESTMENTS & ADVANCES (BEG BAL) E	EQUITY IN EARNINGS F	EQUITY METHOD DIVIDENDS G	NEW INVESTMENT & REPAYMENT OF ADVANCES H	RSTA
009		01 00									009
010		02 00									010
011		03 00									011
012		04 00									012
013		05 00									013
014		06 00									014
015		07 00									015
016		08 00									016
017		09 00									017
018		10 00									018
019		11 00									019
020		12.00									020
021		13 00									021
022		14 00									022
023		15 00									023
024		16.00									024
025		17 00									025
026		18.00									026
027		19.00									027
028		20.00									028

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REPORTING COMPANY
INVESTMENTS AND ADVANCES TO UNCONSOLIDATED AFFILIATES

FORM APPROVED
O.M.B. NO. 38-R-0341
EXPIRES 12/31/79

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(IN THOUSANDS OF DOLLARS)

AFFILIATES NAMES	FRS LINE #	CODE A	OTHER I	INVESTMENTS & ADVANCES (END BAL) J	COST METHOD DIVIDENDS K	TOTAL AFFILIATE SALES L	TOTAL AFFILIATE ASSETS M
	01 00						
	02.00						
	03 00						
	04 00						
	05 00						
	06 00						
	07 00						
	08 00						
	09 00						
	10 00						
	11 00						
	12 00						
	13 00						
	14 00						
	15 00						
	16 00						
	17 00						
	18 00						
	19 00						
	20 00						

COST NOTE

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REPORTING COMPANY
JOINT VENTURE PARTICIPATION

FORM APPROVED
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EXPIRES 12/31/79

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(IN THOUSANDS OF DOLLARS)

JOINT VENTURES NAMES	FRS LINE #	CODE A	BUSINESS/ GEOGRAPHIC CODE B	PERCENT PARTICIP C	CONSOL METHOD CODE D	YEAR FORM E	REPORTING COMPANY ACCOUNTS: CAPITALIZED EXPENDITURES F	EXPENSED EXPENDITURES G	REVENUES H	ACCUMULATED DD&A I	GROSS INVESTMENT J	ISSUE
	01 00											
	02 00											
	03.00											
	04 00											
	05 00											
	06 00											
	07 00											
	08 00											
	09 00											
	10 00											
	11 00											
	12.00											
	13 00											
	14 00											
	15 00											
	16 00											
	17 00											
	18 00											
	19.00											
	20 00											

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FORM APPROVED
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

REPORTING COMPANY
CONSOLIDATING STATEMENT OF SOURCES AND USES OF FUNDS

RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | PAGE FOOTNOTE | ORIGINAL | REVISION | AS OF | REVISION DATE MO DAY YR

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	CONSOL A
SOURCES OF FUNDS:		
FUNDS PROVIDED BY OPERATIONS:		
NET INCOME	01 00	
MINORITY INTEREST IN INCOME	02.00	
DD&A	03 00	
VALUATION CHARGES	04 00	
DEFERRED INCOME TAXES	05 00	
RECOGNIZED UNDISTRIBUTED (EARNINGS)/LOSSES OF UNCONSOLIDATED AFFILIATES	06 00	
OTHER FUNDS PROVIDED	07 00	
TOTAL FUNDS FROM OPERATIONS	08 00	
DISPOSITION OF PROPERTY PLANT & EQUIPMENT	09 00	
PROCEEDS FROM:		
LONG TERM DEBT	10 00	
EQUITY SECURITIES OFFERINGS	11 00	
OTHER SOURCES OF FUNDS	12.00	
TOTAL SOURCES OF FUNDS	13 00	

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REPORTING COMPANY
CONSOLIDATING STATEMENT OF SOURCES AND USES OF FUNDS

FORM APPROVED
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | FOOT NOTE | ORIGINAL | REVISION | REVISION DA MO DAY YR AS OF

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	CONSOL A	ELIM B	NON TRACEABLE C	TOTAL DOMESTIC D	TOTAL FOREIGN E
USES OF FUNDS:						
ADDITIONS TO PROPERTY PLANT & EQUIPMENT:						
PETROLEUM:						
PRODUCTION SEGMENT (SCH 5223):						
EXPLORATION	14 00					
DEVELOPMENT	15 00					
PRODUCTION	16 00					
SUPPORT EQUIPMENT & FACILITIES	17 00					
REFINING/MARKETING SEGMENT:						
REFINING (SCH 5222)	18 00					
MARKETING (SCH 5222)	19 00					
TRANSPORTATION:						
PIPELINE	20 00					
MARINE	21 00					
OTHER	22.00					
TOTAL TRANSPORTATION (SCH 5222)	23 00					
TRANSPORTATION SEGMENT (SCH 5222):						
FEDERALLY REGULATED PIPELINES:						
CRUDE/LIQUID	24 00					
NATURAL GAS	25 00					
REFINED PRODUCT	26.00					
INTERNATIONAL MARINE	27 00					
TOTAL PETROLEUM	28.00					
COAL (SCH 5320)	29.00					
NUCLEAR (SCH 5420)	30 00					
OTHER ENERGY (SCH 5520)	31.00					
NON ENERGY INDUSTRIES (SCH 5620):						
CHEMICAL INDUSTRY	32.00					
OTHER INDUSTRIES	33.00					
NONTRACEABLE ASSETS	34 00					
TOTAL	35.00					

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FORM APPROVED
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REPORTING COMPANY
CONSOLIDATING STATEMENT OF SOURCES AND USES OF FUNDS

RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | PAGE FOOTNOTE | ORIGINAL | REVISION | AS OF | RECEIPT DATE MO DAY YR | PAGE | OF | PAGES

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	TOTAL FOREIGN E	CANADA F	OECD EUROPE G	AFRICA H	MIDDLE EAST I	OTHER EAST HEMISPHERE J	OTHER WEST HEMISPHERE K
		FOREIGN						
USES OF FUNDS:								
ADDITIONS TO PROPERTY PLANT & EQUIPMENT:								
PETROLEUM:								
PRODUCTION SEGMENT (SCH 5223):								
EXPLORATION	14 00							
DEVELOPMENT	15 00							
PRODUCTION	16 00							
SUPPORT EQUIPMENT & FACILITIES	17 00							
REFINING/MARKETING SEGMENT:								
REFINING (SCH 5222)	18 00							
MARKETING (SCH 5222)	19 00							
TRANSPORTATION:								
PIPELINE	20 00							
MARINE	21 00							
OTHER	22 00							
TOTAL TRANSPORTATION (SCH 5222)	23 00							
TRANSPORTATION SEGMENT (SCH 5222):								
FEDERALLY REGULATED PIPELINES:								
CRUDE/LIQUID	24 00							
NATURAL GAS	25 00							
REFINED PRODUCT	26 00							
INTERNATIONAL MARINE	27 00							
TOTAL PETROLEUM	28 00							
COAL (SCH 5320)	29 00							
NUCLEAR (SCH 5420)	30 00							
OTHER ENERGY (SCH 5520)	31 00							
NON ENERGY INDUSTRIES (SCH 5620):								
CHEMICAL INDUSTRY	32.00							
OTHER INDUSTRIES	33 00							
NONTRACEABLE ASSETS	34 00							
TOTAL	35 00							

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REPORTING COMPANY

CONSOLIDATING STATEMENT OF SOURCES AND USES OF FUNDS

FORM APPROVED
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152 (IN THOUSANDS OF DOLLARS)

	FRS LINE #	CONSOL A	ELIM B	NON TRACEABLE C	TOTAL DOMESTIC D	TOTAL FOREIGN E
157 INVESTMENT & ADVANCES TO UNCONSOLIDATED AFFILIATES:						
158 PETROLEUM	36 00					
159 COAL	37 00					
160 NUCLEAR	38 00					
161 OTHER ENERGY	39 00					
162 NON ENERGY INDUSTRIES	40 00					
163 NON TRACEABLE	41 00					
164 TOTAL	42.00					
165 INVESTMENT IN OTHER NON-CURRENT ASSETS	43 00					
166 DIVIDENDS TO SHAREHOLDERS	44 00					
167 REDUCTION IN LONG TERM DEBT	45 00					
168 OTHER USES OF FUNDS	46 00					
169 TOTAL USES OF FUNDS	47 00					
170 INCREASE/(DECREASE) IN WORKING CAPITAL	48.00					

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REPORTING COMPANY
UNCONSOLIDATED AFFILIATES

FORM APPROVED
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

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	FRS LINE #	CODE A	PERCENT OWNED B
009 UNCONSOLIDATED AFFILIATE (FROM SCHEDULE 5121)			
011	01 00		
013 NAMES OF CO-OWNERS (10% OR MORE)			
015	02.00		
016	03 00		
017	04 00		
018	05 00		
019	06 00		
020	07 00		
021	08 00		
022	09 00		
023	10 00		

POST NOTE

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FINANCIAL REPORTING SYSTEM
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REPORTING COMPANY
UNCONSOLIDATED AFFILIATES

FORM APPROVED
O.M.B. NO. 39-R-0361
EXPIRES 12/31/79

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	FRS LINE #	CODE A	OPERATING STATISTICS (TOTAL AFFILIATE) DOMESTIC C	FOREIGN D
UNCONSOLIDATED AFFILIATE (FROM PAGE 1 OF 3)				
PETROLEUM EXPLORATION DEVELOPMENT & PRODUCTION:				
NET NUMBER OF WELLS COMPLETED:				
OIL	11 00			
GAS	12.00			
DRY	13 00			
NET WORKING INTEREST PRODUCTION:				
CRUDE (MB)	14 00			
NATURAL GAS (MMCF)	15 00			
NATURAL GAS LIQUIDS (MB)	16.00			
NET PROVED RESERVES (END OF PERIOD):				
CRUDE (MB)	17.00			
NATURAL GAS (MMCF)	18.00			
NATURAL GAS LIQUIDS (MB)	19 00			
PETROLEUM REFINING/MARKETING:				
NUMBER OF REFINERIES	20.00			
CAPACITY (MBD)	21.00			
RUNS TO STILLS (MBD)	22.00			
PETROLEUM SHIPMENTS:				
RAW MATERIAL FROM REPORTING COMPANY:				
CRUDE (MB)	23.00			
NATURAL GAS (MMCF)	24.00			
NATURAL GAS LIQUIDS (MB)	25.00			
RAW MATERIAL TO REPORTING COMPANY:				
CRUDE (MB)	26.00			
NATURAL GAS (MMCF)	27.00			
NATURAL GAS LIQUIDS (MB)	28.00			
REFINED PRODUCTS FROM REPORTING COMPANY (MB)	29 00			
REFINED PRODUCTS TO REPORTING COMPANY (MB)	30.00			

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REPORTING COMPANY
UNCONSOLIDATED AFFILIATES

FORM APPROVED
O.M.B. NO. 38-R-0361
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	FRS LINE #	CODE A	OPERATING STATISTICS (TOTAL AFFILIATE) DOMESTIC C	FOREIGN D
107 UNCONSOLIDATED AFFILIATE (FROM PAGE 1 OF 3)				
109				
111 COAL:				
112 RESERVES (M TONS)	31 00			
113 PRODUCTION (M TONS)	32 00			
114 NUCLEAR:				
115 RESERVES (M LBS)	33 00			
116 MINED PRODUCTION OF YELLOWCAKE (M LBS)	34 00			
117 SALES OF PROCESSED ORE (M LBS)	35 00			
118 MARINE TRANSPORTATION:				
119 NUMBER OF TANKERS (OWN LEASE CHARTER)	36 00			
120 CAPACITY (MDWT)	37 00			
121 PIPELINES:				
122 CRUDE/LIQUID SHIPMENTS (MB):				
123 FOR REPORTING COMPANY S ACCOUNT	38 00			
124 FOR OTHER CO-OWNERS	39 00			
125 FOR THIRD PARTIES	40 00			
126 TOTAL	41 00			
127 NATURAL GAS SHIPMENTS (MMCF):				
128 FOR REPORTING COMPANY S ACCOUNT	42 00			
129 FOR OTHER CO-OWNERS	43 00			
130 FOR THIRD PARTIES	44 00			
131 TOTAL	45 00			
132 REFINED PRODUCT SHIPMENTS (MB):				
133 FOR REPORTING COMPANY S ACCOUNT	46 00			
134 FOR OTHER CO-OWNERS	47 00			
135 FOR THIRD PARTIES	48.00			
136 TOTAL	49 00			
137 ENERGY RESEARCH & DEVELOPMENT:				
138 EXPENDITURES	50 00			
139 PREDOMINANT TYPE CODE (SEE INSTRUCTIONS)	51 00			

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REPORTING COMPANY
CONSOLIDATED JOINT VENTURES

FORM APPROVED
O.M.B. NO. 39-R-0361
EXPIRES 12/31/79

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	FRS LINE #	CODE A	PERCENT OWNED B
JOINT VENTURE (FROM SCHEDULE 5122)			
	01 00		
NAMES OF CO-VENTURERS (10% OR MORE)			
	02.00		
	03 00		
	04 00		
	05 00		
	06 00		
	07.00		
	08 00		
	09 00		
	10 00		

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REPORTING COMPANY
CONSOLIDATED JOINT VENTURES

FORM APPROVED
O.M.B. NO. 38-R-0361
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JOINT VENTURE (FROM PAGE 1 OF 3)

	FRS LINE #	CODE A	OPERATING STATISTICS (COMPANY SHARE) DOMESTIC C	FOREIGN D
PETROLEUM EXPLORATION DEVELOPMENT & PRODUCTION:				
NET NUMBER OF WELLS COMPLETED:				
OIL	11 00			
GAS	12 00			
DRY	13 00			
NET WORKING INTEREST PRODUCTION:				
CRUDE (MB)	14 00			
NATURAL GAS (MMCF)	15 00			
NATURAL GAS LIQUIDS (MB)	16 00			
NET PROVED RESERVES (END OF PERIOD):				
CRUDE (MB)	17 00			
NATURAL GAS (MMCF)	18 00			
NATURAL GAS LIQUIDS (MB)	19 00			
PETROLEUM REFINING/MARKETING:				
NUMBER OF REFINERIES	20 00			
CAPACITY (MBD)	21 00			
RUNS TO STILLS (MBD)	22 00			
PETROLEUM SHIPMENTS:				
RAW MATERIAL FROM REPORTING COMPANY:				
CRUDE (MB)	23 00			
NATURAL GAS (MMCF)	24 00			
NATURAL GAS LIQUIDS (MB)	25 00			
RAW MATERIAL TO REPORTING COMPANY:				
CRUDE (MB)	26 00			
NATURAL GAS (MMCF)	27 00			
NATURAL GAS LIQUIDS (MB)	28 00			
REFINED PRODUCTS FROM REPORTING COMPANY (MB)	29 00			
REFINED PRODUCTS TO REPORTING COMPANY (MB)	30 00			

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REPORTING COMPANY
CONSOLIDATED JOINT VENTURES

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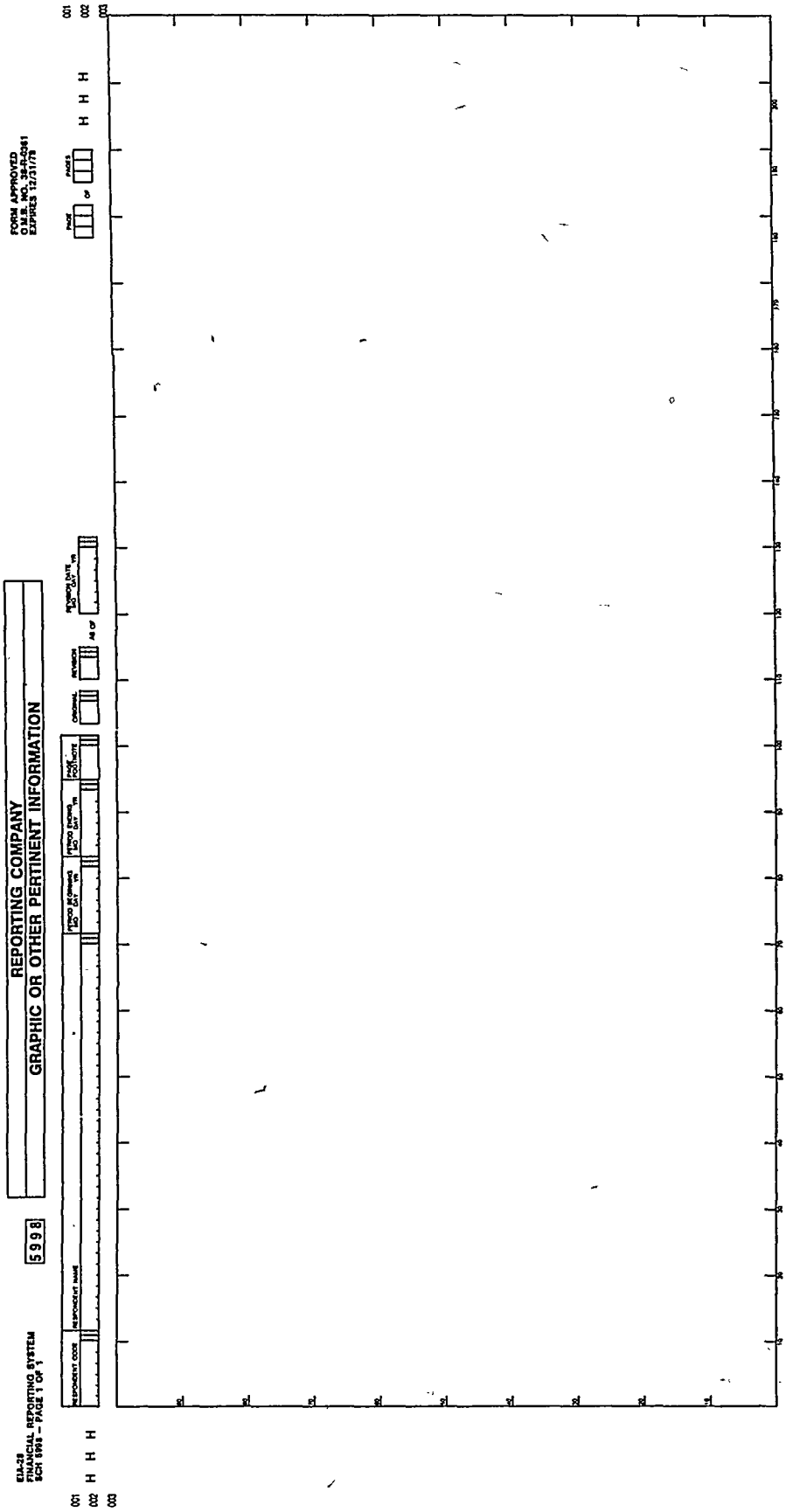
	FRS LINE #	CODE A	OPERATING STATISTICS (COMPANY SHARE) DOMESTIC C	FOREIGN D
JOINT VENTURE (FROM PAGE 1 OF 3)				
COAL:				
RESERVES (M TONS)	31 00			
PRODUCTION (M TONS)	32 00			
NUCLEAR:				
RESERVES (M LBS)	33 00			
MINED PRODUCTION OF YELLOWCAKE (M LBS)	34 00			
SALES OF PROCESSED ORE (M LBS)	35 00			
MARINE TRANSPORTATION:				
NUMBER OF TANKERS (OWN LEASE, CHARTER)	36 00			
CAPACITY (MDWT)	37 00			
PIPELINES:				
CRUDE/LIQUID SHIPMENTS (MB):				
FOR REPORTING COMPANY'S ACCOUNT	38.00			
FOR OTHER CO-VENTURERS	39 00			
FOR THIRD PARTIES	40 00			
TOTAL	41.00			
NATURAL GAS SHIPMENTS (MMCF):				
FOR REPORTING COMPANY'S ACCOUNT	42.00			
FOR OTHER CO-VENTURERS	43.00			
FOR THIRD PARTIES	44.00			
TOTAL	45.00			
REFINED PRODUCT SHIPMENTS (MB):				
FOR REPORTING COMPANY'S ACCOUNT	46.00			
FOR OTHER CO-VENTURERS	47.00			
FOR THIRD PARTIES	48.00			
TOTAL	49.00			
ENERGY RESEARCH & DEVELOPMENT:				
EXPENDITURES	50.00			
PREDOMINANT TYPE CODE (SEE INSTRUCTIONS)	51.00			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REPORTING COMPANY
GRAPHIC OR OTHER PERTINENT INFORMATION
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REPORTING COMPANY
FOOTNOTES

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5210

DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
CONSOLIDATING STATEMENT OF INCOME

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O.M.B. NO. 33-R-0361
EXPIRES 12/31/79

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	CONSOL A	ELIM B	NON TRACEABLE C	DOMESTIC D	FOREIGN E
OPERATING REVENUES:						
RAW MATERIALS						
(SCH 5213 LINES 09 00 17 00 31 00 & 37 00)	01 00					
REFINED PRODUCTS (SCH 5214 LINES 20 00 & 27 00)	02 00					
TRANSPORTATION	03 00					
MANAGEMENT FEES AND PROCESSING REVENUES	04 00					
(NOT USED)	05 00					
(NOT USED)	06 00					
CONSUMER EXCISE TAXES:						
COLLECTION	07 00					
DEDUCTION (IF EXCLUDED FROM LINE 10 00)	08 00					
OTHER	09 00					
TOTAL OPERATING REVENUES	10 00					
OPERATING EXPENSES:						
GENERAL OPERATING EXPENSES (SCH 5211)	11 00					
DD&A (SCH 5222)	12 00					
VALUATION CHARGES (SCH 5222)	13 00					
GENERAL & ADMINISTRATIVE	14 00					
RESEARCH & DEVELOPMENT	15 00					
TOTAL OPERATING EXPENSES	16 00					
OPERATING INCOME	17 00					

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FINANCIAL REPORTING SYSTEM
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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
CONSOLIDATING STATEMENT OF INCOME

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051
052 (IN THOUSANDS OF DOLLARS)

	FRS LINE #	DOMESTIC (CONTINUED ON PAGE 3 OF 8) CONSOL F	ELIM G	NON TRACEABLE H	PRODUCTION I	REFINING/ MARKETING J
057 OPERATING REVENUES:						
058 RAW MATERIALS (SCH 5213 LINES 09 00 & 17 00 COL A)	01 00					
059 REFINED PRODUCTS (SCH 5214 LINE 20 00)	02 00					
060 TRANSPORTATION	03 00					
061 MANAGEMENT FEES AND PROCESSING REVENUES	04 00					
062 (NOT USED)	05 00					
063 (NOT USED)	06 00					
064 CONSUMER EXCISE TAXES:						
065 COLLECTION	07 00					
066 DEDUCTION (IF EXCLUDED FROM LINE 10 00)	08 00					
067 OTHER	09 00					
068 TOTAL OPERATING REVENUES	10 00					
069 OPERATING EXPENSES:						
070 GENERAL OPERATING EXPENSES (SCH 5211)	11 00					
071 DD&A (SCH 5222)	12.00					
072 VALUATION CHARGES (SCH 5222)	13.00					
073 GENERAL & ADMINISTRATIVE	14.00					
074 RESEARCH & DEVELOPMENT	15.00					
075 TOTAL OPERATING EXPENSES	16 00					
076 OPERATING INCOME	17.00					

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
CONSOLIDATING STATEMENT OF INCOME

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	DOMESTIC (CONTINUED FROM PAGE 2 OF 8) FEDERALLY REGULATED PIPELINES CRUDE/LIQ K	NAT GAS L	REF PROD M	PAGE FOOTNOTE
OPERATING REVENUES:					
RAW MATERIALS (SCH 5213 LINES 09 00 & 17 00, COL A)	01 00				
REFINED PRODUCTS (SCH 5214 LINE 20 00)	02 00				
TRANSPORTATION	03 00				
MANAGEMENT FEES AND PROCESSING REVENUES	04 00				
(NOT USED)	05 00				
(NOT USED)	06 00				
CONSUMER EXCISE TAXES:					
COLLECTION	07 00				
DEDUCTION (IF EXCLUDED FROM LINE 10 00)	08 00				
OTHER	09 00				
TOTAL OPERATING REVENUES	10 00				
OPERATING EXPENSES:					
GENERAL OPERATING EXPENSES (SCH 5211)	11 00				
DD&A (SCH 5222)	12 00				
VALUATION CHARGES (SCH 5222)	13 00				
GENERAL & ADMINISTRATIVE	14 00				
RESEARCH & DEVELOPMENT	15 00				
TOTAL OPERATING EXPENSES	16 00				
OPERATING INCOME	17 00				

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
CONSOLIDATING STATEMENT OF INCOME

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	FOREIGN CONSOL N	ELIM O	NON TRACEABLE P	PRODUCTION Q	REFINING/ MARKETING R	INTL MARINE S	FOOTNOTE
OPERATING REVENUES:								
RAW MATERIALS (SCH 5213 LINES 31 00 & 37 00 COL A)	01 00							
REFINED PRODUCTS (SCH 5214 LINE 27 00)	02 00							
TRANSPORTATION	03 00							
MANAGEMENT FEES AND PROCESSING REVENUES	04 00							
(NOT USED)	05 00							
(NOT USED)	06 00							
CONSUMER EXCISE TAXES:								
COLLECTION	07 00							
DEDUCTION (IF EXCLUDED FROM LINE 10 00)	08 00							
OTHER	09 00							
TOTAL OPERATING REVENUES	10 00							
OPERATING EXPENSES:								
GENERAL OPERATING EXPENSES (SCH 5211)	11 00							
DD&A (SCH 5222)	12.00							
VALUATION CHARGES (SCH 5222)	13 00							
GENERAL & ADMINISTRATIVE	14 00							
RESEARCH & DEVELOPMENT	15 00							
TOTAL OPERATING EXPENSES	16 00							
OPERATING INCOME	17.00							

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
CONSOLIDATING STATEMENT OF INCOME

RESPONDENT CODE	RESPONDENT NAME	PERIOD BEGINNING MO DAY YR	PERIOD ENDING MO DAY YR	PAGE FOOTNOTE	ORIGINAL	REVISION	REVISION DATE MO DAY YR

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	CONSOL A	ELIM B	NON TRACEABLE C	DOMESTIC D	FOREIGN E
OTHER REVENUE & (EXPENSE):						
EQUITY IN EARNINGS OF UNCONSOLIDATED AFFILIATES	18 00					
DIVIDEND INCOME FROM COST BASIS UNCONSOLIDATED AFFILIATES	19 00					
GAIN/(LOSS) ON DISPOSITION OF PP&E	20 00					
MINORITY INTEREST IN INCOME (NET OF INCOME TAX)	21 00					
FOREIGN CURRENCY TRANSLATION EFFECTS	22 00					
INCOME TAXES:						
CURRENT	23 00					
DEFERRED	24 00					
TOTAL INCOME TAX	25 00					
TOTAL OTHER REVENUE & (EXPENSE)	26 00					
INCOME BEFORE LINES 28 00 & 29 00	27 00					
EXTRAORDINARY ITEMS	28 00					
CUMULATIVE EFFECT OF ACCOUNTING CHANGES	29 00					
CONTRIBUTION TO NET INCOME	30 00					

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
CONSOLIDATING STATEMENT OF INCOME

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O.M.B. NO. 39-R-0361
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(IN THOUSANDS OF DOLLARS)

DOMESTIC (CONTINUED ON PAGE 7 OF 8)

	FRS LINE #	CONSOL F	ELIM G	NON TRACEABLE H	PRODUCTION I	REFINING/ MARKETING J
OTHER REVENUE & (EXPENSE):						
EQUITY IN EARNINGS OF UNCONSOLIDATED AFFILIATES	18 00					
DIVIDEND INCOME FROM COST BASIS						
UNCONSOLIDATED AFFILIATES	19 00					
GAIN/(LOSS) ON DISPOSITION OF PP&E	20 00					
MINORITY INTEREST IN INCOME (NET OF INCOME TAX)	21 00					
FOREIGN CURRENCY TRANSLATION EFFECTS	22.00					
INCOME TAXES:						
CURRENT	23 00					
DEFERRED	24 00					
TOTAL INCOME TAX	25 00					
TOTAL OTHER REVENUE & (EXPENSE)	26 00					
INCOME BEFORE LINES 26 00 & 29 00	27.00					
EXTRAORDINARY ITEMS	28 00					
CUMULATIVE EFFECT OF ACCOUNTING CHANGES	29 00					
CONTRIBUTION TO NET INCOME	30 00					

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
CONSOLIDATING STATEMENT OF INCOME

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(IN THOUSANDS OF DOLLARS)

DOMESTIC (CONTINUED ON PAGE 7 OF 8)

	FRS LINE #	CONSOL F	ELIM G	NON TRACEABLE H	PRODUCTION I	REFINING/ MARKETING J
OTHER REVENUE & (EXPENSE):						
EQUITY IN EARNINGS OF UNCONSOLIDATED AFFILIATES	18 00					
DIVIDEND INCOME FROM COST BASIS UNCONSOLIDATED AFFILIATES	19 00					
GAIN/(LOSS) ON DISPOSITION OF PP&E	20 00					
MINORITY INTEREST IN INCOME (NET OF INCOME TAX)	21 00					
FOREIGN CURRENCY TRANSLATION EFFECTS	22 00					
INCOME TAXES:						
CURRENT	23 00					
DEFERRED	24 00					
TOTAL INCOME TAX	25 00					
TOTAL OTHER REVENUE & (EXPENSE)	26 00					
INCOME BEFORE LINES 28 00 & 29 00	27 00					
EXTRAORDINARY ITEMS	28 00					
CUMULATIVE EFFECT OF ACCOUNTING CHANGES	29 00					
CONTRIBUTION TO NET INCOME	30 00					

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
CONSOLIDATING STATEMENT OF INCOME

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301
302 (IN THOUSANDS OF DOLLARS)

	FRS LINE #	DOMESTIC (CONTINUED FROM PAGE 6 OF 8) FEDERALLY REGULATED PIPELINES CRUDE/LIQ K	NAT GAS L	REF PROD M
307 OTHER REVENUE & (EXPENSE):				
308 EQUITY IN EARNINGS OF UNCONSOLIDATED AFFILIATES	18 00			
309 DIVIDEND INCOME FROM COST BASIS UNCONSOLIDATED AFFILIATES	19 00			
311 GAIN/(LOSS) ON DISPOSITION OF PP&E	20 00			
312 MINORITY INTEREST IN INCOME (NET OF INCOME TAX)	21 00			
313 FOREIGN CURRENCY TRANSLATION EFFECTS	22.00			
314 INCOME TAXES:				
315 CURRENT	23 00			
316 DEFERRED	24 00			
317 TOTAL INCOME TAX	25 00			
318 TOTAL OTHER REVENUE & (EXPENSE)	26 00			
319 INCOME BEFORE LINES 28 00 & 29 00	27 00			
320 EXTRAORDINARY ITEMS	28.00			
321 CUMULATIVE EFFECT OF ACCOUNTING CHANGES	29 00			
322 CONTRIBUTION TO NET INCOME	30.00			

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
CONSOLIDATING STATEMENT OF INCOME

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	FOREIGN CONSOL N	ELIM O	NON TRACEABLE P	PRODUCTION Q	REFINING/ MARKETING R	INTL MARINE S	EDIT NOTE
OTHER REVENUE & (EXPENSE):								
EQUITY IN EARNINGS OF UNCONSOLIDATED AFFILIATES	18 00							
DIVIDEND INCOME FROM COST BASIS UNCONSOLIDATED AFFILIATES	19 00							
GAIN/(LOSS) ON DISPOSITION OF PP&E	20 00							
MINORITY INTEREST IN INCOME (NET OF INCOME TAX)	21 00							
FOREIGN CURRENCY TRANSLATION EFFECTS	22 00							
INCOME TAXES:								
CURRENT	23 00							
DEFERRED	24 00							
TOTAL INCOME TAX	25 00							
TOTAL OTHER REVENUE & (EXPENSE)	26 00							
INCOME BEFORE LINES 28 00 & 29 00	27 00							
EXTRAORDINARY ITEMS	28 00							
CUMULATIVE EFFECT OF ACCOUNTING CHANGES	29 00							
CONTRIBUTION TO NET INCOME	30 00							

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SCH 5211 – PAGE 1 OF 6

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PETROLEUM PRODUCTION AND REFINING/MARKETING SEGMENTS
GENERAL OPERATING EXPENSES

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	DOMESTIC: TOTAL A	ALASKA: ONSHORE B	ALASKA: OFFSHORE C	OTHER: ONSHORE D	OTHER: OFFSHORE E
DOMESTIC PRODUCTION SEGMENT:						
EXPLORATION:						
ACQUISITION OF UNPROVED ACREAGE	01 00					
DRILLING & EQUIPPING OF WELLS:						
DRY HOLES	02 00					
OIL WELLS	03 00					
GAS WELLS	04 00					
WORK IN PROGRESS ADJUSTMENT	05 00					
TOTAL	06 00					
LEASE RENTS	07 00					
GEOLOGICAL & GEOPHYSICAL	08 00					
TEST HOLE CONTRIBUTIONS	09 00					
LAND DEPARTMENT LEASING & SCOUTING	10 00					
OTHER	11 00					
TOTAL EXPLORATION	12.00					

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PETROLEUM PRODUCTION AND REFINING/MARKETING SEGMENTS
GENERAL OPERATING EXPENSES

FORM APPROVED
O.M.B. NO. 38-R-0161
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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	DOMESTIC TOTAL A	ALASKA ONSHORE B	ALASKA OFFSHORE C	OTHER ONSHORE D	OTHER OFFSHORE E
DEVELOPMENT:						
DRILLING & EQUIPPING OF WELLS:						
DRY HOLES	13 00					
OIL WELLS	14 00					
GAS WELLS	15 00					
WORK IN PROGRESS ADJUSTMENT	16 00					
TOTAL DRILLING & EQUIPPING OF WELLS	17 00					
LEASE EQUIPMENT	18 00					
LEASE (ACQUISITION OF PROVED ACREAGE)	19 00					
OTHER	20 00					
TOTAL DEVELOPMENT	21 00					
PRODUCTION (LIFTING):						
WELL OPERATIONS MAINTENANCE & WORKOVERS:						
PRIMARY RECOVERY PROGRAMS	22 00					
IMPROVED RECOVERY PROGRAMS:						
STATUTORY TERTIARY	23 00					
OTHER IMPROVED RECOVERY	24 00					
TOTAL	25 00					
GAS PROCESSING FACILITIES	26 00					
AD VALOREM TAXES	27 00					
SEVERANCE TAXES	28 00					
OTHER	29 00					
TOTAL PRODUCTION (LIFTING)	30 00					
TOTAL OF LINES 12 00 21 00 & 30 00	31 00					
LESS: DD&A OF SUPPORT EQUIPMENT AND FACILITIES	32 00					
NATURAL GAS & NATURAL GAS LIQUIDS:						
PURCHASES AND INVENTORY CHANGE	33 00					
SELLING AND RELATED EXPENSES	34 00					
TOTAL DOMESTIC PRODUCTION SEGMENT GENERAL OPERATING EXPENSES (SCH 5210 LINE 11 00 COL I)	35 00					

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PETROLEUM PRODUCTION AND REFINING/MARKETING SEGMENTS
GENERAL OPERATING EXPENSES

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	FRS LINE #	TOTAL DOMESTIC A
DOMESTIC REFINING/MARKETING SEGMENT:		
RAW MATERIALS:		
RAW MATERIAL PURCHASES (SCH 5212 LINE 05 00 COL A)	36 00	
RAW MATERIAL TRANSPORTATION (SCH 5215 LINE 19 00)	37 00	
RAW MATERIAL EXCHANGE DIFFERENTIALS	38 00	
CHANGES IN RAW MATERIAL INVENTORIES	39 00	
OTHER RAW MATERIAL SUPPLY EXPENSE	40 00	
TOTAL RAW MATERIAL SUPPLY EXPENSE	41 00	
LESS: RAW MATERIALS INPUT TO REFINING	42.00	
NET RAW MATERIAL SUPPLY (LINE 41 00 MINUS 42 00)	43 00	
REFINED PRODUCTS:		
RAW MATERIALS INPUT TO REFINING (LINE 42.00)	44 00	
CREDIT AMT OF RAW MATERIALS USED AS REFINERY FUEL	45 00	
REFINERY PROCESS ENERGY EXPENSE	46.00	
DOE CRUDE ENTITLEMENTS	47 00	
OTHER REFINING OPERATING EXPENSES	48.00	
REFINED PRODUCT PURCHASES (SCH 5212, LINE 05 00 COL F)	49 00	
REFINED PRODUCT EXCHANGE DIFFERENTIALS	50.00	
CHANGES IN REFINED PRODUCT INVENTORIES	51.00	
REFINED PRODUCT TRANSPORTATION (SCH 5215 LINE 20 00)	52.00	
OTHER REFINED PRODUCT SUPPLY EXPENSES	53.00	
TOTAL (LINES 44.00 THRU 53 00)	54.00	

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PETROLEUM PRODUCTION AND REFINING/MARKETING SEGMENTS
GENERAL OPERATING EXPENSES

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151 152 (IN THOUSANDS OF DOLLARS) 151 152

	FRS LINE #	TOTAL DOMESTIC A	
153 154 155 156			153 154 155 156
157 DOMESTIC REFINING/MARKETING SEGMENT:			157
158 MARKETING:			158
159 PURCHASES OF OTHER PRODUCTS (INCLUDE TBA)	55 00		159
160 CHANGES IN OTHER PRODUCT INVENTORIES			160
161 (INCLUDE TBA)	56 00		161
162 ADVERTISING	57 00		162
163 DOE RESIDUAL FUEL ENTITLEMENTS	58 00		163
164 CONSUMER EXCISE TAXES	59 00		164
165 OTHER MARKETING EXPENSES:			165
166 CREDIT CARD OPERATING EXPENSES	60 00		166
167 COMPANY OPERATED (SALARIED)			167
168 RETAIL OUTLET OPERATING EXPENSES	61 00		168
169 OTHER MARKETING EXPENSES	62 00		169
170 TOTAL MARKETING EXPENSES (LINES 55 00 THRU 62 00)	63 00		170
171 EXPENSE OF TRANSPORTATION SERVICES FOR OTHERS			171
172 (SCH 5215 LINE 21 00)	64 00		172
173 TOTAL DOMESTIC REFINING/MARKETING SEGMENT			173
174 GENERAL OPERATING EXPENSES			174
175 (SCH 5210 LINE 11 00 COL J)	65 00		175

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5211

PETROLEUM PRODUCTION AND REFINING/MARKETING SEGMENTS
GENERAL OPERATING EXPENSES

FORM APPROVED
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	FOREIGN (CONTINUED ON PAGE 6 OF 6) TOTAL F	CANADA G	OECD EUROPE H	AFRICA NORTH I	AFRICA OTHER J
FOREIGN PRODUCTION SEGMENT:						
EXPLORATION:						
DRILLING & EQUIPPING OF WELLS	66 00					
GEOLOGICAL & GEOPHYSICAL	67 00					
OTHER EXPLORATION EXPENSES	68 00					
TOTAL EXPLORATION EXPENSES	69 00					
DEVELOPMENT:						
LEASE EQUIPMENT	70 00					
DRILLING & EQUIPPING OF WELLS	71 00					
OTHER DEVELOPMENT EXPENSES	72.00					
TOTAL DEVELOPMENT EXPENSES	73 00					
PRODUCTION (LIFTING):						
ROYALTY EXPENSES	74 00					
TAXES OTHER THAN INCOME TAXES	75 00					
OTHER PRODUCTION (LIFTING) EXPENSES	76 00					
TOTAL PRODUCTION (LIFTING) EXPENSES	77 00					
TOTAL OF LINES 69 00 73 00 & 77 00	78.00					
LESS: DD&A OF SUPPORT EQUIPMENT AND FACILITIES	79.00					
NATURAL GAS & NATURAL GAS LIQUIDS:						
PURCHASES AND INVENTORY CHANGE	80.00					
SELLING & RELATED EXPENSES	81.00					
TOTAL (LINES 80 00 PLUS 81 00)	82.00					
TOTAL FOREIGN PRODUCTION SEGMENT GENERAL OPERATING EXPENSES (SCH 5210, LINE 11 00 COL O)	83.00					
FOREIGN REFINING/MARKETING SEGMENT (SEE SCHEDULE 5210 LINE 11 00 COL R)	84.00					

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PETROLEUM PRODUCTION AND REFINING/MARKETING SEGMENTS
GENERAL OPERATING EXPENSES

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	FRS LINE #	FOREIGN (CONTINUED FROM PAGE 5 OF 6) MIDDLE EAST K	OTHER EAST HEMISPHERE ASIA L	OTHER EAST HEMISPHERE OTHER M	OTHER WEST HEMISPHERE N
FOREIGN PRODUCTION SEGMENT:					
EXPLORATION:					
DRILLING & EQUIPPING OF WELLS	66 00				
GEOLOGICAL & GEOPHYSICAL	67 00				
OTHER EXPLORATION EXPENSES	68 00				
TOTAL EXPLORATION EXPENSES	69 00				
DEVELOPMENT:					
LEASE EQUIPMENT	70 00				
DRILLING & EQUIPPING OF WELLS	71 00				
OTHER DEVELOPMENT EXPENSES	72 00				
TOTAL DEVELOPMENT EXPENSES	73 00				
PRODUCTION (LIFTING):					
ROYALTY EXPENSES	74 00				
TAXES OTHER THAN INCOME TAXES	75 00				
OTHER PRODUCTION (LIFTING) EXPENSES	76 00				
TOTAL PRODUCTION (LIFTING) EXPENSES	77 00				
TOTAL OF LINES 69 00 73 00 & 77,00	78 00				
LESS: DD&A OF SUPPORT EQUIPMENT AND FACILITIES	79 00				
NATURAL GAS & NATURAL GAS LIQUIDS:					
PURCHASES AND INVENTORY CHANGE	80 00				
SELLING & RELATED EXPENSES	81 00				
TOTAL (LINES 80 00 PLUS 81 00)	82 00				
TOTAL FOREIGN PRODUCTION SEGMENT GENERAL OPERATING EXPENSES (SCH 5210 LINE 11 00 COL Q)	83 00				

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PETROLEUM REFINING/MARKETING SEGMENTS
ACQUISITIONS OF RAW MATERIALS AND REFINED PRODUCTS

FORM APPROVED
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	RAW MATERIALS: TOTAL COLUMNS B-E A	CRUDE B	NATURAL GAS C	NATURAL GAS LIQUIDS D	SEMIFIN E
DOMESTIC REFINING/MARKETING SEGMENT:						
COST OF PURCHASES FROM:						
DOMESTIC PRODUCTION SEGMENT	01 00					
FOREIGN REFINING/MARKETING SEGMENT (TRADING)	02 00					
DOMESTIC UNCONSOLIDATED AFFILIATES	03 00					
DOMESTIC UNAFFILIATED THIRD PARTIES	04 00					
TOTAL COST OF PURCHASES	05 00					
VOLUMES (MB & MMCF) PURCHASED FROM:						
DOMESTIC PRODUCTION SEGMENT	06 00					
FOREIGN REFINING/MARKETING SEGMENT (TRADING)	07 00					
DOMESTIC UNCONSOLIDATED AFFILIATES	08 00					
DOMESTIC UNAFFILIATED THIRD PARTIES	09 00					
TOTAL VOLUMES PURCHASED	10 00					
FOREIGN REFINING/MARKETING SEGMENT:						
VOLUMES (MB & MMCF) PURCHASED FROM:						
FOREIGN PRODUCTION SEGMENT	11 00					
DOMESTIC REFINING/MARKETING SEGMENT (TRADING)	12.00					
FOREIGN UNCONSOLIDATED AFFILIATES	13 00					
FOREIGN UNAFFILIATED THIRD PARTIES:						
FOREIGN ACCESS	14 00					
FOREIGN GOVERNMENTS (OPEN MARKET)	15.00					
OTHER	16.00					
TOTAL	17.00					
TOTAL VOLUMES PURCHASED	18.00					

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PETROLEUM REFINING/MARKETING SEGMENTS
ACQUISITIONS OF RAW MATERIALS AND REFINED PRODUCTS

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051
052 (IN THOUSANDS OF DOLLARS)

	FRS LINE #	REFINED PRODUCTS: TOTAL COLUMNS G-J F	MOTOR GASOLINE G	DIST FUELS H	RESID FUELS I	OTHER REFINED J
057 DOMESTIC REFINING/MARKETING SEGMENT:						
058 COST OF PURCHASES FROM:						
059 DOMESTIC PRODUCTION SEGMENT	01 00					
060 FOREIGN REFINING/MARKETING SEGMENT (TRADING)	02.00					
061 DOMESTIC UNCONSOLIDATED AFFILIATES	03 00					
062 DOMESTIC UNAFFILIATED THIRD PARTIES	04 00					
063 TOTAL COST OF PURCHASES	05 00					
064 VOLUMES (MB & MMCF) PURCHASED FROM:						
065 DOMESTIC PRODUCTION SEGMENT	06 00					
066 FOREIGN REFINING/MARKETING SEGMENT (TRADING)	07 00					
067 DOMESTIC UNCONSOLIDATED AFFILIATES	08.00					
068 DOMESTIC UNAFFILIATED THIRD PARTIES	09 00					
069 TOTAL VOLUMES PURCHASED	10 00					
070 FOREIGN REFINING/MARKETING SEGMENT:						
071 VOLUMES (MB & MMCF) PURCHASED FROM:						
072 FOREIGN PRODUCTION SEGMENT	11 00					
073 DOMESTIC REFINING/MARKETING SEGMENT (TRADING)	12.00					
074 FOREIGN UNCONSOLIDATED AFFILIATES	13.00					
075 FOREIGN UNAFFILIATED THIRD PARTIES:						
076 FOREIGN ACCESS	14 00					
077 FOREIGN GOVERNMENTS (OPEN MARKET)	15 00					
078 OTHER	16 00					
079 TOTAL	17 00					
080 TOTAL VOLUMES PURCHASED	18 00					

FOOT NOTE

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5213

PETROLEUM PRODUCTION AND REFINING/MARKETING SEGMENTS
DISPOSITIONS OF RAW MATERIALS

FORM APPROVED
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(IN THOUSANDS OF DOLLARS)

DOMESTIC DISPOSITIONS (CONTINUED ON PAGE 2 OF 4)

	FRS LINE #	TOTAL VALUE A	CRUDE VOLUME B	CRUDE VALUE C	NATURAL GAS VOLUME D	NATURAL GAS VALUE E
DOMESTIC DISPOSITIONS:						
DOMESTIC PRODUCTION SEGMENT:						
SALES CALCULATION:						
TOTAL VALUE OF PRODUCTION AND PURCHASES	01 00					
LESS: AMOUNTS USED IN PRODUCTION	02 00					
RAW MATERIAL INVENTORY CHANGES	03 00					
DOMESTIC PRODUCTION SEGMENT SALES	04 00					
SALES BREAKDOWN (SALES TO):						
DOMESTIC REFINING/MARKETING SEGMENT	05 00					
OTHER DOMESTIC SEGMENTS	06 00					
UNCONSOLIDATED AFFILIATES	07 00					
THIRD PARTIES	08 00					
TOTAL (SCH 5210 LINE 01 00 COL I)	09 00					
DOMESTIC REFINING/MARKETING SEGMENT:						
SALES TO:						
FOREIGN REFINING/MARKETING (SCH 5212, LINE 12.00)	10 00					
DOMESTIC CHEMICAL SEGMENT	11 00					
DOMESTIC PRODUCTION SEGMENT	12.00					
OTHER DOMESTIC SEGMENTS	13 00					
UNCONSOLIDATED DOMESTIC AFFILIATES:						
DOMESTIC PETROLEUM INDUSTRY	14.00					
OTHER DOMESTIC INDUSTRIES	15 00					
DOMESTIC UNAFFILIATED THIRD PARTIES	16.00					
TOTAL (SCH 5210 LINE 01 00 COL J)	17.00					
INTERNAL USE AND INPUT (COST):						
OWN DOMESTIC REFINERIES	18.00					
OTHER REFINERIES (FOR OWN ACCOUNT)	19.00					
OTHER (INCLUDING TRANSPORTATION COST CENTERS)	20.00					
TOTAL	21.00					
TOTAL (LINE 17 00 PLUS 21 00)	22.00					

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PETROLEUM PRODUCTION AND REFINING/MARKETING SEGMENTS
DISPOSITIONS OF RAW MATERIALS

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	DOMESTIC DISPOSITIONS (CONTINUED FROM PAGE 1 OF 4) NATURAL GAS LIQUIDS VOLUME F	NATURAL GAS LIQUIDS VALUE G	SEMIFINISHED VOLUME H	SEMIFINISHED VALUE I
DOMESTIC DISPOSITIONS:					
DOMESTIC PRODUCTION SEGMENT:					
SALES CALCULATION:					
TOTAL VALUE OF PRODUCTION AND PURCHASES	01 00				
LESS: AMOUNTS USED IN PRODUCTION	02 00				
RAW MATERIAL INVENTORY CHANGES	03 00				
DOMESTIC PRODUCTION SEGMENT SALES	04 00				
SALES BREAKDOWN (SALES TO):					
DOMESTIC REFINING/MARKETING SEGMENT	05 00				
OTHER DOMESTIC SEGMENTS	06 00				
UNCONSOLIDATED AFFILIATES	07 00				
THIRD PARTIES	08 00				
TOTAL (SCH 5210 LINE 01 00 COL I)	09 00				
DOMESTIC REFINING/MARKETING SEGMENT:					
SALES TO:					
FOREIGN REFINING/MARKETING (SCH 5212 LINE 12 00)	10 00				
DOMESTIC CHEMICAL SEGMENT	11 00				
DOMESTIC PRODUCTION SEGMENT	12.00				
OTHER DOMESTIC SEGMENTS	13 00				
UNCONSOLIDATED DOMESTIC AFFILIATES:					
DOMESTIC PETROLEUM INDUSTRY	14 00				
OTHER DOMESTIC INDUSTRIES	15 00				
DOMESTIC UNAFFILIATED THIRD PARTIES	16 00				
TOTAL (SCH 5210 LINE 01 00 COL J)	17 00				
INTERNAL USE AND INPUT (COST):					
OWN DOMESTIC REFINERIES	18 00				
OTHER REFINERIES (FOR OWN ACCOUNT)	19 00				
OTHER (INCLUDING TRANSPORTATION COST CENTERS)	20 00				
TOTAL	21 00				
TOTAL (LINE 17 00 PLUS 21 00)	22 00				

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PETROLEUM PRODUCTION AND REFINING/MARKETING SEGMENTS
DISPOSITIONS OF RAW MATERIALS

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(IN THOUSANDS OF DOLLARS)

FOREIGN DISPOSITIONS (CONTINUED ON PAGE 4 OF 4)

	FRS LINE #	TOTAL VALUE A	CRUDE VOLUME B	CRUDE VALUE C	NATURAL GAS VOLUME D	NATURAL GAS VALUE E
FOREIGN DISPOSITIONS:						
FOREIGN PRODUCTION SEGMENT:						
SALES CALCULATION:						
TOTAL VALUE OF PRODUCTION AND PURCHASES	23 00					
LESS: AMOUNTS USED IN PRODUCTION	24 00					
RAW MATERIAL INVENTORY CHANGES	25 00					
FOREIGN PRODUCTION SEGMENT SALES	26 00					
SALES BREAKDOWN (SALES TO):						
FOREIGN REFINING/MARKETING SEGMENT	27 00					
OTHER FOREIGN SEGMENTS	28 00					
UNCONSOLIDATED AFFILIATES	29 00					
THIRD PARTIES	30 00					
TOTAL (SCH 5210 LINE 01 00 COL Q)	31 00					
FOREIGN REFINING/MARKETING SEGMENT:						
SALES TO:						
DOMESTIC REFINING/MARKETING (SCH 5212 LINE 02 00)	32.00					
FOREIGN CHEMICAL SEGMENT	33.00					
OTHER FOREIGN SEGMENTS	34.00					
UNCONSOLIDATED FOREIGN AFFILIATES	35.00					
FOREIGN UNAFFILIATED THIRD PARTIES	36 00					
TOTAL (SCH 5210 LINE 01.00 COL R)	37.00					
INTERNAL USE AND INPUT (COST):						
REFINERIES	38.00					
OTHER (INCLUDING TRANSPORTATION COST CENTERS)	39.00					
TOTAL	40.00					
TOTAL (LINE 37 00 PLUS 40 00)	41.00					

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PETROLEUM PRODUCTION AND REFINING/MARKETING SEGMENTS
DISPOSITIONS OF RAW MATERIALS

FORM APPROVED
O.M.B. NO. 38-R-0041
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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	FOREIGN DISPOSITIONS (CONTINUED FROM PAGE 3 OF 4) NATURAL GAS LIQUIDS VOLUME F	NATURAL GAS LIQUIDS VALUE G	SEMIFINISHED VOLUME H	SEMIFINISHED VALUE I
FOREIGN DISPOSITIONS:					
FOREIGN PRODUCTION SEGMENT:					
SALES CALCULATION:					
TOTAL VALUE OF PRODUCTION AND PURCHASES	23 00				
LESS: AMOUNTS USED IN PRODUCTION	24 00				
RAW MATERIAL INVENTORY CHANGES	25 00				
FOREIGN PRODUCTION SEGMENT SALES	26 00				
SALES BREAKDOWN (SALES TO):					
FOREIGN REFINING/MARKETING SEGMENT	27 00				
OTHER FOREIGN SEGMENTS	28 00				
UNCONSOLIDATED AFFILIATES	29 00				
THIRD PARTIES	30 00				
TOTAL (SCH 5210 LINE 01 00 COL Q)	31 00				
FOREIGN REFINING/MARKETING SEGMENT:					
SALES TO:					
DOMESTIC REFINING/MARKETING (SCH 5212 LINE 02 00)	32.00				
FOREIGN CHEMICAL SEGMENT	33 00				
OTHER FOREIGN SEGMENTS	34 00				
UNCONSOLIDATED FOREIGN AFFILIATES	35 00				
FOREIGN UNAFFILIATED THIRD PARTIES	36 00				
TOTAL (SCH 5210 LINE 01 00 COL R)	37 00				
INTERNAL USE AND INPUT (COST):					
REFINERIES	38 00				
OTHER (INCLUDING TRANSPORTATION COST CENTERS)	39 00				
TOTAL	40 00				
TOTAL (LINE 37 00 PLUS 40 00)	41 00				

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PETROLEUM REFINING/MARKETING SEGMENTS
DISPOSITIONS OF REFINED PRODUCTS

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DOMESTIC DISPOSITIONS (CONTINUED ON PAGE 2 OF 3)

	FRS LINE #	TOTAL VOLUME A	TOTAL VALUE B	MOTOR GASOLINE VOLUME C	MOTOR GASOLINE VALUE D	DISTILLATE FUELS VOLUME E	DISTILLATE FUELS VALUE F
DOMESTIC DISPOSITIONS:							
DOMESTIC INTRA COMPANY SALES:							
FOREIGN REFINING/MARKETING SEGMENT	01 00						
DOMESTIC CHEMICAL SEGMENT	02 00						
INTERNATIONAL MARINE SEGMENT	03 00						
DOMESTIC PRODUCTION SEGMENT	04 00						
OTHER DOMESTIC SEGMENTS	05 00						
TOTAL DOMESTIC INTRA COMPANY SALES	06 00						
DOMESTIC THIRD PARTY SALES:							
WHOLESALE RESELLERS:							
BRANDED:							
RACK	07 00						
TANK WAGON	08 00						
OTHER	09 00						
UNBRANDED:							
RACK	10 00						
TANK WAGON	11 00						
OTHER	12.00						
TOTAL	13 00						
ULTIMATE CONSUMPTION:							
RETAIL OUTLETS:							
COMPANY OUTLETS	14 00						
OTHER OUTLETS	15 00						
OTHER, INCLUDING INDUSTRIAL AND COMMERCIAL	16.00						
DOMESTIC UNCONSOLIDATED AFFILIATES:							
CHEMICAL INDUSTRY	17.00						
OTHER DOMESTIC INDUSTRIES	18.00						
TOTAL DOMESTIC THIRD-PARTY SALES	19 00						
TOTAL (SCH 5210, LINE 02 00 COL J)	20 00						

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PETROLEUM REFINING/MARKETING SEGMENTS
DISPOSITIONS OF REFINED PRODUCTS

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	DOMESTIC DISPOSITIONS (CONTINUED FROM PAGE 1 OF 3) RESIDUAL FUELS VOLUME G	RESIDUAL FUELS VALUE H	OTHER REFINED VOLUME I	OTHER REFINED VALUE J
DOMESTIC DISPOSITIONS:					
DOMESTIC INTRA COMPANY SALES:					
FOREIGN REFINING/MARKETING SEGMENT	01 00				
DOMESTIC CHEMICAL SEGMENT	02 00				
INTERNATIONAL MARINE SEGMENT	03 00				
DOMESTIC PRODUCTION SEGMENT	04 00				
OTHER DOMESTIC SEGMENTS	05 00				
TOTAL DOMESTIC INTRA COMPANY SALES	06 00				
DOMESTIC THIRD PARTY SALES:					
WHOLESALE RESELLERS:					
BRANDED:					
RACK	07 00				
TANK WAGON	08 00				
OTHER	09 00				
UNBRANDED:					
RACK	10 00				
TANK WAGON	11 00				
OTHER	12 00				
TOTAL	13 00				
ULTIMATE CONSUMPTION:					
RETAIL OUTLETS:					
COMPANY OUTLETS	14 00				
OTHER OUTLETS	15 00				
OTHER INCLUDING INDUSTRIAL AND COMMERCIAL	16 00				
DOMESTIC UNCONSOLIDATED AFFILIATES:					
CHEMICAL INDUSTRY	17 00				
OTHER DOMESTIC INDUSTRIES	18 00				
TOTAL DOMESTIC THIRD PARTY SALES	19 00				
TOTAL (SCH 5210 LINE 02 00 COL J)	20 00				

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PETROLEUM REFINING/MARKETING SEGMENTS
DISPOSITIONS OF REFINED PRODUCTS

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102 (IN THOUSANDS OF DOLLARS)

	FRS LINE #	TOTAL FOREIGN DISPOSITIONS VOLUME A	TOTAL FOREIGN DISPOSITIONS VALUE B
103			
104			
105			
106			
107 FOREIGN DISPOSITIONS:			
108 FOREIGN INTRA COMPANY SALES:			
109 DOMESTIC REFINING/MARKETING SEGMENT	21 00		
110 OTHER FOREIGN SEGMENTS	22 00		
111 TOTAL FOREIGN INTRA COMPANY SALES	23 00		
112 FOREIGN THIRD-PARTY SALES:			
113 FOREIGN UNCONSOLIDATED AFFILIATES	24 00		
114 OTHER FOREIGN THIRD PARTY SALES	25 00		
115 TOTAL FOREIGN THIRD-PARTY SALES	26 00		
116 TOTAL (SCH 5210 LINE 02 00 COL R)	27 00		

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
PRIMARY TRANSPORTATION EXPENSES

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	TOTAL A
TOTAL DOMESTIC PRIMARY TRANSPORTATION EXPENSE BY SOURCE:		
INTERNAL SEGMENT SERVICE TRANSPORTATION:		
MARINE OPERATIONS (OTHER THAN INTERNATIONAL MARINE SEGMENT)	01 00	
PIPELINE OPERATIONS (OTHER THAN FEDERALLY REGULATED PIPELINE SEGMENT)	02.00	
OTHER TRANSPORTATION OPERATIONS	03 00	
TOTAL TRANSPORTATION OPERATIONS	04 00	
CHARGES FROM SEGMENTS:		
AMOUNTS CHARGED BY INTERNATIONAL MARINE SEGMENT	05 00	
AMOUNTS CHARGED BY FEDERALLY REGULATED PIPELINE SEGMENT	06 00	
TOTAL	07 00	
CHARGES BY UNCONSOLIDATED AFFILIATES:		
MARINE AFFILIATES	08 00	
PIPELINE AFFILIATES	09 00	
OTHER AFFILIATES	10 00	
TOTAL	11 00	
PURCHASES FROM THIRD PARTIES:		
MARINE	12.00	
PIPELINE	13 00	
OTHER	14 00	
TOTAL	15 00	
TOTAL DOMESTIC TRANSPORTATION EXPENSE (EQUAL TO LINE 22 00)	16 00	

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
PRIMARY TRANSPORTATION EXPENSES

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	TOTAL A
TOTAL DOMESTIC PRIMARY TRANSPORTATION EXPENSE BY APPLICATION:		
FOR OWN USE:		
RAW MATERIAL TRANSPORTATION:		
CRUDE	17 00	
OTHER RAW MATERIALS	18 00	
TOTAL (SCH 5211 LINE 37 00)	19 00	
REFINED PRODUCT TRANSPORTATION		
(SCH 5211 LINE 52 00)	20 00	
FOR OTHERS (SCH 5211 LINE 62 00)	21 00	
TOTAL DOMESTIC TRANSPORTATION EXPENSE (EQUAL TO LINE 16 00)	22.00	
AMOUNTS CHARGED BY INTERNATIONAL MARINE SEGMENT TO FOREIGN REFINING/MARKETING SEGMENT	23 00	

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
SELECTED CONSOLIDATING BALANCE SHEET ITEMS

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	CONSOL A	ELIM B	NON-TRACEABLE C	DOMESTIC D	FOREIGN E
SELECTED CURRENT ASSETS:						
TRADE ACCOUNTS AND NOTES RECEIVABLE	01 00					
INVENTORIES:						
RAW MATERIALS & PRODUCTS	02.00					
MATERIALS & SUPPLIES	03 00					
NON-CURRENT ASSETS:						
PROPERTY PLANT & EQUIPMENT (SCH 5221):						
GROSS	04 00					
ACCUMULATED DD&A	05 00					
NET	06 00					
INVESTMENT & ADVANCES TO UNCONSOLIDATED AFFILIATES	07 00					
OTHER NON-CURRENT ASSETS	08 00					
TOTAL NON-CURRENT ASSETS	09 00					

FOOTNOTE

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
SELECTED CONSOLIDATING BALANCE SHEET ITEMS

FORM APPROVED
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

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002 H H H

051
052 (IN THOUSANDS OF DOLLARS)
053
054
055
056

	FRS LINE #	DOMESTIC (CONTINUED ON PAGE 3 OF 4) CONSOL F	ELIM G	NON TRACEABLE H	PRODUCTION I	REFINING/ MARKETING J
057 SELECTED CURRENT ASSETS:						
058 TRADE ACCOUNTS AND NOTES RECEIVABLE	01 00					
059 INVENTORIES:						
060 RAW MATERIALS & PRODUCTS	02.00					
061 MATERIALS & SUPPLIES	03 00					
062 NON CURRENT ASSETS:						
063 PROPERTY PLANT & EQUIPMENT (SCH 5221):						
064 GROSS	04 00					
065 ACCUMULATED DD&A	05 00					
066 NET	06 00					
067 INVESTMENT & ADVANCES TO						
068 UNCONSOLIDATED AFFILIATES	07 00					
069 OTHER NON-CURRENT ASSETS	08 00					
070 TOTAL NON-CURRENT ASSETS	09 00					

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
SELECTED CONSOLIDATING BALANCE SHEET ITEMS

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002 H H H

101
102 (IN THOUSANDS OF DOLLARS)
103
104
105
106

	FRS LINE #	DOMESTIC (CONTINUED FROM PAGE 2 OF 4) FEDERALLY REGULATED PIPELINES CRUDE/LIQ K	NAT GAS L	REF PROD M
107 SELECTED CURRENT ASSETS:				
108 TRADE ACCOUNTS AND NOTES RECEIVABLE	01 00			
109 INVENTORIES:				
110 RAW MATERIALS & PRODUCTS	02 00			
111 MATERIALS & SUPPLIES	03 00			
112 NON CURRENT ASSETS:				
113 PROPERTY PLANT & EQUIPMENT (SCH 5221):				
114 GROSS	04 00			
115 ACCUMULATED DD&A	05 00			
116 NET	06 00			
117 INVESTMENT & ADVANCES TO				
118 UNCONSOLIDATED AFFILIATES	07 00			
119 OTHER NON CURRENT ASSETS	08 00			
120 TOTAL NON-CURRENT ASSETS	09 00			

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
SELECTED CONSOLIDATING BALANCE SHEET ITEMS

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002 H H H

(IN THOUSANDS OF DOLLARS)

	FRS LINE #	FOREIGN CONSOL N	ELIM O	NON TRACEABLE P	PRODUCTION Q	REFINING/ MARKETING R	INTL MARINE S
SELECTED CURRENT ASSETS:							
TRADE ACCOUNTS AND NOTES RECEIVABLE	01 00						
INVENTORIES:							
RAW MATERIALS & PRODUCTS	02 00						
MATERIALS & SUPPLIES	03 00						
NON CURRENT ASSETS:							
PROPERTY PLANT & EQUIPMENT (SCH 5221):							
GROSS	04 00						
ACCUMULATED DD&A	05 00						
NET	06 00						
INVESTMENT & ADVANCES TO UNCONSOLIDATED AFFILIATES	07 00						
OTHER NON-CURRENT ASSETS	08 00						
TOTAL NON-CURRENT ASSETS	09.00						

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
NET PROPERTY AND OTHER CAPITALIZED COST BALANCES

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O.M.B. NO. 38-R-0361
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H H H

(IN THOUSANDS OF DOLLARS)

	FRS LINE #	GRAND TOTAL A	DOMESTIC TOTAL B	DOMESTIC ALASKA ONSHORE C	DOMESTIC ALASKA OFFSHORE D	DOMESTIC OTHER ONSHORE E	DOMESTIC OTHER OFFSHORE F	TOTAL FOREIGN G	FOOTNOTE
PRODUCTION SEGMENT:									
MINERAL INTEREST IN PROPERTIES:									
PROVED	01 00								
UNPROVED	02 00								
WELLS EQUIPMENT & FACILITIES:									
GAS PROCESSING FACILITIES	03 00								
OTHER	04 00								
SUPPORT EQUIPMENT & FACILITIES	05 00								
UNCOMPLETED WELLS EQUIPMENT & FACILITIES	06 00								
TOTAL	07 00								
REFINING/MARKETING SEGMENT:									
REFINING	08 00								
MARKETING	09 00								
TRANSPORTATION:									
PIPELINE	10 00								
MARINE	11 00								
OTHER	12 00								
TOTAL	13 00								
FEDERALLY REGULATED PIPELINES:									
CRUDE/LIQUID	14 00								
NATURAL GAS	15 00								
REFINED PRODUCT	16 00								
INTERNATIONAL MARINE	17 00								
TOTAL (SCH 5221 LINE 06 00)	18 00								

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
NET PROPERTY AND OTHER CAPITALIZED COST BALANCES

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EXPIRES 12/31/79

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	TOTAL G	CANADA H	FOREIGN: OECD EUROPE I	FOREIGN: AFRICA J	FOREIGN: MIDDLE EAST K	FOREIGN: OTHER EAST HEMISPHERE L	FOREIGN: OTHER WEST HEMISPHERE M	FORM NOTE
PRODUCTION SEGMENT:									
MINERAL INTEREST IN PROPERTIES:									
PROVED	01 00								
UNPROVED	02.00								
WELLS EQUIPMENT & FACILITIES:									
GAS PROCESSING FACILITIES	03 00								
OTHER	04 00								
SUPPORT EQUIPMENT & FACILITIES	05 00								
UNCOMPLETED WELLS EQUIPMENT & FACILITIES	06 00								
TOTAL	07 00								
REFINING/MARKETING SEGMENT:									
REFINING	08.00								
MARKETING	09 00								
TRANSPORTATION:									
PIPELINE	10.00								
MARINE	11.00								
OTHER	12.00								
TOTAL	13.00								
FEDERALLY REGULATED PIPELINES:									
CRUDE/LIQUID	14.00								
NATURAL GAS	15.00								
REFINED PRODUCT	16.00								
INTERNATIONAL MARINE	17.00								
TOTAL (SCH 5221 LINE 06 00)	18.00								

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
CHANGES IN NET PROPERTY AND OTHER CAPITALIZED COST BALANCES

FORM APPROVED
O.M.B. NO. 38-R-0361
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H H H

(IN THOUSANDS OF DOLLARS)

DOMESTIC PETROLEUM (CONTINUED ON PAGE 2 OF 4)

	FRS LINE #	NET BOOK VALUE AT BEGINNING OF PERIOD A	ADDITIONS AT COST B	GAIN/(LOSS) ON DISP (MEMO) C	BOOK VALUE OF DISPOSALS D	CURRENT PER'OD DD&A E
DOMESTIC PRODUCTION SEGMENT:						
MINERAL INTERESTS IN PROPERTIES:						
PROVED	01 00					
UNPROVED	02 00					
WELLS EQUIPMENT & FACILITIES:						
GAS PROCESSING FACILITIES	03 00					
OTHER	04 00					
SUPPORT EQUIPMENT & FACILITIES	05 00					
UNCOMPLETED WELLS EQUIPMENT & FACILITIES	06 00					
TOTAL DOMESTIC PRODUCTION SEGMENT	07 00					
DOMESTIC REFINING/MARKETING SEGMENT:						
REFINING (SCH 5130) (NOTE 1, BELOW)	08 00					
MARKETING (SCH 5130) (NOTE 2 BELOW)	09 00					
TRANSPORTATION (SCH 5130)	10 00					
TOTAL DOMESTIC REFINING/MARKETING SEGMENT	11 00					
FEDERALLY REGULATED PIPELINES (SCH 5130):						
CRUDE/LIQUID	12 00					
NATURAL GAS	13 00					
REFINED PRODUCT	14 00					
NOTE 1: BREAKDOWN OF LINE 08 00 ABOVE:						
REFINERY REFURBISHMENT & EXPANSION	15 00					
NEW REFINERY CONSTRUCTION	16 00					
OTHER	17 00					
TOTAL (MUST EQUAL LINE 08 00 COL B)	18 00					
NOTE 2: BREAKDOWN OF LINE 09 00 ABOVE:						
RETAIL OUTLET REFURBISHMENT & EXPANSION	19 00					
NEW RETAIL OUTLET CONSTRUCTION	20 00					
OTHER	21 00					
TOTAL (MUST EQUAL LINE 09 00 COL B)	22 00					

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
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051
052 (IN THOUSANDS OF DOLLARS)

DOMESTIC PETROLEUM (CONTINUED FROM PAGE 1 OF 4)

	FRS LINE #	VALUATION CHARGES F	ADJUSTMENT G	NET BOOK VALUE AT END OF PERIOD H
057 DOMESTIC PRODUCTION SEGMENT:				
058 MINERAL INTERESTS IN PROPERTIES:				
059 PROVED	01 00			
060 UNPROVED	02 00			
061 WELLS EQUIPMENT & FACILITIES:				
062 GAS PROCESSING FACILITIES	03 00			
063 OTHER	04 00			
064 SUPPORT EQUIPMENT & FACILITIES	05 00			
065 UNCOMPLETED WELLS EQUIPMENT & FACILITIES	06 00			
066 TOTAL DOMESTIC PRODUCTION SEGMENT	07 00			
067 DOMESTIC REFINING/MARKETING SEGMENT:				
068 REFINING (SCH 5130)	08.00			
069 MARKETING (SCH 5130)	09 00			
070 TRANSPORTATION (SCH 5130)	10 00			
071 TOTAL DOMESTIC REFINING/MARKETING SEGMENT	11 00			
072 FEDERALLY REGULATED PIPELINES (SCH 5130)				
073 CRUDE & PLANT PRODUCT	12.00			
074 NATURAL GAS	13.00			
075 REFINED PRODUCT	14.00			

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
CHANGES IN NET PROPERTY AND OTHER CAPITALIZED COST BALANCES

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(IN THOUSANDS OF DOLLARS)

FOREIGN PETROLEUM (CONTINUED ON PAGE 4 OF 4)

	FRS LINE #	NET BOOK VALUE AT BEGINNING OF PERIOD A	ADDITIONS AT COST B	GAIN/(LOSS) ON DISP (MEMO) C	BOOK VALUE OF DISPOSALS D	CURRENT PERIOD DD&A E	FOOT NOTE
FOREIGN PRODUCTION SEGMENT:							
MINERAL INTERESTS IN PROPERTIES:							
PROVED	23 00						
UNPROVED	24 00						
WELLS EQUIPMENT & FACILITIES:							
GAS PROCESSING FACILITIES	25 00						
OTHER	26 00						
SUPPORT EQUIPMENT & FACILITIES	27 00						
UNCOMPLETED WELLS EQUIPMENT & FACILITIES	28 00						
TOTAL FOREIGN PRODUCTION SEGMENT	29 00						
FOREIGN REFINING/MARKETING SEGMENT:							
REFINING (SCH 5130)	30 00						
MARKETING (SCH 5130)	31 00						
TRANSPORTATION (SCH 5130)	32 00						
TOTAL REFINING/MARKETING SEGMENT	33 00						
INTERNATIONAL MARINE SEGMENT (SCH 5130)	34 00						

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
CHANGES IN NET PROPERTY AND OTHER CAPITALIZED COST BALANCES

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(IN THOUSANDS OF DOLLARS)

FOREIGN PETROLEUM (CONTINUED FROM PAGE 3 OF 4)

	FRS LINE #	VALUATION CHARGES F	ADJUSTMENT G	NET BOOK VALUE AT END OF PERIOD H
FOREIGN PRODUCTION SEGMENT:				
MINERAL INTERESTS IN PROPERTIES:				
PROVED	23 00			
UNPROVED	24 00			
WELLS EQUIPMENT & FACILITIES:				
GAS PROCESSING FACILITIES	25 00			
OTHER	26 00			
SUPPORT EQUIPMENT & FACILITIES	27 00			
UNCOMPLETED WELLS EQUIPMENT & FACILITIES	28 00			
TOTAL FOREIGN PRODUCTION SEGMENT	29 00			
FOREIGN REFINING/MARKETING SEGMENT:				
REFINING (SCH 5130)	30 00			
MARKETING (SCH 5130)	31 00			
TRANSPORTATION (SCH 5130)	32.00			
TOTAL REFINING/MARKETING SEGMENT	33 00			
INTERNATIONAL MARINE SEGMENT (SCH 5130)	34 00			

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
EXPLORATION, DEVELOPMENT, AND PRODUCTION EXPENDITURES CAPITALIZED

FORM APPROVED
O.M.B. NO. 33-R-0361
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H H H

(IN THOUSANDS OF DOLLARS)

	FRS LINE #	GRAND TOTAL A	DOMESTIC TOTAL B	DOMESTIC ALASKA ONSHORE C	DOMESTIC ALASKA OFFSHORE D	DOMESTIC OTHER ONSHORE E	DOMESTIC OTHER OFFSHORE F	TOTAL FOREIGN G
EXPLORATION:								
ACQUISITION OF UNPROVED ACREAGE	01 00							
DRILLING & EQUIPPING OF WELLS:								
DRY HOLES	02 00							
OIL WELLS	03 00							
GAS WELLS	04 00							
WORK IN PROGRESS ADJUSTMENT	05 00							
TOTAL	06 00							
LEASE RENTS	07 00							
GEOLOGICAL & GEOPHYSICAL	08 00							
TEST HOLE CONTRIBUTIONS	09 00							
LAND DEPARTMENT LEASING & SCOUTING	10 00							
OTHER INCLUDING DIRECT OVERHEAD	11 00							
TOTAL EXPLORATION (SCH 5130)	12 00							
DEVELOPMENT:								
DRILLING & EQUIPPING OF WELLS:								
DRY HOLES	13 00							
OIL WELLS	14 00							
GAS WELLS	15 00							
WORK IN PROGRESS ADJUSTMENT	16 00							
TOTAL DRILLING & EQUIPPING OF WELLS	17 00							
LEASE EQUIPMENT:								
PRIMARY RECOVERY PROGRAMS	18 00							
IMPROVED RECOVERY PROGRAMS:								
STATUTORY TERTIARY	19 00							
OTHER IMPROVED RECOVERY	20 00							
TOTAL LEASE EQUIPMENT	21 00							
GAS PROCESSING FACILITIES	22.00							
ACQUISITION OF PROVED ACREAGE	23 00							
OTHER INCLUDING DIRECT OVERHEAD	24 00							
TOTAL DEVELOPMENT (SCH 5130)	25 00							
PRODUCTION (SCH 5130)	26 00							
SUPPORT EQUIPMENT & FACILITIES (SCH 5130)	27 00							
TOTAL (SCH 5222 LINES 07 00 & 29 00 COL B)	28 00							

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
EXPLORATION, DEVELOPMENT, AND PRODUCTION EXPENDITURES CAPITALIZED

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(IN THOUSANDS OF DOLLARS)

FOREIGN (CONTINUED ON PAGE 3 OF 3)

	FRS LINE #	TOTAL G	CANADA H	OECD EUROPE I	AFRICA NORTH J	AFRICA OTHER K
EXPLORATION:						
ACQUISITION OF UNPROVED ACREAGE	01 00					
DRILLING & EQUIPPING OF WELLS:						
DRY HOLES	02 00					
OIL WELLS	03 00					
GAS WELLS	04 00					
WORK IN PROGRESS ADJUSTMENT	05 00					
TOTAL	06 00					
LEASE RENTS	07 00					
GEOLOGICAL & GEOPHYSICAL	08 00					
TEST HOLE CONTRIBUTIONS	09 00					
LAND DEPARTMENT LEASING & SCOUTING	10 00					
OTHER INCLUDING DIRECT OVERHEAD	11 00					
TOTAL EXPLORATION (SCH 5130)	12.00					
DEVELOPMENT:						
DRILLING & EQUIPPING OF WELLS:						
DRY HOLES	13 00					
OIL WELLS	14 00					
GAS WELLS	15.00					
WORK IN-PROGRESS ADJUSTMENT	16.00					
TOTAL DRILLING & EQUIPPING OF WELLS	17.00					
LEASE EQUIPMENT:						
PRIMARY RECOVERY PROGRAMS	18 00					
IMPROVED RECOVERY PROGRAMS:						
STATUTORY TERTIARY	19.00					
OTHER IMPROVED RECOVERY	20 00					
TOTAL LEASE EQUIPMENT	21.00					
GAS PROCESSING FACILITIES	22.00					
ACQUISITION OF PROVED ACREAGE	23.00					
OTHER INCLUDING DIRECT OVERHEAD	24.00					
TOTAL DEVELOPMENT (SCH 5130)	25.00					
PRODUCTION (SCH 5130)	26.00					
SUPPORT EQUIPMENT & FACILITIES (SCH 5130)	27.00					
TOTAL (SCH 5222 LINE 20 00 COL B)	28.00					

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
EXPLORATION, DEVELOPMENT, AND PRODUCTION EXPENDITURES CAPITALIZED

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	FOREIGN (CONTINUED FROM PAGE 2 OF 3) MIDDLE EAST L	OTHER EAST HEMISPHERE ASIA M	OTHER EAST HEMISPHERE OTHER N	OTHER WEST HEMISPHERE O
EXPLORATION:					
ACQUISITION OF UNPROVED ACREAGE	01 00				
DRILLING & EQUIPPING OF WELLS:					
DRY HOLES	02 00				
OIL WELLS	03 00				
GAS WELLS	04 00				
WORK IN PROGRESS ADJUSTMENT	05 00				
TOTAL	06 00				
LEASE RENTS	07 00				
GEOLOGICAL & GEOPHYSICAL	08 00				
TEST HOLE CONTRIBUTIONS	09 00				
LAND DEPARTMENT LEASING & SCOUTING	10 00				
OTHER INCLUDING DIRECT OVERHEAD	11 00				
TOTAL EXPLORATION (SCH 5130)	12 00				
DEVELOPMENT:					
DRILLING & EQUIPPING OF WELLS:					
DRY HOLES	13 00				
OIL WELLS	14 00				
GAS WELLS	15 00				
WORK IN PROGRESS ADJUSTMENT	16 00				
TOTAL DRILLING & EQUIPPING OF WELLS	17 00				
LEASE EQUIPMENT:					
PRIMARY RECOVERY PROGRAMS	18 00				
IMPROVED RECOVERY PROGRAMS:					
STATUTORY TERTIARY	19 00				
OTHER IMPROVED RECOVERY	20 00				
TOTAL LEASE EQUIPMENT	21 00				
GAS PROCESSING FACILITIES	22 00				
ACQUISITION OF PROVED ACREAGE	23 00				
OTHER INCLUDING DIRECT OVERHEAD	24 00				
TOTAL DEVELOPMENT (SCH 5130)	25 00				
PRODUCTION (SCH 5130)	26 00				
SUPPORT EQUIPMENT & FACILITIES (SCH 5130)	27 00				
TOTAL (SCH 5222 LINE 29 00 COL B)	28 00				

EXPL NOTE

GPO 935 678

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
EXPLORATION, DEVELOPMENT, AND PRODUCTION STATISTICS

FORM APPROVED
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FRS LINE #	GRAND TOTAL A	DOMESTIC TOTAL B	ALASKA ONSHORE C	ALASKA OFFSHORE D	OTHER ONSHORE E	OTHER OFFSHORE F	TOTAL FOREIGN G
009 ACREAGE (THOUSANDS OF ACRES):							
010 GROSS ACREAGE:							
011 DEVELOPED	01 00						
012 UNDEVELOPED	02.00						
013 NET ACREAGE:							
014 DEVELOPED	03 00						
015 UNDEVELOPED	04 00						
016 CURRENT YEAR FARMOUTS (NET ACREAGE)	05 00						
017 CURRENT YEAR FARMINS (NET ACREAGE)	06 00						

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
EXPLORATION, DEVELOPMENT, AND PRODUCTION STATISTICS

FORM APPROVED
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EXPIRES 12/31/79

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	FRS LINE #	FOREIGN: TOTAL G	CANADA H	OECD EUROPE I	AFRICA: NORTH J	AFRICA: OTHER K	MIDDLE EAST L	OTHER EAST HEMISPHERE: ASIA M	OTHER EAST HEMISPHERE: OTHER N	OTHER WEST HEMISPHERE O	FORM NOTE
057 ACREAGE (THOUSANDS OF ACRES):											
058 GROSS ACREAGE:											
059 DEVELOPED	01 00										
060 UNDEVELOPED	02 00										
061 NET ACREAGE:											
062 DEVELOPED	03 00										
063 UNDEVELOPED	04 00										
064 CURRENT YEAR FARMOUTS (NET ACREAGE)	05 00										
065 CURRENT YEAR FARMINS (NET ACREAGE)	06 00										

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
EXPLORATION, DEVELOPMENT, AND PRODUCTION STATISTICS

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	FRS LINE #	GRAND TOTAL A	DOMESTIC TOTAL B	DOMESTIC ALASKA ONSHORE C	DOMESTIC ALASKA OFFSHORE D	DOMESTIC OTHER ONSHORE E	DOMESTIC OTHER OFFSHORE F	TOTAL FOREIGN G
WELLS:								
NUMBER OF WELLS (GROSS):								
EXPLORATORY WELLS COMPLETED DURING PERIOD:								
OIL	07 00							
GAS	08 00							
DRY	09 00							
DEVELOPMENT WELLS COMPLETED DURING PERIOD:								
OIL	10 00							
GAS	11 00							
DRY	12.00							
IN PROGRESS WELLS AT END OF PERIOD:								
EXPLORATORY	13 00							
DEVELOPMENT	14.00							
NUMBER OF WELLS (NET):								
EXPLORATORY WELLS COMPLETED DURING PERIOD:								
OIL	15.00							
GAS	16.00							
DRY	17 00							
DEVELOPMENT WELLS COMPLETED DURING PERIOD:								
OIL	18.00							
GAS	19.00							
DRY	20.00							
IN-PROGRESS WELLS AT END OF PERIOD:								
EXPLORATORY	21.00							
DEVELOPMENT	22.00							
NUMBER OF PRODUCING WELLS:								
GROSS:								
OIL	23.00							
GAS	24.00							
NET:								
OIL	25.00							
GAS	26.00							

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
EXPLORATION, DEVELOPMENT, AND PRODUCTION STATISTICS

FORM APPROVED
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

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H H H

	FRS LINE #	TOTAL G	CANADA H	OECD EUROPE I	FOREIGN AFRICA NORTH J	FOREIGN AFRICA OTHER K	MIDDLE EAST L	OTHER EAST HEMISPHERE ASIA M	OTHER EAST HEMISPHERE OTHER N	OTHER WEST HEMISPHERE O	ISRZ
WELLS:											
NUMBER OF WELLS (GROSS):											
EXPLORATORY WELLS COMPLETED DURING PERIOD:											
OIL	07 00										
GAS	08 00										
DRY	09 00										
DEVELOPMENT WELLS COMPLETED DURING PERIOD:											
OIL	10 00										
GAS	11 00										
DRY	12 00										
IN PROGRESS WELLS AT END OF PERIOD:											
EXPLORATORY	13 00										
DEVELOPMENT	14 00										
NUMBER OF WELLS (NET):											
EXPLORATORY WELLS COMPLETED DURING PERIOD:											
OIL	15 00										
GAS	16 00										
DRY	17 00										
DEVELOPMENT WELLS COMPLETED DURING PERIOD:											
OIL	18 00										
GAS	19 00										
DRY	20 00										
IN PROGRESS WELLS AT END OF PERIOD:											
EXPLORATORY	21 00										
DEVELOPMENT	22 00										
NUMBER OF PRODUCING WELLS:											
GROSS:											
OIL	23 00										
GAS	24 00										
NET:											
OIL	25 00										
GAS	26 00										

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
EXPLORATION, DEVELOPMENT, AND PRODUCTION STATISTICS

FORM APPROVED
O.M.B. NO. 38-R-0381
EXPIRES 12/31/79

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	FRS LINE #	GRAND TOTAL A	DOMESTIC TOTAL B	ALASKA ONSHORE C	ALASKA OFFSHORE D	OTHER ONSHORE E	OTHER OFFSHORE F	TOTAL FOREIGN G
DRILLING (THOUSANDS OF FEET):								
GROSS DRILLING FOOTAGE:								
EXPLORATORY WELLS:								
OIL	27 00							
GAS	28 00							
DRY	29 00							
DEVELOPMENT WELLS:								
OIL	30 00							
GAS	31 00							
DRY	32 00							
NET DRILLING FOOTAGE:								
EXPLORATORY WELLS:								
OIL	33 00							
GAS	34 00							
DRY	35 00							
DEVELOPMENT WELLS:								
OIL	36.00							
GAS	37.00							
DRY	38.00							

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
EXPLORATION, DEVELOPMENT, AND PRODUCTION STATISTICS

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	FRS LINE #	GRAND TOTAL A	DOMESTIC TOTAL B	DOMESTIC ALASKA ONSHORE C	DOMESTIC ALASKA OFFSHORE D	DOMESTIC OTHER ONSHORE E	DOMESTIC OTHER OFFSHORE F	TOTAL FOREIGN G
WORKING INTEREST PRODUCTION:								
GROSS:								
CRUDE (MB)	39 00							
NATURAL GAS (MMCF)	40 00							
NATURAL GAS LIQUIDS (MB)	41 00							
NET:								
CRUDE (MB)	42 00							
NATURAL GAS (MMCF)	43 00							
NATURAL GAS LIQUIDS:								
LEASEHOLD PRODUCTION (MB)	44 00							
CONTRACT PRODUCTION (MB)	45 00							
GROSS COMPANY OPERATED PRODUCTION:								
OWN WORKING INTEREST:								
CRUDE (MB)	46 00							
NATURAL GAS (MMCF)	47 00							
NATURAL GAS LIQUIDS (MB)	48.00							
WORKING INTERESTS OF OTHERS:								
CRUDE (MB)	49 00							
NATURAL GAS (MMCF)	50 00							
NATURAL GAS LIQUIDS (MB)	51 00							
NON WORKING INTEREST (ROYALTY) PRODUCTION:								
CRUDE (MB)	52 00							
NATURAL GAS (MMCF)	53 00							
NATURAL GAS LIQUIDS (MB)	54 00							
FOREIGN ACCESS:								
CRUDE (MB)	55 00							
NATURAL GAS (MMCF)	56 00							
NATURAL GAS LIQUIDS (MB)	57 00							

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
EXPLORATION, DEVELOPMENT, AND PRODUCTION STATISTICS

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	FRS LINE #	FOREIGN: TOTAL G	CANADA H	OECD EUROPE I	AFRICA NORTH J	AFRICA OTHER K	MIDDLE EAST L	OTHER EAST HEMISPHERE ASIA M	OTHER EAST HEMISPHERE OTHER N	OTHER WEST HEMISPHERE O
WORKING INTEREST PRODUCTION:										
GROSS:										
CRUDE (MB)	39 00									
NATURAL GAS (MMCF)	40 00									
NATURAL GAS LIQUIDS (MB)	41 00									
NET:										
CRUDE (MB)	42 00									
NATURAL GAS (MMCF)	43 00									
NATURAL GAS LIQUIDS:										
LEASEHOLD PRODUCTION (MB)	44 00									
CONTRACT PRODUCTION (MB)	45 00									
GROSS COMPANY-OPERATED PRODUCTION:										
OWN WORKING INTEREST										
CRUDE (MB)	46 00									
NATURAL GAS (MMCF)	47 00									
NATURAL GAS LIQUIDS (MB)	48 00									
WORKING INTERESTS OF OTHERS										
CRUDE (MB)	49.00									
NATURAL GAS (MMCF)	50 00									
NATURAL GAS LIQUIDS (MB)	51 00									
NON WORKING INTEREST (ROYALTY) PRODUCTION										
CRUDE (MB)	52.00									
NATURAL GAS (MMCF)	53 00									
NATURAL GAS LIQUIDS (MB)	54 00									
FOREIGN ACCESS										
CRUDE (MB)	55.00									
NATURAL GAS (MMCF)	56 00									
NATURAL GAS LIQUIDS (MB)	57 00									

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
EXPLORATION, DEVELOPMENT, AND PRODUCTION STATISTICS

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	FRS LINE #	DOMESTIC TOTAL B	DOMESTIC ALASKA ONSHORE C	DOMESTIC ALASKA OFFSHORE D	DOMESTIC OTHER ONSHORE E	DOMESTIC OTHER OFFSHORE F
NET WORKING INTEREST CRUDE PRODUCTION (MB) BY RECOVERY METHOD:						
COMPANY-OPERATED PROPERTIES:						
PRIMARY RECOVERY OPERATIONS	58 00					
IMPROVED RECOVERY OPERATIONS:						
STATUTORY TERTIARY	59.00					
OTHER IMPROVED RECOVERY	60 00					
TOTAL	61 00					
OPERATED BY OTHERS:						
PRIMARY RECOVERY OPERATIONS	62 00					
IMPROVED RECOVERY OPERATIONS:						
STATUTORY TERTIARY	63 00					
OTHER IMPROVED RECOVERY	64 00					
TOTAL	65 00					
NET WORKING INTEREST CRUDE PRODUCTION (MB) BY TIER:						
COMPANY OPERATED:						
UPPER TIER	66 00					
LOWER TIER	67 00					
WORLD PRICE:						
STRIPPER	68 00					
OTHER	69 00					
OPERATED BY OTHERS:						
UPPER TIER	70 00					
LOWER TIER	71 00					
WORLD PRICE:						
STRIPPER	72.00					
OTHER	73 00					

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
PETROLEUM REFINING STATISTICS

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	FRS LINE #	GRAND TOTAL A	TOTAL DOMESTIC B	TOTAL FOREIGN C	FOREIGN: CANADA D	OECD EUROPE E	AFRICA F	MIDDLE EAST G	OTHER EAST HEMISPHERE H	OTHER WEST HEMISPHERE I
NUMBER OF REFINERIES:										
WHOLLY OWNED	01 00									
PARTIALLY OWNED	02 00									
TOTAL	03 00									
RUNS TO STILLS (MBD):										
AT OWN REFINERIES:										
FOR COMPANY ACCOUNT	04 00									
FOR OTHERS	05 00									
BY REFINERIES OF OTHERS	06 00									
TOTAL	07 00									
TOTAL REFINERY OUTPUT (MBD):										
AT OWN REFINERIES (FOR OWN ACCOUNT):										
MOTOR GASOLINE:										
LEADED	08.00									
UNLEADED	09 00									
TOTAL	10 00									
DISTILLATE FUELS	11 00									
RESIDUAL FUELS	12.00									
OTHER REFINED PRODUCTS	13 00									
TOTAL	14.00									
AT OWN REFINERIES (FOR OTHERS):										
MOTOR GASOLINE:										
LEADED	15.00									
UNLEADED	16.00									
TOTAL	17.00									
DISTILLATE FUELS	18.00									
RESIDUAL FUELS	19.00									
OTHER REFINED PRODUCTS	20.00									
TOTAL	21.00									

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
PETROLEUM REFINING STATISTICS

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	FRS LINE #	GRAND TOTAL A	TOTAL DOMESTIC B	TOTAL FOREIGN C	FOREIGN: CANADA D	OECD EUROPE E	AFRICA F	MIDDLE EAST G	OTHER EAST HEMISPHERE H	OTHER WEST HEMISPHERE I
AT REFINERIES OF OTHERS (FOR OWN ACCOUNT):										
MOTOR GASOLINE:										
LEADED	22.00									
UNLEADED	23 00									
TOTAL	24 00									
DISTILLATE FUELS	25 00									
RESIDUAL FUELS	26 00									
OTHER REFINED PRODUCTS	27 00									
TOTAL	28 00									
TOTAL (LINES 14 00 21 00 & 28 00)	29 00									
CAPACITY (MBD):										
CAPACITY AT BEGINNING OF PERIOD	30 00									
NEW REFINERIES	31 00									
ADDITIONS TO EXISTING REFINERIES	32 00									
PURCHASE OF EXISTING REFINERIES	33 00									
REDUCTION OF CAPACITY	34 00									
SALE	35 00									
OTHER	36 00									
CAPACITY AT END OF PERIOD	37 00									
ANNOUNCED FUTURE CAPACITY CHANGES (WITHIN 5 YEARS):										
NEW REFINERIES	38 00									
ADDITIONS TO EXISTING REFINERIES	39 00									
PURCHASE OF EXISTING REFINERIES	40 00									
REDUCTIONS OF CAPACITY	41 00									

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DOMESTIC PETROLEUM SEGMENT
MOTOR FUEL MARKETING STATISTICS

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(IN THOUSANDS OF GALLONS)

	FRS LINE #	TOTAL ANNUAL VOLUMES SOLD A	NUMBER OF OUTLETS PUMPING THE FOLLOWING NUMBER OF M/GAL PER MONTH: TOTAL 0-E B	OVER 150 C	75-149 D	UNDER 75 E	NUMBER OF OUTLETS ACTIVE F	INACTIVE G
RETAIL MOTOR FUEL SALES THROUGH:								
COMPANY OPERATED OUTLETS/COMMISSION AGENTS	01 00							
LESSEE DEALERS	02 00							
OPEN DEALERS	03 00							
TOTAL	04 00							
ACQUISITIONS AND DISPOSITIONS OF RETAIL OUTLETS OWNED BY OR UNDER LEASE TO REPORTING COMPANY:								
NUMBER AT BEGINNING OF PERIOD	05 00							
ACTIVITY DURING THE PERIOD:								
NEW CONSTRUCTION	06 00							
PURCHASES OF EXISTING OUTLETS	07 00							
SALES OF EXISTING OUTLETS	08 00							
NEWLY LEASED OUTLETS	09 00							
EXPIRED LEASES NOT RENEWED	10.00							
OTHER	11 00							
NET RECLASSIFICATIONS	12.00							
NUMBER AT END OF PERIOD	13.00							

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
TRANSPORTATION STATISTICS

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	FRS LINE #	NUMBER OF VESSELS A	CAPACITY (MDWT) B
MARINE:			
TANKERS:			
OWNED (INCLUDING CAPITALIZED LEASES)	01 00		
CHARTERED/LEASED:			
LONG TERM	02.00		
OTHER	03 00		
TOTAL	04 00		
TOTAL	05 00		
VESSEL TYPE:			
ULCC	06 00		
VLCC	07 00		
SPECIALTY (LPG/LNG)	08 00		
OTHER TANKERS	09 00		
TOTAL	10 00		

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
TRANSPORTATION STATISTICS

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	FRS LINE #	DOMESTIC TOTAL A	DOMESTIC FEDERALLY REGULATED B	DOMESTIC OTHER THAN FEDERALLY REGULATED C
PIPELINE:				
CONSOLIDATED PIPELINES (100 PERCENT OWNED):				
MILEAGE:				
CRUDE/LIQUID	11 00			
NATURAL GAS	12 00			
REFINED PRODUCT	13 00			
CAPACITY:				
CRUDE/LIQUID (MBD)	14 00			
NATURAL GAS (MMCF/DAY)	15 00			
REFINED PRODUCT (MBD)	16 00			
VOLUME TRANSPORTED FOR OWN ACCOUNT:				
CRUDE/LIQUID (MB)	17 00			
NATURAL GAS (MMCF)	18 00			
REFINED PRODUCT (MB)	19 00			
VOLUME TRANSPORTED FOR OTHERS:				
CRUDE/LIQUID (MB)	20 00			
NATURAL GAS (MMCF)	21 00			
REFINED PRODUCT (MB)	22.00			
CONSOLIDATED PIPELINES (PARTIALLY OWNED):				
MILEAGE:				
CRUDE/LIQUID	23.00			
NATURAL GAS	24.00			
REFINED PRODUCT	25.00			
GROSS CAPACITY:				
CRUDE/LIQUID (MBD)	26.00			
NATURAL GAS (MMCF/DAY)	27.00			
REFINED PRODUCT (MBD)	28.00			
NET CAPACITY:				
CRUDE/LIQUID (MBD)	29.00			
NATURAL GAS (MMCF/DAY)	30.00			
REFINED PRODUCT (MBD)	31 00			
VOLUME TRANSPORTED FOR OWN ACCOUNT:				
CRUDE/LIQUID (MB)	32.00			
NATURAL GAS (MMCF)	33.00			
REFINED PRODUCT (MB)	34.00			

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PETROLEUM PURCHASES, SALES, AND EXCHANGES
TRANSACTIONS WITH UNCONSOL AFFILIATES/UNAFFILIATED THIRD PARTIES

FORM APPROVED
O.M.B. NO. 38-R-0381
EXPIRES 12/31/79

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	FRS LINE #	(M) BARRELS RECEIPTS A	(M) BARRELS DELIVERIES B
EXCHANGES WITH:			
GROUP I COMPANIES:			
CRUDE FOR CRUDE	01 00		
CRUDE FOR PRODUCT	02.00		
PRODUCT FOR CRUDE	03 00		
PRODUCT FOR PRODUCT	04 00		
GROUP II COMPANIES:			
CRUDE FOR CRUDE	05 00		
CRUDE FOR PRODUCT	06 00		
PRODUCT FOR CRUDE	07 00		
PRODUCT FOR PRODUCT	08 00		
OTHERS:			
CRUDE FOR CRUDE	09 00		
CRUDE FOR PRODUCT	10 00		
PRODUCT FOR CRUDE	11 00		
PRODUCT FOR PRODUCT	12 00		
TOTAL	13 00		

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PETROLEUM PURCHASES, SALES, AND EXCHANGES
TRANSACTIONS WITH UNCONSOL. AFFILIATES/UNAFFILIATED THIRD PARTIES

FORM APPROVED
O.M.B. NO. 39-R-0361
EXPIRES 12/31/79

001 RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | FOOTNOTE | ORIGINAL | REVISION | AS OF REVISION DATE MO DAY YR | PAGE OF PAGES
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	FRS LINE #	(M) BARRELS RECEIPTS A	(M) BARRELS DELIVERIES B	(M) DOLLARS RECEIPTS C	(M) DOLLARS DELIVERIES D
PURCHASE/SALE AGREEMENTS WITH:					
GROUP I COMPANIES:					
CRUDE FOR CRUDE	14 00				
CRUDE FOR PRODUCT	15 00				
PRODUCT FOR CRUDE	16 00				
PRODUCT FOR PRODUCT	17 00				
GROUP II COMPANIES:					
CRUDE FOR CRUDE	18 00				
CRUDE FOR PRODUCT	19 00				
PRODUCT FOR CRUDE	20 00				
PRODUCT FOR PRODUCT	21 00				
OTHERS:					
CRUDE FOR CRUDE	22 00				
CRUDE FOR PRODUCT	23 00				
PRODUCT FOR CRUDE	24 00				
PRODUCT FOR PRODUCT	25 00				
TOTAL	26 00				
OTHER PURCHASES AND SALES WITH:					
GROUP I COMPANIES:					
CRUDE	27.00				
PRODUCT	28.00				
GROUP II COMPANIES:					
CRUDE	29.00				
PRODUCT	30.00				

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
PROVED PETROLEUM RESERVES

FORM APPROVED
O.M.B. NO. 33-R-0381
EXPIRES 12/31/79

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	FRS LINE #	GRAND TOTAL A	DOMESTIC TOTAL B	DOMESTIC ALASKA ONSHORE C	DOMESTIC ALASKA OFFSHORE D	DOMESTIC OTHER ONSHORE E	DOMESTIC OTHER OFFSHORE F	TOTAL FOREIGN G	CONT NOW
CRUDE RESERVES (MB):									
NET WORKING INTEREST RESERVES:									
BEGINNING OF PERIOD	01 00								
CHANGES DUE TO:									
REVISIONS OF PREVIOUS ESTIMATES	02.00								
IMPROVED RECOVERY (SEE LINE 13 00 BELOW)	03 00								
PURCHASES OF MINERALS-IN PLACE	04 00								
EXTENSIONS DISCOVERIES OTHER ADDITIONS	05 00								
PRODUCTION	06 00								
SALES OF MINERALS-IN PLACE	07 00								
END OF PERIOD	08 00								
GROSS WORKING INTEREST RESERVES	09 00								
NON WORKING INTEREST (ROYALTY) RESERVES	10 00								
PROPORTIONAL INTEREST IN INVESTEE RESERVES	11 00								
FOREIGN ACCESS	12 00								
STATUTORY TERTIARY PORTION OF LINE 03 00 ABOVE	13 00								

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
PROVED PETROLEUM RESERVES

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	FRS LINE #	FOREIGN (CONTINUED ON PAGE 2 OF 5) TOTAL G	CANADA H	OECD EUROPE I	AFRICA NORTH J	AFRICA OTHER K
CRUDE RESERVES (MB):						
NET WORKING INTEREST RESERVES:						
BEGINNING OF PERIOD	01 00					
CHANGES DUE TO:						
REVISIONS OF PREVIOUS ESTIMATES	02 00					
IMPROVED RECOVERY	03 00					
PURCHASES OF MINERALS-IN PLACE	04 00					
EXTENSIONS DISCOVERIES OTHER ADDITIONS	05 00					
PRODUCTION	06 00					
SALES OF MINERALS-IN PLACE	07 00					
END OF PERIOD	08 00					
GROSS WORKING INTEREST RESERVES	09 00					
NON WORKING INTEREST (ROYALTY) RESERVES	10 00					
PROPORTIONAL INTEREST IN INVESTEE RESERVES	11 00					
FOREIGN ACCESS, ...	12.00					

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
PROVED PETROLEUM RESERVES

FORM APPROVED
O.M.B. NO. 38-R-0361
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002 H H H

FOREIGN (CONTINUED FROM PAGE 3 OF 5)

	FRS LINE #	MIDDLE EAST L	OTHER EAST HEMISPHERE ASIA M	OTHER EAST HEMISPHERE OTHER N	OTHER WEST HEMISPHERE O
CRUDE RESERVES (MB):					
NET WORKING INTEREST RESERVES:					
BEGINNING OF PERIOD	01 00				
CHANGES DUE TO:					
REVISIONS OF PREVIOUS ESTIMATES	02 00				
IMPROVED RECOVERY	03 00				
PURCHASES OF MINERALS-IN-PLACE	04 00				
EXTENSIONS DISCOVERIES OTHER ADDITIONS	05 00				
PRODUCTION	06 00				
SALES OF MINERALS-IN PLACE	07 00				
END OF PERIOD	08 00				
GROSS WORKING INTEREST RESERVES	09 00				
NON WORKING INTEREST (ROYALTY) RESERVES	10 00				
PROPORTIONAL INTEREST IN INVESTEE RESERVES	11 00				
FOREIGN ACCESS	12.00				

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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
PROVED PETROLEUM RESERVES

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H H H

	FRS LINE #	GRAND TOTAL A	DOMESTIC TOTAL B	DOMESTIC ALASKA ONSHORE C	DOMESTIC ALASKA OFFSHORE D	DOMESTIC OTHER ONSHORE E	DOMESTIC OTHER OFFSHORE F	TOTAL FOREIGN G	ZERO
NATURAL GAS RESERVES (MMCF):									
NET WORKING INTEREST RESERVES:									
BEGINNING OF PERIOD	14 00								
CHANGES DUE TO:									
REVISIONS OF PREVIOUS ESTIMATES	15 00								
IMPROVED RECOVERY	16 00								
PURCHASES OF MINERALS-IN PLACE	17 00								
EXTENSIONS DISCOVERIES OTHER ADDITIONS	18 00								
PRODUCTION	19 00								
SALES OF MINERALS-IN PLACE	20 00								
END OF PERIOD	21 00								
GROSS WORKING INTEREST RESERVES	22.00								
NON WORKING INTEREST (ROYALTY) RESERVES	23 00								
PROPORTIONAL INTEREST IN INVESTEE RESERVES	24 00								
FOREIGN ACCESS	25 00								
NATURAL GAS LIQUID LEASEHOLD RESERVES (MB):									
NET WORKING INTEREST RESERVES;									
BEGINNING OF PERIOD	26.00								
CHANGES DUE TO:									
REVISIONS OF PREVIOUS ESTIMATES	27.00								
IMPROVED RECOVERY	28.00								
PURCHASES OF MINERALS-IN PLACE	29.00								
EXTENSIONS, DISCOVERIES OTHER ADDITIONS	30.00								
PRODUCTION	31.00								
SALES OF MINERALS-IN-PLACE	32.00								
END OF PERIOD	33.00								
GROSS WORKING INTEREST RESERVES	34.00								
NON WORKING INTEREST (ROYALTY) RESERVES	35.00								
PROPORTIONAL INTEREST IN INVESTEE RESERVES	36.00								
FOREIGN ACCESS	37.00								
NATURAL GAS LIQUID CONTRACT RESERVES (MB)	38.00								

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FINANCIAL REPORTING SYSTEM
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DOMESTIC AND FOREIGN PETROLEUM SEGMENTS
PROVED PETROLEUM RESERVES

FORM APPROVED.
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

001 RESPONDENT CODE | RESPONDENT NAME | PERIOD REFERENCED MO DAY YR | PERIOD ENDING MO DAY YR | FOOTNOTE | ORIGINAL | REVISION | AS OF | REVISION DATE MO DAY YR | PAGE | OF | PAGES
002 H H H

	FRS LINE #	TOTAL FOREIGN G	CANADA H
NATURAL GAS RESERVES (MMCF):			
NET WORKING INTEREST RESERVES:			
BEGINNING OF PERIOD	14 00		
CHANGES DUE TO:			
REVISIONS OF PREVIOUS ESTIMATES	15 00		
IMPROVED RECOVERY	16 00		
PURCHASES OF MINERALS-IN PLACE	17 00		
EXTENSIONS DISCOVERIES OTHER ADDITIONS	18 00		
PRODUCTION	19 00		
SALES OF MINERALS-IN-PLACE	20 00		
END OF PERIOD	21 00		
GROSS WORKING INTEREST RESERVES	22 00		
NON WORKING INTEREST (ROYALTY) RESERVES	23 00		
PROPORTIONAL INTEREST IN INVESTEE RESERVES	24 00		
FOREIGN ACCESS	25 00		
NATURAL GAS LIQUID LEASEHOLD RESERVES (MB):			
NET WORKING INTEREST RESERVES:			
BEGINNING OF PERIOD	26 00		
CHANGES DUE TO:			
REVISIONS OF PREVIOUS ESTIMATES	27 00		
IMPROVED RECOVERY	28 00		
PURCHASES OF MINERALS-IN-PLACE	29 00		
EXTENSIONS DISCOVERIES OTHER ADDITIONS	30 00		
PRODUCTION	31 00		
SALES OF MINERALS-IN PLACE	32 00		
END OF PERIOD	33 00		
GROSS WORKING INTEREST RESERVES	34 00		
NON WORKING INTEREST (ROYALTY) RESERVES	35 00		
PROPORTIONAL INTEREST IN INVESTEE RESERVES	36 00		
FOREIGN ACCESS	37 00		
NATURAL GAS LIQUID CONTRACT RESERVES (MB)	38 00		

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FINANCIAL REPORTING SYSTEM
SCH 5310 – PAGE 1 OF 2

5310

DOMESTIC AND FOREIGN COAL OPERATIONS
STATEMENT OF INCOME

FORM APPROVED
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | PAGE FOOTNOTE | ORIGINAL | REVISION | AS OF | REVISION DATE MO DAY YR | PAGE OF PAGES

(IN THOUSANDS OF DOLLARS)

	FRS LINE #	CONSOL A	ELIM B	NON-TRACEABLE C	DOMESTIC D	FOREIGN E
OPERATING REVENUES:						
LONG TERM CONTRACT SALES OF PRIMARY PRODUCT	01 00					
OTHER SALES OF PRIMARY PRODUCT	02 00					
OTHER OPERATING REVENUES	03 00					
TOTAL OPERATING REVENUES	04 00					
OPERATING EXPENSES:						
GENERAL OPERATING EXPENSES:						
LEASE	05 00					
EXPLORATION & DEVELOPMENT	06 00					
PRODUCTION & PROCESSING OF COAL	07 00					
PURCHASES OF PRODUCTS FOR RESALE	08 00					
INVENTORY CHANGE	09.00					
RECLAMATION EXPENSES	10.00					
BLACK LUNG BENEFITS	11.00					
TAXES OTHER THAN INCOME TAXES	12.00					
OTHER GENERAL OPERATING EXPENSES	13.00					
TOTAL GENERAL OPERATING EXPENSES	14.00					
DD&A	15.00					
VALUATION CHARGES	16.00					
GENERAL & ADMINISTRATIVE	17.00					
RESEARCH & DEVELOPMENT	18.00					
TOTAL OPERATING EXPENSES	19.00					
OPERATING INCOME	20.00					

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FINANCIAL REPORTING SYSTEM
SCH 5310 – PAGE 2 OF 3

5310

DOMESTIC AND FOREIGN COAL OPERATIONS
STATEMENT OF INCOME

FORM APPROVED
O.M.B. NO. 39-R-0361
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | PAGE COUNT NO | ORIGINAL | REVISION | AS OF | PREVIOUS DATE MO DAY YR | PAGE | OF PAGES

H H H

(IN THOUSANDS OF DOLLARS)

	FRS LINE #	CONSOL A	ELIM B	NON TRACEABLE C	DOMESTIC D	FOREIGN E
OTHER REVENUE & (EXPENSE):						
EQUITY IN EARNINGS OF UNCONSOLIDATED AFFILIATES	21 00					
DIVIDEND INCOME FROM COST BASIS UNCONSOLIDATED AFFILIATES	22.00					
GAIN/(LOSS) ON DISPOSITION OF PP&E	23 00					
MINORITY INTEREST IN INCOME (NET OF INCOME TAX)	24 00					
FOREIGN CURRENCY TRANSLATION EFFECTS	25 00					
INCOME TAXES:						
CURRENT	26.00					
DEFERRED	27 00					
TOTAL INCOME TAX	28 00					
TOTAL OTHER REVENUE & (EXPENSE)	29 00					
INCOME BEFORE LINES 31 00 & 32 00	30 00					
EXTRAORDINARY ITEMS	31 00					
CUMULATIVE EFFECT OF ACCOUNTING CHANGES	32 00					
CONTRIBUTION TO NET INCOME	33 00					

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DOMESTIC AND FOREIGN COAL OPERATIONS
SUMMARY FINANCIAL INDICATORS

FORM APPROVED
O.M.B. NO. 38-R-0381
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | FOOTNOTE | ORIGINAL | REVISION | AS OF | REVISION DATE MO DAY YR

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	CONSOL A	ELIM B	NON-TRACEABLE C	DOMESTIC D	FOREIGN E
SELECTED BALANCE SHEET INFORMATION:						
SELECTED CURRENT ASSETS:						
TRADE ACCOUNTS AND NOTES RECEIVABLE	01.00					
INVENTORIES:						
RAW MATERIALS & PRODUCTS	02.00					
MATERIALS & SUPPLIES	03.00					
NON-CURRENT ASSETS:						
PROPERTY PLANT & EQUIPMENT:						
GROSS	04.00					
ACCUMULATED DD&A	05.00					
NET	06.00					
INVESTMENT & ADVANCES TO UNCONSOLIDATED AFFILIATES	07.00					
OTHER NON-CURRENT ASSETS	08.00					
TOTAL NON-CURRENT ASSETS	09.00					
ADDITIONS TO PROPERTY PLANT & EQUIPMENT:						
PLANT & EQUIPMENT	10.00					
MINERAL PROPERTIES:						
PRODUCING	11.00					
NON-PRODUCING	12.00					
OTHER	13.00					
TOTAL (SCH 5130)	14.00					

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5341

DOMESTIC COAL OPERATIONS
RESERVES AND PRODUCTION STATISTICS

FORM APPROVED
O.M.B. NO. 38-R-0341
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | PAGE FOOTNOTE | ORIGINAL | REVISION | AS OF | REVISION DATE MO DAY YR | PAGE OF PAGES

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(IN THOUSANDS OF TONS)

	FRS LINE #	GRAND TOTAL A	UNDERGROUND TOTAL B	UNDERGROUND EAST C	UNDERGROUND MID WEST D	UNDERGROUND WEST E	TOTAL SURFACE F	FOOT NOTE
DOMESTIC COAL RESERVES:								
BITUMINOUS:								
HIGH SULPHUR	01.00							
MEDIUM SULPHUR	02.00							
LOW SULPHUR	03.00							
TOTAL	04.00							
SUB-BITUMINOUS:								
HIGH SULPHUR	05.00							
MEDIUM SULPHUR	06.00							
LOW SULPHUR	07.00							
TOTAL	08.00							
LIGNITE:								
HIGH SULPHUR	09.00							
MEDIUM SULPHUR	10.00							
LOW SULPHUR	11.00							
TOTAL	12.00							
TOTAL	13.00							
DOMESTIC COAL RESERVES:								
METALLURGICAL GRADE	14.00							
STEAM AND METALLURGICAL USEABLE	15.00							
NON METALLURGICAL	16.00							
TOTAL	17.00							
COAL COMMITTED UNDER CONTRACT TO:								
ELECTRIC UTILITIES	18.00							
STEEL COMPANIES	19.00							
OTHER COMPANIES	20.00							
TOTAL	21.00							

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FINANCIAL REPORTING SYSTEM
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5341

DOMESTIC COAL OPERATIONS
RESERVES AND PRODUCTION STATISTICS

FORM APPROVED
O.M.B. NO. 39-R-0361
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | FOOTNOTE | ORIGINAL | REVISION | REVISION DATE MO DAY YR

PAGE ___ OF ___ H H H

(IN THOUSANDS OF TONS)

	FRS LINE #	SURFACE TOTAL F	EAST G	MID WEST H	WEST I
DOMESTIC COAL RESERVES:					
BITUMINOUS:					
HIGH SULPHUR	01 00				
MEDIUM SULPHUR	02.00				
LOW SULPHUR	03 00				
TOTAL	04 00				
SUB-BITUMINOUS:					
HIGH SULPHUR	05 00				
MEDIUM SULPHUR	06 00				
LOW SULPHUR	07 00				
TOTAL	08.00				
LIGNITE:					
HIGH SULPHUR	09 00				
MEDIUM SULPHUR	10.00				
LOW SULPHUR	11.00				
TOTAL	12.00				
TOTAL	13.00				
DOMESTIC COAL RESERVES:					
METALLURGICAL GRADE	14.00				
STEAM AND METALLURGICAL USEABLE	15.00				
NON-METALLURGICAL	16.00				
TOTAL	17.00				
COAL COMMITTED UNDER CONTRACT TO:					
ELECTRIC UTILITIES	18.00				
STEEL COMPANIES	19.00				
OTHER COMPANIES	20.00				
TOTAL	21.00				

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5341

DOMESTIC COAL OPERATIONS
RESERVES AND PRODUCTION STATISTICS

FORM APPROVED
O.M.B. NO. 33-R-0361
EXPIRES 12/31/79

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H H H

(IN THOUSANDS OF TONS)

	FRS LINE #	GRAND TOTAL A	UNDERGROUND TOTAL B	EAST C	MID WEST D	WEST E	TOTAL SURFACE F	LINE
DOMESTIC COAL RESERVES:								
BEGINNING OF PERIOD	22 00							
CHANGES DUE TO:								
REVISIONS OF PREVIOUS ESTIMATES	23 00							
LEASES/PURCHASES OF MINERALS-IN-PLACE:								
PRIVATE SECTOR	24 00							
PUBLIC SECTOR:								
FEDERAL	25 00							
STATE/LOCAL	26 00							
CORPORATE MERGERS/ACQUISITIONS	27 00							
EXTENSIONS DISCOVERIES & OTHER ADDITIONS	28.00							
PRODUCTION	29 00							
SALES OF MINERALS-IN PLACE	30 00							
END OF PERIOD	31.00							
DOMESTIC COAL PRODUCTION:								
BITUMINOUS:								
HIGH SULPHUR	32 00							
MEDIUM SULPHUR	33 00							
LOW SULPHUR	34 00							
TOTAL	35.00							
SUB-BITUMINOUS:								
HIGH SULPHUR	36.00							
MEDIUM SULPHUR	37 00							
LOW SULPHUR	38.00							
TOTAL	39 00							
LIGNITE:								
HIGH SULPHUR	40 00							
MEDIUM SULPHUR	41.00							
LOW SULPHUR	42 00							
TOTAL	43 00							
TOTAL	44 00							
OUTPUT PER PERSON PER DAY	45 00							

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DOMESTIC COAL OPERATIONS
RESERVES AND PRODUCTION STATISTICS

FORM APPROVED
O.M.B. NO. 38-R-0901
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING | PERIOD ENDING | FISCAL YEAR ENDING | ORIGINAL | AMENDED | AS OF | PAGE OF PAGES

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(IN THOUSANDS OF TONS)

	FRS LINE #	SURFACE TOTAL F	EAST G	MID WEST H	WEST I
DOMESTIC COAL RESERVES:					
BEGINNING OF PERIOD	22 00				
CHANGES DUE TO:					
REVISIONS OF PREVIOUS ESTIMATES	23 00				
LEASES/PURCHASES OF MINERALS-IN PLACE:					
PRIVATE SECTOR	24 00				
PUBLIC SECTOR:					
FEDERAL	25 00				
STATE/LOCAL	26 00				
CORPORATE MERGERS/ACQUISITIONS	27 00				
EXTENSIONS DISCOVERIES & OTHER ADDITIONS	28 00				
PRODUCTION	29 00				
SALES OF MINERALS-IN PLACE	30 00				
END OF PERIOD	31 00				
DOMESTIC COAL PRODUCTION:					
BITUMINOUS:					
HIGH SULPHUR	32.00				
MEDIUM SULPHUR	33.00				
LOW SULPHUR	34.00				
TOTAL	35.00				
SUB-BITUMINOUS:					
HIGH SULPHUR	36.00				
MEDIUM SULPHUR	37.00				
LOW SULPHUR	38.00				
TOTAL	39 00				
LIGNITE:					
HIGH SULPHUR	40 00				
MEDIUM SULPHUR	41.00				
LOW SULPHUR	42.00				
TOTAL	43.00				
TOTAL	44 00				
OUTPUT PER PERSON PER DAY	45.00				

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FINANCIAL REPORTING SYSTEM
SCH 5341 – PAGE 5 OF 5

5341

DOMESTIC COAL OPERATIONS
RESERVES AND PRODUCTION STATISTICS

FORM APPROVED
O.M.B. NO. 39-R-0281
EXPIRES 12/31/79

001 RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | PAGE FOOTNOTE | ORIGINAL | REVISION | AS OF | REVISION DATE MO DAY YR | PAGE OF PAGES

002 H H H

201
202 (IN THOUSANDS OF TONS)
203
204
205
206

	FRS LINE #	TOTAL J	EAST K	MID WEST L	WEST M
207 LAND AVAILABLE FOR DEVELOPMENT					
208 LEASED OR OWNED (ACRES):					
209 BEGINNING OF PERIOD	46 00				
210 ACQUISITIONS	47 00				
211 DISPOSITIONS	48 00				
212 END OF PERIOD	49 00				

001 002 201 202 203 204 205 206 207 208 209 210 211 212 213

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DOMESTIC AND FOREIGN COAL OPERATIONS
OTHER COAL OPERATING STATISTICS

FORM APPROVED
O.M.B. NO. 50-R-0621
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD REPORTED MO DAY YR | PERIOD ENDED MO DAY YR | FILE CONTROL | ORIGINAL | REVISION | AS OF | REVISION DATE MO DAY YR | PAGE | OF | PARTS

(IN THOUSANDS OF TONS)

	FRS LINE #	DOMESTIC A	FOREIGN B
COAL SALES:			
TO ELECTRIC UTILITIES:			
CONTRACT SALES (INITIAL TERM)			
MORE THAN 5 YEARS	01.00		
1 TO 5 YEARS	02.00		
LESS THAN 1 YEAR	03.00		
TOTAL CONTRACT SALES	04.00		
SPOT SALES	05.00		
TOTAL SALES TO ELECTRIC UTILITIES	06.00		
TO STEEL COMPANIES:			
CONTRACT SALES	07.00		
SPOT SALES	08.00		
TOTAL SALES TO STEEL COMPANIES	09.00		
OTHER INDUSTRY SALES:			
CONTRACT SALES	10.00		
SPOT SALES	11.00		
TOTAL	12.00		
ALL OTHER SALES:			
CONTRACT SALES	13.00		
SPOT SALES	14.00		
TOTAL	15.00		
TOTAL COAL SALES	16.00		

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FINANCIAL REPORTING SYSTEM
SCH 5342 – PAGE 2 OF 2

5342

DOMESTIC AND FOREIGN COAL OPERATIONS
OTHER COAL OPERATING STATISTICS

FORM APPROVED
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD REPORTED MO DAY YR | PERIOD ENDING MO DAY YR | PAGE FOOTNOTE | ORIGINAL | REVISION | REVISION DATE MO DAY YR AS OF | PAGE OF PAGES

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	FRS LINE #	MINE CODE (MHSA) A	STATE B	DATE INITIAL LICENSE REQUESTED C	ACTUAL OR EXPECTED DATE OF OPERATION D	ANNUAL CAPACITY (M TONS) TOTAL E	MINING METHOD DEEP F	MINING METHOD SURFACE G	MINE TYPE STEAM H	MINE TYPE MET I	MINE TYPE LIQ/GAS J	MINE TYPE OTHER K
NEW UNITS (ON LINE) AND ANNOUNCED UNITS (PENDING REGULATORY AND LICENSING APPROVALS):												
NAME OF MINE												
	17 00											
	18 00											
	19 00											
	20 00											
	21 00											
	22 00											
	23 00											
	24 00											
	25 00											
	26 00											
	27 00											
TOTAL (M TONS)	28 00											
CURRENT ANNUAL PRODUCTION CAPACITY	29 00											

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FINANCIAL REPORTING SYSTEM
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5410

DOMESTIC AND FOREIGN NUCLEAR FUEL OPERATIONS
STATEMENT OF INCOME

FORM APPROVED
O.M.B. NO. 39-R-0441
EXPIRES 12/31/79

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	CONSOL A	ELIM B	NON TRACEABLE C	DOMESTIC D	FOREIGN E
OPERATING REVENUES:						
MINED ORE SALES	01 00					
YELLOWCAKE SALES:						
LONG TERM CONTRACTS	02 00					
OTHER	03 00					
HEXAFLUORIDE SALES:						
LONG TERM CONTRACTS	04 00					
OTHER	05.00					
FABRICATED PRODUCT SALES:						
LONG-TERM CONTRACTS	06.00					
OTHER	07 00					
SERVICES FOR OTHERS:						
MINING	08.00					
MILLING	09 00					
CONVERSION	10.00					
ENRICHMENT	11.00					
FABRICATION	12.00					
SPENT FUEL STORAGE	13.00					
OTHER	14.00					
OTHER OPERATING REVENUES	15.00					
TOTAL OPERATING REVENUES	16.00					

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FINANCIAL REPORTING SYSTEM
SCH 5410 – PAGE 2 OF 3

5410

DOMESTIC AND FOREIGN NUCLEAR FUEL OPERATIONS
STATEMENT OF INCOME

FORM APPROVED
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | PAGE FOOTNOTE | ORIGINAL | REVISION | REVISION DATE MO DAY YR

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	CONSOL A	ELIM B	NON TRACEABLE C	DOMESTIC D	FOREIGN E
OPERATING EXPENSES:						
GENERAL OPERATING EXPENSES:						
EXPLORATION & DEVELOPMENT:						
EXPLORATORY DRILLING	17 00					
OTHER EXPLORATION EXPENSE	18 00					
DEVELOPMENT DRILLING	19 00					
OTHER DEVELOPMENT EXPENSE	20 00					
TOTAL EXPLORATION & DEVELOPMENT	21 00					
PRODUCTION (MINING & MILLING)	22 00					
CONVERSION	23 00					
ENRICHMENT	24 00					
FABRICATION	25 00					
SPENT FUEL STORAGE	26 00					
PURCHASES OF PRODUCTS:						
FOR RESALE	27 00					
FOR PROCESSING	28 00					
TOTAL PURCHASES	29 00					
INVENTORY CHANGE	30 00					
TAXES OTHER THAN INCOME TAXES	31 00					
OTHER GENERAL OPERATING EXPENSES	32 00					
TOTAL GENERAL OPERATING EXPENSES	33 00					
DD&A	34 00					
VALUATION CHARGES	35 00					
GENERAL & ADMINISTRATIVE	36 00					
RESEARCH & DEVELOPMENT	37 00					
TOTAL OPERATING EXPENSES	38 00					
OPERATING INCOME	39 00					

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5410

DOMESTIC AND FOREIGN NUCLEAR FUEL OPERATIONS
STATEMENT OF INCOME

FORM APPROVED
O.M.B. NO. 38-R0381
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING | PERIOD ENDING | FILE FOOTNOTE | ORIGINAL | REVISION | REVISION DATE

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	CONSOL A	ELIM B	NON TRACEABLE C	DOMESTIC D	FOREIGN E
OTHER REVENUE & (EXPENSE):						
EQUITY IN EARNINGS OF UNCONSOLIDATED AFFILIATES	40 00					
DIVIDEND INCOME FROM COST BASIS UNCONSOLIDATED AFFILIATES	41 00					
GAIN/(LOSS) ON DISPOSITION OF PP&E	42 00					
MINORITY INTEREST INCOME (NET OF INCOME TAX)	43 00					
FOREIGN CURRENCY TRANSLATION EFFECTS	44 00					
INCOME TAXES:						
CURRENT	45 00					
DEFERRED	46 00					
TOTAL INCOME TAX	47 00					
TOTAL OTHER REVENUE & (EXPENSE)	48 00					
INCOME BEFORE LINES 50 00 & 51 00	49 00					
EXTRAORDINARY ITEMS	50 00					
CUMULATIVE EFFECT OF ACCOUNTING CHANGES	51 00					
CONTRIBUTION TO NET INCOME	52.00					

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FINANCIAL REPORTING SYSTEM
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DOMESTIC AND FOREIGN NUCLEAR FUEL OPERATIONS
SUMMARY FINANCIAL INDICATORS

FORM APPROVED
O.M.B. NO. 33-R-0561
EXPIRES 12/31/79

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	CONSOL A	ELIM B	NON TRACEABLE C	DOMESTIC D	FOREIGN E	EDIT CODE
SELECTED BALANCE SHEET INFORMATION:							
SELECTED CURRENT ASSETS:							
TRADE ACCOUNTS AND NOTES RECEIVABLE	01 00						
INVENTORIES:							
RAW MATERIALS & PRODUCTS	02 00						
MATERIALS & SUPPLIES	03 00						
NON CURRENT ASSETS:							
PROPERTY PLANT & EQUIPMENT:							
GROSS PROPERTY PLANT & EQUIPMENT:							
PRODUCTION (MINING & MILLING)	04 00						
CONVERSION	05 00						
ENRICHMENT	06 00						
FABRICATION	07 00						
SPENT FUEL STORAGE	08 00						
REPROCESSING	09 00						
PRODUCING PROPERTIES	10 00						
NON PRODUCING PROPERTIES	11 00						
OTHER	12 00						
TOTAL	13 00						
ACCUMULATED DD&A	14 00						
NET PP&E	15 00						
INVESTMENT & ADVANCES TO UNCONSOLIDATED AFFILIATES	16 00						
OTHER NON CURRENT ASSETS	17 00						
TOTAL NON CURRENT ASSETS	18 00						

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FINANCIAL REPORTING SYSTEM
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5420

DOMESTIC AND FOREIGN NUCLEAR FUEL OPERATIONS
SUMMARY FINANCIAL INDICATORS

FORM APPROVED
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | MONTH REPORTED | YEAR REPORTED | FIRST FORTNITE | ORIGINAL | REVISION | REVISION DATE

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H H H

(IN THOUSANDS OF DOLLARS)

	FRS LINE #	CONSOL A	ELIM B	NON TRACEABLE C	DOMESTIC D	FOREIGN E
ADDITIONS TO PROPERTY PLANT & EQUIPMENT:						
PLANT & EQUIPMENT:						
PRODUCTION (MINING & MILLING)	19 00					
CONVERSION	20 00					
ENRICHMENT	21 00					
FABRICATION	22 00					
SPENT FUEL STORAGE FACILITIES	23 00					
REPROCESSING	24 00					
MINERAL PROPERTIES:						
PRODUCING	25 00					
NON PRODUCING	26 00					
OTHER	27 00					
TOTAL, (SCH 5130)	28.00					

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FINANCIAL REPORTING SYSTEM
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5441

DOMESTIC AND FOREIGN NUCLEAR FUEL OPERATIONS
NUCLEAR FUEL OPERATING STATISTICS

FORM APPROVED
O.M.B. NO. 33-R-0581
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | PAGE FOOTNOTE | ORIGINAL | REVISION | REVISION DATE MO DAY YR

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	FRS LINE #	DOMESTIC A	FOREIGN B
LAND HELD FOR EXPLORATION (ACRES):			
BEGINNING OF PERIOD	01 00		
ACQUISITIONS	02.00		
DISPOSITIONS	03.00		
END OF PERIOD	04 00		
SURFACE DRILLING FOOTAGE:			
EXPLORATION	05 00		
DEVELOPMENT	06 00		
URANIUM RESERVES (M LBS):			
COMMITTED UNDER CONTRACT	07 00		
UNCOMMITTED	08.00		
URANIUM RESERVES (M LBS):			
BEGINNING OF PERIOD	09 00		
CHANGES DUE TO:			
REVISION OF PREVIOUS ESTIMATES	10 00		
LEASES/PURCHASES OF MINERALS-IN-PLACE	11.00		
PRIVATE	12 00		
PUBLIC	13 00		
CORPORATE MERGERS/ACQUISITIONS	14 00		
EXTENSIONS/DISCOVERIES OTHER ADDITIONS	15 00		
PRODUCTION	16.00		
SALES OF MINERALS-IN PLACE	17.00		
END OF PERIOD	18.00		
AVERAGE GRADE OF RESERVES AT END OF PERIOD (PERCENT YELLOWCAKE)	19 00		

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FINANCIAL REPORTING SYSTEM
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5441

DOMESTIC AND FOREIGN NUCLEAR FUEL OPERATIONS
NUCLEAR FUEL OPERATING STATISTICS

FORM APPROVED
O.M.B. NO. 93-R-0361
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD REPORTED | PERIOD ENDING | PAGE | ORIGINAL | REVISION | REVISION DATE

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	FRS LINE #	DOMESTIC A	FOREIGN B
MINING (URANIUM ORE):			
ANNUAL MINING CAPACITY (M LBS YELLOWCAKE EQUIVALENT)	20 00		
VOLUME MINED–OPEN PIT (M LBS YELLOWCAKE EQUIVALENT)	21 00		
AVERAGE GRADE OF MINED ORE (PERCENT YELLOWCAKE)	22 00		
VOLUME MINED–UNDERGROUND (M LBS YELLOWCAKE EQUIVALENT)	23 00		
AVERAGE GRADE OF MINED ORE (PERCENT YELLOWCAKE)	24 00		
VOLUME MINED–IN SITU (M LBS YELLOWCAKE EQUIVALENT)	25 00		
AVERAGE GRADE OF MINED ORE (PERCENT YELLOWCAKE)	26 00		
VOLUME MINED–OTHER (M LBS YELLOWCAKE EQUIVALENT)	27 00		
AVERAGE GRADE OF MINED ORE (PERCENT YELLOWCAKE)	28 00		
TOTAL VOLUME MINED (M LBS YELLOWCAKE EQUIVALENT):			
OWN ACCOUNT	29 00		
FOR OTHERS	30 00		
MILLING (YELLOWCAKE):			
MILLING CAPACITY (TONS OF URANIUM ORE PER DAY)	31.00		
VOLUME MILLED (TONS OF URANIUM ORE):			
OWN ACCOUNT	32.00		
FOR OTHERS	33.00		
CONVERSION (M LBS, YELLOWCAKE EQUIVALENT):			
ANNUAL CONVERSION CAPACITY	34 00		
VOLUME CONVERTED:			
OWN ACCOUNT	35.00		
FOR OTHERS	36 00		
FABRICATION (MTHM):			
ANNUAL FABRICATION CAPACITY	37.00		
VOLUME FABRICATED:			
OWN ACCOUNT	38.00		
FOR OTHERS	39.00		

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DOMESTIC AND FOREIGN NUCLEAR FUEL OPERATIONS
NUCLEAR FUEL OPERATING STATISTICS

FORM APPROVED
O.M.B. NO. 33-R-0561
EXPIRES 12/31/79

	FRS LINE #	DOMESTIC A	FOREIGN B
SPENT FUEL STORAGE (MTHM):			
ANNUAL STORAGE CAPACITY	40 00		
VOLUME STORED:			
OWN ACCOUNT	41 00		
FOR OTHERS	42 00		
ANNOUNCED FUTURE ADDITIONS TO CAPACITY (WITHIN 5 YEARS):			
MINING (M LBS YELLOWCAKE EQUIVALENT/DAY)	43 00		
MILLING (TONS OF URANIUM ORE/DAY)	44 00		
CONVERSION (M LBS YELLOWCAKE EQUIVALENT/DAY)	45 00		
ENRICHMENT (SEPARATIVE WORK UNITS/YEAR)	46 00		
FABRICATION (MTHM/YEAR)	47.00		
REPROCESSING (MTHM/YEAR)	48 00		
SPENT FUEL STORAGE (MTHM/YEAR)	49 00		
ACTUAL CURRENT PERIOD ADDITIONS TO ANNUAL CAPACITY:			
MINING (M LBS YELLOWCAKE EQUIVALENT/DAY)	50 00		
MILLING (TONS OF URANIUM ORE/DAY)	51 00		
CONVERSION (M LBS YELLOWCAKE EQUIVALENT/DAY)	52 00		
ENRICHMENT (SEPARATIVE WORK UNITS/YEAR)	53 00		
FABRICATION (MTHM/YEAR)	54 00		
REPROCESSING (MTHM/YEAR)	55 00		
SPENT FUEL STORAGE (MTHM/YEAR)	56 00		

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DOMESTIC AND FOREIGN OTHER ENERGY OPERATIONS
STATEMENT OF INCOME

FORM APPROVED
O.M.B. NO. 39-R-0061
EXPIRES 12/31/79

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	CONSOL A	ELIM B	NON TRACEABLE C	TOTAL DOMESTIC D	TOTAL FOREIGN E
OPERATING REVENUES:						
SALES OF PRIMARY PRODUCT	01 00					
GOVERNMENT GRANTS & TRANSFERS	02 00					
NON-GOVERNMENT GRANTS & TRANSFERS	03 00					
PATENT CROSS-LICENSING	04 00					
OTHER OPERATING REVENUES	05 00					
TOTAL OPERATING REVENUES	06 00					
OPERATING EXPENSES:						
GENERAL OPERATING EXPENSES:						
EXPLORATION & DEVELOPMENT	07 00					
PATENT CROSS-LICENSING	08 00					
PRODUCTION	09 00					
TAXES OTHER THAN INCOME TAXES	10 00					
OTHER GENERAL OPERATING EXPENSES	11 00					
TOTAL GENERAL OPERATING EXPENSES	12.00					
DD&A	13 00					
VALUATION CHARGES	14 00					
GENERAL & ADMINISTRATIVE	15 00					
RESEARCH & DEVELOPMENT	16.00					
TOTAL OPERATING EXPENSES	17.00					
OPERATING INCOME	18.00					

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DOMESTIC AND FOREIGN OTHER ENERGY OPERATIONS
STATEMENT OF INCOME

FORM APPROVED
O.M.B. NO. 39-R-4581
EXPIRES 12/31/79

001 RESPONDENT CODE | RESPONDENT NAME | PERIOD REPORTED MO DAY YR | PERIOD ENDING MO DAY YR | FILE FOOTNOTE | ORIGINAL | REVISION | AS OF REVISION DATE MO DAY YR

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051

052 (IN THOUSANDS OF DOLLARS)

053 DOMESTIC (CONTINUED ON PAGE 3 OF 6)

	FRS LINE #	TOTAL F	ELIM G	NON TRACEABLE H	OIL SHALE I	TAR SANDS J
057 OPERATING REVENUES:						
058 SALES OF PRIMARY PRODUCT	01 00					
059 GOVERNMENT GRANTS & TRANSFERS	02 00					
060 NON-GOVERNMENT GRANTS & TRANSFERS	03 00					
061 PATENT CROSS-LICENSING	04 00					
062 OTHER OPERATING REVENUES	05 00					
063 TOTAL OPERATING REVENUES	06 00					
064 OPERATING EXPENSES:						
065 GENERAL OPERATING EXPENSES:						
066 EXPLORATION & DEVELOPMENT	07 00					
067 PATENT CROSS-LICENSING	08 00					
068 PRODUCTION	09 00					
069 TAXES OTHER THAN INCOME TAXES	10 00					
070 OTHER GENERAL OPERATING EXPENSES	11 00					
071 TOTAL GENERAL OPERATING EXPENSES	12 00					
072 DD&A	13 00					
073 VALUATION CHARGES	14 00					
074 GENERAL & ADMINISTRATIVE	15 00					
075 RESEARCH & DEVELOPMENT	16 00					
076 TOTAL OPERATING EXPENSES	17 00					
077 OPERATING INCOME	18 00					

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DOMESTIC AND FOREIGN OTHER ENERGY OPERATIONS
STATEMENT OF INCOME

FORM APPROVED
O.M.B. NO. 38-R-0381
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING (MO) (DAY) (YR) | PERIOD ENDING (MO) (DAY) (YR) | PAGE FOOTNOTE | ORIGINAL | REVISION | REVISION DATE (MO) (DAY) (YR) | PAGE OF PAGES

(IN THOUSANDS OF DOLLARS)

	FRS LINE #	DOMESTIC (CONTINUED FROM PAGE 2 OF 6) GEOTHERM K	COAL GASIF/ LIQUEFAC L	OTHER M
OPERATING REVENUES:				
SALES OF PRIMARY PRODUCT	01 00			
GOVERNMENT GRANTS & TRANSFERS	02.00			
NON-GOVERNMENT GRANTS & TRANSFERS	03 00			
PATENT CROSS-LICENSING	04 00			
OTHER OPERATING REVENUES	05 00			
TOTAL OPERATING REVENUES	06.00			
OPERATING EXPENSES:				
GENERAL OPERATING EXPENSES:				
EXPLORATION & DEVELOPMENT	07 00			
PATENT CROSS-LICENSING	08.00			
PRODUCTION	09 00			
TAXES OTHER THAN INCOME TAXES	10 00			
OTHER GENERAL OPERATING EXPENSES	11 00			
TOTAL GENERAL OPERATING EXPENSES	12.00			
DD&A	13.00			
VALUATION CHARGES	14.00			
GENERAL & ADMINISTRATIVE	15.00			
RESEARCH & DEVELOPMENT	16.00			
TOTAL OPERATING EXPENSES	17 00			
OPERATING INCOME	18.00			

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FINANCIAL REPORTING SYSTEM
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DOMESTIC AND FOREIGN OTHER ENERGY OPERATIONS
STATEMENT OF INCOME

FORM APPROVED
O.M.B. NO. 33-R-0361
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | FILE YEAR/QUARTER | ORIGINAL | REVISION | AS OF | RESUBMISSION DATE MO DAY YR

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H H H

(IN THOUSANDS OF DOLLARS)

	FRS LINE #	CONSOL A	ELIM B	NON-TRACEABLE C	TOTAL DOMESTIC D	TOTAL FOREIGN E
OTHER REVENUE & (EXPENSE):						
EQUITY IN EARNINGS OF UNCONSOLIDATED AFFILIATES	19.00					
DIVIDEND INCOME FROM COST BASIS UNCONSOLIDATED AFFILIATES	20.00					
GAIN/(LOSS) ON DISPOSITION OF PP&E	21.00					
MINORITY INTEREST IN INCOME (NET OF INCOME TAX)	22.00					
FOREIGN CURRENCY TRANSLATION EFFECTS	23.00					
INCOME TAXES:						
CURRENT	24.00					
DEFERRED	25.00					
TOTAL INCOME TAX	26.00					
TOTAL OTHER REVENUE & (EXPENSE)	27.00					
INCOME BEFORE LINES 29.00 & 30.00	28.00					
EXTRAORDINARY ITEMS	29.00					
CUMULATIVE EFFECT OF ACCOUNTING CHANGES	30.00					
CONTRIBUTION TO NET INCOME	31.00					

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DOMESTIC AND FOREIGN OTHER ENERGY OPERATIONS
STATEMENT OF INCOME

FORM APPROVED
O.M.B. NO. 33-R-0301
EXPIRES 12/31/79

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H H H

(IN THOUSANDS OF DOLLARS)

DOMESTIC (CONTINUED ON PAGE 6 OF 6)

	FRS LINE #	TOTAL F	ELIM G	NON TRACEABLE H	OIL SHALE I	TAR SANDS J
OTHER REVENUE & (EXPENSE):						
EQUITY IN EARNINGS OF UNCONSOLIDATED AFFILIATES	19 00					
DIVIDEND INCOME FROM COST BASIS UNCONSOLIDATED AFFILIATES	20 00					
GAIN/(LOSS) ON DISPOSITION OF PP&E	21 00					
MINORITY INTEREST IN INCOME (NET OF INCOME TAX)	22 00					
FOREIGN CURRENCY TRANSLATION EFFECTS	23 00					
INCOME TAXES:						
CURRENT	24 00					
DEFERRED	25 00					
TOTAL INCOME TAX	26 00					
TOTAL OTHER REVENUE & (EXPENSE)	27 00					
INCOME BEFORE LINES 29 00 & 30 00	28 00					
EXTRAORDINARY ITEMS	29 00					
CUMULATIVE EFFECT OF ACCOUNTING CHANGES	30 00					
CONTRIBUTION TO NET INCOME	31 00					

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FORM APPROVED
O.M.B. NO. 36-R-0851
EXPIRES 12/31/79

DOMESTIC AND FOREIGN OTHER ENERGY OPERATIONS
STATEMENT OF INCOME

RESPONDENT CODE | RESPONDENT NAME | PERIOD REPORTED | PERIOD ENDING | FOOTNOTE | ORIGINAL | REVISION | REVISION DATE

H H H

(IN THOUSANDS OF DOLLARS)

	FRS LINE #	DOMESTIC (CONTINUED FROM PAGE 5 OF 6) GEOTHERM K	COAL GASIF/ LIQUEFAC L	OTHER M
OTHER REVENUE & (EXPENSE):				
EQUITY IN EARNINGS OF UNCONSOLIDATED AFFILIATES	19 00			
DIVIDEND INCOME FROM COST BASIS UNCONSOLIDATED AFFILIATES	20 00			
GAIN/(LOSS) ON DISPOSITION OF PP&E	21 00			
MINORITY INTEREST IN INCOME (NET OF INCOME TAX)	22 00			
FOREIGN CURRENCY TRANSLATION EFFECTS	23 00			
INCOME TAXES:				
CURRENT	24 00			
DEFERRED	25 00			
TOTAL INCOME TAX	26 00			
TOTAL OTHER REVENUE & (EXPENSE)	27 00			
INCOME BEFORE LINES 29 00 & 30 00	28 00			
EXTRAORDINARY ITEMS	29 00			
CUMULATIVE EFFECT OF ACCOUNTING CHANGES	30 00			
CONTRIBUTION TO NET INCOME	31 00			

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FINANCIAL REPORTING SYSTEM
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DOMESTIC AND FOREIGN OTHER ENERGY OPERATIONS
SUMMARY FINANCIAL INDICATORS

FORM APPROVED
O.M.B. NO. 39-R-0361
EXPIRES 12/31/79

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	CONSOL A	ELIM B	NON TRACEABLE C	TOTAL DOMESTIC D	TOTAL FOREIGN E	NOTE
SELECTED BALANCE SHEET INFORMATION:							
SELECTED CURRENT ASSETS:							
TRADE ACCOUNTS AND NOTES RECEIVABLE	01 00						
INVENTORIES							
RAW MATERIALS & PRODUCTS	02 00						
MATERIALS & SUPPLIES	03 00						
NON CURRENT ASSETS:							
PROPERTY PLANT & EQUIPMENT							
GROSS	04 00						
ACCUMULATED DD&A	05 00						
NET	06 00						
INVESTMENT & ADVANCES TO UNCONSOLIDATED AFFILIATES	07 00						
OTHER NON CURRENT ASSETS	08 00						
TOTAL NON-CURRENT ASSETS	09 00						
ADDITIONS TO PROPERTY PLANT & EQUIPMENT:							
PLANT & EQUIPMENT	10 00						
MINERAL PROPERTIES							
PRODUCING	11 00						
NON PRODUCING	12.00						
OTHER	13 00						
TOTAL (SCH 5130)	14 00						

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DOMESTIC AND FOREIGN OTHER ENERGY OPERATIONS
SUMMARY FINANCIAL INDICATORS

FORM APPROVED
O.M.B. NO. 33-R-0341
EXPIRES 12/31/79

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H H H

(IN THOUSANDS OF DOLLARS)

DOMESTIC (CONTINUED ON PAGE 3 OF 3)

	FRS LINE #	TOTAL F	ELIM G	NON TRACEABLE H	OIL SHALE I	TAR SANDS J
SELECTED BALANCE SHEET INFORMATION:						
SELECTED CURRENT ASSETS:						
TRADE ACCOUNTS AND NOTES RECEIVABLE	01 00					
INVENTORIES:						
RAW MATERIALS & PRODUCTS	02.00					
MATERIALS & SUPPLIES	03 00					
NON CURRENT ASSETS:						
PROPERTY PLANT & EQUIPMENT:						
GROSS	04 00					
ACCUMULATED DD&A	05 00					
NET	06 00					
INVESTMENT & ADVANCES TO						
UNCONSOLIDATED AFFILIATES	07 00					
OTHER NON CURRENT ASSETS	08 00					
TOTAL NON CURRENT ASSETS	09 00					
ADDITIONS TO PROPERTY PLANT & EQUIPMENT:						
PLANT & EQUIPMENT	10 00					
MINERAL PROPERTIES:						
PRODUCING	11:00					
NON PRODUCING	12 00					
OTHER	13 00					
TOTAL (SCH 5130)	14 00					

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FINANCIAL REPORTING SYSTEM
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DOMESTIC AND FOREIGN OTHER ENERGY OPERATIONS
SUMMARY FINANCIAL INDICATORS

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O.M.B. NO. 39-R-0361
EXPIRES 12/31/79

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H H H

(IN THOUSANDS OF DOLLARS)

	FRS LINE #	DOMESTIC (CONTINUED FROM PAGE 2 OF 3) GEOTHERM K	COAL GASIF/ LIQUEFAC L	OTHER M
SELECTED BALANCE SHEET INFORMATION:				
SELECTED CURRENT ASSETS:				
TRADE ACCOUNTS AND NOTES RECEIVABLE	01.00			
INVENTORIES:				
RAW MATERIALS & PRODUCTS	02 00			
MATERIALS & SUPPLIES	03 00			
NON CURRENT ASSETS:				
PROPERTY PLANT & EQUIPMENT:				
GROSS	04 00			
ACCUMULATED DD&A	05 00			
NET	06 00			
INVESTMENT & ADVANCES TO UNCONSOLIDATED AFFILIATES	07 00			
OTHER NON-CURRENT ASSETS	08 00			
TOTAL NON-CURRENT ASSETS	09 00			
ADDITIONS TO PROPERTY PLANT & EQUIPMENT:				
PLANT & EQUIPMENT	10 00			
MINERAL PROPERTIES:				
PRODUCING	11 00			
NON PRODUCING	12.00			
OTHER	13 00			
TOTAL (SCH 5130)	14 00			

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FINANCIAL REPORTING SYSTEM
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DOMESTIC AND FOREIGN OTHER ENERGY OPERATIONS
OTHER ENERGY OPERATING STATISTICS

FORM APPROVED
O M B. NO. 38-R-0361
EXPIRES 12/31/79

001 RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | PAGE FOOTNO E | ORIGINAL | REVISION | AS OF | REVISION DATE MO DAY YR | PAGE | PAGES
002 H H H

	FRS LINE #	DOMESTIC OIL SHALE A	TAR SANDS B	GEOTHERM C	COAL GASIF/ LIQUEFAC D	OTHER E	FOOT NOTE
ACREAGE AT END OF PERIOD:							
NET ACRES LEASED							
FROM GOVERNMENT	01 00						
FROM OTHERS	02 00						
TOTAL NET ACRES LEASED	03 00						
NET ACRES OWNED	04 00						
TOTAL NET ACRES	05 00						
ANNUAL CAPACITY (BARRELS OR EQUIVALENT):							
IN PLACE AT BEGINNING OF PERIOD	06 00						
ADDITIONS DURING PERIOD	07 00						
ANNOUNCED FUTURE ADDITIONS TO CAPACITY (WITHIN THE NEXT 5 YEARS):							
PILOT PLANTS	08 00						
COMMERCIAL OPERATIONS	09 00						

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FINANCIAL REPORTING SYSTEM
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DOMESTIC AND FOREIGN OTHER ENERGY OPERATIONS
OTHER ENERGY OPERATING STATISTICS

FORM APPROVED,
OMB NO 38-R-0361
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | BLANK FOOTNOTE | ORIGINAL | REVISION | AS OF MO DAY YR

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H H H

	FRS LINE #	FOREIGN OIL SHALE F	FOREIGN TAR SANDS G	FOREIGN GEOTHERM H	FOREIGN COAL GASIF/ LIQUEFAC I	FOREIGN OTHER J
ACREAGE AT END OF PERIOD:						
NET ACRES LEASED						
FROM GOVERNMENT	01 00					
FROM OTHERS	02 00					
TOTAL NET ACRES LEASED	03 00					
NET ACRES OWNED	04 00					
TOTAL NET ACRES	05 00					
ANNUAL CAPACITY (BARRELS OR EQUIVALENT):						
IN PLACE AT BEGINNING OF PERIOD	06 00					
ADDITIONS DURING PERIOD	07 00					
ANNOUNCED FUTURE ADDITIONS TO CAPACITY (WITHIN THE NEXT 5 YEARS):						
PILOT PLANTS	08 00					
COMMERCIAL OPERATIONS	09 00					

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5610

DOMESTIC AND FOREIGN NON-ENERGY OPERATIONS
STATEMENT OF INCOME

FORM APPROVED
O.M.B. NO. 38-R-0381
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | PAGE FOOTNOTE | ORIGINAL | REVISION | AS OF REVISION DATE MO DAY YR

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(IN THOUSANDS OF DOLLARS)

	FRS LINE #	CONSOL A	ELIM B	NON TRACEABLE C	CONSOL CHEMICAL D	CONSOL OTHER NON-ENERGY E
OPERATING REVENUES	01 00					
OPERATING EXPENSES:						
GENERAL OPERATING EXPENSES	02 00					
DD&A	03 00					
VALUATION CHARGES	04 00					
GENERAL & ADMINISTRATIVE	05 00					
RESEARCH & DEVELOPMENT	06 00					
TOTAL OPERATING EXPENSES	07 00					
OPERATING INCOME	08 00					
OTHER REVENUE & (EXPENSE):						
EQUITY IN EARNINGS OF UNCONSOLIDATED AFFILIATES	09 00					
DIVIDEND INCOME FROM COST BASIS UNCONSOLIDATED AFFILIATES	10 00					
GAIN/(LOSS) ON DISPOSITION OF PP&E	11 00					
MINORITY INTEREST IN INCOME (NET OF INCOME TAX)	12 00					
FOREIGN CURRENCY TRANSLATION EFFECTS	13 00					
INCOME TAXES:						
CURRENT	14 00					
DEFERRED	15 00					
TOTAL INCOME TAX	16 00					
TOTAL OTHER REVENUE & (EXPENSE)	17 00					
INCOME BEFORE LINES 19 00 & 20 00	18 00					
EXTRAORDINARY ITEMS	19 00					
CUMULATIVE EFFECT OF ACCOUNTING CHANGES	20 00					
CONTRIBUTION TO NET INCOME	21 00					

FOOT NOTE

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DOMESTIC AND FOREIGN NON-ENERGY OPERATIONS
STATEMENT OF INCOME

FORM APPROVED
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

001 RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | FOOT NOTE | ORIGINAL | REVISION | REVISION DATE MO DAY YR
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051
052 (IN THOUSANDS OF DOLLARS)
053
054
055
056

	FRS LINE #	CHEMICAL CONSOL F	ELIM G	NON TRACEABLE H	DOMESTIC I	FOREIGN J
057 OPERATING REVENUES	01 00					
058 OPERATING EXPENSES:						
059 GENERAL OPERATING EXPENSES	02 00					
060 DD&A	03 00					
061 VALUATION CHARGES	04 00					
062 GENERAL & ADMINISTRATIVE	05 00					
063 RESEARCH & DEVELOPMENT	06 00					
064 TOTAL OPERATING EXPENSES	07 00					
065 OPERATING INCOME	08 00					

001 002 051 052 053 054 055 056 057 058 059 060 061 062 063 064 065

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DOMESTIC AND FOREIGN NON-ENERGY OPERATIONS
STATEMENT OF INCOME

FORM APPROVED
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

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101
102 (IN THOUSANDS OF DOLLARS)

	FRS LINE #	OTHER NON-ENERGY CONSOL K	ELIM L	NON TRACEABLE M	DOMESTIC N	FOREIGN O
107 OPERATING REVENUES	01 00					
108 OPERATING EXPENSES:						
109 GENERAL OPERATING EXPENSES	02 00					
110 DD&A	03 00					
111 VALUATION CHARGES	04 00					
112 GENERAL & ADMINISTRATIVE	05 00					
113 RESEARCH & DEVELOPMENT	06 00					
114 TOTAL OPERATING EXPENSES	07 00					
115 OPERATING INCOME	08 00					

EIA-28
FINANCIAL REPORTING SYSTEM
SCH 5620 – PAGE 1 OF 3

5620

DOMESTIC AND FOREIGN NON-ENERGY OPERATIONS
SUMMARY FINANCIAL INDICATORS

FORM APPROVED
O.M.B. NO. 38-R-0381
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | PAGE FOOTNOTE | ORIGINAL | REVISION | AS OF | REVISION DAT MO DAY YR | PAGE | OF | PAGES

H H H

(IN THOUSANDS OF DOLLARS)

	FRS LINE #	CONSOL A	ELIM B	NON TRACEABLE C	CONSOL CHEMICAL D	CONSOL OTHER NON ENERGY E
SELECTED BALANCE SHEET INFORMATION:						
SELECTED CURRENT ASSETS:						
TRADE ACCOUNTS AND NOTES RECEIVABLE	01 00					
INVENTORIES:						
RAW MATERIALS & PRODUCTS	02 00					
MATERIALS & SUPPLIES	03 00					
NON CURRENT ASSETS:						
PROPERTY PLANT & EQUIPMENT:						
GROSS	04 00					
ACCUMULATED DD&A	05 00					
NET	06 00					
INVESTMENT & ADVANCES TO						
UNCONSOLIDATED AFFILIATES	07 00					
OTHER NON-CURRENT ASSETS	08 00					
TOTAL NON-CURRENT ASSETS	09 00					

EIA-28
FINANCIAL REPORTING SYSTEM
SCH 5620 – PAGE 2 OF 3

5620

DOMESTIC AND FOREIGN NON-ENERGY OPERATIONS
SUMMARY FINANCIAL INDICATORS

FORM APPROVED
O.M.B. NO. 38-R-0361
EXPIRES 12/31/79

001 RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | PAGE FOOTNOTE | ORIGINAL | REVISION | AS OF REVISION DATE MO DAY YR | PAGE OF PAGES
002 H H H

051
052 (IN THOUSANDS OF DOLLARS)

	FRS LINE #	CHEMICAL CONSOL F	ELIM G	NON TRACEABLE H	DOMESTIC I	FOREIGN J
057 SELECTED BALANCE SHEET INFORMATION:						
058 SELECTED CURRENT ASSETS:						
059 TRADE ACCOUNTS AND NOTES RECEIVABLE	01 00					
060 INVENTORIES:						
061 RAW MATERIALS & PRODUCTS	02 00					
062 MATERIALS & SUPPLIES	03 00					
063 NON CURRENT ASSETS:						
064 PROPERTY PLANT & EQUIPMENT:						
065 GROSS	04 00					
066 ACCUMULATED DD&A	05 00					
067 NET	06 00					
068 INVESTMENT & ADVANCES TO						
069 UNCONSOLIDATED AFFILIATES	07 00					
070 OTHER NON CURRENT ASSETS	08 00					
071 TOTAL NON CURRENT ASSETS	09 00					
072 ADDITIONS TO PROPERTY PLANT & EQUIPMENT (SEE SCH 5130)	10 00					

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FINANCIAL REPORTING SYSTEM
SCH 5620 -- PAGE 3 OF 3

5620

DOMESTIC AND FOREIGN NON-ENERGY OPERATIONS
SUMMARY FINANCIAL INDICATORS

FORM APPROVED
O.M.B. NO. 38-R-0381
EXPIRES 12/31/79

RESPONDENT CODE | RESPONDENT NAME | PERIOD BEGINNING MO DAY YR | PERIOD ENDING MO DAY YR | PAGE FOOTNOTE | ORIGINAL | REVISION | AS OF | REVISION DATE MO DAY YR | PAGE OF PAGES

H H H

(IN THOUSANDS OF DOLLARS)

	FRS LINE #	OTHER NON-ENERGY CONSOL K	ELIM L	NON TRACEABLE M	DOMESTIC N	FOREIGN O
SELECTED BALANCE SHEET INFORMATION:						
SELECTED CURRENT ASSETS:						
TRADE ACCOUNTS AND NOTES RECEIVABLE	01 00					
INVENTORIES:						
RAW MATERIALS & PRODUCTS	02 00					
MATERIALS & SUPPLIES	03 00					
NON CURRENT ASSETS:						
PROPERTY PLANT & EQUIPMENT:						
GROSS	04 00					
ACCUMULATED DD&A	05 00					
NET	06 00					
INVESTMENT & ADVANCES TO UNCONSOLIDATED AFFILIATES	07 00					
OTHER NON-CURRENT ASSETS	08 00					
TOTAL NON-CURRENT ASSETS	09 00					

[FR Doc. 79-807 Filed 1-11-79; 8:45 am]

federal register

FRIDAY, JANUARY 12, 1979
PART III

THE NATIONAL ARCHIVES OF THE UNITED STATES
1934

DEPARTMENT OF LABOR

Employment Standards Administration

■

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

[4510-27-M]

DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statues, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Special Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

Alabama:	
AL78-1069	Sept. 8, 1978
AL78-1076	Sept. 22, 1978
District of Columbia—DC78-3098	Dec. 15, 1978
Indiana—IN78-2066	July 28, 1978
Mississippi—MS78-1079	Sept. 15, 1978
New Jersey—NJ77-3092	Oct. 7, 1977
Pennsylvania:	
PA77-3126	Sept. 9, 1977
PA77-3129	Sept. 15, 1977
PA78-3013	Apr. 14, 1978
PA78-3014	Mar. 24, 1978
PA78-3015; PA78-3044; PA78-3045	May 12, 1978
PA78-3017	May 5, 1978
PA78-3064; PA78-3065; PA78-3066	Sept. 22, 1978
PA78-3099	Dec. 15, 1978
South Carolina:	
SC75-1029	Mar. 7, 1975
SC75-1045	Apr. 11, 1975
SC76-1008	Jan. 9, 1976
SC76-1067	May 28, 1976
SC76-1088	Aug. 27, 1976
SC76-1115	Oct. 8, 1976
SC76-1126	Oct. 29, 1976
SC77-1019	Feb. 11, 1977
SC77-1070	May 20, 1977
SC77-1077	June 10, 1977
SC78-1038; SC78-1040	Apr. 14, 1978
SC78-1046	May 12, 1978
SC78-1103	Dec. 22, 1978

CANCELLATION OF GENERAL WAGE DETERMINATION DECISIONS

None.

Signed at Washington, D.C. This 5th day of January 1979.

DOROTHY P. COME,
Assistant Administrator,
Wage and Hour Division.

MODIFICATIONS P 1

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Decision # AL78-1069 - Mod. # 1 (43 FR-40172 September 8, 1978) Tuscaloosa County, Alabama					
Change:					
Bricklayers	9 85		40		05
Electricians	11 45	55	3%+.40		½ of 1%
Tile workers	9.60		40		.05
Decision # AL78-1076 - Mod. # 1 (43 FR-43153 - September 22, 1978) Jefferson and Shelby Counties Alabama					
Change:					
Bricklayers:					
Bricklayers, pointers, caulkers stone masons	10 15	40	50		13
Cleaners	9 05	40	50		13
Electricians:					
Electricians	11 45	55	3%+ 40		½ of 1%
Cable splicers	11 70	55	3%+ 40		½ of 1%
Sheet metal workers	11 05	69	82		09
Tile, marble, terrazzo finishers	7 50				
Decision #DC78-3098 - Mod. #1 (43 FR-56723 - December 15, 1978) District of Columbia; Maryland Montgomery & Prince George's Counties; and D C Training School; Virginia - Independent City of Alexandria & Arlington					
Change:					
Heading of Wage Rate Schedule presently issued to read: Water and Sewer Lines (District of Columbia and Montgomery County, Maryland only)					

MODIFICATIONS P 2

DECISION #IN78-2066 - MOD #1 (43 FR 33003 - July 28, 1978) Elkhart, Jasper, Kosciusko, LaGrange, Marshall Newton Pulaski & Starke Counties Indiana	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CHANGE:					
ASBESTOS WORKERS:					
Elkhart, Jasper Kosciusko Marshall, Pulaski & Starke Cos	$12 98	65	90		
LaGrange Co	12 60	55	1 25		
Newton Co	13 01	91	99		05
BRICKLAYERS; Stonemasons:					
Elkhart Kosciusko, & LaGrange Cos	12 33		30		02
Jasper Newton & Starke Cos	12 70	90	55		05
CEMENT MASONS:					
Elkhart, Kosciusko, & LaGrange Cos	11 38		30		02
ELECTRICIANS:					
Jasper Pulaski, & Starke Cos	13 00	4%	7½%		5%
LaGrange Co	12 35	50	3%+ 40		06
GLAZIERS:					
Kosciusko (Southern portion), & LaGrange Cos	10 79		25	40+d	04
IRONWORKERS:					
Jasper (N½), & Newton Cos	12 72	90	1 66		09
Jasper (S½) Co	11 54	90	1 25		02
MARBLE SETTERS; Terrazzo Workers & Tile Setters:					
Elkhart, Kosciusko, & LaGrange Cos :					
Terrazzo Workers; & Tile Setters	11 10		30	e	02
Jasper, Newton, & Starke Cos :					
Marble Setters; Terrazzo Workers	12 70	90	55		05
Tile Setters	12 60	90	55		02
PAINTERS:					
LaGrange Co :					
Brush; Paperhangers; Rollers; & Tapers	9 25	50	65		12
Sandblasting; Spray; & Steam-cleaning	10 25	50	65		12
PIPEFITTERS; Plumbers; & Steamfitters:					
Elkhart, Kosciusko, & LaGrange Cos	12 65	55	85		07

DECISION #IN78-2066 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
CHANGE:					
Jasper (No side of city of Renselaer, S) Marshall Pulaski, & Starke Cos	$11 75	55	95		10
PLASTERERS:					
Elkhart Kosciusko & LaGrange Cos	11 18		30		02
ROOFERS:					
Jasper & Newton Cos:	13 01	75	60		
SHEET METAL WORKERS:					
LaGrange Co	12 09	50+g	60		12
OMIT:					
POWER EQUIPMENT OPERATORS: Jasper, Newton, Pulaski & Starke Counties					
ADD:					
FOOTNOTE:					
g 3% of gross earnings to SASMI					
POWER EQUIPMENT OPERATORS: Jasper, Newton, Pulaski, & Starke Counties					

DECISION #IN78-2066 (Cont'd)

POWER EQUIPMENT OPERATORS Jasper Newton Pulaski & Starke Counties	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Class I	$12 40	1 00	1 00		05
Class II	11 90	1 00	1 00		05
Class III	10 35	1 00	1 00		05
Class IV	9 35	1 00	1 00		05

CLASS I Mechanic; asphalt plant; autograde; batch plant; benoto (requires two engineers); boiler & throttle valve; boring machine (mining machine); caisson rigs; central redimix plant; combination backhoe, front end loader with backhoe bucket over ½ cu yd ; combination tugger hoist & air compressor; compressor and throttle; concrete breaker (truck mounted); concrete conveyor; concrete paver over 27E cu ft ; concrete paver 27E cu ft and under; concrete pump w/boom (truck mounted); concrete tower; cranes, all; cranes, hammerhead tower; creter crane; derricks, all; derricks, traveling; forklift-lull type; forklift - 10 ton and over; hoists one two, and three drum; hoist, two tugger one floor; hydraulic boom truck; locomotive all; motor patrol; mucking machine; pile drivers and skid rig; pit machines; pre-stress machine; pump cretes and similar types; rock drill (self-propelled); rock drill (truck mounted); slipform paver; straddle buggies; tractor with boom & side boom; trenching machine; winch tractors

CLASS II Asphalt spreader; boiler; bulldozers; combination backhoe front-end loader with backhoe bucket, ½ cu yd and under; grader, elevating; greaser engineer; grouting machines; highlift shovels or front endloader; hoist, automatic; cowboy drilling machines; hoists all elevators; hoists, tugger single drum; post hole digger; rollers all; scoops - tractor drawn; stone crushers; tournapull; winch trucks

CLASS III Concrete mixer (2 bag & over); conveyor, portable; steam generators; tractors, farm & similar type; air compressor small 150 & under (1 to 5 not to exceed a total of 300 ft); air compressor - large over 150; combination - small equipment operator; forklift - under 10 tons; generators; pumps (1 to 3 not to exceed a total of 300 ft); pumps well points; welding machines (2 through 5); winches 4 electric drill winches

CLASS IV Heaters mechanical (1 to 5); oilers & switchmen

MODIFICATIONS P 5

Decision # MS78 1079 - Mod #2
(43 FR 41348 September 15, 1978)
Hancock, Harrison, Jackson
and Pearl River Counties,
Mississippi.)

CHANGE:
Description of work to read:
Building Construction (does
not include Residential Construction
consisting of single family
homes and garden type apartments
up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr

MODIFICATIONS P 6

DECISION #NJ77-3092 - Mod. #7
(42 FR 54726 - October 7 1977)
Bergen, Essex, Hudson & Passaic Counties,
New Jersey

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change:					
Areas Covered By Laborers:					
Area 1 - Bergen (Garfield, Passaic and Wallington Twps , Lodi Athenia, Allwood, Dellawanna and Clifton (to Piaget Ave) and Passaic Counties					
Change:					
Air Conditioning & Refrigeration Mechanics	9 10	065	31	m	.04
Asbestos Workers	12 71	1 09	1 09		04
Boilermakers	12 18	8%	20%+ 25	10%	02
Boilermakers Helpers	11 65	8%	20%+ 25	10%	02
Bricklayers, Stonemasons Cement Masons, & Plasterers:					
Area 3	11 60	84	90		02
Area 5	11 40	1 00	85		02
Electricians & Cable Splicers:					
Family residence construction not to exceed 4 unit apartments (Note: Firewalls alone are not a determinative criteria):	7 25	7%	3%		05
Laborers:					
Area 1					
Group 1	8 00	85	85		07
Area 4					
Unskilled Laborers	8 50	80	40		07
Line Construction:					
Passaic County:					
Linemen & Equipment Operators	13 70	7%	9%		3/4%
Cable Splicers	14 77	7%	9%		3/4%
Groundmen	9 59	7%	9%		3/4%
Pipefitters:					
Bergen & Hudson Counties and the city of Passaic in Passaic County	11 80	1.00	1 50	1 00	25
Soft Floor Layers	9 19	6%	5%+ 50		

MODIFICATIONS P 7

DECISION #PA77-3126 - Mod. #7
(42 FR 45622 - September 9, 1977)
Lycoming County Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change:					
Roofers & Kettlemen	10 15	90	85		
Sheet Metal Workers	11.09	.65	.71		.02

DECISION #PA77-3129 - Mod. #8
(42 FR 46903 - September 16, 1977)
Northumberland County, Pennsylvania

Change:					
Roofers:					
Remainder of County:					
Composition	10 15	90	85		
Sheet Metal Workers	11 09	65	71		02

DECISION #PA78-3013 - Mod. #6
(43 FR 16097 - April 14 1978)
Bedford, Cambria Cameron, Clarion Clearfield, Jefferson Crawford & Venango Counties Pennsylvania

Change:					
Electricians					
Zone 3	13 35	50	3%		½ of 1%
Ironworkers					
Zone 3	12 00	1 86	1 01		.15
Painters:					
Zone 1					
Commercial					
Brush & Roller	10 39	75	45		02
Spray	10 44	75	45		02
Industrial					
Brush	10 94	75	45		02
Spray	11 64	75	.45		02
Plumber & Steamfitters					
Zone 2	11 92	75	1 05		06
Zone 3	11 95	70	1 00		10

MODIFICATIONS P 8

DECISION #PA78-3014 - Mod. #6
(43 FR 12603 - March 24 1978)
Armstrong, Allegheny Beaver Butler, Fayette, Indiana, Washington & Westmoreland Counties Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change:					
Bricklayers & Stonemasons					
Zone 1	11 53	75	1 34		01
Painters:					
Zone 4					
Brush & Roller	9 85	65	40		05
Spray	10 975	65	40		05
Painters:					
Zone 6					
Commercial					
Brush	10 39	75	45		02
Spray	10 44	75	45		02
Industrial					
Brush	10 94	75	45		02
Spray	11 64	75	45		02

DECISION #PA78-3015 - Mod. #5
(43 FR 20697 - May 12, 1978)
Greene, Somerset & Potter Counties, Pennsylvania

Change:					
Bricklayers & Stonemasons					
Zone 1	11 53	75	1 34		01
Painters:					
Zone II					
Commercial					
Brush & Roller	10 39	75	45		02
Spray	10 44	75	45		02
Industrial					
Brush	10 94	75	45		02
Spray	11 64	75	45		02
Sheet Metal Workers					
Zone 2	11 09	65	71		02

MODIFICATIONS P 9

DECISION #PA78-3017 - Mod. # 7
(43 FR - May 5, 1978)
Carbon, Monroe, County, including Tobyhanna Army Depot, and Pike County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change:					
Roofers:					
Zone 2					
Composition & Kettleman	10 15	90	85		
Sheet Metal Workers	11 09	65	71		02

DECISION #PA78-3044 - Mod. #5
(43 FR 20711 - May 12, 1978)
Luzerne County, Pennsylvania

Change:					
Roofers:					
Roofers, Composition & Kettleman	10 15	90	85		
Sheet Metal Workers	11 09	65	71		02

DECISION #PA78-3045 - Mod. #7
(43 FR 20714 May 12, 1978)
Lackawanna, Susquehanna, Wayne and Wyoming Counties Pennsylvania

Change:					
Bricklayers, Stonemasons:					
Carbondale in Lackawanna County	10 45		1 55		
Susquehanna & Wyoming Counties	10 90	60	75		
Cement Masons:					
Carbondale in Lackawanna Co	10 45		1 55		
Sheet Metal Workers	11 09	65	71		02

MODIFICATIONS P. 10

DECISION #PA78-3064 - Mod. #2
(43 FR 43224 - September 22, 1978)
Schuylkill County, Pennsylvania

	Basic Hourly Rates	Fringe Ben fits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Change:					
Roofers:					
Composition					
Remainder of County	10 15	90	85		
Sheet Metal Workers	11 09	65	71		02

Decision #PA78-3065 - Mod. #1
(43 FR 43226 - September 22, 1978)
Sullivan County, Pennsylvania

Change:					
Roofers	10 15	90	85		

DECISION #PA78-3066 - Mod. #3
(43 FR 43228 - September 22, 1978)
Columbia, Montour & Snyder Counties, Pennsylvania

Change:					
Roofers	10 15	90	85		
Sheet Metal Workers	11 09	65	71		02

DECISION #PA78-3099 - Mod. #1
(43 FR 58729 December 15, 1978)
Bradford, Tioga & Union Counties, Pennsylvania

Change:					
Roofers:					
Composition & Kettleman	10 15	90	85		
Sheet Metal Workers	11 09	65	71		02

MODIFICATIONS P 11

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Decision # SC75-1029 - Mod. # 3 (40 FR-10900 - March 7, 1975) Aiken, Barnwell and Edgefield Counties, South Carolina					
Change:					
Laborers:					
Laborers	2 90				
Truck drivers	2 90				
Omit:					
Insulation installer	2 75				
Laborers:					
Mason tenders & mortar mixers	2 65				
Pipelayers	2.75				
Roofers	2 81				
Power Equipment Operators:					
Asphalt distributor	2 65				
Asphalt finisher	2 65				
Asphalt rakers & oilers	2 65				
Front end loader	2 84				
Steel wheel rollers	2 65				
Tractor	2.89				
Decision # SC75-1045 - Mod. # 3 (40 FR-16636 - April 11, 1975) Allendale Bamberg Calhoun, and Orange Counties, South Carolina					
Change:					
Laborers:					
Laborers	2 90				
Truck Drivers	2 90				
Omit:					
Drywall finisher	2 75				
Drywall hanger	2 65				
Laborers:					
Mason tenders	2 65				
Mortar mixers	2 65				
Painters brush	2 65				
Roofers	2 65				

MODIFICATIONS P 12

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Decision # SC76-1008 - Mod. # 3 (41 FR-1699 - January 9 1976) Sumter County South Carolina					
Change:					
Laborers	2 90				
Truck drivers	2 90				
Omit:					
Roofers	2 80				
Power Equipment Operators:					
Bulldozers	2 65				
Front end loader	2 65				
Motor graders	2.75				
Decision # SC76-1067 - Mod. # 2 (41 FR-22024 - May 28 1976) Charleston, Berkeley and Dorchester Counties, South Carolina					
Change:					
Laborers:					
Laborers	2.90				
Truck drivers	2 90				
Decision # SC76-1088 - Mod. # 2 (41 FR-36399 - August 27, 1976) Clarendon, Darlington Dillon, Florence Lee, Marion Marlboro Sumter and Williamburg Counties, South Carolina					
Change:					
Laborers:					
Laborers	2 90				
Truck drivers	2 90				

MODIFICATIONS P 13

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Decision # SC76-1115 - Mod. # 2 (41 FR-44657 - October 8 1976) Anderson, Greenville, Oconee, and Pickens Counties, South Carolina					
Change:					
Laborers:					
Laborers	2 90				
Omit:					
Laborers:					
Asphalt rakers	2 70				
Mason tenders	2 75				
Power Equipment Operators:					
Motor grader	2 70				
Paving machine operator	2.65				
Decision # SC76-1126 - Mod. # 2 (41 FR-47907 - October 29, 1976) Lexington and Richland Counties, South Carolina					
Change:					
Laborers:					
Laborers, unskilled	2 90				
Omit:					
Laborers:					
Asphalt raker	2 67				
Decision # SC77-1019 - Mod. # 4 (41 FR-8900 - February 11, 1977) Chester, Fairfield and Lancaster Counties, South Carolina					
Change:					
Laborers	2 90				
Truck drivers	2 90				
Omit:					
Power Equipment Operators:					
Asphalt raker	2 65				
Roller operator	2 65				
Spreader operator	2 75				

MODIFICATIONS P. 14

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Decision # SC77-1070 - Mod. # 4 (42 FR-26182 - May 20, 1977) Beaufort County, South Carolina					
Change:					
Laborers	2 90				
Truck drivers	2 90				
Power Equipment Operators:					
Oilers	2.90				
Decision # SC77-1077 - Mod. # 2 (42 FR-30080 - June 10, 1977) Chester, Chesterfield, Fairfield Kershaw, Lancaster, and York Counties, South Carolina					
Change:					
Laborers:					
Laborers	2 90				
Truck drivers	2 90				
Omit:					
Laborers:					
Asphalt raker	2 78				
Asphalt sweeper	2 78				
Mason tenders	2 65				
Decision # SC78-1038 - Mod. # 1 (43 FR 16108 - April 14, 1978) Darlington County, South Carolina					
Change:					
Laborers	2 90				
Sprinkler fitters	8 25	75	1 05		08
Truck drivers	2 90				
Decision SC78-1040 - Mod. # 1 (43 FR-16110 - April 14, 1978) Abbeville, Cherokee, Laurens, Newberry, and Union Counties, South Carolina					
Change:					
Laborers	2 90				
Truck drivers	2 90				
Sprinkler fitters	8 25	75	1 05		08
Omit:					
Laborers:					
Mason tenders	2 75				
Power Equipment Operators:					
Forklift & Scraper	2 75				
Roller	2 84				

MODIFICATIONS P 15

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr Tr
Decision # SC78-1046 - Mod. # 1 (43 FR-20717 - May 12, 1978) Statewide, South Carolina					
Change:					
Power Equipment Operators:					
Truck drivers (single-rear axle)	2 90				
Omit:					
Asphalt Jaydown man	2 65				
Asphalt plant helper	2 80				
DECISION #SC78-1103 - Mod. #1 (43 FR 60020 - December 22, 1978) Georgetown County, South Carolina					
Omit:					
Plumbers & Steamfitters	$9 50	30	20		08
Add:					
Horry County					
Plumbers & Steamfitters:					
Georgetown County	9 40	50	40		10
Horry County	5 72				

CORRECTION

THIS PAGE WAS PUBLISHED IN THE FEDERAL REGISTER DECEMBER 29 1978 43 FR 61218 IT IS BEING RE-SUBMITTED FOR PUBLICATION IN THE 1/12/79 FEDERAL REGISTER

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TRUCK DRIVERS (Area 2) (Cont'd)

All Counties and portions of Counties West of the 120th Meridian (except those enumerated in Area 3) and including the Northern portion of Pacific County and including all of Kittitas and Yakima Counties

Group 10: Bull Lifts or similar equipment used in loading or unloading trucks transporting materials on job site, other than warehousing

Group 11: Transit-mix, over 4½ yards to and including 6 yards

Group 12: "A" Frame or Hydralift Trucks or similar equipment

Group 13: Dumpsters and similar equipment (as listed in Group 3) - over 20 yards to and including 30 yards; Lowbed and Heavy Duty Trailer, over 50 tons gross to and including 100 tons gross

Group 14: Transit-mix, over 6 yards, to and including 8 yards

Group 15: Dumpsters and similar equipment (as listed in Group 3) - over 30 yards to and including 40 yards; Lowbed and Heavy Duty Trailer, over 100 tons gross

Group 16: Transit-mix, over 8 yards to and including 10 yards

Group 17: Dumpsters and similar equipment (as listed in Group 3) - over 40 yards to and including 55 yards

Group 18: Transit-mix over 10 yards to and including 12 yards

Group 19: Transit-mix, over 12 yards to and including 16 yards

Group 20: Transit-mix, over 16 yards to and including 20 yards

Group 21: Transit-mix, over 20 yards

[FR Doc 79-861 Filed 1-11-79; 8:45 am]

federal register

FRIDAY, JANUARY 12, 1979
PART IV

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

THERAPEUTICALLY EQUIVALENT DRUGS

Availability of List

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 20]

[Docket No. 78N-0170]

THERAPEUTICALLY EQUIVALENT DRUGS

Availability of List

AGENCY: Food and Drug Administration.

ACTION: Proposal.

SUMMARY: The Food and Drug Administration (FDA) proposes to amend its public information regulations to make available a list of all approved drug products, together with therapeutic evaluations of listed products that are available from more than one manufacturer (multisource). This proposal offers the public an opportunity to comment on the proposed policy of making such a list available as well as the current content and form of the list itself.

DATES: Comments by April 12, 1979.

ADDRESSES: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Herbert Gerstenzang, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

FOR TECHNICAL INFORMATION ON THE LIST OF DRUG PRODUCTS CONTACT:

Gene G. Knapp, Bureau of Drugs (HFD-500), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2806.

FOR A COPY OF THE PROPOSED LIST ONLY CONTACT:

Margaret Lawrence, Consumer Inquiries Staff (HFJ-10), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3170.

NOTE.—Because the number of copies of the proposed list is limited, FDA asks that only those persons who contemplated commenting in response to this proposal request copies. The proposed list is subject to revision and is not intended for general distribution and use at this time.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration proposes to amend § 20.117 (21 CFR 20.117) of its public information regulations to include in the list of available computer printouts approved prescription drug products with proposed therapeutic equivalence evaluations. This list, which is being prepared in response to requests from State health agencies for assistance in administering their laws relating to generic substitution, is presented as a proposal so that interested persons may review and comment on all aspects of this proposed FDA activity, including the legal authority, rationale and criteria for the evaluation of approved multisource prescription drug products for therapeutic equivalence.

I. POLICY CONSIDERATIONS IN PROPOSING LIST

A. GENERAL CONSIDERATIONS

Three major considerations lead the agency to propose that FDA should make available a list of therapeutically equivalent drug products:

(1) Education of users of drug products, i.e., those who purchase, prescribe, or dispense drug products, as well as the patients for whose benefit the drug products are used.

(2) Cooperation with the States in carrying out their duties to protect and promote the health and welfare of their citizens.

(3) Facilitation of the President's program to control inflation in the American economy.

Several additional specific factors that also influenced the agency's decision to make this proposal are discussed in section I. B. of this preamble.

1. *Public education.* Decisions affecting the selection of prescription drug products to be used in the diagnosis, prevention, or treatment of disease in patients are made at many points in the health care delivery system.

Physicians, of course, exercise the primary control through their authority to prescribe drugs. They may prescribe by a generic name or by a brand name. The "generic" name is the established or common name of the active drug ingredient in a drug product (21 U.S.C. 352(e)(3)). The "brand name" is the privately owned trade name used by a manufacturer or distributor to identify its particular drug product and, if there are competing products containing the same active drug ingredient, to differentiate its product from those of the competitors.

Prescriptions are generally presented to pharmacists for filling. If the prescription uses only a generic name, the pharmacist is responsible for selecting the specific drug product to be dispensed. Over the last few years, physicians have shown an increasing tendency to prescribe by generic name. While 8.9 percent of all prescriptions in 1970 were written specifying only a generic name, by 1977 generic prescribing occurred 12.4 percent of the time, a rise of almost 40 percent.

If the prescription identifies a brand name, the pharmacist has, until recently, been required under most State pharmacy laws to dispense the precise product specified by the physician. Statutory restrictions against a pharmacist's dispensing a drug product other than the particular brand named in the prescription have been termed "antisubstitution laws." Between the early 1950's and 1972, virtually every State or jurisdiction had adopted an antisubstitution law or equivalent regulation. For a history of the spread of antisubstitution legislation, see Drug Product Selection, Bureau of Consumer Protection Staff Report to the Federal Trade Commission, pp. 141-151 (Dec. 1978) (hereafter called "FTC Staff Report").

Recently, restrictions on the authority of a pharmacist in filling prescriptions that identify drug products by brand name have been changed in many States. New statutes, often called "drug product selection laws" or "drug product substitution laws," have been adopted in approximately 40 States and the District of Columbia in the last decade; over half of these have been enacted since 1977. These laws generally authorize or direct the pharmacist to substitute a lower priced drug product if one is available that is therapeutically equivalent to the brand name product prescribed. Most the drug product selection laws also prohibit substitution if the physician clearly directs that the prescription be filled and dispensed as written. A history and analysis of current State drug product selection laws and an analysis of current State laws is set forth in FTC Staff Report, pp. 151-184.

Thus, because physicians may prescribe by generic name and appear to be doing so more frequently, and because State laws regarding the filling of prescriptions have changed, pharmacists now have a much greater responsibility for selecting the actual drug product that the patient will use than they formerly had.

Few pharmacies, however, are capable of stocking all brands of drug products containing a particular active drug ingredient. Consequently, at any one time, a pharmacist will be choosing the specific product to dispense from among a preselected group of drug products. This preselection of brands available for filling prescriptions may, of course, have been made by the dispensing pharmacist, if he or she were also responsible for purchasing the pharmacy's supplies. More commonly, especially in large pharmacy operations and chain drug stores,

purchasing is done through centralized or cooperative systems in which supervisory of other selected pharmacists choose which products to stock. Nonpharmacists, such as business or procurement officers, may also participate in the purchasing process. Clearly, the individuals who order drug products for stocking pharmacies have a significant role in drug product selection.

The system of drug dispensing may operate differently within hospitals and public health clinics. For example, many hospitals have worked with drug formulary systems under which only one brand of a drug product would be stocked, regardless of the number of brands marketed. Nevertheless, the same factors influencing drug product selection may be found.

All persons involved in drug product selection obviously need accurate, complete, and understandable information regarding prescription drug products. Because the health care delivery system contains so many decentralized decisionmaking points and so many decisionmakers, the information must also be widely available. FDA can contribute to assuring responsible prescription drug product selection decisions by disseminating necessary information about prescription drug products that the agency has evaluated for therapeutic equivalence, together with the basis for these evaluations.

The information contained in a list of therapeutically equivalent drug products will help to protect the public health. As just discussed, many persons in the health care delivery system need to know what therapeutically equivalent drug products are being marketed. The information is particularly needed by pharmacies, hospitals, State procurement agencies, and public health clinics, both in determining which products to purchase and in deciding which to dispense. Currently, in the absence of an offical list, pharmacists must make their own evaluations of therapeutic equivalence. Even with their professional training and experience, however, many pharmacists do not have the time, the resources, or the access to comprehensive scientific and regulatory data essential to making these evaluations. Consequently, risks exist that drug products that are not therapeutically equivalent may by mistake be substituted and dispensed, with possible adverse health consequences to patients. Although the number of situations in which therapeutically inequivalent drug products may create serious problems is quite small, the potential is sufficient to create a public health concern.

The Food and Drug Administration is the national agency charged with assuring the safety and effectiveness of the drug supply. It has also been designated as the unit responsible for assuring that the drug products purchased by Federal agencies meet all applicable quality standards. It is appropriate that FDA apply its expertise and experience in evaluating the safety, effectiveness, and quality control of drug products to minimize the public health problems that might arise in drug product selection by physicians, pharmacists, or drug procurement officers.

A list of therapeutically equivalent drug products is also needed to balance and correct materials disseminated widely in recent years alleging the therapeutic inequivalence of drug products. For example, in March 1976, *Private Practice*, the journal of the Congress of County Medical Societies, published a special supplement of materials that were used in the campaign against drug product substitution legislation in the State of Oklahoma. Opponents of similar legislation in other States were urged to consider the success of the Oklahoma campaign. These materials are reprinted in "Competitive Problems in the Drug Industry," Pt. 33: Hearings before the Subcommittee on Monopoly and Anticompetitive Activities of the Senate Select Committee on Small Business, 95th Cong., 1st Sess., pp. 16518-16528 (1977) (hereafter called "Drug Quality Hearings"). They included full-page newspaper advertisements and radio and television spots to be directed to the general public. Among the claims made were the following:

> * * * chemically equivalent drugs may not have the same effect.
>
> * * * * *
>
> Generic drugs may cost a little less in dollars and cents, but they can exert a high price in health.
>
> * * * * *
>
> Those big drug companies didn't get big by making crummy medicine.
>
> * * * * *
>
> Despite the identical ingredients, the slight differences in fillers, coatings, acidity, and absorption rate in drugs can make them totally ineffective—or worse than that—potentially harmful and even fatal.
>
> * * * * *
>
> "Bioequivalence" or "therapeutic" equivalence means that the drug will produce the same effect in your body as the brand-named drug prescribed by your doctor. Most generic or chemically equivalent drugs do not, in fact, produce the same result because of differences in coating, fillers, quality controls, acidity and absorption rates.
>
> * * * * *
>
> The fact is, the government doesn't even require that all generic drugs be equal. They need only meet minimum standards to be on the market.
>
> * * * * *
>
> A diamond. A chunk of coal. Both pure carbon * * * chemically equal * * * but therapeutically different * * * and some difference! WOW!

A motion picture film with a similar message was sponsored by Warner/Chilcott Division of Warner-Lambert Co. called "The Consumer and Prescription Drugs." Narrated by television figure Frank Blair and featuring 11 physicians, this movie seeks to demonstrate that generic drug products are of lower quality, and possibly less safe and effective, than brand-named drug products. A flyer for the film prominently advises: "Available for your use with lay audiences!"

These materials have not conveyed an accurate or complete picture of the prescription drug marketplace. They imply that the minimum standards for drug quality are inadequate to assure such quality, that differences in chemically equivalent drug products generally produce differences in therapeutic effects, and that government regulation never assures therapeutic equivalence. Although illustrations can be offered to support each of these propositions, the generalizations are unfounded. The broad dissemination of these assertions to the general public, as well as to the health professionals, may lead to a decline of public confidence in the nation's drug supply. For this reason, an authoritative statement from the Federal agency charged with monitoring and assuring the safety, effectiveness, and quality of drugs is an appropriate contribution to public understanding.

2. *Cooperative federalism.* In our Federal system, the States bear the primary responsibility for protecting and promoting the health and welfare of their citizens. In doing so, the States and their subdivisions directly provide health care services through public hospitals, public health clinics, and special assistance to patients with unique medical needs. Additionally, State agencies engage in a variety of educational and regulatory activities pertaining to health care delivery in the private sector, including licensing professionals and establishing requirements for pharmacies, private hospitals and clinics, nursing and residential care homes, and other facilities in which health services are provided. Finally, States are charged with administering welfare programs that reimburse for medical expenses.

In these capacitites, the States are entitled to and should receive assistance from the Federal Government. This aid properly includes FDA advice

on therapeutically equivalent drug products.

As providers of health care services, States purchase and distribute prescription drug products. Like those of the Federal Government, State agencies are under great pressure to make the most efficient use of tax dollars in purchasing goods and services. The availability of drug products identified as therapeutically equivalent encourages effective competition, and permits each State to select suppliers on the basis of price and collateral services tailored to meet that State's needs. FDA now serves as the central agency for quality assurance in purchases of drug products by the U.S. Department of Defense, the Veterans Administration, and the U.S. Public Health Service. (See section III.B.4.(vi) below in this preamble.) State procurement agencies in eight States have now sought similar FDA assistance for their programs. In part to explore the feasibility of such assistance, in June 1978 the agency entered an agreement with the State of New York to provide a quality assurance service for that State's drug purchases. (See the FEDERAL REGISTER of July 14, 1978 (43 FR 30353).) Direct provision to all of the States of a list of FDA evaluations concerning therapeutically equivalent drug products offers another means of assisting the States in their drug purchasing activities, while the feasibility of providing additional quality assurance services to the States, e.g., evaluation of drug products not subject to new drug application requirements, is determined.

The States also can use an FDA list of therapeutically equivalent drug products in their relationship with the providers of private health care services. In response to recently enacted drug product selection laws, several States have undertaken preparation of formularies of drug products that may or may not be substituted under their respective statutes. See, e.g., "Safe, Effective and Therapeutically Equivalent Prescription Drugs," New York State Department of Health, Office of Public Health (Health Education Service, Albany, N.Y.) (April 1, 1978) (hereafter called "New York Drug List"). At least 19 of these States and the District of Columbia have approached FDA to aid in preparing these formularies. In response to such a request from the State of New York, FDA devoted significant resources to review and advise upon the New York Drug List. A similar evaluation was later made of a list submitted by the State of Illinois. Based upon these experiences, the agency concluded that continuing to provide assistance on a State-by-State basis would not be cost-effective, because of the number of requests and the varying definitions and criteria among the individual statutes for evaluating therapeutic equivalence. Instead, FDA decided that it should prepare a master list to provide a guidance and information that could be utilized by each State in meeting its own repsonsibilities under the particulars of its drug product selection law. The Commissioner sent a letter to appropriate State officials on May 31, 1978, informing them of FDA's plans to develop this list.

3. *Combatting inflation.* The President of the United States has repeatedly sought to bring the current inflation problem under control. On October 24, 1978, President Carter reaffirmend his commitment that the Administration will do everything in its power to ensure that its actions are consistent with the objectives of the anti-inflation program. These objectives include restraining the growth of government spending, encouraging more competition in our economy, urging voluntary action to slow wage and price increases to specified rates, and limiting government purchases to firms observing the pay and price standards (Predsidential Address to the Nation, 14 Pres. Doc. 1839; White House Fact Sheet on the President's Anti-Inflation Program, 14 Pres. Doc. 1845 (Oct. 24, 1978)).

An area of particular concern to the President is health costs. At a July 20, 1978 press conference, President Carter, in response to an inquiry regarding national health insurance, observed (14 Pres. Doc. 1325-1326):

> One of the very discouraging aspects of our present health care system is the enormous increase in costs that have burdened down the American people. The average increases in cost of health care per year has been more than twice as much as the overall inflation rate.

Federal, State, and private purchases of prescription drugs are significant. If lower cost, therapeutically equivalent drug products are available and are used more widely, immediate savings would accrue without a sacrifice in the quality of health care. As a result, the increase in health costs would be lessened, the growth in government expenditures for prescription drugs reduced, and the efforts to control inflation furthered.

It is true that prices for pharmaceuticals have not been rising as rapidly as prices of other components of the health care system, and that prescription drugs do not represent the largest factor in health expenditures. These facts do not mean, however, that cost savings in the prescription drug market would not be helpful to the economy, to the consumer, or to the taxpayer. They merely make clear that no single step will be adequate to restrain health costs. President Carter acknowledged this reality in his October 24 speech to the nation, and went on to say (14 Pres. Doc. 1840):

> If there's one thing I have learned beyond any doubt, it is that there is no single solution for inflation. What we have, instead, is a number of partial remedies. Some of them will help; other may not. But we have no choice but to use the best approaches we have and to maintain a constant search for additional steps which may be effective.

Lower cost, therapeutically equivalent drug products are in fact available. If these products were used more widely in place of higher priced products, fewer dollars would have to be spent by the government and by consumers in purchasing prescription drugs. Several studies to estimate the potential savings from substitution of lower or higher priced drug products have been made. The FTC Staff Report reviews eight studies done by others and one undertaken by the Federal Trade Commission (FTC Staff Report, pp. 196-219). Its conclusion is that "the potential for the realization of consumer savings is substantial" (id. at 219).

The President has announced his anti-inflation program and directed the executive departments to act consistently with its objectives. Publication of a list of FDA evaluations of therapeutically equivalent drug products will advance this program by providing important information to drug product purchasers.

B. ADDITIONAL CONSIDERATIONS

In addition to the three major factors set forth above, several other considerations support the preparation and issuance of a list of drug products that FDA has evaluated on the basis of therapeutic equivalence.

1. *Cooperation with FTC.* The Department of Health, Education, and Welfare and the Federal Trade Commission have cooperated in the development of a "Model State Drug Product Selection Act." This draft legislation is being made available to the States to assist them in considering their own drug product selection legislation (FTC Staff Report, pp. 273-289). For purposes of drug product selection, the model act would require the establishment by an appropriate State health agency of a formulary that would list equivalent drug products, potentially including all drug products determined by FDA to be therapeutically equivalent. As one aspect of HEW's cooperation with FTC, FDA has been asked to prepare a list of such products to be provided to the State.

2. *Confusion over the legal status of certain drug products.* A recent court decision has created the potential for serious confusion over the legal status of certain drug products. Specifically, the United States Court of Appeals for

the Third Circuit suggested in dicta that it believed many drug products that FDA has classified as "new drugs" under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the "act") (21 U.S.C. 321(p)) and thus subject to premarketing clearance by FDA, may be incorrectly classified and thus not subject to FDA approval before marketing (*United States* v. *Articles of Drug, etc., The Lannett Co., Inc., claimant*, No. 77-2100, decided, Aug. 14, 1978, rehearing denied, Dec. 1, 1978 (hereafter called "Lannett")). Because the agency believes these dicta to be clearly wrong, FDA first sought, unsuccessfully, a rehearing by the Third Circuit and now intends to ask the Solicitor General to petition the Supreme Court to review the Lannett decision.

In the meantime, in reliance on the Lannett decision, some manufacturers are seeking to introduce drug products into the marketplace without FDA review or approval. (See, e.g., *Pharmadyne Laboratories, Inc.* v. *Kennedy*, Civ. No. 78-2792, (D.N.J., filed Nov. 17, 1978).) Other manufacturers with competing drug products are continuing to comply with FDA preclearance requirements, and FDA is continuing to enforce these requirements outside the jurisdiction of the Third Circuit.

Until the issues raised by the Lannett case are fully resolved, purchasers, prescribers, and dispensers of drug products may face considerable difficulty in determining which marketed products have been reviewed and approved by FDA. Section 301(l) of the act (21 U.S.C. 321(l)) prohibits a manufacturer from labeling or advertising that its product has an approved new drug application. Confirmation that an application has been approved is available from FDA under the Freedom of Information Act and implementing regulations (21 CFR 314.14). Unfortunately, this availability offers little benefit because of the volume of potential inquiries about a large number of products from a large number of individuals. A better solution lies in collecting the information in one list and distributing that list widely.

3. *"Man-in-the-plant" practice.* Under the so-called "man-in-the-plant" practice of some drug manufacturers, one drug firm, generally marketing a drug product under its own brand name, will contract with a second firm, who may independently market a competing product under either a brand or generic name, for the second to manufacture the first's drug product. Under the terms of the contract, the first firm will send one or more of its employees into the facility of the manufacturer to monitor operations. The designated employee, the so-called "man-in-the-plant," purportedly assures that the product meets the purchaser's standards. Because of this monitoring, the first firm claims to be the actual manufacturer of the drug product, and so represents itself on the labeling of the drug product. This practice reflects a judgment on the part of the brand name firms that engage in it that at least some generic firms—the ones with whom they contract—are capable of manufacturing drug products equal in quality to those made by the brand name firms themselves. FDA certainly has found no significant difference in quality between brand name and generic drugs made in the same plant, with or without the man-in-the-plant practice.

In November 1977, a Senate subcommittee chaired by Senator Gaylord Nelson held hearings regarding the man-in-the-plant practice (Drug Quality Hearings).

Additional hearings on the same topic were held in September 1978, before a House subcommittee chaired by Rep. John Moss (H. Rept. No. [unassigned at time of this publication], 95th Cong., 2d Sess. (1978); Hearings before the Subcommittee on Investigations and Oversight of the House Interstate and Foreign Commerce Committee, 95th Cong., 2d Sess. (1978)). Both congressional subcommittees found evidence that the price differentials were significant between the brand name firm's products and the product marketed by the second firm, even though both products were made in the same facility with the same equipment and essentially the same personnel. Moreover, the subcommittees heard testimony that in many instances the quality control standards did not differ between the products. The House subcommittee, in its report, found that the practice results in consumer deception. FDA has published a proposal in the FEDERAL REGISTER of October 3, 1978 (43 FR 45614) to prohibit information in drug product labeling that might mislead purchasers on the identity of the actual manufacturer of a drug product.

Even if this proposal is fully implemented, however, it will not provide complete information regarding the products that have been reviewed by FDA and found to comply with all applicable standards. More comprehensive information is necessary and a list of drug products, including FDA evaluations on their therapeutic equivalence, would fill this need.

4. *Voluntary compliance activities.* The agency has been directed by a Federal court not to follow a policy of permitting the marketing of drug products that FDA has determined to be a "new drugs" under the act without prior approval of new drug applications for that product (*Hoffmann-LaRoche* v. *Weinberger*, 425 F. Supp. 890 (D.D.C., 1975)). In response to this order, the agency issued a compliance policy guide establishing a priority sequence for identifying all violative new drug products and removing them from the market (FDA Compliance Policy Guide 7132c.08 (Oct. 6, 1976); notice of availability published in the FEDERAL REGISTER of September 23, 1976 (41 FR 41770)). The number of such products was known to be significant, and FDA at that time estimated that it would take at least 2 years to bring about full compliance. Given the magnitude of the problem, the limitations on FDA's resources, and the consequent length of the delay before compliance could be completely attained, FDA developed a strategy to deal on a priority basis with those drugs that most affected public health and safety, to provide equitable treatment among competing firms, and to have a maximum impact on violative products. One effect of this policy was to provide firms marketing lower priority drug products with an opportunity to comply voluntarily with the new drug application requirements of the law before FDA began enforcement proceedings.

At about this same time, FDA issued a list of drug products that (i) contained drugs with known or suspected problems of bioinequivalence and (ii) were subject to approved new drug applications. (See the FEDERAL REGISTER of Feb. 5, 1976 (41 FR 5339).) This list, which became known as the FDA "Blue Book" because of the color of its cover, soon became an important guide to public and private procurement officers in determining which products to purchase. As a result, a number of manufacturers promptly sought to obtain approval of new drug applications for their products in order to be added to the Blue Book list. In short, FDA found that the public availability of information about which products were covered by approved applications provided a valuable incentive toward voluntary compliance with the act.

In light of this experience, it appears likely that a broader list, containing all approved new drugs and not simply those with known or suspected bioequivalence problems, will further encourage voluntary compliance with the act. This purpose could, of course, be accomplished without providing FDA evaluations as to the therapeutic equivalence of approved products; however, for reasons discussed elsewhere in this section of the preamble, these evaluations will serve other useful purposes not necessarily related to voluntary compliance.

5. *Recommendation of the OTA Drug Bioequivalence Study Panel.* In 1974, the Office of Technology Assessment of the Congress created a panel to study issues relating to problems of

drug bioequivalence. The work and conclusions of this panel are discussed in great detail in section III.B.2. below in this preamble. It is appropriate to note here, however, that the last of the 11 recommendations of the panel, quoted in full below, proposed establishment of an official list of drug products evaluated for therapeutic equivalence. To date, no action has been taken on this recommendation. Completion of other FDA actions now makes it feasible for the agency to consider implementing this proposal.

C. LITIGATION REGARDING ISSUANCE OF LIST

The Pharmaceutical Manufacturers Association (hereafter called "PMA") has filed a lawsuit seeking to enjoin FDA from issuing a list of therapeutically equivalent drug products (*Pharmaceutical Mfr's Ass'n* v. *Kennedy*, No. T-78-2449, filed Dec. 7, 1978 (D. Md.)). That litigation provides no compelling reason to defer or delay this proposal. Because this notice constitutes only a proposal, because comments are requested on all factual, legal, and policy issues related to the proposal, and because both the decision to proceed with issuance of a list and the contents of the list with its proposed evaluations of therapeutic equivalence are subject to change in light of the comments received, publication of the proposal or public release of the proposed list does not affect the authority of the District Court in which the litigation is pending.

The objections of PMA to an FDA list of therapeutically equivalent drug products, as set forth in its complaint, need not be discussed point-by-point in this document. This preamble amply describes the reasons for issuing such a list, the legal, scientific, and regulatory bases on which such a list may be prepared and issued, and the details of the list that FDA proposes to issue. Opportunity to comment and raise specific objections, in light of the specific proposal in this notice, is being provided to the public, including PMA. The objections of PMA, both in its complaint and, if PMA chooses, as particularized by its comments on this proposal, will be considered by FDA in determining how to proceed in this matter.

II. LEGAL AUTHORITY AND LEGAL STATUS

A. LEGAL AUTHORITY TO ISSUE LIST

The Secretary of Health, Education, and Welfare is charged with several important duties in preparing and disseminating health information. Those duties that relate to the activities and responsibilities of FDA in regulating the safety and quality of the nation's foods, drugs, cosmetics, and other products have been delegated to the Commissioner of FDA.

Each of four separate statutory provisions relate directly to FDA authority for issuing a list of therapeutically equivalent drug products. A broad implied authority is also relevant.

1. *Public health information.* Section 310 of the Public Health Service Act (42 U.S.C. 242o) directs the Secretary 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." Functions of the Secretary under section 310 that relate to functions of FDA have been delegated to the Commissioner (21 CFR 5.1(a)(2)).

The availability of drug products evaluated by FDA as therapeutically equivalent, as well as the identity of pharmaceutically equivalent drug products which are evaluated by FDA as not therapeutically equivalent, is important information related to the public health. Likewise, this type of information is quite pertinent for use by persons and institutions concerned with health services.

As discussed in section I.A.1. above in this preamble, a list of therapeutically equivalent drug products will serve the public health by notifying those persons responsible for decisions affecting drug product selection about those products that, in FDA's judgment, are or are not therapeutically equivalent and the reasons for these evaluations. The list will also serve to correct and balance other information being disseminated to the public that claims or implies that therapeutic equivalence among drug products cannot be either determined or assured.

Consequently, publication of an FDA list of therapeutically equivalent drug products is within the FDA functions described in section 310 of the Public Health Service Act.

2. *Advice to the States.* 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 section 311 which relate to functions of FDA have been delegated to the Commissioner (21 CFR 5.1(a)(2)).

The list of therapeutically equivalent drug products, as explained in section I.A.2. above in this preamble, will enable the States to carry out their duties to protect and promote the public health, both in providing health care services with efficiency and cost-effectiveness and in advising physicians and pharmacists on the requirements of State drug product selection laws.

For these reasons, distribution of an FDA list of therapeutically equivalent drug products is within the FDA duties described in section 311 of the Public Health Service Act.

3. *Information to the public.* Section 705(b) of the 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 deception of the consumer." The functions of the Secretary under the act have been delegated to the Commissioner (21 CFR 5.1(a)(1)).

The absence of a list of therapeutically equivalent drug products permits the continuation of a situation involving potential dangers to health as well as deception of consumers, as discussed in section I.A.1. above in this preamble.

The magnitude of the potential dangers or deception need not be estimated, however, because section 705(b) is not a limitation upon the authority of the Secretary or the Secretary's delegate. "The only purpose of this statute is to place within the express scope of the duties of the Secretary something that was one of his implied functions" (*Hoxsey Cancer Clinic* v. *Folsom*, 155 F. Supp. 376, 378 (D.D.C., 1957)). In that case, an injunction was sought against FDA's issuing a circular to post offices warning that the so-called Hoxsey cancer cure had been found worthless. The court 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 against the use of certain treatment" (id.). A similar conclusion was reached in *United States* v. *An Article of Device* * * * *Diapulse Mfg. Corp., Claimant*, 262 F. Supp. 728 (D. Conn. 1967).

Because section 705(b) of the act merely amplifies implicit authority in the Secretary and the Commissioner, it is not necessary to determine whether the specific conditions for invoking the explicit authority under that section now exist. Potential health risks and consumer deception do exist and will continue to exist in the absence of information and evaluations by FDA of the therapeutic equivalence of drug products. Thus, distribution of this information is a proper FDA responsibility.

4. *Voluntary compliance activities.* Section 306 of the act (21 U.S.C. 336) authorizes FDA to use written notices in lieu of formal enforcement actions when the public interest will be adequately served by such notices. To the extent that a list of approved new drug products will encourage voluntary compliance by manufacturers of

new drug products that have not been approved, as discussed in section I.B.5. above in this preamble, issuance of such a list is within the authority delegated to the Commissioner under that section (21 CFR 5.1(a)(1)).

B. LEGAL STATUS OF LIST

The proposed FDA list of approved drug products, with evaluations on their therapeutic equivalence, would contain only public information and advice. This list would not constitute an order or a rule; it would neither determine nor adjudicate the legal rights of any drug manufacturer or distributor; it would impose no requirement or restriction upon any person; it would not interpret or apply the act in a manner that creates any obligation on any person; it would make no recommendation as to which products persons should purchase, prescribe, or dispense, or conversely, which products should be avoided.

To the extent that the list identifies drug products approved for marketing under sections 505 and 507 of the act (21 U.S.C. 355 and 357), it would merely set forth information to which the public is entitled under the Freedom of Information Act. (See 21 CFR 20.117; 314.14; and 431.71). Omission of a drug product from the list would not necessarily mean that the drug product is in violation of section 505 or 507 of the act, or that it is not safe or effective, or that it may not be therapeutically equivalent to other drug products. Decisions on whether specific drug products are subject to the requirements of either of those sections, or whether specific drug products have fulfilled those requirements, are made in clearly defined proceedings unrelated to the release of information on approval decisions. (See e.g., 21 CFR 314.100 and *Weinberger* v. *Bentex Pharmaceuticals, Inc.*, 412 U.S. 645 (1973).)

To the extent that the list sets forth FDA's evaluations of the therapeutic equivalence of drug products that have been approved, it would contain FDA's advice to the public and to the States regarding an important public health matter. These evaluations would not constitute determinations that any products are in violation of the act or that any products are preferable to others. They are based on the application of certain criteria, described below, to information contained in FDA files to make these nonregulatory evaluations.

The agency desires that the list be as well-informed as possible because of the public interest in and importance of the information it could contain. Issuance of the list would be significant activity by FDA, and the agency believes that it would profit from public participation during its development. Therefore, this notice is being published to solicit comments and suggestions on all aspects of the list, including the legal authority, rationale, and criteria for the evaluation of therapeutic equivalence. Because the list is not a rule, as defined in the Administrative Procedure Act (5 U.S.C. 551(4)), adherence to the rulemaking procedures of that statute (5 U.S.C. 553) is not required. Nevertheless, these procedures provide a useful model for the agency to present a proposal and request public comments on it.

If FDA decides to publish with a list such as proposed in this preamble, it is desirable that the public have a point of reference reflecting the availability of that list. To this end, the agency proposes to add a new paragraph to its regulations describing the FDA records and information that are and are not available to the public (21 CFR Part 20). Specifically, a new paragraph would be added to § 20.117 (21 CFR 20.117), which discusses the availability of various computer printouts of new drug information. The text of this proposed paragraph is set forth at the end of this document.

III. "THERAPEUTIC EQUIVALENCE": CONCEPT AND RATIONALE

The term "therapeutically equivalent drug products" simply means that two such drug products can be expected, in the judgment of FDA, to have equivalent therapeutic effect and equivalent potential for adverse effects when used under the conditions set forth in their labeling. Drug products that are therapeutically equivalent may still vary in certain respects: color, shape, taste, or packaging, for example. As a result, patients may not perceive them as identical or equally acceptable. For this reason, it cannot be stated that such drug products are substitutable or interchangeable in all cases. The judgment is not FDA's as to whether different drug products are substitutable or interchangeable for use by a particular patient; rather, it rests with practitioners who, in prescribing and dispensing drug products, can take into consideration the unique characteristics, needs, or problems of individual patients. It is the agency's position, however, that if one therapeutically equivalent drug product" is substituted for another under State law, with due professional regard for the individual patient, there is no substantial reason to believe that the patient will receive a drug product that is different in terms of the therapeutic effect intended.

Drug products may be evaluated as therapeutically equivalent if—

(1) They are pharmaceutical equivalents in that they contain identical amounts of the same active drug ingredient in the same dosage form, and they meet identical compendial or other applicable standards of identity, strength, quality, and purity;

(2) They are bioequivalent in that either they present no known or potential bioinequivalence problem or, if they do present such a known or potential problem, they are shown to meet an appropriate bioequivalence standard (bioequivalence refers to the comparative rates and extents of absorption of drug products into the human body; the assurance of bioequivalence of drug products is discussed in section III.B.2. of this preamble);

(3) They are adequately labeled; and

(4) They are manufactured in compliance with current good manufacturing practice.

On the basis of these factors, drug products can be said to be therapeutically equivalent. Moreover, if one of these products has been shown to be safe for its intended uses and has also been shown to be effective for those uses through adequate and well-controlled clinical trials, there is no scientific or medical justification for requiring clinical trials to establish the safety and effectiveness of the second product, without reasonable grounds for believing that the two products will not be of equivalent safety and effectiveness. It is neither feasible nor in the interest of the public health nor a productive use of the nation's scarce research resources to require costly duplication of these tests. A regulatory system that requires such duplicative testing is wasteful, anticompetitive, scientifically unsound, and ethically dubious.

In order to understand the basis on which FDA concludes that certain drug products are therapeutically equivalent, it is necessary first to define a number of terms and then to examine the assumptions and experience underlying the factors used in determining therapeutic equivalence.

A. THE CONCEPT OF "THERAPEUTIC EQUIVALENCE"

The starting point for understanding therapeutic equivalence is the term "therapeutic agent" or, as it is usually called, "therapeutic moiety." This term refers to the substance in a drug product that actually achieves the intended effect in the diagnosis, cure, mitigation, treatment, or prevention of a disease or in affecting the structure or function of the human body. (See 21 U.S.C. 321(g)(1).) Although different substances may produce the same ultimate therapeutic effect, they are not necessarily identical therapeutic agents. For example, various narcotics produce analgesia, but do so through different, although related, therapeutic moieties. On the other hand the same therapeutic moiety may appear in slightly different chemical forms,

e.g., as different salts or esters of the same molecule. To distinguish these separate forms, the term "active drug ingredient" is used; each salt or ester of a therapeutic agent is a unique active drug ingredient. For example, tetracycline hydrochloride and tetracycline phosphate complex are distinct active drug ingredients containing the same therapeutic moiety.

The form in which a patient uses an active drug ingredient is s "drug product." This term has been defined in 21 CFR 320.1(b) to mean "a finished dosage form, e.g., tablet, capsule, or solution, that contains the active drug ingredient, generally, but not necessarily, in association with inactive ingredients."

The first consideration in evaluating therapeutic equivalence among drug products is whether they are "pharmaceutical equivalents." This term is defined in 21 CFR 320.1(c) as follows:

"Pharmaceutical equivalents" means drug products that contain identical amounts of the identical active drug ingredient, i.e., the same salt or ester of the same therapeutic moiety, in identical dosage forms, but not necessarily containing the same inactive ingredients, and that meet the identical compendial or other applicable standard of identity, strength, quality, and purity, including potency and, where applicable, content uniformity, disintegration times and/or dissolution rates.

Pharmaceutical equivalents may differ in characteristics such as color, taste, shape, packaging, stability and expiration time, and (within certain limits) labeling. Frequently, variations in these characteristics are described as "pharmaceutical elegance," a term that refers to aspects of s drug product relating to its physical attractiveness, cost, convenience to patients, or acceptance by patients, rather than referring to its safety or efficacy.

Drug products that contain different active drug ingredients but the same therapeutic moiety, or products that are different dosage forms of the same active ingredient, are called "pharmaceutical alternatives." To distinguish these products from pharmaceutical equivalents, the following definition is used in 21 CFR 320.1(d):

"Pharmaceutical alternatives" means drug products that contain the identical therapeutic moiety, or its precursor, but not necessarily in the same amount or dosage form or as the same salt or ester. Each such drug product individually meets either the identical or its own respective compendial or other applicable standard of identity, strength, quality, and purity, including potency and, where applicable, content uniformity, disintegration times and/or dissolution rates.

For present purposes of evaluating therapeutic equivalence, FDA proposes not to consider two drug products to be therapeutically equivalent unless they are pharmaceutically equivalent. Thus, drug products would not be evaluated as therapeutically equivalent even though they may contain (1) the same therapeutic moiety, but as different salts or esters, and thus as different active drug ingredients, or (2) the same active ingredients, but (i) in addition, contain other, different active ingredients, or (ii) are in different dosage forms (e.g., tablet v. solution), or (iii) do not meet identical compendial or other applicable standards. (Compliance with such standards is discussed in detail in section III.B.1. of this preamble.)

The second factor in evaluating whether two products are therapeutically equivalent is whether they are "bioequivalent drug products." To understand this consideration, two further definitions are needed:

"Bioavailability," as defined in 21 CFR 320.1(a), means "the rate and extent to which the active drug ingredient or therapeutic moiety is absorbed from a drug product and becomes available at the site of drug action." The site of drug action is the place in or upon the human body where the therapeutic moiety acts to achieve its intended effect.

The term "bioequivalent drug products" is also defined in 21 CFR 320.1, in paragraph (e), to mean:

Pharmaceutical equivalents or pharmaceutical alternatives whose rate and extent of absorption do not show a significant difference when administered at the same molar dose of the therapeutic moiety under similar experimental conditions, either single dose or multiple dose. Some pharmaceutical equivalents or pharmaceutical alternatives may be equivalent in the extent of their absorption but not in their rate of absorption and yet may be considered bioequivalent because such differences in the rate of absorption are intentional and are reflected in the labeling, are not essential to the attainment of effective body drug concentrations on chronic use, or are considered medically insignificant for the particular drug product studied.

The Food and Drug Administration presumes that pharmaceutically equivalent drug products are also bioequivalent unless there exists scientific evidence to the contrary. The basis for this presumption, and the issues surrounding bioequivalence among drug products, are discussed at length in section III.B.2. below in this preamble. As a consequence of this presumption, only where scientific evidence demonstrates a known or potential problem of bioinequivalence does the agency require each manufacturer to establish that its product is bioequivalent to a reference product, which generally is the pharmaceutically equivalent product marketed by the holder of the original new drug application. In such a situation, individual products are presumed not to be bioequivalent until proven otherwise by adequate scientific studies.

Under the definition quoted above, two drug products that are not pharmaceutically equivalent may still be bioequivalent. Such drug products would not, however, be designated as "therapeutically equivalent" for purposes of the proposed list. As stated above in section I of this preamble, a primary purpose of this list is to provide State agencies and officials with information relating to drug products that may be selected for dispensing under applicable State law. Under most State drug product selection statutes, pharmaceutical alternatives are excluded from the scope of substitution, i.e., pharmacists are not required or authorized to substitute with a pharmaceutical alternative. Thus, there is no need at this time to consider the circumstances under which pharmaceutical alternatives may be therapeutically equivalent.

Two other factors relate to therapeutic equivalence. Prescription drug products must be accompanied by labeling that provides information regarding proper use of the drug. The labeling must be adequate for licensed practitioners to prescribe, dispense, or administer the drug safely and for the purposes for which it is intended (21 U.S.C 352, 355, and 357; 21 CFR 201.100). In addition, the label of every drug product is required to identify the contents accurately and in detail (id.). Thus, the third consideration of therapeutic equivalence is whether the drug products are adequately labeled for the practioner and pharmacist.

The fourth and final factor in evaluating whether drug products are therapeutically equivalent is whether they are manufactured in accordance with current good manufacturing practice. Under section 501(a)(2)(B) of the act (21 U.S.C. 351(a)(2)(B)), a drug product is deemed adulterated if "the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that" the drug product meets the requirements of the law. Current good practice is determined by FDA on the basis of an ongoing review of industry operations.

In summary, FDA proposes to evaluate as "therapeutically equivalent" those drug products that meet the following general criteria:

(1) They are pharmaceutical equivalents in that—

(a) They contain identical amounts of the same active drug ingredient in the same dosage form; and

(b) They meet compendial or other applicable standards of identity, strength, quality, and purity.

(2) They are bioequivalent in that—

(a) They do not present a known or potential bioinequivalence problem; or

(b) If they do present such a known or potential problem, they are shown to meet an appropriate bioequivalence standard.

(3) They are adequately labeled.

(4) They are manufactured in compliance with current good manufacturing practice.

Specific criteria proposed to be used by FDA in evaluating therapeutic equivalence, based on the foregoing four factors, are set forth in section IV of this preamble. Before discussing these specific tests, however, it is appropriate to examine the scientific, regulatory, and practical foundations underlying the four general criteria.

B. THE SCIENTIFIC AND REGULATORY FOUNDATIONS FOR EVALUATION OF DRUG PRODUCTS AS "THERAPEUTIC EQUIVALENTS"

The scientific ad regulatory foundations for the evaluation of the therapeutic equivalency of drug products involve the following three major elements:

(1) Pharmaceutical equivalence.

(2) Bioequivalence.

(3) Controls to assure consistency of quality in, and pharmaceutical and bioequivalency among, individual batches produced by all manufacturers.

1. *Pharmaceutical equivalence.* The definition of "pharmaceutical equivalent" set forth above contains two key tests. First, the drug products must contain identical amounts of an identical active drug ingredient in identical dosage forms. This test is quite restrictive, for it excludes drug products that provide the same ultimate therapeutic effect from the identical therapeutic moiety, although through a different active drug ingredient (e.g., a different salt or ester), or through a different dosage form (e.g., tablet v. suppository), or with a different quantity of active drug ingredient. These excluded drug products are treated as pharmecutical alternatives and are not included in the category of therapeutically equivalent drug products.

The second test for pharmaceutical equivalence is that each product meet the identical compendial (or other applicable) standards of identity, strength, quality, and purity, including potency and, where applicable, content uniformity, disintegration times, and/or dissolution rates. Under section 501(b) of the act, any drug recognized in an official compendium is required to meet the standards of strength, quality, and purity set forth in that compendium (21 U.S.C. 351(b)). The term "official compendium is defined in section 201(j) of the act to mean the United States Pharmacopeia (USP), the National Formulary (NF) or the Homeopathic Pharmacopeia (21 U.S.C. 321(j)). Section 507(b) of the act authorizes the Secretary to issue regulations prescribing similar standards for antibiotics (21 U.S.C. 357(b)). In cases where compendial standards do not exist, section 505 of the act authorizes FDA to require analogous standards to be included in a new drug application as part of assuring that the manufacturing processes are adequate to preserve the identity, strength, quality, and purity of the drug (21 U.S.C. 355). (See also 21 CFR 314.1(c)(2) Form FD-356H, Item 8.)

Compendial, antibiotic, and similar new drug application standards prescribe a number of specifications, and corresponding tests or methods of assay, regarding the identity of the active drug ingredient and its strength or potency and purity, and the finished drug product and its strength or potency, purity, and sometimes packaging. Standards may establish limits upon or requirements for, e.g., sterility, pyrogenicity, pH, heavy metals, and package design.

The purpose of these standards is to provide manufacturers with workable means to assure that drug products achieve a level of quality sufficient for their safe and effective use. To the extent that compendial and antibiotic standards recognize a difference between adequate and the most stringent possible specifications, they do so in an attempt to balance the costs and burdens of meeting the requirements with the need for standards that adequately protect the health and safety of the patient using the drug product.

In recent years, some concern has been expressed as to the adequacy of existing compendial standards. For example, a study conducted for Congress by the Office of Technology Assessment on "Drug Bioequivalence" (July 15, 1974) (hereafter called "OTA Report") concluded in part that "[p]resent compendial standards * * * do not assure quality and uniform bioavailability of drug products" (id., p. 2). The PMA made a detailed attack on the quality of the compendia during HEW's proceedings to promulgate regulations relating to Federal reimbursement for prescription drugs (the "Maximum Allowable Cost" or "MAC" regulations) and in litigation challenging those regulations (*American Medical Ass'n et al. (Pharmaceutical Mfr's Ass'n, Intervenors)* v. *Mathews,* 429 F. Suppl 1179 (1977)). These criticisms have not gone unanswered. The United States Pharmacopeial Convention, Inc., which now publishes USP and NF, and the American Pharmaceutical Association, which published NF in 1974, have argued in congressional hearings before the Senate Health Subcommittee that the focus of the OTA Report is substantially narrower than the overall adequacy of compendial standards, in that it did not relate to all aspects of drug product quality, but solely to those aspects affecting bioequivalency. It was further urged that "[c]ompendial standards, although not perfect, do effectively minimize the possiblity that unsatisfactory products will be permitted on the market" (statement of Dr. Edward Feldmann, American Pharmaceutical Association, in Hearings on the Examination of the Office of Technology Assessment Report of the Drug Bioequivalence Study Panel before the Subcommittee on Health of the Senate Committee on Labor and Public Welfare, 93d Cong., 2d Sess. 184 (1974) ("OTA Report Hearings")). Related hearings were held before the Senate Subcommittee on Monopoly in 1974. (See Hearings, Pt. 24, before the Subcommittee on Monopoly of the Senate Select Committee on Small Business, 93d Cong., 2d Sess. 1974) ("Monopoly Committee Hearings").)

In reference to the MAC regulations, the Department stated (OTA Report Hearigs, pp. 127–128):

> We cannot agree, however, that identifying those interchangeable drug products for which evidence of bioequivalence is not essential requires extensive new [compendial] standards. The task involved in developing such standards must be placed in perspective. Drug products which meet standards based on the best available technology are highly desirable. Applying appropriate tests to raw materials, precompression stages and to the finished drug product universally may also be important. But, if efforts to develop such standards and tests are expended precipitously on all marketed drugs, important and limited medical and investigational resources would be misspent to the exclusion of more urgent tasks.
>
> For drug products which are found not to require evidence of bioequivalency, the fact that these products have met present compendial standards as demonstrated by possession of an approved New Drug Application or Abbreviated New Drug Application is sufficient to support the assumption of interchangeability. We believe that this approach is reasonable, practical, and consistent with the spirit of the [OTA] Panel's evaluation. We further believe that this approach involves no hazard to the patient. It is and will continue to be desirable to improve the standards under which drugs are manufactured so that the possibility of bioinequivalence is reduced still further. The Panel's suggestions of ways to achieve this goal are appreciated and, in the main, enthusiastically supported by FDA.

The Food and Drug Administration adheres to these conclusions. Preparation of a list of therapeutically equivalent drug products can proceed without awaiting a comprehensive review and upgrading of all relevant compendial standards. The OTA Report is

correct in concluding that existing standards by themselves may not guarantee bioequivalence. But these standards do provide a basis for evaluating drug products as pharmaceutically equivalent, and in some cases provide dissolution rate standards that reduce the potential for bioinequivalence problems. In case where bioinequivalence problems are suspected or identified, bioequivalence standards may be imposed in addition to compendial specifications. Thus, it is safe to conclude that when supplemented by other appropriate tests and requirements, such as bioavailability testing and new drug application requirements, compendial and antibiotic applicable standards do provide a reasonable assurance of therapeutic equivalence.

Since 1974, when the OTA Report was issued, significant improvements have been made in the compendia. Responsibility for the NF has been transferred from the American Pharmaceutical Association to the United States Pharmacopeial Convention, Inc., so that USP and NF, and their improvement, are now fully coordinated. The compendia have also adopted important new requirements, including dissolution rate standards for many drug products (USP XIX, p. xv).

Furthermore, FDA has proposed that specifications for drug ingredients and drug products submitted by manufacturers in new drug applications or similar premarketing approval applications be available for public disclosure, unless the specifications serve no regulatory or compliance purpose and are exempt as trade secrets. (See the FEDERAL REGISTER of July 15, 1977 (42 FR 36485).) If adopted, this action will permit the official compendia to maintain current standards applicable to the drug products of all manufacturers.

In the past, individual manufacturers have claimed that they use standards exceeding the requirements of the compendia and that consequently their products are of higher quality than competing brands. Many of these firms refuse, however, to make public the standards they use; a number submitted comments opposing the FDA proposal to disclose specifications contained in submissions to the agency, on the ground that these specifications constitute "trade secrets." The argument runs roughly as follows: (1) Company A claims that it uses higher standards than the compendia require; (2) Company A further claims that these higher standards lead to better products; (3) the public prefers to buy better products; (4) to the extent that the public believes Company A's claims, the public (through physicians and pharmacists) will prefer to buy Company A's products; (5) to the extent that the public buys Company A's products because of a belief that they reflect a quality difference, Company A's standards provide a competitive advantage; (6) because the standards provide a competitive advantage, they constitute "trade secrets" that are prohibited from disclosure under section 301(j) of the act (21 U.S.C. 351(j)) and section 1905 of Title 18 of the U.S. Code (18 U.S.C. 1905). The success of this argument, of course, depends upon whether Company A's standards are in fact "higher" or merely different, and if truly "higher," whether the standards have any significance with regard to the safety or effectiveness of the product.

It is impossible for the public to evaluate Company A's claim that it uses higher standards because Company A insists that they are "trade secrets" and therefore cannot be seen by the public. FDA, which can and does look at these standards in reviewing new drug applications, ascertains that they are adequate to assure the quality of the product; if not, the application is not approved. The agency has observed firms adopting specifications beyond those needed to reasonably assure drug product quality in order to provide some pharmaceutical elegance. Although these standards are different, they do not necessarily make a "better" product.

Except for identified problems of bioinequivalence, FDA is not aware that any therapeutically significant differences currently exist among "pharmaceutically equivalent drug products" which result from differences between public compendial (or antibiotic) standards and "higher" internal standards of manufacturers.

If such therapeutic differences did exist, however, protection of the public health would require that the compendial standards be changed as quickly as possible. Means for avoiding significant problems in the safety or effectiveness of a drug product should not be viewed as a "competitive advantage," nor should the new drug approval process be viewed as a mechanism for perpetuating differences between compendial and private standards critical to assuring drug quality. Compendial standards should remain current with technological evolution and good industry practice.

To this end, it is in the public interest for manufacturers to make their standards available to the compendial officials, rather than to encourage a system of double standards in order to gain a "competitive advantage." As was stated in the FEDERAL REGISTER of July 15, 1977 (42 FR 36486):

> The public availability of drug specifications will help to assure that all manufacturers of the same drug product meet the same standards of identity, quality, purity and, where applicable, dissolution rate or other in vitro tests intended to assure bioequivalence. Furthermore, consumers and physicians will be able to select a particular brand of a drug product with confidence, knowing that the standards it is required to meet are comparable to those of other versions of the same drug product. Disclosure will permit the official compendia to maintain current standards applicable to the drug products of all manufacturers. Consistent compendial specifications and methods will contribute to improving the enforcement programs of Federal, State, and local regulatory agencies whose function is to assure full compliance with legal requirements for drug products.

It can be argued that a drug product may be called "better" without providing a therapeutically significant advantage, on the grounds that it offers other factors of benefit to the patient, such as greater acceptability (e.g., because of taste, size, color, or shape), longer storage life, or more convenient packaging. These attributes of pharmaceutical elegance do not relate to the essential safety and effectiveness of the drug product. Each carries with it a certain economic cost, which consumers may or may not be willing to pay in order to obtain the advantage. It must be recognized, however, that cost of medication may be as significant a factor to patients as taste, storage life, or packaging. Thus, to the extent that internal manufacturing standards result in a more elegant product, without providing greater safety or effectiveness, they do not justify any therapeutic distinctions among drug products and are not relevant to the evaluation of the therapeutic equivalence of those drug products.

For these reasons, it is appropriate to conclude that current compendial and antibiotic standards and similar standards in new drug applications provide a reasonable basis for evaluating whether two or more drug products are pharmaceutically equivalent and thus may be therapeutically equivalent. Although specifications in new drug applications may differ in some cases, all are adequate—and none are clearly superior—in assuring the quality of the drug products covered in those applications.

2. *Bioequivalence.* Bioequivalence involves the comparison of two drug products on the basis of the rate and extent to which their active drug ingredient is absorbed and becomes available at the site of drug action. Two drug products are generally said to be bioinequivalent if, under similar experimental conditions, the rate or extent of absorption of one differs significantly from that of the other.

Problems of bioinequivalence have undoubtedly existed since the development of drugs. Awareness of these problems, however, is a relatively recent phenomenon, arising in the last

decade. Before that time, variations in patient-response among different brands of drug products were generally attributed to patient variation rather than to drug nonuniformity. As the science of biopharmaceutics evolved, attention was focused on the clinical effects of differences in the bioavailability of drug products made by different firms, or in different batches of a drug product made by a single firm.

The bioavailability of a drug product, it is now known, can be affected by a number of biological and pharmaceutical factors. For example, for an orally administered drug, bioavailability is dependent upon factors such as the area in the gastrointestinal tract from which the drug is absorbed, the dissolution and stability of the drug in the gastrointestinal tract, the rate at which the drug is absorbed from the gastrointestinal tract, and the rate of metabolism of the drug in the intestinal wall and liver. In turn, these biological factors are influenced by the specific pharmaceutical characteristics of the product, including the physical structure and particle size or surface area of the active drug ingredient, the quantity and characteristics of inactive ingredients, the coating of a tablet or capsule, and the compression applied to produce a tablet. Variations in any of these factors, either from batch to batch of one manufacturer or from the product of one manufacturer to that of another, can produce variations in bioavailability or, in other words, bioinequivalence. If a patient using one product is given a different product, including a product from a different batch by the same manufacturer a bioinequivalence problem may result. Most commonly, bioinequivalence problems are discovered only by in vivo testing of blood levels. Therapeutic failures are uncommon and, when they occur, generally result in reduced effectiveness. Less frequently, absorption is significantly in excess of a previously used product, and thus bioinequivalence may produce toxicity.

In its first regulatory response to this problem, FDA began systematically in 1970 to require evidence of "biological availability" in support of abbreviated new drug applications (hereafter called "ANDA's") for many drug products subject to a Drug Efficacy Study Implementation (DESI) notice rating them as "effective" and requiring an ANDA as a condition to marketing. (See 21 CFR 314.1(f)(3).) Several problems resulted from these DESI notices. As firms inquired of the agency as to the availability of protocols for meeting this requirement, it became apparent that the state of the art was still inadequate for many drugs. Moreover, later FDA review found that a number of active ingredients and dosage forms covered by the DESI "biological availability" requirements did not pose any bioequivalence problems. It followed that such requirements were not scientifically warranted.

As a result of these developments, the agency advised firms that the bioavailability requirements spelled out in certain DESI notices were deferred. These actions were taken on an ad hoc basis, while many new DESI notices continued to impose bioavailability requirements. As a result, FDA reconsidered its policies with a view toward promulgating a comprehensive set of regulations in this area.

It was at this point that FDA and many in the pharmaceutical industry disagreed on the extent of the bioinequivalence problem. Indeed, the major controversy surrounding FDA's subsequent regulatory activities (and related issues of drug substitution and the MAC program) is whether bioinequivalence is relatively widespread or rare. The degree to which the problem is common to all drugs suggests the degree to which therapeutic equivalence cannot be determined without scientific studies on each specific drug product, and, indeed, each specific batch of each drug product. Some manufacturers and the PMA argue to this day the bioinequivalence is so prevalent that proof of bioequivalence should be required for every prescription drug product. See, e.g., proposed amendments to the Drug Regulation Reform Act of 1978 by PMA, in Senate Committee on Human Resources, 95th Cong. 2d Sess., section-by-section analysis of amendments submitted to S. 2755, pp. 41-42 (Comm. Print 1978).

Quite apart from the merits of these proposals, their economic implications would be quite favorable to firms already on the market, because the cost for a new manufacturer to enter the market would be greatly increased, and the time at which entry could occur would be significantly delayed. Thus, if accepted, the PMA proposals would have substantial anticompetitive effects. Such costs to the public from scientific studies and from a loss of competition require substantial justification in terms of protecting the public health.

Because of the fervor, persistence, and implications of the controversy over whether proof of bioequivalence should be required for every prescription drug product, a detailed history and discussion are appropriate.

On January 5, 1973, FDA published a notice of proposed rulemaking in the FEDERAL REGISTER (38 FR 885) to establish bioavailability requirements for prescription drugs. The preamble to that proposal stated (id. at 886):

> It is not possible to specify at the present time the frequency with which lack of equivalence in bioavailability of chemically equivalent formulations may occur. However, the parameters associated with defining the bioavailability of a drug have been identified and the factors for assessing a drug's bioavailability in most instances are known or can be determined.
>
> It is the responsibility of the manufacturer to assure by acceptable scientific evidence that each dosage form of each drug product is formulated so as to meet appropriate standards, is safe, and has the effectiveness claimed in its labeling. For some drugs a necessary part of this assurance is evidence that the active drug in a drug product is biologically available to a uniform and acceptable degree.
>
> Suitable methodology for accurately measuring the bioavailability of a drug in humans is not currently available for many drug products. Practical limitations on the number of investigators and clinical research facilities available for such work also precludes the possibility of testing in the near future every formulation of every drug currently on the market. There is no reason to believe that a rigid across-the-board requirement for bioavailability testing of every marketed drug product would, on a benefit/risk ratio basis, improve the quality of drug products commensurate with the expenditure of human and technical resources. Thus, it is necessary to set priorities in the categories of drugs selected for bioavailability testing, with primary attention directed toward those in which a defect in bioavailability would be most detrimental to patient care.
>
> In view of the above, the FDA will publish, from time to time, lists of drugs for which bioavailability data will be required on the basis of medical importance and/or indications that problems of bioavailability have been suggested or suspected.

To develop the lists of drugs referred to, FDA initiated an exhaustive search of published literature and agency files concerning any problems of bioinequivalence among multiple source drugs. This work necessitated examining scientific literature on the subject in order to determine which references adequately documented and supported the existence of actual drug bioinequivalence problems. FDA also sought to establish scientific criteria for determining in advance where a bioinequivalence problem was most likely to arise.

In addition, FDA reviewed drug application files to identify evidence of any actual bioinequivalence problems. The resulting information established in 1973 that in 6 of the 13 cases in which a bioinequivalence problem was identified, it was found that it was the reference product, rather than the new manufacturer's product, that was substantially less bioavailable. (Currently about one-third of 29 documented bioinequivalence problems involve the first-marketed product.) In other words, the pioneer's product was not delivering the quantity of active ingredient once believed to be available; the original clinical trials and de-

velopment of the initial manufacturing standards turned out not to have guaranteed the full potential bioavailability in the product. Therefore, in order to eliminate the product-to-product bioinequivalence, it would be necessary to upgrade the bioavailability of the pioneer. As a result of this conclusion, and the agency's experience of bioinequivalence among batches of individual brands of digoxin, the concern for bioinequivalence problems had to extend beyond multiple source drugs to include single source drugs as well.

After the January 5, 1973 proposal, there were numerous reports, symposia, and publications by academic institutions, industry, professional groups such as the Academy of Pharmaceutical Sciences, and organizations such as the National Academy of Sciences and the World Health Organization dealing with the subject of drug bioavailability. FDA actively participated in this dialog and sponsored some of the public meetings dealing with the subject of drug bioavailability. From these discussions new understandings of bioinequivalence problems have evolved, along with new procedures for their solutions. No final action was taken, however, on the January 1973 proposal.

Beginning on April 12, 1974, a Drug Bioequivalence Study Panel, formed by the Congress of the United States, Office of Technology Assessment (OTA), began to examine the relationships between the chemical and therapeutic equivalence of drug products and to assess the capability of current technology to determine—without therapeutic trials in human subjects—whether drug products with the same physical and chemical composition produce comparable therapeutic effects. FDA shared with the Panel its experience in preparing the lists of drugs with bioavailability problems, and the definitions, concepts, and solutions that had evolved since the 1973 proposal. On July 15, 1974, the OTA Report was released. Among the conclusions and recommendations contained in the report were the following:

* * * * *

2. Variations in the bioavailability of drug products have been recognized as responsible for a few therapeutic failures: It is probable that other therapeutic failures (or toxicity) of a similar origin have escaped recognition.

* * * * *

4. It is neither feasible nor desirable that studies of bioavailability be conducted for all drugs or drug products. Certain classes of drugs for which evidence of bioequivalence is critical should be identified. Selection of these classes should be based on clinical importance, ratio of therapeutic importance to toxic concentration in blood, and certain pharmaceutical characteristics.

* * * * *

11. A system should be organized as rapidly as possible to generate an official list of interchangeable drug products. In the development of the list, distinctions should be made between two classes of drugs and drug products.

a. Those for which evidence of bioequivalence is not considered essential and that could be added to the list as soon as standards of pharmaceutical equivalence have been established and satisfied.

b. Those for which evidence of bioequivalence is critical. Such products should be listed after they have been shown to be bioequivalent or have satisfied standards of pharmaceutical equivalence that have been shown to insure bioequivalence.

In response to the evolution of ideas on bioavailability and bioequivalence after the January 1973 proposal, in the FEDERAL REGISTER of June 20, 1975, that proposal was withdrawn (40 FR 26142) and two separate notices of proposed rulemaking were issued, one dealing with bioavailability testing requirements (40 FR 26157), and the other, with establishing bioequivalence testing requirements for certain drug products (40 FR 26164). In the latter notice, it was stated (id. at 26165):

The Commissioner recognizes that a few bioequivalence problems have been noted in the past and others may become apparent in the future. However, he believes that relatively few of the currently marketed drug products meeting current in vitro standards and current good manufacturing practices will be found to have medically significant bioequivalence problems. For this reason, he does not believe that it is necessary or in the public interest to undertake the task of developing new in vitro bioequivalence standards for all drug products. The procedures being proposed by the Commissioner are intended to identify bioequivalence problems involving currently marketed drug products and to develop adequate in vitro bioequivalence standards for these drug products.

The Commissioner is of the opinion that it is neither necessary nor feasible to require in vivo bioavailability testing of all drug products which were evaluated as effective under the drug efficacy study. For many such drug products, such testing would involve human risk and would be a waste of human resources with little benefit to the public health. Furthermore, the Commissioner is of the opinion that, for many drug products, the use of a current in vitro test comparing the drug product to a reference material may be adequate to assure the quality and uniformity of drug products which are intended to be used interchangeably as well as all batches of the same drug product.

In the continuing controversy over whether proof of bioequivalence is necessary for all drug products, the Commissioner remains convinced that only a small fraction of all drugs present bioequivalence problems, and that, among those drugs that are currently marketed by more than one supplier, the problem drugs have now mostly been identified. For the remainder, bioequivalence can be pharmaceutical equivalence.

The agency has taken steps to eliminate the problems posed by those drugs that present bioinequivalence problems. Throughout the period 1970 through 1977, even without formal regulations on bioavailability and bioequivalence requirements, FDA continued to require bioavailability data in ANDA's for many generic drug products, even though in some cases compliance was deferred pending development of appropriate methodology. As a condition for obtaining FDA approval, The agency required newly submitted ANDA's for those drugs having known or potential bioinequivalence problems to contain evidence demonstrating that the drug product proposed for approval was bioequivalent to a reference product. Generally, the reference product was the pharmaceutically equivalent drug product that was subject to an approval full NDA. In conjunction with the June 20, 1975 FEDERAL REGISTER notices cited above, the agency limited these requirements to a specific list of drugs covered by DESI notices (40 FR 26142). The standards used in compiling this list were described in that notice, and more fully discussed in the FEDERAL REGISTER of January 7, 1977, in which the list was affirmed (42 FR 1624, 1626):

* * * The proposed [bioequivalence] regulations under § 320.3(b) [published on June 20, 1975 (40 FR 26164); codified as § 320.52 on January 7, 1977 (42 FR 1624)] listed factors that the Commissioner would consider in determining whether there is a bioequivalence problem that requires the establishment of a bioequivalence requirement. Using these criteria, the Commissioner made a tentative finding that the drug products listed in the preamble had a known or potential bioequivalence problem. The purpose of the list was to generage public understanding of how FDA intends to apply the factors set forth in proposed § 320.3(b) to identify drug products for which a bioequivalence requirement should be established. Although an attempt was made to identify each drug product with a known or potential bioequivalence problem, the Commissioner recognizes that the list may omit some drug products with a known or potential bioequivalence problem. Likewise, the Commissioner emphasizes that a drug product's inclusion on the list does not necesarily imply that FDA has positive evidence of bioinequivalence among the various brands of the drug product.

* * * * *

In compiling the list, FDA took a conservative approach. Therefore, a drug product was included on the list if, in FDA's opinion, there was any suspicion that the drug product had a known or potential bioequivalence

problem or was a member of a class of drug products for which there was suspicion that at least on member of the class had a known or potential bioequivalence problem. The Commissioner is of the opinion that, as evidence of bioequivalence is closely exmined, few of the drug products listed will be determined to have well-documented, medically significant bioequivalence problems. A "medically significant bioequivalence problem" is one that would result in therapeutic failure or a hazard to a patient if different brands of the same drug product or different batches of the same brand are not bioequivalent. The Commissioner believes that a determination of bioequivalence is most critical in a drug product that has a narrow therapeutic-toxicity dosage range and requires careful patient titration and monitoring for safe and effective use.

* * * * *

The purpose of the list was to alert persons marketing a drug product on the list that, on the basis of an in-house review of data available to FDA, the Commissioner is concerned that the product has a bioequivalence problem and he will likely propose to establish a bioequivalence requirement for the drug product. At the time the Commissioner proposes a bioequivalence requirement, he will document the data to support the requirement. These persons, therefore, can rely on this advance information if they wish to conduct bioequivalence studies in anticipation of the establishment of the requirement by rulemaking.

The January 1977 notice went on to explain the regulatory requirements that were being applied for products containing drugs on the list pending the establishment of bioequivalence requirements (id.):

The Commissioner advises that FDA will continue to require the submission of bioavailability data in a full or abbreviated NDA for any of these products and for identical, related, or similar drug products. This policy is being codified in § 320.22(c) (21 CFR 320.22 (c)) * * *. The FDA intends to propose in the near future * * * the establishment of a bioequivalence requirement for all of these drug products, which upon examination, are determined to have well-documented, medically significant bioequivalence problems. If a bioequivalence requirement is finally established for a drug product after completion of these procedures, the applicant will be required to submit data in the full or abbreviated NDA to demonstrate that the product meets the bioequivalence requirement.

The Commissioner also advises that FDA's current policy is that, until a bioequivalence requirement is established for a drug product, manufacturers submitting a full or abbreviated NDA for a drug product already identified by FDA as having a known or potential bioequivalence problem will be required to meet the same requirements as previous manufacturers. Thus if previous manufacturers have been required to conduct in vivo studies, new manufacturers will be required to conduct in vivo studies even though there is evidence that a bioequivalence requirement could be established on the basis of an in vitro test. This assures that opportunity for public comment will be provided before an in vitro test is substituted for an existing in vivo test to demonstrate bioequivalence, and that competing firms are treated fairly and equally by the agency. The Commissioner advises that, pursuant to the agency's policy of minimizing human studies, FDA will give priority to the establishment of bioequivalence requirements to those products for which an in vitro test is available.

To summarize, since the early identification of bioequivalence problems, FDA has sought to assure the bioequivalence of pharmaceutically equivalent drug products. The agency undertook two parallel activities: (1) the development of requirements for bioavail- ability testing and for demonstrating bioequivalence (now codified in 21 CFR Part 320), and (2) in anticipation of such requirements, a review of the evidence of bioavailability and bioequivalence in ANDA's for those pharmaceutically equivalent drug products for which evidence of a bioinequivalence problem exists. Although the first activity has taken considerable time and effort to put into place, the second activity has functioned well for the last 8 years and has provided considerable bioequivalence data and information contained in ANDA submissions. For these products there is a reliable basis for determining the bioequivalence of specific pharmaceutically equivalent drug products.

3. *Controlling batch-to-batch consistency.* Bioequivalence is only one test of equivalent safety and effectiveness among different drug products that are pharmaceutical equivalents. Other factors that may affect safety and effectiveness of such drug products include both compliance of the manufacturing process with current good manufacturing practice and adequacy of drug product labeling. These factors, as well as conformity with compendial or other standards of identity, strength, quality, and purity, are regulated through mechanisms other than the bioequivalence requirements. These other mechanisms provide a further basis for concluding that pharmaceutically equivalent and bioequivalent products may be considered therapeutically equivalent. The mechanisms, described in the following paragraphs, are as follows: (a) the new drug approval and antibiotic certification processes, (b) the batch certification procedures, (c) the good manufacturing practice regulations, and (d) FDA's monitoring of the marketplace.

(a) The new drug approval and antibiotic certification processes: Section 505 of the act requires that each "new drug," as defined in section 201(p) of the act, be subject to an approved new drug application before being introduced into interstate commerce (21 U.S.C. 355, 321(p)). Agency regulations describe two types of application: a full new drug application (NDA) and an abbreviated new drug application (ANDA) (21 CFR 314.1). In general, the ANDA is currently permitted only for drug products subject to a DESI notice either rating the active drug ingredient as effective (see FEDERAL REGISTER of September 1, 1978 (43 FR 39126)) or requiring further studies to evaluate effectiveness (see FEDERAL REGISTER of February 17, 1978 (43 FR 7044)); the active drug ingredients in these drug products were all first marketed prior to 1962. Both types of application require submission of information on inactive ingredients, labeling, and manufacturing practices (21 CFR 314.1).

Under section 507 of the act, once an "antibiotic drug," as defined in that section, has been approved for safety and effectiveness, regulations providing for certification of batches of products containing the drug are issued (21 U.S.C. 357). These regulations require that persons seeking to market an antibiotic drug product through submission of a request for certification provide FDA with information on inactive ingredients, labeling, and manufacturing practices similar to that required in new drug applications (21 CFR 431.1, 431.17, 431.50).

The process of reviewing and approving new drug applications and antibiotic certification forms enables FDA, in addition to determining pharmaceutical equivalence and bioequivalence of the drug products, to review the inactive ingredients in the drug products, to assure the inactive ingredients in the drug products, to assure the adequacy of labeling, and to evaluate any proposed specific manufacturing controls to assure appropriate quality and batch-to-batch consistency. Only when all these elements meet regulatory requirements may an application be approved or an antibiotic drug product be eligible for certification. As discussed in subsection (b) below in this preamble, each batch of an antibiotic drug product also must be submitted for FDA testing and certification before being marketed. Once an application or certification form is approved, moreover, changes may not be made in any of the critical factors, including inactive ingredients, labeling, and manufacturing controls, without prior notice to, and generally prior approval of, FDA (21 CFR 314.8; 431.16). Changes are accomplished through supplemental applications and amended antibiotic applications. Thus, the new drug approval process and the antibiotic certification process are important parts of FDA's program for determining before marketing commences—and thereafter maintaining—the therapeutic equivalence of drug products subject to sections 505 and 507 of the act.

Conversely, the absence of any such process for drugs that are claimed to

be neither "new drugs" nor "antibiotic drugs" substantially vitiates FDA's present ability to evaluate the therapeutic equivalence of such drugs. Unlike antibiotic drugs and new drugs, these other drug products may be placed on the market at any time without prior notice to FDA; under section 510 of the act, the manufacturer is required only to notify the agency of the availability of the product in the first June or December following marketing (21 U.S.C. 360). Even when this notice is submitted, the manufacturer is required to provide only limited information: qualitative and quantitative identification of the active ingredients and a copy of the labeling of the drug product (21 CFR 207.25(b)(4) and (6)). The agency does not receive a qualitative or quantitative identification of inactive ingredients, evidence regarding bioavailability, or manufacturing controls, unless they are voluntarily supplied. Moreover, even if the manufacturer freely provides the information, it may change the formulation, the labeling, and the manufacturing process at any time without prior notice to FDA.

For such drugs, FDA can obtain information similar to that required in a new drug application only by conducting an on-site inspection of the manufacturer's records under section 704 of the act (21 U.S.C. 374). These records would probably not be organized in the format of an NDA or ANDA. Clearly, this procedure is quite costly, given the freedom of firms to enter the market and to modify their products. The procedure may also not be adequate for FDA to assure the safety, effectiveness, quality, or therapeutic effectiveness of a drug product at any given point; many batches of a product may already have been distributed before FDA could conduct an inspection, and the product could be substantially modified after an inspection without notice to the agency. Thus, FDA cannot accept, for example, the argument made by counsel for the National Association of Pharmaceutical Manufacturers that bioequivalence can be adequately monitored without premarketing review of drug products. (See statement of Milton Bass quoted in 40 *FDC Reports* (the "Pink Sheet"), No. 50, p. 22 (Dec. 11, 1978).)

With regard to drugs subject to the new drug approval process, it has been argued that the ANDA approval process is less demanding than the NDA approval process, and that therefore product quality is less reliable among drug products covered by an approved ANDA. (See, e.g., statement of C. Joseph Statler in Drug Quality Hearings, pp. 16529-16538, and pp. 15782; PMA's complaint in the Drug List Litigation, para. 12.) The argument appears to be more abstract than empirical. Because most members of PMA hold at least one approved ANDA is it to be inferred that these manufacturers apply different quality control standards internally for their ANDA products than for their NDA products, or that ANDA's are adequate for preclearing PMA member's generic drug products but not others? Despite these defects in reasoning, the argument and its underlying assumptions should be examined closely.

The criticisms of ANDA's appear to fall into three areas: (1) ANDA's do not contain adequate evidence of safety and effectiveness to justify approval of the drug product; (2) ANDA's do not contain evidence of bioavailability of the drug product or its bioequivalence with pharmaceutically equivalent drug products; (3) ANDA's do not contain, or contain substantially less, infomation regarding the manufacturing processes and controls for, and the packaging of, the drug product.

In FDA's opinion, none of these objections is valid.

First, regarding the absence of full safety and efficacy data, the abbreviated NDA is authorized in lieu of a full NDA only after a decision has been made through the DESI review process that further information is not necessary regarding the safety and effectiveness of the active drug ingredient in a specified indication for use (21 CFR 314.1(a)(1)). The full rationale for this policy has been discussed at length in several FEDERAL REGISTER notices; see, for example, notice of proposed rulemaking on acceptability of ANDA's, September 1, 1978 (43 FR 39126); and notices of opportunity for hearing published in the FEDERAL REGISTER of April 29, 1977 (42 FR 21847), June 10, 1977 (42 FR 30002), August 9, 1977 (42 FR 40248), and September 16, 1977 (42 FR 46592). If one drug product has been shown to meet the criteria for therapeutic equivalence with another drug product, and either has been shown by clinical trials to be safe and effective for its intended uses, there can be no justification for routinely requiring clinical trials to demonstrate the safety and effectiveness of the other drug product. In the absence of a reasonable scientific basis for believing that the two drug products may not be equivalent in safety and efficacy, duplicative clinical testing is unacceptable on ethical, social, economic, and scientific grounds.

The second criticism, that ANDA's do not assue bioavailability or bioequivalence, is dealt with at length in section III.B.2. of this preamble. In brief: (i) Only a small percentage of drugs for which ANDA's are permitted have known or potential bioinequivalence problems. For the others, bioavailability studies are neither necessary nor desirable. (ii) Since June 1975, the agency has identified publicly all of those multiple source drugs which it believes may warrant proof of bioequivalence. The drugs without bioinequivalence problems have not been required, in the ANDA approval process, to have their bioavailability or bioequivalence established, and they should not be so required until evidence becomes available raising a real risk that a bioinequivalence problem exists. The criteria for identifying such a risk have been carefully described in FDA regulations after a full public proceeding (21 CFR 320.52). (iii) For those drugs identified as presenting problems of bioinequivalence, and for which methodology exists, the agency has required evidence of bioequivalence to an approved pharmaceutically equivalent drug product, generally one that is subject to a full NDA. In sum, for many drug products it would be unnecessary and wasteful to require proof of bioequivalence in order to obtain approval of an ANDA; for the lesser number of drug products that are known to present potential or real bioequivalence problems, the ANDA process can and in fact generally does provide sufficient assurance that approved products are bioequivalent; for any drug product known to present a bioequivalence problem that has not been satisfactorily resolved by the ANDA process, FDA will not evaluate the drug as therapeutically equivalent.

The third criticism, that ANDA's require less information regarding drug product contents, manufacturing, and packaging, is in error. It is true that current FDA regulations do state that an ANDA need contain summaries or outlines of the formulation, manufacturing, and packaging information required in a full NDA (21 CFR 314.1(f)(1)). These regulations do not reflect current agency practice which, beginning in 1972, has required ANDA applicants to submit full information analogous to the information required to be submitted in full NDA's. These requirements were imposed under 21 CFR 314.1(f)(5) and have been complied with in most ANDA's approved in recent years. In the FEDERAL REGISTER of June 20, 1975 (40 FR 26156), the Commissioner proposed to conform the ANDA regulations with agency practice and to eliminate any differences between NDA and ANDA requirements in reference to product composition, manufacturing methods, facilities and controls, and packaging. In a notice published in the FEDERAL REGISTER of September 1, 1978 (43 FR 39126), the agency recently affirmed its intention to act upon this proposal in the near future. In conclusion, FDA believes that new drug approval process, including the ANDA review proc-

ess, and the process for reviewing antibiotic drug certification requests, constitute important and effective mechanisms for determining whether drug products are therapeutically equivalent and for controlling batch-to-batch consistency of approved drug products in order to maintain assurance of therapeutic equivalence.

(b) The batch certification process: Under section 507 of the act, each batch of an antibiotic drug product, unless exempted by the agency, is subject to testing by FDA and must be certified by the agency as meeting applicable standards before it may be marketed (21 U.S.C. 357). This requirement is in addition to the submission and approval of components, labeling, and manufacturing processes required under 21 CFR 431.1 and 431.17, described in this section of this preamble, and has served to increase confidence that antibiotic drug products are of consistent quality batch. Over the last 5 years, from January 1974 through October 1978, approximately 20,000 batches have been submitted annually to FDA. The rejection rate has averaged less than one-half of 1 percent of the batches submitted. The existence and success of this pogram provides a further basis for concluding that certified antibiotic drug products that meet the criteria for therapeutic equivalence may reasonably be considered to provide the same therapeutic effects.

The agency has also employed the batch certification process to solve an important bioinequivalence problem. In 1974, because of the potential of serious risks to patients, FDA acted to require ANDA's for all digoxin products in order to assure their bioequivalence. Studies had demonstrated clinically significant differences in the bioavailability of different batches of digoxin by single manufacturers as well as in different batches by different manufacturers. (See the FEDERAL REGISTER of January 22, 1974 (39 FR 2471); now codified in 21 CFR 310.500.) The firm that first marketed digoxin in the United States objected and, in the face of a prolonged legal challenge, compliance with the ANDA requirements was postponed indefinitely. (See the FEDERAL REGISTER of March 8, 1974 (39 FR 9184).) Pending resolution of the legal issues raised by this firm, FDA instituted a program by which manufacturers would submit batches to FDA for dissolution rate testing before releasing them to the market. As a result of this special program, a serious health problem related to bioinequivalence was rapidly and effectively brought under control and batch-to-batch consistency within and among manufacturers was assured. An analogous effort is now being conducted with regard to two other drugs, digitoxin and prednisone in tablet form. Upon completion, the agency will be able to evaluate the therapeutic equivalence of tableted prednisone drug products; digitoxin, however, is not subject to approval under section 505 of the act and therefore will not be evaluated for therapeutic equivalence.

The authority to adopt similar programs for other drug products, should serious bioinequivalence problems arise, is confirmed in 21 CFR 320.55. The availability of this proven mechanism to address future problems further justifies the belief that the batch approval process reasonably assures the batch-to-batch consistency of drug product quality. Such assurance supports the conclusion that drug products that are pharmaceutically equivalent and bioequivalent are also generally therapeutically equivalent.

(c) Good manufacturing practice regulations: Section 501(a)(2)(B) of the act requires that drug products be made in conformity with current good manufacturing practice ("CGMP") in the industry (21 U.S.C. 351(a)(2)(B)). To implement this provision, the agency has long had regulations that set forth objectives, or standards of performance, to be achieved by individual firms in their facilities, equipment, personnel, production methods, quality control procedures, and related aspects of manufacturing (21 CFR Parts 210 and 211). The objectives reflect the results attained by those manufacturing practices that FDA has found to be "current" and "good" in the industry. The current good manufacturing practice (CGMP) regulations are not generally designed to prescribe specific manufacturing processes; such an approach would be difficult to implement, because of the wide variety of drug products, and would unduly interfere with technological evolution. Moreover, at least for new drugs, the new drug approval process provides a superior mechanism for addressing unique problems in manufacturing specific drug products.

The CGMP regulations are more appropriate for problems common to the manufacture of all drug products or of all drug products of a particular class, e.g., large volume parenteral drug products, medical gases, or radioactive pharmaceuticals. Central among these problems, of course, are the general practices and procedures necessary to assure batch-to-batch consistency in drug quality. CGMP regulations specifically focus on matters such as responsibilities for quality control operations, building and equipment design and maintenance, control of ingredients and in-process materials, production and process controls, packaging and labeling controls, expiration dating, warehousing and distribution procedures, laboratory controls, and testing and releasing products for distribution.

The CGMP regulations, adopted in 1963 and revised in 1971, will be completely superseded on March 28, 1979, by regulations published in the FEDERAL REGISTER of September 29, 1978 (43 FR 45014). These new regulations are the product of a lengthy and comprehensive review of industry practices as reflected in agency records such as NDA's, ANDA's, and establishment inspection reports, a proposal published in the FEDERAL REGISTER of February 13, 1976 (41 FR 6878), and extensive comments from the industry. Many older requirements were updated and clarified; important new quality assurance measures were added; and the legal status of CGMP regulations was strengthened. Consequently, it is now the position of the agency, as stated in the new 21 CFR 210.1:

> (a) The [CGMP] regulations * * * contain the minimum current good manufacturing practice for methods to be used in, and the facilities or controls to be used for, the manufacture, processing, packing, or holding of a drug to assure that such drug meets the requirements of the act as to safety, and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess.
>
> (b) The failure to comply with any [CGMP] regulation * * * in the manufacture, processing, packing, or holding of a drug shall render such drug to be adulterated under section 501(a)(2)(B) of the act and such drug, as well as the person who is responsible for the failure to comply, shall be subject to regulatory action.

The agency evaluates compliance with CGMP regulations during factory inspections under section 704 of the act (21 U.S.C. 374). In the event of noncompliance, the agency notifies the firm of the alleged violation through a Notice of Adverse Finding or a Regulatory Letter. (See 21 CFR Part 7, Subpart B, published in the FEDERAL REGISTER of June 23, 1978 (43 FR 27498).) If corrective action is not taken, or the violation is such that formal enforcement action should not be delayed, FDA may begin proceedings to seize the violative products or to enjoin future violations. Criminal penalties may also be sought, and new drug applications can be withdrawn. FDA has been successful in enforcing the standards contained in the previous CGMP regulations. (See, e.g., *United States* v. *An Article of Drug* * * * *White Quadrisect*, 484 F.2d (7th Cir., 1973).)

Because of this success, because of the substantive improvements in the new CGMP regulations, these regulations should provide another important assurance of batch-to-batch consistency in drug product quality. Again, this assurance, when applied to drug products otherwise known to be pharmaceutically equivalent and bioe-

quivalent, makes it reasonable to believe that they will provide the same therapeutic effect.

(d) FDA's monitoring of the marketplace: In implementing its quality assurance activities, the FDA relies on a variety of its facilities and resources, including the National Center for Drug Analysis in St. Lous, the National Center for Antibiotic Analysis in Washington, and 20 district laboratories. More than 200 trained drug investigators are stationed in the 20 FDA district offices. Each year these investigators conduct inspections of over 6,000 establishments in which human drugs are manufactured; they also provide a critical capacity for fast and effective followup to reports to problems with drugs. The National Center for Drug Analysis is now capable of performing approximately 100,000 analyses annually on marketed drug products. The National Center for Antibiotic Analysis performs batch certification and postcertification testing on batches of antiobiotics and insulin; approximately 20,000 batches are submitted to FDA each year for certification, release, or check testing. The Bureau of Drugs, headquartered in Rockville, Maryland, provides direction and coordination of FDA's drug quality activities. The Bureau employs over 1,100 doctors, pharmacists, chemists, compliance officers, and other professional and support personnel.

The agency carries out a number of programs to evaluate marketed drug products, to gather information regarding defective products, and to assure compliance with CGMP regulations, NDA and ANDA commitments, and compendial or other applicable standards. Any products that are found through any of these programs to be out of compliance with applicable standards are promptly subjected to followup regulatory action. These programs include the following:

(i) *Factory inspections.* FDA inspects every establishment in which drug products are manufactured at least once every 24 months. As noted, over 6,000 drug inspections occur each year. Most drug firms appearing on the proposed list are inspected several times during that period. In addition, the agency will not approve an NDA or ANDA for a drug product unless the manufacturer has been inspected and has been found to be in compliance with CGMP regulations within the preceding 12 months.

(ii) *The Quality Assurance Program for Selected Marketed Drugs.* Each year categories of drugs are selected by the Bureau of Drugs on the basis of therapeutic importance, amount of usage, past quality problems, or other parameters, for testing by FDA laboratories. Under this program, district offices are directed to collect samples, which are then analyzed by various FDA laboratories for the appropriate specifications. About 1,500 batches are analyzed annually under this program.

(iii) *The Drug Product Problem Reporting Program.* This surveillance system is conducted jointly by FDA and USP officials. Under this program, pharmacists and other health professionals report to the USP any unusual observations regarding drug products they pruchase or dispense. Officials of USP, in turn, send copies of these reports to FDA, where review and followup are instituted. In addition, each manufacturer is supplied with a copy of any report involving one of its products. Under this program, over 5,000 reports are submitted annually.

(iv) *The Antibiotic Post-Certification Sampling Program.* FDA district offices are directed to collect samples of antibiotics that have previously been certified by the agency. To assure that marketed antibiotics meet specifications for the length of expiration dating, samples are collected from the oldest batches available. Samples are then analyzed by FDA's National Center for Antibiotic Analysis.

(v) *The District-Initiated Sampling Program.* Finished drug products that are not covered under any of the above programs may be monitored for acceptability under the FDA District-Initiated Sampling Program. Each FDA district office selects particular products to sample and test for appropriate specifications. Selections are made on the basis of factory inspections within the district, consumer complaints, previous experience with particular products or manufacturing facilities, or other factors of relevance to the field enforcement efforts.

(vi) *The Government-Wide Quality Assurance Program.* The agency is responsible for assuring the quality for drugs purchased by the Department of Defense, the Veterans Administration, and the Health Services Administration. This program provides that before any government contracts for drug purchases are issued, FDA must determine that the supplier is in compliance with regulatory requirements applicable to the drug to be purchased. After a contract is let, FDA inspects to evaluate whether the supplier has operated in conforming with CGMP regulations. In certain instances, specific products are analyzed by FDA laboratories to determine that these products do, in fact, meet appropriate quality criteria. Delivery of the finished drugs will not be accepted by the purchasing government agency without a final FDA review and evaluation of the supplier. In the 3½ years since this program began, FDA has made approximately 45,000 quality determinations related to Federal drug procurement. In response to requests from 8 States for similar quality assurance assistance from FDA, the agency has recently begun a pilot program at the request of the State of New York to examine the feasibility of providing similar services to State procurement programs.

(vii) *MAC program.* The Maximum Allowable Cost (MAC) regulations of the Department of Health, Education, and Welfare authorize the establishment of a limit on the amount the Federal government will pay under the Medicare and Medicaid statues in reimbursing for the cost of multiple source prescription drug products (45 CFR Part 19). Such limits are imposed on a drug-by-drug basis through defined procedures by the Pharmaceutical Reimbursement Board. Under these regulations, FDA is charged with the responsibility for reviewing drugs that are candidates for MAC Limits to assure that there are no bioequivalence issues or regulatory actions pending that should prevent the establishment of a MAC limit (45 CFR 19.5(b)). These documented reviews are carefully conducted by FDA under established procedures. As part of the review, results from bioequivalence and quality surveys are examined, inspection profiles of approved manufactures are reviewed, the Drug Product Problem Reporting System is queried, product specifications are compared and other quality assurance indices are reviewed. A written, documented response, which becomes part of the public administrative record, is then forwarded to the Pharmaceutical Reimbursement Board, the body that establishes the MAC limits.

(viii) *Biopharmaceutics Research Program.* The agency has sponsored a number of studies to determine whether a bioinequivalence problem exists among multiple source drug products and to develop methodology and standards for measuring and assuring bioequivalence. To date, 24 drugs have been evaluated for bioequivalence through FDA funded clinical studies; the majority of these studies were carried out by FDA contractors who have published their findings.

(ix) *Manufactures' reports of problems involving their own drug products.* FDA regulations require manufacturers of new drugs and antibiotic drugs to report promptly to the agency any information concerning manufacturing mixups or failures or unexpected adverse reactions or therapeutic failures in patients (21 CFR 310.300, 431.60). All manufacturers are required to notify FDA or firm-initiated removals from the market of drug products that the firm believes violate the act; with nonviolative products, firms are advised to consult with FDA (21 CFR 7.46, published in the FEDERAL REGISTER of June 16, 1978 (43 FR

26202)). The agency conducts a follow-up investigation on these reports, as appropriate, to determine the cause of the problem and the need for any FDA-initiated activity to correct the problem or prevent its recurrence.

(x) Manufacturers' reports of problems involving competitors' drug products. Although not required to do so, many manufacturers conduct tests on their competitors' products. FDA is frequently notified by these firms that, in their judgment, one or more competing products fail to meet compendial standards, or are bioinequivalent, or otherwise are in violation of the act or present a public health problem. Here, too, the agency conducts appropriate followup investigations that may lead to regulatory actions against the violative product or a change in applicable standards to protect the public health.

The agency concludes that these diverse programs, with different scopes and purposes but somewhat overlapping perspectives on the prescription drug market, provide assurance that manufacturers and drug products deviating from established requirements will be detected with reasonable promptness. Once a problem is detected, FDA can take a variety of regulatory enforcement activities to remove any violative products from the market and to prevent further distribution of violative drug products. The enforcement tools available to FDA include seizure of violative products (21 U.S.C. 334), injunctions against further violations (21 U.S.C. 332), criminal prosecution of those responsible for violative products (21 U.S.C. 333), and requests for voluntary recalls of violative products (21 CFR Part 7, Subpart C, published in the FEDERAL REGISTER of June 16, 1978 (43 FR 26202)).

All of the FDA's monitoring activities described above furnish additional grounds for concluding that drug products found to be pharmaceutically equivalent and bioequivalent will remain so and thus may be evaluated as therapeutically equivalent.

C. THE PRACTICAL FOUNDATION FOR EVALUATION OF DRUG PRODUCTS AS "THERAPEUTIC EQUIVALENTS"

Notwithstanding the scientific priciples and regulatory controls discussed above, concern has been expressed that, on the level of daily experience, FDA is unable to assure the consistent quality of "generic" drug products, so that therapeutic equivalence is not and can never be a practical reality. The PMA and some others have argued that products made by a certain segment of the pharmaceutical industry, defined variously as PMA members, "large" manufacturers, or "research-intensive" firms, are consistently of a higher quality than products made by the rest of the industry. (See, e.g., statement of Mr. C. Joseph Stetler, President, PMA, in "Drug Quality Hearings," 16529-38, and Pauls and Kloer, "FDA Enforcement Activities Within the Pharmaceutical Industry: Analysis of Relative Incentive" (hereafter called "Lilly Study").) Consequently, the argument implies, if a patient receives a competing drug product in place of that made by the PMA member (or large company or research-intensive firm), the patient has a much greater probability of using a substandard product that may be ineffective or even unsafe.

The question must then be asked: When a patient hands a pharmacist a prescription written for a brand name product, and the pharmacist selects a substitute product evaluated by FDA as being therapeutically equivalent to fill the prescription, how likely is it that the substitute product will be of the same quality as the brand name product prescribed by the patient's physician?

The answer given by FDA to this question is that it is overwhelmingly likely that the substituted product will be equal in quality to the prescribed product. Indeed, it is so likely that the products will be equal in quality, that the possibility that they will not be equal can properly be disregarded for practical purposes. There are several reasons for this conclusion.

First, as a result of the laws and programs previously discussed in this preamble and of the general competence of firms in the pharmaceutical industry, the overall quality of approved drug products sold in the United States is very high. FDA's monitoring of the marketplace and its antibiotic certification program disclose an excellent record of drug products that meet all applicable standards. Compared with the volume of drugs manufactured every year, the frequency of recalls and other regulatory actions is quite small. This general conclusion extends to all segments of the pharmaceutical industry engaged in the manufacture of drug products that are the subject of approved applications. Only these products are proposed to be included in the FDA list. By any measure of compliance with quality requirements, the level of industry performance is exceptionally good.

Second, the vast majority of generic drug products that are sold in the United States are manufactured by the very same group of companies that manufacture brand name products. Taking, for example, the members of PMA as one accepted definition of brand-name manufacturers, it appears that these firms account for about 95 percent of the sales of all approved multiple source drug products proposed to be evaluated as therapeutically equavalent. These drug products include the "pioneer" brand drug products, generic drug products marketed under a brand name (so-called "branded generics"), and generic drug products marketed without a brand name. Even if one examines the sales of drug products marketed solely under a generic name, PMA members supply an estimated 80 percent of the approved, therapeutically equivalent drug products. (Under 21 U.S.C. 374(a) FDA is precluded from obtaining sales and financial data from drug firms; the foregoing estimates were derived from published market survey data of wholesale drug purchases of prescription drug products, other than biologicals, by retail drug stores and hospital pharmacies in 1977.) Obviously, when one drug product evaluated by FDA as therapeutically equivalent is substituted for another, it is quite probable that the substituted product will also have been manufactured by a PMA member. No one takes the position that, when a product made by one PMA firm is substituted for a competing product made by another PMA firm, the substituted product is likely to be lower in quality. On the contrary, as far as FDA knows, there is unanimous agreement within PMA that these substituted products will not be inferior, whether labeled by brand name or generic.

Third, the remaining generic products that have been evaluated as therapeutically equivalent—those manufactured by firms that do not also manufacture brand name products—are overwhelmingly likely to be equal in quality to the brand name products. FDA's experience in regulating these products and their manufacturers discloses little meaningful difference in the ability of these firms to meet all applicable standards, nor in their actually doing so.

On June 1, 1978, a study sponsored by Eli Lilly and Co., was released purporting to show that FDA's experience is quite different with respect to firms other than brand name manufacturers. Specifically, the Lilly Study identifies 23 "research-intensive" pharmaceutical firms and compares records of FDA regulatory and monitoring actions on products made by these firms with those involving products of all other drug manufacturers. The authors conclude that products of the "research-intensive" firms "are recalled much less often and * * * have far fewer seizures, injunctions, and prosecutions and fewer drug product problem reports than 'other' companies" (Lilly Study, p. 3).

The Lilly Study has numerous methodological defects. It divides the pharmaceutical industry into two separate categories: "research-intensive" firms

and "other" firms. The authors do not state that criteria by which this distinction was made. When analyzing the study, FDA asked Paul deHaan, an internationally recognized expert on the pharmaceutical industry, to make a similar division, and his list of research-intensive and other firms differs significantly from Lilly's. The agency also divided the universe of drug manufacturers into other pairs: PMA members v. nonmembers, firms listed by IMS America as the top 50 drug manufacturers v. all others, firms with sales over $100 million annually v. those with smaller total sales, firms with sales over $10 million annually v. those with less, and those with annual sales exceeding $1 million v. Those with less. Utilizing these divisions, FDA has analyzed recall data for prescription drug products. The agency's conclusion is that no reliable conclusions can be drawn on the relative competence of pairs of drug manufacturers by using the type of analysis Lilly proposed. The FDA analysis of recall data is now being completed and will be made available in the near future. Notice of its availability will be published in the FEDERAL REGISTER, and comments on the Lilly Study and the FDA analysis may be submitted to the agency in conjunction with comments on this proposal.

In analyzing the recall data used in the Lilly Study, FDA discovered that Lilly had included recalls that had nothing to do with drug quality and even recalls that did not involve drug products. The Lilly Study also included recalls of products that would not be evaluated by FDA as therapeutic equivalents. This last error, in particular, renders the Lilly Study irrelevant to the issue of the quality of drug products that might be substituted for brand name products. Lilly included all prescription drug products in its universe for study. FDA would consider only those FDA-approved prescription drug products that are evaluated as therapeutically equivalent.

Within this universe, FDA has no reason to believe that any meaningful quality differences exist among drug products.

To illustrate this, one can look at the data on recalls of prescription drug products in 1977. Of the 94 recalls involving product defects likely to have adverse health consequences, 74 involved drug products that did not have approved new drug applications and therefore would even be eligible for evaluation as therapeutic equivalents. Of the remaining 20, a total of 16 were recalls of products that FDA proposes not to evaluate as therapeutically equivalent. Thus, only 4 recalls in 1977 related to products that FDA would list as being therapeutic equivalents.

Clearly the policies proposed for evaluating drugs as therapeutically equivalent will effectively screen out the vast majority of products that have been subject to recall in recent years. The recall data, when properly analyzed according to the policies proposed for the evaluation of therapeutic equivalence, support the view that the general level of quality of products on the proposed list is very high. Similar results would probably be obtained if one analyzed the products listed as therapeutic equivalents using other measures of compliance with regulatory requirements. There is little meaningful difference in drug product quality between large and small manufacturers, or between brand and generic labels, for products evaluated as therapeutic equivalents.

In summary, arguments that serious differences exist in the quality of competing drug products ignore the very high level of quality for all drug products, rely principally on a methodologically unsound study, and are quite misplaced when applied to drug products that meet FDA's proposed criteria for evaluating therapeutic equivalence. In the absence of reliable data to the contrary, and based on FDA's broad experience in regulating drugs, it is sound and appropriate for FDA and the public to rely on the requirements of law, compendial standards, the drug approval process, and FDA's monitoring, compliance, and enforcement programs to conclude that, for practical purposes, therapeutically equivalent drug products included in the list will be of equal quality.

It should be emphasized, however, that no member of the public is required to rely on these regulatory controls or to accept this conclusion. FDA's evaluations of therapeutic equivalence are not binding on any State, any physician, any pharmacist, or any patient. The list is intended to facilitate substitution and assure that drug product selection decisions are well-informed. FDA's proposed list does not mandate substitution, nor does it require that, when substitution occurs, any particular product is to be dispensed.

Under all State substitution laws now in effect, pharmacists retain the authority and responsibility for the exercise of professional judgment in determining which drug products to keep in stock for purposes of dispensing and in determining which product to use in filling a particular prescription. If a pharmacist believes that a particular product is not of adequate quality, he or she need not stock that product and need not use it for substitution.

A patient who is not willing to rely on the list as an assurance of quality can rely on the professional judgment of his or her physician and pharmacist. Under most drug product selection statutes, a physician can direct that the particular drug product prescribed by the physician be dispensed to the patient. Also, most States require that a pharmacist inform a patient that a substitution may be made. Thus, patients are able to consult with both physician and pharmacist as to the wisdom of substitution in a particular case.

The patient has yet one more protection as well. Under all State substitution laws now in effect, the patient retains the right to insist that certain generic products not be used for substitution or that the prescription be filled with some particular substitute product. If, for example, a patient believes that only five firms make high quality products, the patient can insist that the substitute product be one made by one of those firms. The patient may pay a premium price for that product, because therapeutically equivalent products may differ widely in price, but would simply be exercising a right recognized by law. In some States, however, a patient may only receive his or her chosen substitute if it meets the standards considered equivalent and is less expensive than the prescribed product.

IV. SPECIFIC CRITERIA PROPOSED TO BE USED IN PREPARATION OF LIST

The agency proposes to issue a list that identifies drug products that have been affirmatively approved by FDA for marketing in the United States and evaluates those products on that list that are available from more than one source of supply as to their therapeutic equivalence.

A. IDENTIFICATION OF DRUG PRODUCTS

1. *Approved new drugs and antibiotic drugs.* FDA proposes that the list include all drug products that have been affirmatively approved by FDA under sections 505 and 507 of the act, with certain exceptions.

(a) Exclusions of certain approved products: The agency proposes to exclude from the list two groups of drug products that are subject to approvals under sections 505 and 507 of the act.

(i) *Over-the-counter drug products.* The proposed list does not include drug products that may be sold over-the-counter (OTC) without a prescription, in accordance with section 503(b)(1) of the act (21 U.S.C. 353(b)(1)). Only a small percentage of these drug products are being marketed with approved new drug applications. All OTC drug products are currently being reviewed for safety and effectiveness (21 CFR Part 330). Until that review is completed, the identification of safe and effective OTC drugs is not feasible. Furthermore, the con-

siderations underlying this proposal, as explained in section I.A. of this preamble. apply almost entirely to prescription drug products. Consequently, the agency proposes to exclude OTC drugs approved under section 505 of the act from the list.

(ii) *Prescription drug products not yet determined to be effective.* The DESI review is not yet completed for certain drug products marketed under new drug applications that became effective between 1938 and 1962. Under section 107(c) of the Drug Amendments of 1962 (21 U.S.C.A. 321 note), these applications are "deemed approved" pending a determination on the effectiveness of the drug. Under section 507(h) of the act, regulations were issued permitting certification of antibiotic drugs pending a determination of their effectiveness. The DESI review represents FDA's efforts to apply the efficacy provisions of the act to these drug products.

If substantial evidence of the drug's efficacy is not submitted to the agency in the DESI review, FDA must proceed to withdraw approval of the new drug application. This review program is not yet finished, with the result that there remain on the market "deemed approved" drug products, the effectiveness of which is still in doubt. Inclusion of these products on the FDA list, however, might mislead users into believing that their effectiveness had been established.

In addition, in order to conserve agency resources and concentrate on more serious health priorities, FDA has neither required nor permitted approval of new drug applications for the marketing of drug products that are identical, similar, or related to the drug product covered by a "deemed approved" application until a final decision on effectiveness is made (FDA Compliance Policy Guide 7132c.08). Recently, in a notice published in the FEDERAL REGISTER of February 17, 1978 (43 FR 7044), this policy was changed for certain DESI drugs that are subject to further testing requirements, but implementation is only starting. Consequently, listing of the "deemed approved" products, without permitting others to obtain such an approval, would be unfair and discriminatory.

The agency proposes therefore to exclude from the list at this time all prescription drug products, whether or not subject to a "deemed approved" new drug application, for which a final DESI determination of effectiveness has not been made. "Deemed approved" applications will be included in an appendix to the list for information purposes only.

(b) Listing of unmarketed approved products: The inclusion of a drug product on this FDA list does not necessarily mean that it is being marketed at the present time. The list reflects the products that have been approved for marketing under sections 505 and 507 of the act. A manufacturer may, however, withdraw any of its products from active marketing at any time, while still maintaining an active application in FDA files. The agency, in cooperation with manufacturers, seeks to terminate approvals for products that are not intended to be remarketed in the future. FDA files are, therefore, not generally out of date, and the agency believes that most of the products in this list are marketed at the present time. Nevertheless, some products included in the list may not actually be available for purchase in the United States.

(c) Identification of other distributors or brand names for approved products: The proposed FDA list would identify only the holder of the approved application in FDA files. Frequently, approved products are manufactured for, or purchased and repackaged or relabeled by, distributors who in turn market these products under other labels. These labels may or may not identify the actual manufacturer of the drug product. Because these distributors often shift their sources of supply in the commercial marketplace, there is no feasible way at this time for the FDA to maintain an up-to-date and complete list either linking every approved manufacturer with the distributors currently handling its product or linking each distributor with its current suppliers. Purchasers and dispensers wishing to know the manufacturing source of a particular batch offered by a distributor must rely upon the distributor to disclose such information, either in the labeling or otherwise. Disclosure of the actual manufacturer is not required by the act (21 U.S.C. 352(b)(1)). Absent voluntary labeling or disclosure, there is no ready and convenient way for a purchaser or dispenser to verify that the distributor's product was manufactured under an approved new drug application.

(d) Listing of approved products subject to regulatory actions: From time to time approved products may be found to be in violation of one or more requirements of the act. In such circumstances, the agency will commence appropriate enforcement action to remove the violative product from the market, e.g., by voluntary recall or seizure. If the problem leading to the violation is continuing, so that there exists a risk of future noncomplying products entering the market, FDA will undertake steps to eliminate that risk, e.g., by court injunction, withdrawal of the approval of the new drug application, or revocation of the antibiotic certification. Where the violation is corrected by removal of the particular batch of the product from the market, no need exists to exclude the product from this list; the approval continues and other batches are not tainted. Where additional preventive action is indicated, the agency will utilize appropriate legal procedures to keep the product off the market; exclusion from this list prior to completion of those procedures might be considered improper or an infringement of the application holder's legal rights. Consequently, it is proposed that no such product be excluded from the list until completion of FDA proceedings to withdraw approval of the product under section 505 or 507, as applicable. Retention of a violative product on the list will not have any adverse health consequences because other legal tools are available to the agency to prevent actual marketing of violative products.

2. *Drug products not subject to approved new drug applications or antibiotic certifications.* A number of drug products are currently being marketed under claims of exemption from the applicability of sections 505 and 507 of the act. By far the greatest proportion of these drug products rely upon claims of marketing prior to 1938 and consequent exclusion from the definition of "new drug" in section 201(p)(1) of the act (21 U.S.C. 321(p)(1)). Because these drugs have been distributed in one form or another for many years, patent protection has expired and often several firms are now competing in the market.

For the reasons discussed in section III.C.1. above, the agency proposes to exclude from the list any drug product that has not been reviewed and approved through the new drug or antibiotic approval process. This exclusion does not necessarily mean that any such drug would not meet the current legal standards for a new drug, or is in violation of the law, or is unsafe or ineffective. Rather, the exclusion is based on the premise that FDA has not had the authority or opportunity to evaluate and assure the safety, effectiveness, and quality of the drug product.

B. EVALUATION OF THERAPEUTIC EQUIVALENCE

1. *Scope of evaluations.* The agency proposes to limit its evaluations of therapeutic equivalence to those drug products that are included in the list of products approved under sections 505 and 507 of the act. For the reasons discussed in section III.C.1. above, FDA lacks sufficient information at this time to assess the therapeutic equivalence of drug products not regulated under new drug applications or antibiotic certifications. The agency is not asserting that these products may not be therapeutically equivalent;

their equivalence simply cannot be evaluated or assured. The agency has no current plans to review unapproved drug products for therapeutic equivalence; however, such evaluations may become feasible in the future for at least certain classes of these drug products. At such time, inclusion of these drug products and their therapeutic evaluations in the list will be considered.

FDA also proposes to make no therapeutic equivalence evaluations of approved drug products that are available from only one manufacturer. Obviously only when two or more products are available in the market does the question of therapeutic equivalence arise.

2. *Evaluation of pharmaceutical equivalence.* It is proposed that two drug products will not be evaluated as being therapeutic equivalents unless they are pharmaceutical equivalents, as defined in 21 CFR 320.1(c).

This criterion would be applied as described in the following examples.

(a) Different salts or esters: Different salts and esters of the same therapeutic moiety are regarded as not pharmaceutically equivalent. Therefore, drug products containing different salts or esters will be presumed to be therapeutically inequivalent. Data could be developed adequate to demonstrate the therapeutic equivalence of different salts or esters on a product-by-product basis. But in practice, there are insufficient cases in which such equivalence has been demonstrated to warrant evaluating the therapeutic equivalence of pharmaceutical alternatives. There are no known instances in the proposed list where different salts are evaluated as therapeutically equivalent.

On the other hand, anhydrous and hydrated entities are not considered to be different salts or esters. Thus, as in the case of ampicillin, these two forms will be treated as pharmaceutical equivalents.

(b) Variations in amount of active drug ingredient: Different products may be labeled as containing slightly different quantities of the same active drug ingredient. In practice, the quantity of active ingredient in individual drug products will vary from the amount shown on the label; as long as these variations are within applicable compendial or antibiotic standards, the products are viewed as being in compliance with the act. Similar variations between different brands of drug products should be similarly tolerated. Therefore, two drug products labeled as having different amounts of the same active drug ingredients will be considered as pharmaceutically equivalent, if the difference between declared potencies does not exceed 1 percent.

(c) Products requiring reconstitution, dilution, or other manipulation before dispensing: A drug product may require dissolution, reconstitution, dilution, or other manipulation before dispensing. Pharmaceutical equivalence will be evaluated on the basis of the properties of the drug product before such manipulation. The agency recognizes that the process of manipulation may introduce differences in the drug products. For example, pharmaceutically equivalent powders to be reconstituted for administration as oral or injectable liquids may vary in their expiration time or storage conditions after reconstitution. An FDA evaluation that such products are pharmaceutically equivalent is applicable only when those products are reconstituted, stored, and used under the conditions specified in the labeling of each product.

Although drug products that are solids for reconstitution, diluted solutions, or concentrated solutions contain different concentrations of active ingredients, and thus are not considered to be pharmaceutical equivalents, this evaluation is not intended to prevent the exercise of accepted professional practice to render pharmaceutically different concentrations into pharmacuetical equivalents. For example, concentrated solutions may be diluted to lower strengths by using proper procedures designed to maintain the quality of the product.

(d) Variations in package size: Where package size variations have therapeutic implications, drug products packaged in different sizes are not considered to be pharmaceutical equivalents. For example, many oral contraceptives are supplied in 21- and 28-tablet packets, the 28-tablet packets containing 7 placebo tablets. These two packaging configurations are not regarded as pharmaceutically equivalent and thus not therapeutically equivalent.

(e) Deficiencies in compendial or other applicable standards: As discussed in section III.B.1. above, the agency believes that existing compendial standards are generally adequate to provide a reasonable assurance of therapeutic equivalence. Nevertheless, from time to time specific standards may be found by FDA to be deficient and, until they are corrected or supplemented, they may not permit an FDA evaluation of either pharmaceutical or therapeutic equivalence. When these situations arise, it is proposed that drug products subject to the standard in question not be considered to be pharmaceutically equivalent.

(f) Solutions and powders for aerosol-nebulizer drug delivery systems: Uncertainty about the therapeutic equivalence of aerosolized products arises primarily because of differences in their drug delivery systems. If powders or solutions for aerosolization are marketed without restriction to a specific delivery system, they generally present no therapeutic equivalence issues and may be treated as pharmaceutical equivalents. Those products, however, that are marketed so that they are only compatible with, or are only a component of, a specific delivery system may present significant differences, e.g., in the dose of drug or particle size delivered by different products. The agency proposes that the drug products for use in specific delivery systems not be regarded as pharmaceutically equivalents.

(g) Injectable oil solutions: The absorption of drugs in injectable oil solutions may vary substantially with the type of oil employed as a vehicle and the concentration of the active ingredient. Therefore, FDA proposes that it consider injectable oil solutions to be pharmaceutically equivalent only when the active ingredient, its concentration, and the type of oil used as a vehicle are all identical.

(h) Aqueous injectable (parenteral) solutions: All injectable products are listed under the general category "Injectable; Injection" but specific routes of administration are not shown. Some multisource products that are pharmaceutical equivalents are labeled by their different manufacturers for different routes of administration. Consistent with accepted professional practice, it is the responsibility of the prescriber, dispenser, or individual administering the product to be familiar with a product's labeling to assure that it is given only by the route of administration stated in the labeling.

The agency proposes that, unless otherwise noted, injectable products available as dry powders for reconstitution, concentrated sterile solutions for dilution, or sterile solutions ready for injection, all be considered to be pharmaceutically equivalent if they are designed to produce the same concentration for injection and are equivalently labeled.

(i) Large volume parenteral drug products: Certain commonly used large volume intravenous products are not included in this list, e.g., dextrose 5 percent with water, dextrose 10 percent with water, and sodium chloride injection. Virtually all of these drugs came on the market in glass containers before 1938 and have not been required to obtain an approved new drug application as a condition of marketing. When packaged in plastic containers, however, these same drugs are considered to be new drugs requiring approved new drug applications for marketing (21 CFR 310.509, published in the FEDERAL REGISTER of December 15, 1978 (43 FR 58557)). The proposed

list thus includes only those approved solutions in plastic containers.

All large volume parenteral products are manufactured under similar standards regardless of whether they are packaged in glass or plastic. Thus, FDA has no reason to believe that the packaging container of large volume parenteral drug products that are pharmaceutically equivalent would have any effect on their therapeutic equivalence. Nevertheless, in keeping with the policy of evaluating only approved drug products, large volume parenterals packaged in glass containers are not included on the proposed list.

(j) Drug products for nonsystemic use: There are a variety of drug products available for topical, ophthalmic, otic, rectal, and vaginal administration that are not intended to produce their therapeutic effect by means of systemic absorption. Dosage forms of these drug products can include solutions, creams, ointments, gels, lotions, pastes, sprays, and suppositories. Different nonsystemic dosage forms are not pharmaceutically equivalent, even though they may contain the same active ingredient. Therefore, FDA proposes that they not be considered therapeutically equivalent. On the other hand, products in the same nonsystemic dosage form will be evaluated as therapeutically equivalent if they are pharmaceutically equivalent.

3. *Evaluation of bioequivalence.* The agency proposes that, in evaluating the bioequivalence of drug products, FDA presume that pharmaceutically equivalent drug products are also bioequivalent, unless there is a scientific reason to believe that an actual or potential problem of bioinequivalence exists with respect to the drug products. When a bioinequivalence problem is identified, however, a drug product will be presumed not to be bioequivalent until a new drug application is approved. The application must contain adequate scientific evidence demonstrating the bioequivalence of the product to an appropriate reference product or reference standard.

The following examples show how this criterion will be applied in particular situations.

(a) Active drug ingredients or dosage forms with documented bioinequivalence problems: FDA has identified those new drugs originally marketed between 1938 and 1962 that are now known or suspected to present bioinequivalence problems (21 CFR 320.22). In compiling this list, the agency took a conservative approach, so that as evidence of bioequivalence is closely examined, a number of the drugs on this list will probably be found not to present a real problem. (See the FEDERAL REGISTER of January 7, 1977 (42 FR 1624).) The criteria that will be used in determining the existence of a bioinequivalence problem are set forth in 21 CFR 320.52. Until the determinations are made, however, bioequivalence, rather than bioequivalence, is presumed. In addition, for any drug product for which a bioequivalence requirement is established under 21 CFR Part 320, Subprt C, bioinequivalence will of course be presumed. No drug product containing an active drug ingredient on the list in 21 CFR 320.22 in the dosage form specified, and no drug product for which a bioequivalence requirement is established, will be considered as bioequivalent unless the manufacturer of the drug product has submitted studies acceptable to FDA fulfilling the bioequivalence requirements.

(b) Active drug ingredient or dosage forms with suspected bioinequivalence problems: FDA's bioequivalence regulations contain criteria and procedures for determining the existence of a bioequivalence problem among drug products other than those identified in the 1977 list (21 CFR Part 320, Subpart C). It is proposed that for any drug ingredient or dosage form that, in FDA's opinion, meets these criteria, bioinequivalence will be presumed. This presumption is solely for purposes of evaluation of therapeutic equivalence and therefore may be made before the commencement of proceedings under the bioequivalence regulations.

(c) Controlled release dosage forms: Controlled release tablets, capsules, and injectables are subject to bioavailability and bioequivalence differences, primarily because different firms developing controlled release products for the same active ingredient rarely employ the same approach to formulating their controlled release products. The agency proposes that different controlled release dosage forms containing the same active ingredient in equal strength not be evaluated as bioequivalent unless equivalence between individual products has been specifically demonstrated through appropriate bioequivalence studies.

(d) Enteric coated oral dosage forms: Drug products in enteric coated dosage forms containing the same active ingredients are subject to significant differences in absorption. Such products cannot necessarily be considered as pharmaceutically equivalent because they do not necessarily meet similar standards, and few manufacturers of enteric coated products have studied the pharmacokinetics of their products. FDA proposes that different enteric coated products containing the same active ingredients not be considered as bioequivalent unless appropriate bioequivalence studies are satisfactorily performed.

(e) Injectable suspensions: Injectable suspensions containing an active ingredient suspended in an aqueous or oleagenous vehicle are subject to bioinequivalence problems because differences in particle size, polymorphic structure of the suspended active ingredient, or the suspension formulation can significantly affect the rate of release and the rate of absorption. FDA proposes that it not consider pharmaceutical equivalents of these products as being bioequivalent without adequate evidence of bioequivalence being presented to the agency.

(f) Suppositories for systemic use: The absorption of active ingredients from suppositories that are intended to have a systemic effect, as distinct from suppositories administered for local effect, can vary significantly from product to product. Therefore, the agency proposes to consider pharmaceutically equivalent systemic suppositories as bioequivalent only if positive evidence of bioequivalence is presented to FDA.

4. *Evaluation of other factors.* FDA proposes that the drug products that are pharmaceutically equivalent, are bioequivalent, and are approved under sections 505 or 507 of the act be evaluated as therapeutically equivalent, unless special circumstances prevent such an evaluation. The definition of "therapeutic equivalence" refers to two factors in addition to pharmaceutical equivalence and bioequivalence; these two are related to labeling and manufacturing practices. In the opinion of the agency, approval of a new drug application or antibiotic certification for a drug product is a sufficient basis for assuring that the drug product has been reviewed for unsafe inactive ingredients and contaminants; that its labeling is adequate and complies with legal requirements; and that no deficiencies are known to exist in the manufacturing controls applied to the drug product at the time of approval. Therefore, it is unnecessary to conduct a specific review of product formulations, labeling, and current manufacturing practices in evaluating therapeutic equivalence.

(a) Inactive ingredients: FDA regulates and reviews inactive ingredients through a variety of mechanisms. The GRAS (generally recognized as safe) review of food ingredients, described in the FEDERAL REGISTER of July 26, 1973 (38 FR 20044), includes most of the common inactive ingredients, including flavors. Color additives are already regulated under section 706 of the act (21 U.S.C. 376) and the implementing regulations in 21 CFR Parts 70 through 82. Further, the agency has, through approval of new drug applications and antibiotic certifications, specifically reviewed and approved most inactive ingredients currently in

use in regard to their safety. In addition, FDA has in the past identified, and may from time to time in the future identify, specific ingredients that may not be used in packaging or in drug products because of safety concerns (e.g., the vinylchloride document published in the FEDERAL REGISTER of April 22, 1974 (30 FR 14238), and the chloroform document published in the FEDERAL REGISTER of June 29, 1976 (41 FR 26842)).

These regulatory procedures, in conjunction with review of new applications for drug products, have proven adequate to prevent problems of therapeutic inequivalence among drug products from developing because of inactive engredients in the drug products. Consequently, it is proposed that FDA evaluate as being therapeutically equivalent approved drug products that meet the standards for pharmaceutical equivalence and bio-equivalence, unless a specific problem affecting the safety or effectiveness of a drug product is known to result from a specific inactive ingredient used in that drug product.

(b) Labeling: FDA has established standards for the format and content of all drug product labeling, e.g., 21 CFR 201.56. From time to time specific requirements are also established for specific drug products. (See 21 CFR Part 201, Subpart G, and Part 310, Subpart E.) Generally, however, labeling is reviewed and approved during the new drug application and antibiotic certification process.

Occasionally there may be variation among pharmaceutically equivalent products in the labeling instructions for admininstering the dose. For example, one antibiotic drug product may contain labeling that requires giving the dose on an empty stomach, while another's labeling permits the drug to be given without regard to food intake, based upon in vivo studies of the latter product that establishes that blood levels of the drug are not affected by the presence of food. An FDA evaluation of therapeutic equivalence of pharmaceutically equivalent drug products in such a case is applicable only when each product is taken in accordance with its particular labeling directions.

(c) Manufacturing controls and drug quality: Even after a drug product has been approved, problems may arise in the manufacturing process that casue one or more batches of the product to be out of compliance with applicable standards and requirements. Where regulatory action, such as a recall or seizure, serves to remove a violative batch or batches from the market, the evaluation of the therapeutic equivalence of the approved product need not be changed. Thus, the remaining stocks and future batches of the product which are available for purchase are untainted.

(d) Insufficient data: In isolated situations, the agency lacks sufficient data to evaluate whether specific drug products; or drug products containing a specific active drug ingredient, are therapeutically equivalent under the criteria set forth above. The agency proposes that in these situations drug products be presumed to be inequivalent until adequate information becomes available to make a full evaluation of therapeutic equivalence.

V. PROCEDURES FOR PREPARING AND DISTRIBUTING THE LIST

A. THE PROPOSED REGULATION

The agency proposes to add a new provision to its public information regulations reflecting the proposed policy of making available a list of all approved drug products, together with evaluations of therapeutic equivalence. Adoption of this regulation would affirm the tentative decision to proceed with the proposed policy. The proposed regulation under 21 CFR 20.117(a)(3) offers the public an opportunity to comment on all aspects of this proposal. FDA invites these comments and will carefully consider all of them before finally deciding whether the agency should publish a final list of approved drug products with evaluations on therapeutic equivalence.

B. THE PROPOSED LIST

Concurrent with this proposal, the agency is also making available a proposed list. This document is being sent to State health officials, and is on display in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. Additional copies of the draft will be printed and available after January 22, 1979, from Margaret Lawrence, Consumer Inquiries Staff (HFJ-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, (301-443-3170).

Because copies are limited in number, the agency asks that only persons contemplating submitting documents in response to this notice request a copy of the proposed list. This version is tentative and is subject to change in light of the comments received; it is not intended for general distribution and use at this time.

The proposed list contains a preface, the actual drug product list, and four additional aids to using the list. In the preface, a statement of the background and status of the list is provided, together with explanations of the criteria used in developing the list and the evaluations of thereapeutic equivalence. These materials essentially summarize this notice to help users of the list. The preface also contains an explanation of the codes used in the list to describe the therapeutic evaluations made by FDA of the listed multiple source drug products. Finally, there is an explanation of special situations not adequately described by the therapeutic codes and a guide to reading the list.

The proposed list itself sets forth, to the best of FDA's knowledge, all drug products with approved new drug applications, under section 505 of the act, or approved antibiotic certification forms, under section 507 of the act. In preparing this list, FDA initially drew from its computerized files of approved NDA's, and antibiotic Form 5's. In order to minimize the potential for error, a complete list of approved NDA's, ANDA's, and antibiotic Form 5's, as of April 1978, was published as an interim document in May, and sent to appropriate State officials and agencies, including health officers, boards of pharmacy, and drug procurement agents, for review and comment. By notice published in the FEDERAL REGISTER of June 30, 1978 (43 FR 28557), this interim list was also made publicly available, with a request for additions, deletions, or corrections. In addition, on two separate occasions, FDA sent to each application holder data worksheets listing its products that FDA had identified as being approved; corrections were solicited; the agency received a 100 percent response with considerable updating information, indicating a serious and careful review by the firms. Information received in response to these requests has been incorporated in the proposed list. Information regarding approved antibiotic Form 6's (the antibiotic certification analogous to the ANDA) has also now been included. Errors may still remain, however, and additional corrections are solicited by this proposal.

The proposed therapeutic equivalence evaluations have not previously been circulated. They reflect FDA's application of the specific criteria proposed in section IV above to the approved multisource drug products on the list. The evaluations are presented in the form of code letters that explain the basis for the evaluation made. An explanation of the code is in the preface.

After the list, four additional items are provided to assist the reader: an index of drug products by trade or brand name, an index by name of the holder of the approval, an abbreviation list for the drug firms listed, and an appendix regarding drug products still being evaluated for effectiveness in the DESI review.

The agency invites comments and suggestions on the proposed list. Because the list is to be a working tool,

FDA wants its style and format to be most helpful to users.

C. PUBLISHING AND DISTRIBUTING THE LIST

FDA is presently planning to have copies of the list, when finally issued, printed and sold through the U.S. Government Printing Office, Washington, DC 20402. The agency invites suggestions on other methods of publication and distribution.

D. UPDATING THE LIST

FDA proposes that after the initial list is issued, it will be revised on a quarterly basis during the first year. These revisions would include the addition or deletion of approved drug products as well as any changes in evaluations of therapeutic equivalence during the preceding 90 days. After the first year, the frequency of revisions would be reevaluated. The agency solicits comments on this plan and how these revisions might best be disseminated.

The Food and Drug Administration has determined that this document does not contain an agency action covered by 21 CFR 25.1(b) and consideration by the agency of the need for preparing an environmental impact statement is not required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 201 et seq., 52 Stat. 1040 et seq. as amended (21 U.S.C. 321 et seq.)), the Public Health Service Act (sec. 1 et seq., 58 Stat. 682 et seq. as amended (42 U.S.C. 201 et seq.)), and the Freedom of Information Act (Pub. L. 90-23, 81 Stat. 54-56 as amended by 88 Stat. 1561-1565 (5 U.S.C. 552)) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that § 20.117 of Part 20 of Title 21 of the Code of Federal Regulations be amended by adding a new paragraph (a)(3) to read as follows:

§ 20.117 New drug information.

(a) * * *

(3) A listing of all new drug applications, abbreviated new drug applications, antibiotic Form 5's, or antibiotic Form 6's, which were approved since 1938 and which are still approved covering prescription drug products, except prescription drug products covered by applications deemed approved under the Drug Amendments of 1962 and not yet determined to be effective in the Drug Efficacy Study Implementation program, showing the name of the active ingredient, the type of dosage form, the trade name of the product, the application or certificate holder, and the strength or potency of the product. This listing shall also include, for each active ingredient in a particular dosage form for which there is more than one approved application or certificate, an evaluation of the therapeutic equivalence of the drug products covered by such applications or certificates.

* * * * *

Interested persons may, on or before April 12, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

This proposal to make available to the public a list of approved drug products, including FDA's evaluation of the therapeutic equivalence of multisource drug products on that list, does not fall under the purview of Executive Order 12044 which governs the process for developing significant regulations. Consequently, a regulatory Analysis is not required. The availability of this information may affect the purchasing, prescribing, and dispensing of prescription drug products. It is currently expected that this activity will promote competition, reduce prescription durg prices, and thus benefit the consumer. FDA intends to examine the economic impact associated with this activity more closely and solicits comments and supporting data that may be relevant to this examination.

Dated: January 8, 1979.

DONALD KENNEDY,
Commissioner of Food and Drugs.

[FR Doc. 79-1052 Filed 1-9-79; 12:00 pm]

FRIDAY, JANUARY 12, 1979
PART V

THE NATIONAL ARCHIVES OF THE UNITED STATES • 1934 •

federal register

WATER RESOURCES COUNCIL

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UPPER MISSISSIPPI RIVER SYSTEM MASTER PLAN

Proposed Guidelines for Public Participation

[8410-01-M]

WATER RESOURCES COUNCIL

[18 CFR Part 708]

UPPER MISSISSIPPI RIVER BASIN COMMISSION; PUBLIC PARTICIPATION IN UPPER MISSISSIPPI RIVER SYSTEM MASTER PLAN

Proposed Guidelines

AGENCY: Upper Mississippi River Basin Commission, United States Water Resources Council.

ACTION: Proposed rule.

SUMMARY: This document proposes guidelines for public participation in the Upper Mississippi River System Comprehensive Master Management Plan, mandated by Title I of Pub. L. 95-502, the Inland Waterways Authorization Act of 1978. It is submitted preliminary to final publication to permit interested agencies, organizations, and persons to comment on the proposal.

DATES: Comment must be received on or before February 12, 1979.

A public meeting on these proposed guidelines will be held on February 5, 1979.

ADDRESSES: Send comments to: Upper Mississippi River Basin Commission, Room 510 Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

The public meeting will be held at the Thunderbird Motel, Bloomington, Minnesota.

CONTACT: For further information contact:

D. D. Galloway, (612) 725-4690.

SUPPLEMENTARY INFORMATION: Pub. L. 95-502, the Inland Waterways Authorization Act of 1978, was enacted October 21, 1978. In part, the Act provides for the following: (1) Replacement is authorized of Locks and Dam No. 26 on the Mississippi River at Alton, Illinois with a new dam and single lock two miles downstream from the existing dam; (2) An excise tax is imposed on fuel used by commercial cargo vessels on specified inland waterways; (3) A comprehensive study is to be made of inland waterway user charges and taxes; (4) The Upper Mississippi River Basin Commission is to prepare a comprehensive master plan for the management of the Upper Mississippi River System in cooperation with appropriate federal, state, and local officials. The Commission, established under Title II of Pub. L. 89-80, the Water Resources Planning Act of 1965, is directed to publish the preliminary master plan not later than January 1, 1981 and to publish the final master plan one year later.

As part of that assignment, Congress has directed the Commission in Title I, Sec. 101(b) of the Act to publish, within 150 days after the date of enactment, guidelines in the FEDERAL REGISTER for public participation in the development, revision, and implementation of the master plan. Such guidelines are to be afterwards incorporated in the overall plan of study of the master plan.

In the interest of eliciting participation not only in the substantive planning process but also in the formulation of the guidelines, a 30-day period has been set aside for interested agencies, organizations, and persons to comment by submission of written or oral data, views or arguments before the final document is published. All communications received by the Commission on or before February 12, 1979 will be considered before final action is taken on the proposed guidelines. The proposal contained in this notice may be changed in light of comments received. All comments submitted to the Commission will be available for examination by interested agencies, organizations, or persons both before and after the closing date.

Supplementary to this notice, the Commission will hold a public meeting February 5, 1979 from 11:00 a.m. to 4:00 p.m. at the Thunderbird Motel, Bloomington, Minnesota, for purposes of hearing comments by interested agencies, organizations, and persons in regard to the proposed guidelines. If appropriate response is received, proceedings of this meeting will be published and made available at cost.

WORDS OF ISSUANCE: It is proposed to amend 18 CFR Chapter VI by adding the following Part 708:

UPPER MISSISSIPPI RIVER BASIN COMMISSION; PUBLIC PARTICIPATION IN UPPER MISSISSIPPI RIVER SYSTEM MASTER PLAN

Sec.
708.1 Definitions.
708.2 Scope.
708.3 Policy, objectives, and standards.
708.4 Required programs and reports.
708.5 Program objectives implementation.

AUTHORITY: Title II, Sec. 204, Pub. L. 89-80, Water Resources Planning Act of 1965; Title I, sec. 101 (b), Pub. L. 95-502, Inland Waterways Authorization Act of 1978.

§ 708.1 Definitions.

As used in this part, the term:

(a) "Act" means the Inland Waterways Authorization Act of 1978, Public Law 95-502.

(b) "Commission" means the Upper Mississippi River Basin Commission, with headquarters at Fort Snelling, Twin Cities, Minnesota.

(c) "Master Plan" means the Upper Mississippi River System Comprehensive Master Management Plan mandated by Title I of the Act.

(d) "GREAT" refers to studies conducted by Great River Environmental Action Teams pursuant to Sec. 117 of the Water Resources and Development Act of 1976 (Pub. Law 94-587) for purposes of developing balanced management strategies for multipurpose use of the Upper Mississippi River.

(e) "System" means those Upper Mississippi River reaches containing commercial navigation channels on the Mississippi River main stem north of Cairo, Illinois, the Minnesota River, Minnesota; Black River, Wisconsin; Saint Croix River, Minnesota and Wisconsin; Illinois River and Waterway, Illinois; and Kaskaskia River, Illinois.

(f) "Public meeting" means a meeting to provide individuals and representatives of interested organizations opportunities to present their opinions and suggestions by means of an informally structured format.

(g) "Public hearing" means a formally structured public meeting scheduled to provide adequate time for each testimony, which will be recorded, transcribed, published, and made available to the public.

§ 708.2 Scope.

(a) This part describes minimum guidelines for public participation in the development, revision, and implementation of the Master Plan specified in the Act.

(b) This part applies to the following organizations with references to the activities described in § 707.2(a):

(1) The Commission, including its staff and persons, organizations, and agencies under contract to it for work within the scope of the Master Plan.

(2) Such Federal departments and agencies as are directed under Sec. 101(e) of the Act to conduct studies pursuant to the Master Plan, for any work carried out for purposes of developing, revising, and implementing the Master Plan.

(3) Such departments and agencies of any state or local government as are authorized and/or directed to carry out studies and analyses under direction or advice of the Commission as stipulated in Sec. 101 of the Act.

(c) The guidelines referred to in this part shall be considered general requirements applicable to all studies, procedures, programs, regulations, or other administrative devices carried out under § 708.2(b), but only for those Master Plan activities under authority of the Act.

§ 708.3 Policy, objectives, and standards.

(a) *Policy.* (1) Congress had directed the Commission to prepare a comprehensive Master Plan for management of the System in cooperation with appropriate Federal, state, and local officials. In developing the plan, the Com-

mission is required to identify various economic, recreational, and environmental objectives of the System, recommend guidelines to achieve such objectives, and proposed methods to assure compliance with such guidelines and coordination of future management decisions affecting the System, and include with the proposed plan any legislation proposals which may be necessary to carry out such recommendations and achieve such objectives.

(2) The Commission is required to provide for public participation in the development, revision, and implementation of the Master Plan and to encourage and assist such participation. In doing this, the Commission seeks to foster a spirit of openness and a sense of mutual trust between the public and the planners. Public participation is expected to result in greater responsiveness of the Master Plan to public concerns and priorities, as well as improved popular understanding of official studies, planning processes, and decisions.

(3) In order for public participation to be effective, it must be timely and integrated into the planning process. The Commission shall seek public participation prior to any decision-making on the Master Plan or any of its components. Such public participation will ordinarily include informational output about the plan, public response and input, two-way discussions or exchange, and Commission consideration of public expressions.

(4) Public participation processes utilized by the Commission in developing the Master Plan shall aim for the highest achievable standards of objectivity and thoroughness consistent with other requirements of the Act and the intent, concepts, ideas, and basic tenets of the Principles and Standards for Planning Water and Related Land Resources published by the Water Resources Council in the FEDERAL REGISTER, Volume 38, Number 174, Part III, September 10, 1973 and any forthcoming revisions. Public participation programs shall include monitoring procedures to maintain an acceptable degree of responsiveness and accountability.

(5) Neither the Master Plan as a whole nor any component of it shall be formulated without incorporation of a program of public participation involving fair representation of all segments of the public. The public participation section of the Master Plan-Plan of Study shall be developed consistent with guidelines described in this part.

(b) *Objectives.* Objectives of the public participation program developed by the Commission as part of the Master Plan are:

(1) To sensitize the planners to public preferences,

(2) To anticipate and help resolve conflicts arising during the study,

(3) To improve information transfer and public awareness of the study,

(4) To provide for periodic reviews in the development of the Master Plan as well as the final review required by the Act, and

(5) To provide for evaluation of public participation in the planning process.

(c) *Standards.* The Commission in meeting the above objectives recognizes that:

(1) Inputs from the public are important for development of the Master Plan;

(2) Participants are to include individual citizens as well as organizations;

(3) The public participation program is to assume the existence of numerous publics and their interests—identified and delineated according to a number of socioeconomic, demographic, geographic, personal, and ideological variables;

(4) The public participation process must be continuous: It is to be provided for, encouraged, and assisted throughout the planning process;

(5) The public participation process is to have as a product measureable sets of opinion and other manifestations of the public will in regard to details of the Master Plan; and

(6) Inputs from the public into the Master Plan through avenues other than the Commission public participation program should be facilitated.

§ 708.4 Required programs and reports.

(a) The Commission shall prepare a work plan for public participation as part of the Master Plan-Plan of Study. The work plan shall satisfy minimum standards described in this part. The work plan shall describe all substantive administrative and management arrangements to elicit public participation, shall delineate Commission member and staff responsibilities, and shall identify budgetary provisions.

(b) In addition to public meetings and hearings, the public participation program shall include survey research, program evaluation, and information/education activities as described in § 708.5.

(c) The Commission shall recommend long-term public participation activities and programs related to implementation of the Master Plan. These recommendations shall be based on evaluation of procedures and results mandated in this part and carried out during the Master Plan process.

(d) The Commission shall issue reports describing the participation program as developed or implemented during the designated reporting period. Each such report shall include as a minimum a brief description of the main participation activities, the means used to obtain the participation, the quality and amount of participation elicited, the costs of the effort, and the use that was made of the elicited information in the planning process. The reporting periods shall be arranged so as to correspond generally with the main sequential segments of the overall planning process.

§ 708.5 Program objectives implementation.

(a) The continuing public participation program shall contain mechanisms or activities for each objective listed in § 708.3(b). The listing of specific measures in this section shall not preclude additional techniques for obtaining, encouraging, or assisting public participation. Special efforts shall be made to simplify the planning process and products for public and media use. Variances may occur in the use of any given program element, according to the nature of the planning issues, the budgetary resources accorded the participation process, and the effectiveness of the participation actually elicited and measured in the field.

(b) To obtain data in regard to plan-relevant public opinion, methods shall include but not be limited to survey research.

(1) The survey research process shall be developed and utilized in connection with the Master Plan as a whole and its components. Whereas public meetings are organized to elicit unstructured participation and opinion changes, surveys shall be targeted on carefully-selected samples of functionally-defined publics located throughout the System.

(2) The Commission shall evaluate the effectiveness of the information/education program on the part of the surveyed publics necessary for continued and sustained participation in the decision-making steps of the planning process.

(3) If a gap is found between the desired and actual effectiveness, the Commission shall develop and implement a short-term narrow-focus information and education program targeted at the specific problem areas in question.

(4) On completion of the short-term information/education program, resurveys shall be made among the affected publics. The results shall constitute a measure of the effectiveness of the short-term information/education program.

(c) To improve information transfer and public awareness of the study, two levels of information and education activities shall be pursued. The first shall have the general public as its

target audience and shall emphasize methods that foster general awareness and understanding of plan issues and the nature of the ongoing planning process. The second level of information and education activities shall focus on public interest groups, agency representatives, and elected officials and shall emphasize the creation of plan component data and information in a form that can be utilized by these groups in the plan decision-making process. The information presented shall be broadly representative of the relevant perspectives and issues.

(d) Throughout the period of study and the succeeding period of implementation of the Master Plan, the Commission shall provide a centralized capability for acting as an information/education center. The Commission shall provide a central source of media-directed information about the Master Plan, its components, future expected planning needs in the System, current program-related activities, and other relevant subject areas. Special efforts shall be made to summarize complex technical materials for public and media use. The Commission shall have an arrangement for providing technical and informational assistance to public groups for citizen education, community workshops, training, and dissemination of information to communities. Requests for information shall be promptly handled. The Commission shall have standing arrangements for early consultation and exchange of views with interested or affected persons and organizations on development or revisions of plans, programs, or other significant actions prior to decision-making. Survey research methods and other procedures will be used to determine the content and emphasis of information and education activities and products.

(e) The Commission shall provide for periodic reviews of the development of the Master Plan as well as the final review required by the Act. Activities to accomplish this shall include:

(1) *Public meetings.* (i) Public meetings shall be organized at locations in parts of the System most significantly affected by the possible outcomes. These open meetings shall be timed to coincide with sequential elements of the planning process.

(ii) The meetings shall provide citizens and representatives of interested organizations an opportunity to utilize an informally-structured format to air their suggestions and grievances in regard to the subject matter of the Master Plan.

(iii) Where the Commission deems necessary a formal public hearing, it may coincide with the public meeting. When this is the case, a clear distinction shall be made between the formal and open segments of the meeting/hearing.

(iv) Documents and data pertaining to the agenda for each public meeting shall be made available to the public for a reasonable time prior to the public meeting, at a location convenient to the expected participants. In addition, the Commission shall prepare outlines of major issues including brief descriptions of the issue, alternatives, and sources of additional information.

(2) *Public hearings.* (i) The Commission is required to publish a preliminary plan not later than January 1, 1981 and to hold public hearings in each state which would be affected by the plan. The Commission is required to review all comments presented at such hearings or submitted in writing to the Commission, and, after making any revisions in the plan it decides are necessary, to submit to Congress a final Master Plan not later than January 1, 1982.

(ii) The public hearings on the preliminary plan and any other public hearings deemed necessary by the Commission are to be consistent with the provisions of sec. 205 of Pub. L. 89-80 in conformity with this part. If conflict exists between the minimum guidelines of this part and requirements of state or Federal law or other regulations pertaining to a particular hearing, the more stringent requirements shall be observed.

(iii) In addition to any other formal legal requirements, the public hearings are to be well publicized and notices of each hearing will be mailed to interested or affected persons at least 30 calendar days before the hearings.

(iv) In determining locations and times for hearings, consideration will be given to travel and to facilitating attendance and testimony by a cross-section of interested or affected persons and organizations. Accessibility of hearing sites by public transportation will be considered.

(v) The preliminary plan and any supporting reports, documents, and data to be discussed at the public hearings are to be made available to the public at least 30 days prior to the public hearings. Information concerning availablility of the preliminary plan, reports, documents, and data will be provided in public hearing notices.

(vi) The elements of the public hearings, proposed time schedules, and any constraints on statements shall be specified in public hearing notices.

(vii) Testimony of witnesses at public hearings shall be scheduled in advance when necessary to ensure maximum participation and allotment of adequate time for testimony, provided that such scheduling is not used as a bar to unscheduled testimony. Blocks of time shall be considered for major categories of witnesses.

(viii) Public hearing procedures shall not inhibit free expression of views by requirements of more than one legible copy of any statement submitted, or for qualifications of witnesses beyond that needed for identification.

(ix) A record of public hearing proceedings shall be made promptly available to the public at cost. The Commission shall invite, receive, and consider comments in writing from any interested or affected persons and organizations. All such comments shall be part of the public record.

(f) To provide mechanisms for evaluation of public participation in the Master Plan:

(1) the Commission shall conduct periodic evaluations of the public participation program. The purpose of this evaluation is to determine the following:

(i) The extent of actual participation elicited from each of the process phases—public meetings, public hearings, survey research, direct input from organizations, and other sources.

(ii) The degree to which participation elicited from each process phase was actually utilized in the planning process.

(iii) Regional/local differences in effectiveness of public participation methods and procedures.

(iv) The need to modify the public participation process during the Master Plan.

(2) Public participation evaluations shall be incorporated into the Master Plan. Recommendations resulting from this overall evaluation shall be utilized to draft new guidelines, and plans of study for public participation programs to be implemented after the Master Plan has been adopted.

NEIL S. HAUGERUD,
Chairman, Upper Mississippi River Basin Commission.

[FR Doc. 79-1061 Filed 1-11-79; 8:45 am]

federal register

FRIDAY, JANUARY 12, 1979
PART VI

ENVIRONMENTAL PROTECTION AGENCY

CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES

Revision to Emission Testing Procedure

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL-1005-1]

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURE

Revision to Emission Testing Procedure

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This action amends the procedures (40 CFR Part 86) by which new 1981 and later model year light-duty vehicles (LDV's) and new light-duty trucks (LDT's) will be tested for purposes of determining compliance with applicable Federal Regulations established under the authority of the Clean Air Act, as amended. The Environmental Protection Agency (EPA) published a Notice of Intent to Develop Rulemaking on this subject on May 31, 1977. The proposed amendment to the test procedures was published as a Notice of Proposed Rulemaking (NPRM) on October 21, 1977. The NPRM proposed test procedure changes which would permit EPA to test, or require manufacturers to test, LDV's and LDT's with their engines adjusted to any combination of settings within the physically adjustable ranges of their adjustable parameters prior to testing, rather than set precisely to the manufacturer's specifications.

EPA proposed these changes, and is now promulgating them in revised form, because data indicate that significant numbers of vehicles which were certified as being capable of meeting applicable emissions standards (when operated in accordance with manufacturer's instructions and adjusted to manufacturer's specifications) are exceeding the standards in actual use due to maladjustments.

Comments were received during the public comment period on several aspects of this action, and changes have been made in response to the comments. The purpose of this amendment remains as stated in the NPRM, i.e., to require light-duty vehicles and light-duty trucks to meet the standards even when maladjusted, or conversely to motiviate manufacturers to effectively reduce the feasibility and likelihood of vehicles being adjusted to other than manfacturer's specifications.

EFFECTIVE DATE: March 13, 1979. These changes in the test procedures will apply in two stages, to 1981 and then 1982 and later model year vehicles.

FOR FURTHER INFORMATION CONTACT:

Ronald Kruse, Emission Control Technology Division, Office of Mobile Source Air Pollution Control, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone: 313-668-4317.

SUPPLEMENTARY INFORMATION:

BACKGROUND AND PURPOSE

Before new motor vehicles may be introduced into commerce, the Clean Air Act requires that they be covered by a certificate of conformity with emissions regulations.

Currently, to determine whether new vehicles will be issued a certificate of conformity, vehicles are tested with their various adjustable parameters (e.g., ignition timing, idle air/fuel mixture) set according to the manufacturer's specifications. In the Selective Enforcement Audit (SEA) program, EPA tests production vehicles in their assembly-line state of adjustment, including any subsequent adjustments normally made on all vehicles prior to delivery. The outcome of these procedures is that new vehicles usually only need to demonstrate emission compliance with their parameters adjusted to the manfacturer's recommended settings. However, some of these parameters are easily adjusted on in-use vehicles to other settings. Such maladjustment can cause a vehicle that complied in certification and SEA to substantially exceed standards in use.

EPA has in fact observed such in-use maladjustment. Since 1971 EPA has measured the emissions of in-use vehicles, in part to evaluate the effectiveness of its emission control program. Measurements made on 1975 and 1976 model year vehicles revealed that over half of them failed to meet one or more of the emission standards to which these models were certified. EPA initiated the Restorative Maintenance Study to determine why this was so. The results of this study have indicated two primary causes: disablement of emission control components and maladjustment of engine parameters. Of 300 in-use, low-mileage vehicles tested in three cities, 38 percent were considered to have maladjusted idle mixture, 25 percent had maladjusted idle speed, 10 percent had maladjusted choke valve action, and 19 percent had maladjusted initial spark timing.

Most of those vehicles that initially failed the emission test passed it after measures were taken to correct disablements and to restore parameters to a proper state of adjustment. Further, these measures caused a substantial reduction in the average emissions of the test group. Most of this reduction was attributable to adjustment of idle speed and idle mixture to their proper settings. Once disablements and other maladjustments were corrected, correction of the idle speed and idle mixture reduced the average carbon monoxide emissions of the test group by 68% of the applicable standard and the average hydrocarbon emissions by 23% of the standard.

There are a number of possible reasons why parameters are not properly adjusted on in-use vehicles. Some vehicles may have been adjusted incorrectly when delivered to their owners. Maladjustments also occur after vehicles are delivered to their owners, for several reasons. Many mechanics probably depart from a manufacturer's instructions because they lack up-to-date knowledge or lack required test equipment. Mechanics and owners may also make deliberate maladjustments in an attempt to cure driver complaints about acceleration, quality of idle, and cold starting. Some maladjustments may occur spontaneously during use and not be corrected because of inadequate maintenance practices.

These causes of in-use maladjustments can be partially overcome by better vehicle designs and manufacturing practices. These improvements fall into five categories:

1. Parameter settings which are not needed for proper vehicle operation in use can be eliminated from the adjustable range of the parameter. Wide ranges of adjustment are a convenience during manufacturing, but they increase the likelihood and severity of inadvertent or accidental maladjustment. In some cases parameters can be adjusted at the factory and then fixed in position, without creating any problems during later use of the vehicle. In other cases the stops that limit the range of adjustment can be made more effective than they have been in the past (e.g., plastic limiter caps that have been easily removed).

2. While narrowing the range of parameter adjustment settings will not by itself ensure emission compliance over the remaining range, more significant design changes are possible which will ensure compliance. These design changes will change the vehicle operating characteristics so that emission compliance will be assured over the operating range of the adjustment, or the design changes may entirely eliminate the need for the adjustable parameter.

3. The tolerances with which parameters are adjusted during production can be kept narrow enough so as not to cause vehicles to exceed the emission standards. This will be particularly important when manufacturers begin sealing or making adjustment mechanisms inaccessible, as EPA anticipates they may for some parameters. When corrective adjustment in the field becomes more difficult, parameters should be adjusted more carefully in production.

4. Manufacturers can reduce the incentives for maladjustment by owners. Good acceleration, idle quality, cold starting, etc., can be provided at the recommended settings. Owners would then have less reason to resort to nonrecommended settings in an attempt to get better driveability. The availability of such technology has been demonstrated by manufacturer-to-manufacturer differences in the frequency of maladjustments on 1975 and 1976 vehicles.

5. Manufacturers can design the next generation of electronic engine and emission control systems in ways that reduce in-use maladjustment. These control systems, if carelessly designed, could be even more maladjustment-prone than past systems. But with relatively little preventative effort now, the control systems of the mid 1980's can be more maladjustment-proof.

EPA is promulgating this revision to the emission test procedure so that it can require manufacturers of LDV's and LDT's to make these types of improvements. Vehicles in these categories will be required to be in compliance with the emission standards when certain adjustable parameters, designated by EPA, have been adjusted within ranges recommended by the manufacturer. This change will give each manufacturer a strong incentive to limit adjustability or otherwise make maladjustment less likely on in-use vehicles, to produce vehicles which are properly adjusted, and/or to reduce the sensitivity of emission control systems to such maladjustments. A manufacturer that does not do so will risk denial, suspension or revocation of the certificate of conformity.

Some comments received in the course of this rulemaking (from private individuals and members of the service and aftermarket parts industries [1]) ascribed broad and far-reaching effects to these regulations. Some felt that the regulations provided a 50,000 mile warranty on emission-related components or would require that service be performed only at dealerships. Others thought that these regulations would require maintenance-free cars. These regulations do not have the scope perceived in those comments.

These regulations provide only that vehicles will meet the prescribed emission standards with certain selected parameters adjusted to any setting within the physically adjustable range. These regulations will not substantially alter the traditional need for vehicle maintenance, will not require that maintenance be performed at dealerships, and will not provide a 50,000 mile warranty on emission-related components.

Motor vehicle manufacturers are becoming quite adept at automatic control of various vehicle functions. Parameters which have traditionally required periodic adjustment will, in the future, be automatically controlled or eliminated. The regulatory purpose of this rulemaking (to assure that motor vehicles meet the emission standards at any settings within the parameters' adjustable ranges) may be accomplished in a variety of ways; the manufacturers are, however, expected to accelerate the application of advanced parameter control technology. EPA expects that the service industry will keep pace with this trend by providing and using more sophisticated and automated diagnostic equipment.

SUMMARY OF CHANGES FROM THE NPRM

The NPRM: EPA proposed in the NPRM that beginning with the 1980 model year, manufacturers be required to describe as part of their application for EPA certification all adjustable parameters that may affect emissions. This description of their physical limits and adjustable ranges as intended by the manufacturer, and the nominal or recommended setting for each at the manufacturer's option, additional information could be provided. EPA could adjust these parameters to settings selected from within the parameters' physically adjustable ranges as determined by EPA, prior to testing an emission data vehicle.

A physically adjustable range as determined by EPA might not be the same as intended by the manufacturer. The two could be different if EPA considered it likely that the physical limit, or other methods used to inhibit adjustability, would be overcome on in-use vehicles.

A vehicle which failed the emission test when adjusted to EPA's selected setting would be denied a certificate of conformity. For vehicles which were successfully certified, EPA could again adjust parameters prior to testing assembly line vehicles as part of the Selective Enforcement Audit program. EPA could revise its determination of the physically adjustable ranges and its selection of test settings before each Selective Enforcement Audit.

In addition, EPA included in the preamble to the NPRM several examples and guidelines intended to illustrate how EPA would make its determinations and selections once the new procedure was in effect.

The Final rule: The regulations being promulgated today include a number of notable changes from the proposal's provisions as outlined above, both in response to comments and in the interest of clarifying the requirements of this action and the Clean Air Act:

1. The information that the manufacturer must provide in the application for certification is clarified to separately include the tolerances to which physical limits or stops will be placed during production, and those to which sealed and inaccessible parameters will be adjusted.

2. EPA must make several early determinations regarding the adjustment of parameters on vehicles tested during certification and SEA:

(a) EPA must determine which parameters will be subject to adjustment;

(b) EPA must determine the adequacy of any limits, stops, seals, or other means used to inhibit the adjustment of each of these parameters; and

(c) EPA must determine two physically adjustable ranges for each of these parameters. Production tolerances on stops affect the adjustable range of physically adjustable parameters and production tolerances on settings affect the adjustable range of sealed parameters; therefore, production tolerances must be included in the physically adjustable range for certification. For SEA, which tests production vehicles, production tolerances come into play automatically and need not be considered further when setting the parameters.

EPA must make these determinations and notify the manufacturer no later than when it selects the emission data vehicles for the manufacturer's test fleet. EPA must make them earlier if the manufacturer submits adequate descriptions of its vehicles' parameters in advance of its preliminary application. The NPRM was not as explicit as to what determinations would be made at what stages in the certification process. The NPRM also did

[1] In all, comments on the NPRM were received from five domestic manufacturers of light-duty vehicles and light-duty trucks, 11 foreign manufacturers, 24 private individuals, 13 companies or organizations involved in automotive parts manufacturing or distributing or automotive repair, the Automobile Owners Action Council, the Department of the Army, the Department of Transportation, the General Services Administration, the Departments of Environmental Protection of the States of Connecticut and New Jersey, and the California Air Resources Board. All comments received were reviewed and considered in the final preparation of this regulation.

not state that production tolerances would be treated as outlined above.

3. The amendments provide an opportunity for the manufacturer to request a hearing on the above determinations within 30 days of being notified, at which time it can appeal them. The NPRM did not explicitly provide such an appeal procedure. This opportunity to request a hearing is in addition to less formal appeal procedures now available to manufacturers during the certification process.

4. These determinations regarding the adjustment of parameters will apply to compliance testing of both emission data vehicles during certification and production vehicles during SEA. EPA will select test settings only for the parameters designated as being subject to adjustment, and only from their appropriate physically adjustable ranges. Of course, for certification testing, the production tolerances (as projected by the manufacturer) will be included in the physically adjustable ranges and for SEA the production tolerances take care of themselves. Subject to these two restrictions, test settings selected for SEA testing may be different from those selected for certification testing. EPA may select test settings at any time prior to a certification or SEA test. EPA may select settings independently before each test, but each time it will consider the likelihood of the selected test settings occurring on in-use vehicles. One of the factors that may influence this consideration is the effect of the settings on vehicle performance characteristics. EPA does not intend to choose settings that are unlikely to occur in use because of their adverse effect on performance.

EPA will not select test settings for parameters that EPA has not previously determined to be subject to adjustment. These parameters will be treated as they are under the present test procedures, i.e., adjusted according to manufacturer's specifications or left in their production states.

The NPRM differed in that it would have allowed EPA to revise all parameter adjustment determinations prior to each test. It also permitted, but did not require, EPA to consider various factors when making determinations, although the preamble to the NPRM made it clear that EPA intended to consider all relevant factors.

5. A restriction has been placed on EPA's authority to adjust parameters which were present on a vehicle in the previous model year. EPA may adjust a parameter that is repeated from the previous model year only if EPA has given the manufacturer adequate indication in advance that it might do so. The NPRM did not require such notice. This final rulemaking constitutes the notice needed for adjustment of selected parameters (idle fuel-air mixture, idle speed, initial spark timing, or choke valve action) according to the schedule described immediately below.

6. The implementation schedule has been changed: The 1981 model year will be the first affected by the revised test procedures. For the largest category of LDV's and LDT's, those which use gasoline and are equipped with carburetors, two parameters will be regulated beginning in 1981: idle fuel-air mixture and choke. Two more will be regulated in 1982: idle speed and initial spark timing. Gasoline-fueled LDV's and LDT's with fuel injection systems will follow the same schedule, except choke parameters will not be affected. At present there is no schedule for regulating specific parameters on Diesel-powered LDV's and LDT's. EPA may on some future date establish a schedule for regulating parameters on Diesel-powered vehicles and other parameters on gasoline-fueled vehicles, subject to conditions and restrictions explained in detail in the discussion of major issues, below. Rulemaking will not be required to establish such a schedule.

7. EPA has revised some of the examples and guidelines that were given in the preamble to the NPRM and incorporated some into the text of the amendment itself, which, of course, binds EPA to agree that the examples do, in fact, represent adequate mechanisms for limiting adjustment.

8. A specific requirement that the manufacturer ensure safe vehicle driveability within its intended physically adjustable range is added. This requirement is not new, but rather construes the existing requirement of § 202(a)(4)(A) of the Clean Air Act that emission control devices, systems, or elements of design shall not cause or contribute to an unreasonable risk to public health, welfare, or safety in their operation.

The final rule also eliminates two potential ambiguities present in the NPRM. It makes it clear that all adjustable parameters must be described in the application for certification, including those that the manufacturer has designed for restricted adjustability, and that the regulations apply to both EPA and manufacturer testing of emission data vehicles.

The notable changes and the reasons EPA has made them are described in detail in the discussion of major issues, which follows.

Discussion of Major Issues

Should the Regulation Be General in Scope?

The NPRM proposed that EPA have general authority to adjust any adjustable engine or vehicle parameters prior to conducting compliance tests. Many manufacturers commented that only a few parameters have been observed to be maladjusted on in-use vehicles and that it was unnecessary and/or unreasonable to extend EPA's adjustment authority to include other parameters. Most of these manufacturers requested that the change in the test procedure apply only to the idle air/fuel mixture adjustment.

EPA recognizes that at the present time it does not have a basis for concluding that all adjustable parameters are maladjusted in use. No doubt many parameters have not been found to be maladjusted because they are in fact not maladjusted in actual use. On the other hand, the Restorative Maintenance Study was limited in scope and structured to find only those few parameters which are most frequently maladjusted, with significant emission effects. In addition, only low mileage vehicles were studied. Undetected maladjustments may be detected where other parameters are studied or when older vehicles are examined.

Parameters which are not being maladjusted now may begin to be maladjusted in the future if EPA regulates the adjustability of other parameters. For example, manufacturers might make the fuel float level adjustable if they choose to do without adjustable idle mixture screws. In addition, new types of emission control systems may have adjustable parameters that do not fit into current categories. Such parameters cannot be listed in this regulation and would have been excluded if the scope of the regulation were limited to specific parameters found on present systems.

Limiting the scope of the regulation as suggested by the manufacturers would prevent EPA from requiring manufacturers to correct known or foreseen maladjustment problems involving any of these other parameters. The delay between when a parameter was identified as being reasonably likely to be maladjusted in use and when EPA could complete the rulemaking needed to add it to the list of regulated parameters could allow one or more years of production of maladjustment-prone vehicles. Therefore, to allow EPA the flexibility it needs to deal with future maladjustment problems, the general authority proposed in the NPRM has been retained in this final rule.

This does not mean that EPA will force manufacturers to redesign all adjustable parameters simply as a precaution. This final rule requires EPA to consider the likelihood that nonrecommended settings will occur on in-use vehicles when determining which parameters will be subject to adjustment. It also states that EPA may consider such factors as the information provided by the manufacturer in the

preliminary application, surveillance information from similar in-use vehicles, and factors that might encourage or discourage maladjustment of a vehicle once in use. As a matter of policy, EPA will determine a parameter to be subject to adjustment only if it believes that the occurrence of non-recommended settings may cause a significant increase in emissions. EPA will consider the degree, frequency, and emission impact of maladjustments when judging the significance of an actual or potential maladjustment problem and the desirability of correcting it via the broad authority contained in this regulation. For example, based on present information EPA would not determine any transmission, brake, wheelbearing, clutch, or valve lash parameters to be subject to EPA adjustment, even though they may affect emissions.

In any case, the manufacturer has the right to appeal these EPA determinations through either an informal process or through the formal process identified in § 86.081-22(g).

The fact that EPA has not determined that a parameter is subject to EPA adjustment does not in and of itself remove the liability of a manufacturer for recall if a substantial number of in-use vehicles, although properly maintained and used, are in nonconformity due to adjustment of the parameter beyond the manufacturer's recommended setting.

LEAD TIME AND FEASIBILITY CONSIDERATIONS

The object of the revised test procedure is to induce manufacturers to make design changes to their vehicles, both immediately and on a continuing basis to ensure that significant maladjustment problems do not occur in actual use. The feasibility of and required lead time for these changes will naturally be of concern to the manufacturers. They will also be of concern to EPA. EPA intends to consider feasibility and to give manufacturers sufficient notice of parameters which will be subject to adjustment in each model year. EPA has done so for certain parameters in the context of this final rulemaking (see "What Parameters Will Be Initially Affected?" and "Implementation Schedule" below). Other parameters are provided for as explained in the next paragraphs.

EPA expects that from time to time some parameter changes will occur; of course many parameters will remain the same, but some will disappear and other, new parameters will appear.

When considering lead time for parameters which have remained the same (those which appeared on vehicles in the same engine family in the previous model year) EPA must give adequate notice to the manufacturer before determining that any of those parameters are subject to adjustment. EPA has no lead time concerns about parameters which disappear, but is concerned about the sudden appearance of new parameters. For new parameters, the available lead time is completely under the manufacturers' control. The revised test procedure requires EPA to determine no later than the selection of the emission test fleet those parameters that it will adjust. However, EPA will respond to information whenever it is presented by the manufacturer. Thus, the manufacturer can assure long lead time for new parameters by providing early information.

EPA will not allow new, maladjustment-prone parameters to begin production just because EPA did not learn of their planned introduction. To do so would negate the general scope of the regulations. EPA's policy will be to make every reasonable effort to facilitate product innovations by advising the manufacturer regarding new parameters, once informed of them.

HOW SHOULD PARAMETER ADJUSTMENT BE IMPLEMENTED FOR SEA?

Several adverse comments were received from manufacturers concerning the NPRM's provisions for parameter adjustment during SEA testing. The manufacturers objected to the possibility that EPA would revise its determination of the adequacy of physical limits or other means used to limit adjustability after production begins. The manufacturers claimed that such revisions could impose new performance requirements for production vehicles, of which they would be unaware when they decided to begin production.

The intent of the original proposal was not to have EPA revise the determination of the adequacy of the physical limit, but merely to determine whether the effectiveness of physical limitation in the production vehicle had diminished from that of the prototype design. Nevertheless, in response to manufacturers concerns and in recognition of the potential inconsistent application of the criteria for determining adequacy, the amendment proposed today is different from the NPRM.

The amended test procedure requires EPA to make several determinations early in the certification process that will be binding on EPA during both certification and SEA. The manufacturer will then be aware of the requirements production vehicles must meet, before production begins. These requirements will be the same as those for certification vehicles. Of course, if there is a material difference in the physical limitations between the Part I application and production vehicles EPA may consider the production vehicles uncertified.

The determinations are described fully under the next issue heading. Briefly, EPA must determine which parameters will be subject to adjustment, no later than when it selects the certification test fleet. EPA may not subsequently adjust any other parameter. Also, for each parameter EPA designates as subject to adjustment, EPA will at the same time determine the adequacy of any limits, stops, seals, or other means used to inhibit adjustment. Those that are found to be adequate limits to adjustment will not be exceeded in later SEA tests. The exact settings used during certification tests and SEA tests may be different, but the manufacturer will know which settings are potential test settings.

Some manufacturers claimed that in order for SEA to retain its present role, it is necessary that the SEA test procedure be left as it is presently, i.e., with no adjustment of parameters by EPA. This claim is without merit. In fact, SEA cannot play its proper role to ensure that new production vehicles comply with the same emission requirements met by certification vehicles, if parameters subject to adjustment during certification are not similarly subject to adjustment during SEA. Moreover, it would make no sense for EPA to remove SEA test conditions further from conditions in-use (with regard to engine parameters) than conditions in certification testing.

WHAT FACTORS SHOULD INFLUENCE THE DETERMINATION OF ADEQUATE LIMITS AND THE PHYSICALLY ADJUSTABLE RANGES?

Parameters that have been determined to be subject to adjustment can be divided into two groups for purposes of this discussion: (1) parameters that are not likely to be adjusted on vehicles after they leave the factory because the parameters are effectively inaccessible or effectively sealed to the production setting; and (2) parameters that are likely to be adjusted in use by dealers, other mechanics, or owners.

Since a parameter in the first group will remain at its production setting, it is important that the vehicle be designed to meet emission standards at all settings expected to occur in production. This final rule ensures this by allowing EPA to determine an official physically adjustable range equal to the range of production variation specified by the manufacturer in the preliminary application, for the purpose of certification testing.[2] For the pur-

[2] This is analogous to selecting an emission-data vehicle with a component calibration (e.g., carburetor flow curve) other than

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pose of SEA testing, the physically adjustable range will contain only the actual production setting of the vehicle being tested. From time to time, production tolerances may exceed the ranges identified in the preliminary application for certification. When this happens, EPA will not automatically consider a vehicle with such tolerances to be noncertified; rather it will test the vehicle to determine compliance, with the parameter left adjusted to the actual production setting.

For a parameter in the second group, the physically adjustable range depends on the location of the adequate physical limits or stops, if any. EPA will determine whether the physical limits or stops used by the manufacturer to establish its intended physically adjustable range are adequate.

If they are, the official physically adjustable range will consist of all settings between those limits or stops. EPA may consider the limits or stops to be located at their production extremes when determining which settings are included in the physically adjustable range that will apply for certification.[3] For the purpose of SEA testing, the actual location of the limits or stops on the vehicle being tested will be used, and the limits or stops may not be exceeded by EPA when it adjusts the vehicle. Again, if from time to time production tolerances exceed those identified in the preliminary application and result in a limit or stop being located beyond the extremes identified in the application, EPA may adjust the parameter up to the limit or stop as it is actually located rather than consider the vehicle to be noncertified.

If EPA judges the manufacturer's intended limits or stops to be inadequate, EPA will consider the adequacy of any limits or stops beyond the intended ones and determine the physically adjustable range accordingly.

Thus, the group to which a parameter belongs depends on whether it is effectively sealed or inaccessible. For a parameter in the second group, the physically adjustable range will greatly depend on the adequacy of whatever physical limits or stops are present. The general criterion to be used in determining whether a parameter is effectively sealed or inaccessible and whether a physical limit or stop is adequate will be the reasonableness of expecting that access will be gained or that a seal, limit, or stop will be overcome on in-use vehicles. Once made during certification, this determination will be final for SEA as well.

In the preamble to the NPRM, EPA elaborated this general criterion into three specific criteria to be used in determining whether a parameter was effectively sealed or inaccessible. EPA stated that any one of the following conditions would be grounds for EPA determining that a parameter was adjustable:

(1) The parameter was adjusted prior to the vehicle being delivered to the dealer and the adjustment mechanism was not disabled;

(2) Manufacturer service manuals or bulletins contain procedures for adjusting the parameter or statements indicating that it can be adjusted; or

(3) The parameter can be adjusted quickly (in less than one half hour) or inexpensively (cost less than $20, including any replacement of parts) with the use of simple or inexpensive tools whether or not such tools are of common or of special design.

After considering the many comments on these criteria, EPA has decided that a case may arise in which it would be unreasonable to conclude that it was likely that a parameter would be adjusted on in-use vehicles, despite the fulfillment of one of these three conditions. Therefore, EPA will not treat these three conditions as sufficient. It will, however, weigh them carefully. Also, EPA will consider as accessible and adjustable any parameter for which manufacturer service manuals or bulletins describe routine adjustment procedures. Manufacturers may safely continue to describe procedures intended only for non-routine use, e.g., during major engine or carburetor repair, EPA-ordered recall, or high-altitude performance adjustments.

Two manufacturers requested that parameters be considered effectively inaccessible or sealed, and physical limits or stops be considered adequate, if special tools are needed in order to adjust the paramenter or to exceed the physical limits or stops. As it is possible for special tools to become widely available, EPA cannot grant this request. EPA may consider a parameter to be accessible and adjustable, and physical limits or stops to be inadequate, even though special tools are required.

One manufacturer requested that EPA consider a parameter to be effectively inaccessible or sealed, and physical limits or stops to be adequate, if the adjustment procedure takes more than 30 minutes to perform or costs more than $20. Another manufacturer thought that this preamble example was actually being proposed by EPA and pointed out that, in its opinion, it would simply encourage manufacturers to increase the cost and time of routine adjustments to more than $20 and 30 minutes so that they would no longer be considered adjustments, without reducing the need for those adjustments.

After considering these comments, EPA deems it appropriate to consider limits on adjustability as adequate whenever the adjustment procedure takes more than 30 minutes or costs more than $20, unless the procedure is described as routine in manufacturer service manuals or bulletins, surveillance data indicate that in-use adjustment is likely, or the manufacturer's estimates of cost or time are unreasonable. The $20 figure is based on 1978 price levels, and will be adjusted as necessary to account for inflation.

The preamble to the NPRM also gave several design examples. These were chosen to provide guidance on how EPA will evaluate the adequacy of the inaccessibility of an adjustment mechanism and the adequacy of physical limits, stops, and seals. Two objections were made to these examples. One was that EPA did not commit itself in some of the examples, but instead qualified them with the word "probably". EPA agrees to commit to the examples and has included them in the regulatory language of § 86.081-22(e). The second was that it was not feasible to manufacture a carburetor that had connecting choke links that fit EPA's examples of nonadjustable, bendable members. EPA has determined that it is possible to manufacture such a carburetor.

EPA has considered the feasibility of controlling those parameters designated in these regulations for initial control (See "Which Parameters will be Initially Affected?" below) and will in the future consider feasibility of control before additional familiar parameters are designated for control. The selection of the parameters cited as being subject to adjustment by EPA in specific years was based on a finding that the emissions standards for those years can be met, allowing for such adjustments.

For completeness, the design examples are restated here in revised form.

(1) Idle Mixture Screw—The idle mixture will be considered to be nonadjustable if the idle mixture screw is recessed within the carburetor casting and sealed with lead, thermosetting plastic, or an inverted elliptical spacer or sheared off after adjustment at the factory, in such a way that the adjustments cannot be accomplished in any of these circumstances with simple

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the nominal production calibration. The only difference is that the selection comes when the test setting is chosen from within the official physically adjustable range rather than when the emission data vehicle itself is chosen for the test fleet. EPA has in the past interpreted the existing certification regulations as giving it authority to select emission data vehicles with such off-nominal calibrations. Thus, this portion of the final rule serves to clarify existing authority in light of the substantive changes in the test procedure.

[3] The explanation in the previous footnote applies here also.

tools in a short time period (approximately one-half hour).

The idle mixture will be considered to be adjustable if the only deterrent to adjustment consists of a plastic cap placed over the idle mixture screw.

(2) Choke Bimetal Spring Cover—The choke mechanism will be considered to be nonadjustable if the plate covering the bimetal spring is riveted or welded in place, or held in place with nonreversible screws.

The choke will be considered to be adjustable if the plate covering the bimetal spring is merely held in place with screws which can be removed with the use of simple or inexpensive tools whether or not such tools are common or of special design.

(3) Elongating or Bending Adjustable Members—Parameters which may be adjusted by elongating or bending adjustable members (e.g., the choke vacuum break) will be considered nonadjustable if the elongation of the adjustable member is limited by design or, in the case of bendable members, is constructed of a material which when bent would return to its original shape after the force is removed (plastic or spring steel materials).

Parameters which may be adjusted by elongating or bending adjustable members will be considered to be adjustable.

(4) General.—A physical limit would generally be considered adequate provided that travel or rotation limits could not be exceeded with the use of simple and inexpensive tools (screwdriver, pliers, open-end or box wrenches, etc.) without incurring significant and costly damage to the vehicle or control system. Stops that can readily be broken off or otherwise eliminated or overcome without disabling the component's function may be broken off or overridden prior to certification or SEA testing. Limits on threaded adjustments would be considered adequate if the threads were terminated, pinned or crimped so as to prevent additional travel without breakage or need for costly repairs. A physical limit would be considered adequate if the adjustment were ineffective at the end of the limits of travel regardless of additional forces or torques applied to the adjustment.

While these examples do not encompass every possible adjustable parameter, or the many possible methods which could be employed to render an adjustment effectively nonadjustable, the guidance provided by these specific illustrations may be applied to many analogous situations. These examples will not be considered binding on the Administrator when making his determinations of adjustability if manufacturer service manuals or bulletins describe routine adjustment procedures for a parameter or if surveillance data indicate that in-use maladjustment is likely. As noted earlier, once the Administrator has made the parameter adjustment determinations for a model year those determinations are final. They may not be revised for that model year, either for certification or for later SEA testing, even if EPA acquires surveillance data indicating that in-use maladjustment is more prevalent than when the Administrator made the determinations.

Several manufacturers requested that specific, objective criteria for evaluating the adequacy of the inaccessibility of a parameter and the adequacy of limits, stops, and seals be included in the text of the regulation. EPA has not been able to develop criteria that would be adequate for every situation, and the manufacturers did not suggest any suitable criteria even though the NPRM invited them to do so. (The manufacturers' responses and the EPA Summary and Analysis of Comments are available; see Availability of Documents.) However, in response to the general desire by some manufacturers to have criteria in the regulation and not just in this accompanying explanation, EPA has incorporated those of the above design examples which are restrictive on EPA into the text of the regulatory language.

WHAT FACTORS SHOULD INFLUENCE THE SELECTION OF TEST SETTINGS?

The gist of most comments dealing with the selection of test settings for parameters was that EPA should not deviate from the manufacturer's recommended setting if doing so degraded vehicle driveability (e.g., cold start or stalling) or performance (e.g., fuel economy or acceleration). EPA has not accepted this recommendation, because the likelihood that a parameter setting will occur on in-use vehicles is not solely a function of its impact on driveability or performance. To achieve the goals of this regulation, EPA must be free to select as a test setting any setting which will occur with significant frequency on in-use vehicles, not just the setting which will occur most frequently. A setting may occur with significant frequency on in-use vehicles even though another setting gives better driveability or performance. EPA's Restorative Maintenance Study investigated the driveability and fuel economy impacts of the maladjustments observed in the study, and found that the maladjustments had only slight, and sometimes degrading, impacts. EPA concludes from this that car owners and mechanics in maladjusting are not universally successful in obtaining the best possible driveability and performance. EPA recognizes that driveability effects can influence the likelihood of in-use maladjustment to particular settings. The Administrator intends to consider information on driveability effects when it is reasonably available. The Administrator will not treat such effects as a controlling consideration, however. Sections 202(a)(4) and 206 (a)(3) of the Clean Air Act require manufacturers to provide safe vehicle driveability in their certified configuration. Therefore, these regulations have the effect of requiring safe driveability at the setting that has been sealed from further adjustment or within the physically adjustable range. The Administrator will not operate the vehicle at parameter settings which produce unsafe vehicle driveability when settings are available which will produce safe vehicle driveability, assuming that any unsafe vehicle driveability condition is apparent to the driver.

ADEQUACY OF DUE PROCESS

Some manufacturers claimed that they would not be afforded adequate due process under the revised test procedure proposed in the NPRM. The common contention was that EPA's determinations of which parameters would be maladjusted during certification testing and of the adequacy of the steps taken by a manufacturer to limit the adjustability of those parameters, and the first opportunity to appeal these determinations, would come too late in the certification process. Specifically, it was claimed (1) that unreasonable determinations made just prior to the emission test (as would be possible under the provisions of the NPRM) could deprive a manufacturer of its investment in certification vehicles and production tooling if allowed to stand, and (2) that because of delays this investment could not be recovered even if the unreasonable determinations were corrected when appealed to the Administrator or the courts. A similar situation was claimed to exist if a parameter determination were revised prior to SEA tests.

The final rule being promulgated today has been changed in response to these objections. The changes are intended to provide a manufacturer a genuine opportunity to appeal EPA decisions, by moving these decisions forward in time.

A manufacturer will now be notified of which parameters will be subject to adjustment for certification and SEA testing and of the limits for each parameter. EPA will do this no later than when it selects the emission data test fleet. EPA will make the determinations and notify the manufacturer even earlier, if the manufacturer makes this possible by submitting the required descriptions of its parameters and their physical limits in advance of

its full preliminary application for certification. The manufacturer will have time to appeal EPA's initial determinations, or accept them and change its designs or production plans accordingly if necessary, before investing further in product development, certification vehicles, or production tooling. If the manufacturer chooses to appeal the initial determinations, it may do so either by requesting the Administrator for a hearing or through the less formal procedures which EPA normally affords manufacturers.

As discussed in greater detail above (see "Lead time and Feasibility Considerations"), more time will be available for a manufacturer to dispute an EPA decision to adjust an existing parameter for the first time. A familiar parameter (e.g., one that was present on a vehicle in the same engine family in the previous model year) may be newly determined by EPA to be subject to adjustment only if EPA has previously notified the manufacturer that it might do so as discussed earlier. If the manufacturer feels it would be unreasonable for EPA to adjust the parameter or that there is insufficient leadtime to modify the design of the parameter, it can appeal the EPA decision at once. A deadline of September 1 of the calendar year two years prior to the model year has been added to the regulation, by which EPA must give notice or delay one model year. This deadline assures time for an appeal. With these changes, the revised test procedure does provide manufacturers with adequate due process.

WHAT PARAMETERS WILL BE INITIALLY AFFECTED?

1. *Gasoline-Fueled Vehicles With Carburetion Systems.* On the basis of a technical evaluation of data from surveillance studies of in-use vehicles and other information, EPA concludes that the following parameters are maladjusted on in-use vehicles with significant frequency and with concomitant increases in emissions (See Summary and Analysis of Comments—item 1): idle air/fuel mixture, idle speed, choke valve action (e.g., bimetal spring tension and vacuum pull-off adjustments), and initial spark timing. These parameters are therefore of immediate concern to EPA. It is feasible for manufacturers to redesign all of these parameters so as to comply under the revised test procedures. These parameters have therefore been specifically included in the regulation as ones that may be determined to be subject to adjustment. Depending on the design changes made to these parameters by each manufacturer, EPA will determine them to be subject to adjustment according to the schedule described under the next issue heading.

EPA has identified the following parameters as having significant potential for maladjustment with concomitant increases in emissions, although EPA has not observed their maladjustment on in-use vehicles: part (or full) throttle mixture, accelerator pump, fuel level adjustment (float) in fuel bowl, and deceleration speed control (dash pot). EPA may examine these familiar parameters to determine if they are reasonably likely to be maladjusted or EPA may conduct in-use vehicle studies to determine the frequency of maladjustment. In any case, EPA will be required to give manufacturers adequate notice before determining any of these to be subject to adjustment. This notice must be provided prior to the traditional start of certification for the model year. For purposes of this notice, this will be deemed to be September 1 of the calendar year two years prior to the model year, e.g., September 1, 1980 for the 1982 model year. This deadline for EPA notification has been selected on the basis of the time needed to conduct an appeal. Often the lead time requirement will be longer and notice will be given earlier.

Comments received on the NPRM raised three major objections concerning the feasibility of carbureted vehicles complying with the new test procedure. Specifically, comments were received questioning the feasibility of compliance in the area of initial spark timing, idle speed, and bendable members on chokes.

Spark timing. Some manufacturers interpreted the NPRM to mean that the distributor would have to be fixed in place during assembly in such a way that freedom of motion could not be achieved again in less than 30 minutes, and contended that this was not feasible. This interpretation is not correct. It is possible to retain several degrees of initial timing adjustability in the retard direction without causing emission violations. EPA encourages manufacturers to do so, to facilitate timing retard when necessary in unusual circumstances. Further, EPA did not and does not intend the 30-minute criterion to be the only definition of an adequate physical limit on adjustability. EPA may consider measures to be adequate even when they can be overcome in less than 30 minutes. Again, the general criterion will be the reasonableness of expecting that owners and mechanics will overcome such features. The manufacturers of the small minority of vehicles which would otherwise use ignition systems with breaker points may find it advantageous to adopt breakerless ignition systems (a readily available technology) in order to eliminate timing variations due to point wear and the adjustability needed to compensate for them.

Idle speed. The revised test procedure itself does not impose any requirement that manufacturers restrict the adjustability of parameters. It only requires that certification and SEA vehicles meet emission standards at parameter settings likely to occur on in-use vehicles. One obvious approach a manufacturer may use to ensure compliance with this requirement for a parameter is to physically limit the adjustability of that parameter to only those settings which allow the vehicle to pass emission tests. Some manufacturers expressed serious concern in their comments that this approach is not feasible for conventional idle speed controls and that alternative controls are not feasible by the implementation date proposed in the NPRM.

EPA recognizes the merit of these concerns. It appears that on some vehicles the reduction in internal engine friction during the first few thousand miles of operation, combined with the sensitivity of exhaust emission levels to idle speed, is such that the motion of the idle speed adjustment mechanism cannot be limited to a range of settings that will allow both a "green" SEA vehicle and a "worn in" certification vehicle to pass the emission test. This situation could be remedied by closed-loop control of idle speed, but at higher cost and longer lead time.

Given the nature of the in-use maladjustment problem associated with idle speed, such closed-loop control is expected to provide minimal advantages over the following approach: EPA will not select an idle speed test setting for *SEA vehicles* which corresponds to a *lower* engine idle speed (in revolutions per minute) than could be achieved within the physically adjustable range of a vehicle with 4,000 miles of service accumulation. This minimum engine speed will be determined based on past tests of certification vehicles or other information provided by the manufacturer. Similarly, EPA will not select an idle speed test setting for *certification vehicles* which corresponds to a *higher* engine idle speed than could be physically achieved on the same vehicle with "zero" miles of service accumulation.

This policy should ensure that manufacturers can comply with the revised test procedure insofar as idle speed is concerned, without adopting closed-loop control. Manufacturers will be able to retain the adjustability needed to compensate for engine break-in. They will, however, have to restrict the range of motion of the idle speed screw so that a 4,000-mile certification vehicle will meet standards at its lowest possible idle speed as well as at the idle speed that is the highest possible on an SEA vehicle, and so that a new SEA vehicle will meet

standards at its highest possible idle speed as well as the idle speed that is the lowest possible on a 4,000-mile vehicle. The policy will apply indefinitely. It has been incorporated into the language of the regulations.

Bendable members. Some manufacturers claimed it was not technically feasible to replace present bendable links in the choke assemble with links made of plastic or spring steel materials, two examples of non-adjustable designs given in the preamble to the NPRM. The reason given was that these links must be bendable to provide for adjustments during assembly and to allow standardization of parts between models. These claims may have merit in that bendable links as used now are a cost-saving convenience for the vehicle manufacturer. However, EPA concludes that it is possible to replace bendable links with links that are adjusted by threaded connections. These connections could then be sealed or crimped so that they were less susceptible to improper adjustment by owners and mechanics. Bendable members can also be eliminated by using a greater number of fixed length members during assembly. It is also feasible to eliminate chokes with bendable links and replace them with integral chokes which lack bendable members and can more easily be given a limited range of adjustability or sealed after assembly and final adjustment.

2. *Gasoline-Fueled Vehicles with Fuel Injection Systems.* EPA has not surveyed in-use vehicles of this type to date and therefore has not observed maladjustments of parameters specific to the type. However, the similarity between the idle mixture, idle speed, and initial spark timing adjustments on these vehicles and the same adjustments on vehicles with carburetion systems is so close that EPA can expect similar frequencies and effects of in-use maladjustment. EPA will therefore treat these three parameters on fuel-injected vehicles in the same way it treats them on carbureted vehicles and on the same schedule. In addition, EPA will continue to consider for future action injection timing, fuel pressure, and adjustable sensors that can affect air fuel computation in electronic fuel injection systems, each of which has been identified as having a significant potential for in-use maladjustment.

3. *Diesel-Powered Vehicles.* Only a very small number of in-use light-duty vehicles and light-duty trucks are powered by Diesel engines, so no surveillance data on their possible in-use maladjustment are available. However, by the early 1980's a significant fraction of new vehicles may fall in this category. EPA has examined the design of vehicles in this category and has identified the following parameters which are or may be adjustable on some models and for which there may be actual or perceived incentives for maladjustment by owners or mechanics: turbocharger waste gate control, cold timing control, adjustable aneroid control, full load fuel control stops, idle speed, high idle speed, fuel supply pressure, turbocharger aneroid control fuel rate modifier, governor control, and adjustable EGR rate.

EPA's determination of which if any of these parameters will be subject to adjustment after the revised test procedure becomes applicable will depend on information supplied by the manufacturer and surveillance data that become available. These will be evaluated according to the criteria and guidelines presented above in the discussion of major issues. EPA will give particular attention to Diesel parameters which are as easily adjusted as the parameters which have been observed to be maladjusted on in-use gasoline-powered vehicles and for which there are equivalent incentives for maladjustment, or for which the manufacturer's recommended adjustment procedure is such that it likely will frequently be performed incorrectly. In short, analogies between Diesel and gasoline engines will be used where applicable in order to ensure equitable treatment of the two in EPA's technical evaluation.

IMPLEMENTATION SCHEDULE

The proposed implementation date of 1980 will not give adequate lead time for all manufacturers to meet the requirements of the revised test procedures for any of the parameters identified under the previous issue heading. EPA analysis of comments by manufacturers (see Summary and Analysis of Comments—Item 7) indicates that all manufacturers will be able to comply by 1981 insofar as idle mixture and choke valve action are concerned. These parameters potentially need no adjustment during a vehicle's life. If manufacturers upgrade the vehicles' engines and emission control systems where necessary to realize this potential and then seal or fix these parameters to the recommended settings during engine assembly, one of the simpler approaches to compliance, no serviceability or driveability problems will result.

The idle speed and initial spark timing parameters are ones which do require adjustment on some or all vehicles while in service. EPA wishes to ensure that manufacturers have sufficient lead time to develop restricted ranges of adjustability that will allow the necessary adjustments while providing emissions compliance. Implementation of the revised test procedure for these two parameters beginning in the 1982 model year will provide the necessary lead time.

Therefore, the amendment being promulgated today allows EPA to determine idle mixture and choke valve action parameters to be subject to EPA adjustment beginning with the 1981 model year. Beginning with the 1982 model year, idle mixture, choke valve action, idle speed, and initial spark timing may be so determined. This staged schedule applies to gasoline-fueled LDV's and LDT's with carburetion systems. Gasoline-fueled LDV's and LDT's with fuel injection systems will follow the same schedule, except choke parameters will not be affected. There is no schedule for adjusting specific parameters on Diesel-powered LDV's and LDT's.

This schedule does not exclude the possibility of EPA adjusting a new parameter in 1981 or any subsequent model year. Also, existing parameters may be adjusted in 1981 or any subsequent model year if EPA has previously notified the manufacturer concerned. These possibilities were explained at greater length in the discussion of the issue "Lead Time and Feasibility Considerations", above.

One manufacturer requested that the effective date for LDT's be later than for LDV's. After considering the costs and feasibility of compliance within the allowed periods, EPA had determined that the implementation schedule described here is necessary and adequate for both LDV's and LDT's. Consequently, this action promulgates the same schedule for both classes.

ADDITIONAL TESTING REQUIRED TO GENERATE FUEL ECONOMY DATA

At present, EPA intends to continue to collect fuel economy data only from vehicles adjusted to manufacturer's specifications after it implements this revision to the emission test procedure. The alternative, collecting fuel economy data using the same parameters settings as selected for emission testing, would be difficult to implement while retaining the effectiveness of the parameter adjustment concept, the representativeness of the fuel economy data base, and the equitable treatment of different manufacturers. While supporting EPA's rejection of the latter alternative, several manufacturers pointed out that EPA's intention will necessitate an increase in the amount of testing. EPA recognizes that some emission data and fuel economy data which previously were collected in a single test will have to be collected in separate tests. The increase in the amount of testing can be kept small, however. There will be many instances in which the manufacturer's reommended parameter setting will be EPA's preferred test setting

under the revised emission test procedure. This will be the case if it is the only setting reasonably likely to occur on in-use vehicles or if the recommended setting is the setting which maximizes emissions. EPA will also be able to select the recommended setting as the emission test setting in a substantial fraction of the remaining instances and still retain the effectiveness of the parameter adjustment regulations. When the recommended setting has been chosen as the emission test setting for each of the parameters subject to adjustment, the fuel economy data can be gathered in the same test as the emission data. When separate tests are unavoidable, EPA will partially reduce its own testing load by relying more heavily on the results of tests performed by manufacturers.

EFFECT OF THIS RULE ON RECALL AND WARRANTY ACTIONS

As stated in the preamble to the Notice of Proposed Rulemaking, these regulations will not alter current EPA practice with regard to testing in support of recall or warranty activities under section 207 of the Clean Air Act. The determinations made by EPA for vehicles tested during certification or SEA as to which parameters will be subject to adjustment, the adequacy of the limitations on adjustment and the physically adjustable ranges will not constitute similar determinations with respect to in-use vehicles. Therefore, in-use vehicles determined to be in conditions of adjustment different from the limits specified for certification and SEA may be tested in such conditions and may be used in support to recall or warranty actions insofar as the criteria of section 207 is met. Placing constraints on the conditions in which in-use vehicles may be tested would frustrate the intent of the in-use compliance provisions of the act.

In particular, the fact that one or more of a vehicle's parameters are not set to a manufacturer's recommended settings is not *per se* determinative of whether or not a vehicle has been properly maintained and used. Similarly, the fact that one or more of a vehicle's parameters are adjusted beyond the allowable settings determined by EPA for certification and SEA vehicles is not determinative of whether or not a vehicle has been properly maintained and used. Manufacturers are advised not to rely on certification or SEA determinations as definitions of the state of "proper maintenance and use" insulate manufacturers from their continuing liability to remedy nonconformities on in-use vehicles. Comments were received from certain manufacturers concerning their views on this issue as they relate to the parameter adjustment regulations. Such comments are not relevant in the context of this particular rulemaking and have not caused EPA to reverse its current practice.

HIGH ALTITUDE PERFORMANCE ADJUSTMENTS AND EMISSION STANDARDS

The connection between this final rule and current developments in the areas of high altitude performance adjustments and emission standards needs explanation. EPA anticipates that this connection may be of concern to some parties.

With the exception of the 1977 model year, manufacturers have been allowed to sell in high altitude areas vehicles which were designed for operation in low altitude areas and which had demonstrated emission compliance only under low altitude conditions. Manufacturers have also been allowed to certify and sell separate high altitude configurations after demonstrating emission compliance under high altitude conditions. In addition to the two types of new vehicles sold in high altitude areas, substantial numbers of in-use vehicles have relocated to high altitude areas from low altitude areas. All of these relocated vehicles were designed for low altitude operation.

When low altitude vehicles with current emission controls (i.e., vehicles without three-way catalysts) are operated at high altitude they tend towards overly fuel-rich operation. This can cause higher carbon monoxide (CO) and hydrocarbon (HC) emissions, as well as driveability and performance problems. There are modifications—known as high altitude performance adjustments—which can be made to alleviate the driveability and performance problems. These modifications can also reduce CO and HC emissions. These reductions are usually accompanied by an increase in emissions of oxides of nitrogen (NOx) to levels which are typical of vehicles operated at low altitude. The exact changes involved in high altitude performance adjustments differ for different engines, but may involve adjustment of the idle mixture and other fuel system calibrations, choke bimetal spring tension, and ignition timing.

Prior to the 1977 Amendments to the Clean Air Act, manufacturers and dealers were discouraged from performing such modifications because of their concern that these actions might be considered in some cases to be prohibited tampering.

The 1977 Amendments expanded the tampering prohibition to include independent mechanics as well as dealership mechanics. They also added a new section 215 which exempts high altitude performance adjustments from the prohibition provided they follow procedures approved by the Administrator. EPA is in the process of developing regulations to implement section 215.

EPA is also in the process of developing separate emission standards for 1981 through 1983 model year vehicles produced for sale in high altitude areas, as it is allowed to do under the 1977 Amendments. These standards will require that all new vehicles sold in high altitude areas demonstrate emission compliance under high altitude conditions. EPA expects that vehicles complying with these standards will also have satisfactory driveability and performance and will not need any high altitude performance adjustments. EPA also expects that the 1981 through 1983 standards will not result in a restriction in the availability of some models, as occurred during the 1977 model year. EPA bases its expectations that vehicles will be produced with acceptable driveability on an important difference between the approach it used for 1977 and the approach it is considering for the 1981 through 1983 standards. For 1977, EPA restricted the sale in high altitude areas of vehicles not designed and certified for operation in those areas. EPA did not require manufacturers to design and certify any vehicles for high altitude, and some manufacturers did not design and certify as many models for high altitude as they did for the larger, low altitude market. For 1981 through 1983, EPA is considering *requiring* manufacturers to certify a high altitude version of every vehicle configuration they wish to sell in low altitude areas. Having gone to the expense of doing so, the manufacturers will be more likely to produce and sell such versions also, or at least to produce and distribute to their dealers the parts needed to change a low altitude version to a high altitude version before sale, than they were in 1977. Thus, there is no cause for concern about the connection between this final rule on parameter adjustment and new vehicles produced for sale in high altitude areas.

The other area of potential concern is with 1981 through 1983 model year low altitude vehicles which are relocated to high altitude areas. EPA anticipates that as a result of this final rule, manufacturers will make it more difficult to adjust some of the parameters which are sometimes adjusted as part of high altitude performance adjustments on current vehicles. There will likely be an increase in the cost of making the adjustments for some vehicles because of the increased difficulty in gaining access to adjustment mechanisms. EPA does not expect the increase to be severe.

One of the factors which will keep the increase smaller than it would otherwise be is the expected widespread use of three-way catalysts in 1981 and

later years. Vehicles with this type of emission control system will inherently respond to altitude changes differently than current vehicles. Their closed-loop control of fuel/air mixture during most modes of operation will eliminate the overly fuel-rich mixtures that are responsible for driveability and emissions degradation in those modes.

Rich mixtures during the cold start and idle modes may remain as problems. However, there are steps which a manufacturer can take to alleviate them. Manufacturers should still be able to retain enough idle mixture adjustability to allow leaning adjustments in the idle mode, without risking noncompliance under the revised test procedure. Alternatively, closed-loop control can be extended to include the idle mode. When choke adjustments are essential, pressure compensating systems can be used to make them automatic.

In contrast to current low altitude vehicles, vehicles with three-way catalysts are expected to show an improvement in fuel economy when relocated to higher altitude. Timing adjustments will therefore not be needed to retain fuel economy, as they are on current vehicles. EPA expects that electronic spark control will be used on many vehicles. This will facilitate timing adjustments when they are necessary.

The methods used to accommodate altitude relocation for 1981 through 1983 will ultimately be selected by each vehicle manufacturer. By 1981, the section 215 provisions will be implemented and will legally allow whatever appropriate adjustments the manufacturer does recommend for relocated vehicles.

Finally, the Clean Air Act requires all 1984 and later model year light-duty motor vehicles to meet the statutory emission standards at all altitudes no matter where sold. EPA expects that this requirement will result in vehicles which also have good driveability and performance at all altitudes. If so, the revised test procedure will no longer be of any concern relative to high altitude performance adjustments.

DRIVEABILITY, SAFETY, AND RESTRICTED ADJUSTABILITY

EPA has noted with much concern that some manufacturers have produced vehicles which were capable of complying with emission standards if adjusted to the manufacturer's recommended settings, but which gave poor driveability characteristics (e.g., hard cold start, stalling, stumble, surge) at those settings. Once in use, these vehicles were frequently maladjusted in (not always successful) attempts to restore reasonably good driveability. Such maladjustments increase emissions, often very substantially.

EPA is certain that vehicles can be designed and produced that will give low emissions and safe and acceptable driveability at the same parameter settings. Many vehicles have been produced already that do so. The more sophisticated engine controls of the future will make the task easier in many ways. This situation will not change as a result of this regulation or of the more stringent emission standards scheduled for the future. However, EPA realizes that there may be short-run market advantages for a manufacturer that neglects to develop and use technology which will give both emission compliance and driveability. Therefore, it is possible that the problem of the past will recur. If it does, it will likely appear in the form of poor driveability, rather than in the form of excessive in-use emissions, since the regulation being promulgated today will make it more difficult to maladjust vehicles in an attempt to better driveability.

Section 202(a)(4) of the Clean Air Act as amended prohibits the use of emission control devices, systems, or elements of design if they cause or contribute to an unreasonable risk to public health, welfare or safety in their operation. Section 206(a)(3)(A) prohibits EPA from certifying a vehicle unless the manufacturer establishes to the satisfaction of the EPA Administrator that the vehicle meets the requirement of section 202(a)(4). While these two provisions deal explicitly with emissions of unregulated pollutants, they are not limited to only risks posed by such pollutants. EPA interprets the two provisions to include risks to safety caused by poor vehicle driveability. Together, the provisions give EPA the authority to establish regulations (standards and test procedures) for safe vehicle driveability.

EPA is not establishing or formally proposing specific safe drivability criteria at this time. Instead, this amendment requires the manufacturer to ensure safe vehicle driveability when it establishes the physically adjustable range of each parameter. EPA will closely monitor the performance of in-use vehicles. Moreover, EPA will develop and issue such safe driveability criteria as may be needed to assure redress under the Clean Air Act for driveability problems with safety implications. These efforts will, of course, be coordinated with the National Highway Traffic Safety Administration.

ECONOMIC IMPACT

The Environmental Protection Agency has determined that this rule does not constitute a "significant" regulation requiring preparation of a Regulatory Analysis under Executive Order 12044.

The average increase in the cost of new vehicles during the initial implementation of this rule is expected to be negligible. The majority of vehicles can be brought into compliance through minor changes. An incremental cost of $3.00 for these vehicles was estimated in the preamble to the NPRM, and manufacturers' comments generally supported this estimate. Vehicles for which more costly changes are required are expected to constitute a small minority.

There will be two possible effects on service costs over a vehicle's useful life. Manufacturers may produce vehicles that can be tuned-up in less time than presently or that need less frequent tune-ups. Counteracting this may be an increase in the time and cost required to make certain adjustments or to service or replace certain parts in unusual situations (e.g., repair of crash damage, part failure, or change of altitude). (Manufacturers may choose to make design changes that are more costly than the $3.00 per vehicle estimate in order to reduce this potential increase in service costs. Also, warranty claims within the standard one-year warranty period will transfer part of the service cost impact onto new vehicle prices.)

The actual fuel economy of in-use vehicles should improve somewhat since the opportunity for maladjustments, which EPA has found are generally to the detriment of fuel economy, will be limited by this action.

EPA expects that the average net effect of service cost and fuel cost impacts will be small compared to present lifetime operating costs.

ENVIRONMENTAL IMPACT

This change to the test procedure does not cause EPA's emission standards to be more stringent than those prescribed by section 202 of the Clean Air Act since it requires test vehicles to meet emission standards in states of adjustment that are likely to occur in vehicles in use. The change will result in a significant improvement in air quality, particularly with respect to carbon monoxide and oxidant concentrations, by reducing the extent to which in-use vehicles exceed the emission standards.

EPA estimates that had this regulation been in effect for the 1975 and 1976 model year vehicles, their contribution of CO emissions would have been reduced an average of about 65% and their contribution of HC emissions by about 40%.

REVIEW OF ACTION AFTER 5 YEARS

EPA intends to review the effectiveness and need for continuation of the provisions contained in this action no

more than five years after initial implementation, e.g., the end of the 1985 model year. In particular, EPA will solicit comments from affected parties with regard to cost and other burdens associated with compliance and will review data on cars in use before and after implementation to determine how effective these measures have been.

AVAILABILITY OF DOCUMENTS

Copies of EPA's summary and analysis of comments to the Notice of Intent to Develop Rulemaking and NPRM and supporting documentation are available for inspection and copying at the U.S. Environmental Protection Agency, Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street, S.W., Washington, D.C. 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

Dated: December 15, 1978.

DOUGLAS M. COSTLE,
Administrator.

Part 86 of Chapter I, Title 40 of the Code of Federal Regulations is hereby amended as follows:

1. By adding a new § 86.081-5 to read as follows:

§ 86.081-5 General standards; increase in emissions; unsafe conditions.

(a)(1) Every new motor vehicle (or new motor vehicle engine) manufactured for sale, sold, offered for sale, introduced, or delivered for introduction into commerce, or imported into the United States for sale or resale which is subject to any of the standards prescribed in this subpart shall be covered by a certificate of conformity issued pursuant to §§ 86.081-21, 86.081-22, 86.079-23, and §§ 86.079-29 through 86.079-34.

(2) No heavy-duty vehicle manufacturer shall take any of the actions specified in section 203(a)(1) of the Act with respect to any gasoline-fueled or Diesel heavy-duty vehicle which uses an engine which has not been certified as meeting applicable standards. Each heavy-duty vehicle manufacturer shall provide to the Administrator prior to the beginning of each model year a statement signed by an authorized representative which includes the following information:

(i) A description of the vehicles which will be produced subject to this section;

(ii) Identification of the engines used in the vehicles;

(iii) Projected sales data on each vehicle-engine combination;

(iv) A statement that the engines will not be modified by the vehicle manufacturer or a detailed specification of any changes which will be made. Changes made solely for the purpose of mounting an engine in a vehicle need not be included.

(v) A statement that the engine maintenance instruction supplied by the engine manufacturer, in compliance with § 86.079-38, will be furnished to the ultimate purchaser. If these maintenance instructions are modified, a detailed description of the modifications and a justification for each must be provided to the Administrator for review. The Administrator will notify the manufacturer of the determination whether the modified instructions are reasonable and necessary to assure proper functioning of the emission control system.

(b)(1) Any system installed on or incorporated in a new motor vehicle (or new motor vehicle engine) to enable such vehicle (or engine) to conform to standards imposed by this subpart.

(i) Shall not in its operation or function cause the emission into the ambient air of any noxious or toxic substance that would not be emitted in the operation of such vehicle (or engine) without such system, except as specifically permitted by regulation; and

(ii) Shall not in its operation, function, or malfunction result in any unsafe condition endangering the motor vehicle, its occupants, or persons or property in close proximity to the vehicle.

(2) In establishing the physically adjustable range of each adjustable parameter of a light-duty vehicle or light-duty truck, the manufacturer shall insure that, taking into consideration the production tolerances, safe vehicle driveability characteristics are available within that range, as required by § 202(a)(4) of the Clean Air Act.

(3) Every manufacturer of new motor vehicles (or new motor vehicle engines) subject to any of the standards imposed by this subpart shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicles (or motor vehicle engines) in accordance with good engineering practice to ascertain that such test vehicles (or test engines) will meet the requirements of this section for the useful life of the vehicle (or engine).

2. By adding a new § 86.081-21 to read as follows:

§ 86.081-21 Application for certification.

(a) A separate application for a certificate of conformity shall be made for each set of standards and each class of new motor vehicles or new motor vehicle engines. Such application shall be made to the Administrator by the manufacturer and shall be updated and corrected by amendment.

(b) The application shall be in writing, signed by an authorized representative of the manufacturer, and shall include the following:

(1)(i) *All vehicles and engines.* Identification and description of the vehicles (or engines) covered by the application and a description of their engine (vehicles only), emission control system and fuel system components. This shall include a detailed description of each auxiliary emission control device (AECD) to be installed in or on any certification test vehicle (or certification test engine).

(ii) *Light-duty vehicles and light-duty trucks only.* (A) The manufacturer shall provide to the Administrator in the preliminary application for certification:

(*1*) A list of those parameters which are physically capable of being adjusted (including those adjustable parameters for which access is difficult) and that, if adjusted to settings other than the manufacturer's recommended setting, may affect emissions;

(*2*) A specification of the manufacturer's intended physically adjustable range of each such parameter, and the production tolerances of the limits or stops used to establish the physically adjustable range;

(*3*) A description of the limits or stops used to establish the manufacturer's intended physically adjustable range of each adjustable parameter, or any other means used to inhibit adjustment;

(*4*) The nominal or recommended setting, and the associated production tolerances, for each such parameter.

(B) The manufacturer may provide, in the preliminary application for certification, information relating to why certain parameters are not expected to be adjusted in actual use and to why the physical limits or stops used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are expected to be effective in preventing adjustment of parameters on in-use vehicles to settings outside the manufacturer's intended physically adjustable ranges. This may include results of any tests to determine the difficulty of gaining access to an adjustment or exceeding a limit as intended or recommended by the manufacturer.

(C) The Administrator may require to be provided detailed drawings and descriptions of the various emission related components, and/or hardware samples of such components, for the purpose of making his determination of which vehicle or engine parameters will be subject to adjustment for new certification and Selective Enforcement Audit testing and of the physically adjustable range for each such vehicle or engine parameter.

(2) Projected U.S. sales data sufficient to enable the Adminstrator to select a test fleet representative of the

vehicles (or engines) for which certification is requested.

(3) A description of the test equipment and fuel proposed to be used.

(4) (i) A description of the proposed mileage (or service) accumulation procedure for durability testing.

(ii) A description of the test procedures to be used to establish the evaporative emission deterioration factors required to be determined and supplied in § 86.079-23(a)(2).

(5) A statement of recommended maintenance and procedures necessary to assure that the vehicles (or engines) covered by a certificate of conformity in operation conform to the regulations, and a description of the program for training of personnel for such maintenance, and the equipment required.

(6) At the option of the manufacturer, the proposed composition of the emission-data and durability-data test fleet.

(c) Complete copies of the application and of any amendments thereto, and all notifications under §§ 86.079-32, 86.079-33, and 86.079-34 shall be submitted in such multiple copies as the Administrator may require.

(d) Incomplete light duty trucks shall have a maximum completed curb weight and maximum completed frontal area specified by the manufacturer.

3. By adding a new § 86.081-22 to read as follows:

§ 86.081-22 Approval of application for certification; test fleet selections; determinations of parameters subject to adjustment for certification and Selective Enforcement Audit testing, adequacy of limits, and physically adjustable ranges.

(a) After a review of the application for certification and any other information which the Administrator may require, the Administrator may approve the application and select a test fleet in accordance with § 86.080-24.

(b) The Administrator may disapprove in whole or in part an application for certification for reasons including incompleteness, inaccuracy, inappropriate proposed mileage (or service) accumulation procedures, test equipment, or fuel, and incorporation of defeat devices in vehicles (or on engines) described by the application.

(c) Where any part of an application is rejected, the Administrator shall notify the manufacturer in writing and set forth the reasons for such rejection. Within 30 days following receipt of such notification, the manufacturer may request a hearing on the Administrator's determination. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If, after the review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078-6 with respect to such issue.

(d) The Administrator does not approve the test procedures for establishing the evaporative emission deterioration factors. The manufacturer shall submit the procedures as required in § 86.081-21(b)(4)(ii) prior to the Administrator's selection of the test fleet under § 86.080-24(b)(1) and if such procedures will involve testing of durability-data vehicles selected by the Administrator or elected by the manufacturer under § 86.080-24(c)(1), prior to initiation of such testing.

(e) *Light-duty vehicles and light-duty trucks only.* When the Administrator selects emission data vehicles for the test fleet, he will at the same time determine those vehicle or engine parameters which will be subject to adjustment during certification and Selective Enforcement Audit testing; the adequacy of the limits, stops, seals, or other means used to inhibit adjustment; and the resulting physically adjustable ranges for each such parameter and notify the manufacturer of his determinations.

(1)(i) The Administrator may determine to be subject to adjustment the idle fuel-air mixture on gasoline-fueled vehicles (carbureted or fuel injected); the choke valve action parameter(s) on carbureted, gasoline-fueled vehicles; or any parameter on any vehicle (Diesel or gasoline-fueled) which is physically capable of being adjusted, may significantly affect emissions, and was not present on vehicles of the same engine family in the previous model year.

(ii) The Administrator may, in addition, determine to be subject to adjustment any other parameter on any vehicle which is physically capable of being adjusted and which may significantly affect emissions. However, the Administrator may do so only if he has previously notified the manufacturer that he might do so and has found, at the time he gave this notice, that the intervening period would be adequate to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period. In no event will this notification be given later than September 1 of the calendar year two years prior to the model year.

(iii) In determining the parameters subject to adjustment the Administrator will consider the likelihood that, for each of the parameters listed in paragraphs (e)(1)(i) and (e)(1)(ii) of this section, settings other than the manufacturer's recommended setting will occur on in-use vehicles. In determining likelihood, the Administrator will consider such factors as, but not limited to, information contained in the preliminary application, surveillance information from similar in-use vehicles, the difficulty and cost of gaining access to an adjustment, damage to the vehicle if an attempt is made to gain such access and the need to replace parts following such attempt, and the effect of settings other than the manufacturer's recommended setting on vehicle performance characteristics including emission characteristics.

(2)(i) The Administrator will determine a parameter to be adequately inaccessible or sealed if:

(A) In the case of an idle mixture screw, the screw is recessed within the carburetor casting and sealed with lead, thermosetting plastic, or an inverted elliptical spacer or sheared off after adjustment at the factory, and the inaccessibility is such that the screw cannot be accessed and/or adjusted with simple tools in one-half hour or for $20 (1978 dollars) or less.

(B) In the case of a choke bimetal spring, the plate covering the bimetal spring is riveted or welded in place, or held in place with nonreversible screws.

(C) In the case of a parameter which may be adjusted by elongating or bending adjustable members (e.g., the choke vacuum break), any elongation of the adjustable member is limited by design or, in the case of a bendable member, the member is constructed of a material which when bent would return to its original shape after the force is removed (plastic or spring steel materials).

(D) In the case of any parameter, the manufacturer demonstrates that adjusting the parameter to settings other than the manufacturer's recommended setting takes more than one-half hour or costs more than $20 (1978 dollars).

(ii) The Administrator will determine a physical limit or stop to be an adequate restraint on adjustability if:

(A) In the case of a threaded adjustment, the threads are terminated, pinned or crimped so as to prevent additional travel without breakage or need for repairs which take more than one-half hour or cost more than $20 (1978 dollars).

(B) The adjustment is ineffective at the end of the limits of travel regardless of additional forces or torques applied to the adjustment.

(C) The manufacturer demonstrates that travel or rotation limits cannot be exceeded with the use of simple and inexpensive tools (e.g., screwdriver, pliers, open-end or box wrenches)

without incurring significant and costly damage to the vehicle or control system or without taking more than one-half hour or costing more than $20 (1978 dollars).

(iii) If manufacturer service manuals or bulletins describe routine procedures for gaining access to a parameter or for removing or exceeding a physical limit, stop, seal or other means used to inhibit adjustment, or if surveillance data indicate that gaining access, removing, or exceeding is likely, paragraphs (e)(2)(i) and (e)(2)(ii) of this section shall not apply for that parameter.

(iv) In determining the adequacy of a physical limit, stop, seal, or other means used to inhibit adjustment of a parameter not covered by paragraph (e)(2)(i) or (e)(2)(ii) of this section, the Administrator will consider the likelihood that it will be circumvented, removed, or exceeded on in-use vehicles. In determining likelihood the Administrator will consider such factors as, but not limited to, information contained in the preliminary application; surveillance information from similar in-use vehicles; the difficulty and cost of circumventing, removing, or exceeding the limit, stop, seal, or other means; damage to the vehicle if an attempt is made to circumvent, remove, or exceed it and the need to replace parts following such attempt; and the effect of settings beyond the limit, stop, seal, or other means on vehicle performance characteristcs other than emission characteristics.

(3) The Administrator shall determine two physically adjustable ranges for each parameter subject to adjustment.

(i) (A) In the case of a parameter determined to be adequately inaccessible or sealed, the Administrator may include within the physically adjustable range applicable to testing under §§ 86.079-23 and 86.081-29 (certification testing) all settings within the production tolerance associated with the nominal setting for that parameter, as specified by the manufacturer in the preliminary application for certification.

(B) In the case of other parameters, the Administrator shall include within this range all settings within physical limits or stops determined to be adequate restraints on adjustability. The Administrator may also include the production tolerances on the location of these limits or stops when determining the physically adjustable range.

(ii) (A) In the case of a parameter determined to be adequately inaccessible or sealed, the Administrator shall include within the physically adjustable range applicable to testing under § 86.608 (Selective Enforcement Audit testing) only the actual setting to which the parameter is adjusted during production.

(B) In the case of other parameters, the Administrator shall include within this range all settings within physical limits or stops determined to be adequate restraints on adjustability, as they are actually located and effective on the test vehicle.

(f) If the manufacturer submits the information specified in § 86.081-21(b)(1)(ii) in advance of its full preliminary application for certification, the Administrator shall review the information and make the determinations required in paragraph (e) of this section.

(g) Within 30 days following receipt of notification of the Administrator's determinations made under paragraph (e) of this section, the manufacturer may request a hearing on the Administrator's determinations. The request shall be in writing, signed by an authorized representative of the manufacturer, and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in supprt of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual isssue, he shall provide the manufacturer a hearing in accordance with § 86.078-6 with respect to such issue.

4. By adding a new § 86.081-29 to read as follows:

§ 86.081-29 Testing by the Administrator.

(a) (1) Paragraph (a) of this section applies to light-duty vehicles and light-duty trucks.

(2) The Administrator may require that any one or more of the test vehicles be submitted to him, at such place or places as he may designate, for the purposes of conducting emissions tests. The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(3)(i) Whenever the Administrator conducts a test on a test vehicle, the results of that test shall, unless subsequently invalidated by the Administrator, comprise the official data for the vehicle at the prescribed test point and the manufacturer's data for that prescribed test point shall not be used in determining compliance with emission standards.

(ii) Whenever the Administrator does not conduct a test on a test vehicle at a test point, the manufacturer's test data will be accepted as the official data for that test point: *Provided*, That if the Administrator makes a determination based on testing under paragraph (a)(2) of this section that there is a lack of correlation between the manufacturer's test equipment and the test equipment used by the Administrator, no manufacturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer; *And, further provided*, That if the Administrator has reasonable basis to believe that any test data submitted by the manufacturer is not accurate or has been obtained in violation of any provisions of this part, the Administrator may refuse to accept that data as the official data pending retesting or submission of further information. If the manufacturer conducts more than one test on a vehicle, as authorized under § 86.079-26(a)(3)(i)(A), the data from the last test in that series of tests on that vehicle will constitute the official data:

(iii)(A)(*1*) The Administrator may adjust or cause to be adjusted any adjustable parameter of an emission data vehicle or engine which the Administrator has determined to be subject to adjustment for certification and Selective Enforcement Audit testing in accordance with § 86.081-22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.081-22(e)(3)(i), prior to the performance of any tests to determine whether such vehicle or engine conforms to applicable emission standards, including tests performed by the manufacturer under § 86.079-23(c)(1). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the vehicle before it accumulated any mileage, all other parameters being adjusted identically for the purpose of comparison. The Administrator, in making or specifying such adjustments, will consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use light-duty vehicles or light-duty trucks. In determining likelihood, the Administrator will consider factors such as, but not limited to, the effect of the adjustment on vehicle performance characteristics and surveillance information from similar in-use vehicles.

(*2*) For those vehicle or engine parameters which the Administrator has

not determined to be subject to adjustment during certification and Selective Enforcement Audit testing in accordance with § 86.081-22(e)(1), the emission data vehicle presented to the Administrator for testing shall be calibrated within the production tolerances applicable to the manufacturer's specifications to be shown on the vehicle label (see § 86.079-35(a)(1)(iii)(D)) as specified in the application for certification. If the Administrator determines that a vehicle is not within such tolerances, the vehicle will be adjusted, at the facility designated by the Administrator, prior to the test and an engineering report shall be submitted to the Administrator describing the corrective action taken. Based on the engineering report, the Administrator will determine if the vehicle will be used as an emission data vehicle.

(B) If the Administrator determines that the test data developed on an emission-data vehicle under paragraph (a)(3)(i) of this section would cause that vehicle to fail due to excessive 4,000 mile emissions or by application of the appropriate deterioration factor, then the following procedure shall be observed:

(*1*) The manufacturer may request a retest. Before the retest, those vehicle or engine parameters which the Administrator has not determined to be subject to adjustment for certification and Selective Enforcement Audit testing in accordance with § 86.081-22(e)(1) may be readjusted to the manufacturer's specifications, if these adjustments were made incorrectly prior to the first test. The Administrator may adjust or cause to be adjusted any parameter which the Administrator has determined to be subject to adjustment to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.081-22(e)(3)(i). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the vehicle before it accumulated any mileage, all other parameters being adjusted identically for the purpose of comparison. Other maintenance or repairs may be performed in accordance with § 86.079-25. All work on the vehicle shall be done at such location and under such conditions as the Administrator may prescribe.

(2) The vehicle will be retested by the Administrator and the results of this test shall comprise the official data for the emission-data vehicle.

(iv) If sufficient durability data are not available at the time of any emission test conducted under paragraph (a)(2) of this section to enable the Administrator to determine whether an emission-data vehicle would fail, the manufacturer may request a retest in accordance with the provisions of paragraphs (a)(3)(iii) (A) and (B) of this section. If the manufacturer does not promptly make such request, he shall be deemed to have waived the right to a retest. A request for retest must be made before the manufacturer removes the vehicle from the test premises.

(b) (1) Paragraph (b) of this section applies to heavy-duty engines.

(2) The Administrator may require that any one or more of the test engines be submitted to him, at such place or places as he may designate, for the purpose of conducting emissions tests. The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(3) (i) Whenever the Administrator conducts a test on a test engine the results of that test, unless subsequently invalidated by the Administrator, shall comprise the official data for the engine at that pescribed test point and the manufacturer's data for that prescribed test point shall not be used in determining compliance with emission standards.

(ii) Whenever the Administrator does not conduct a test on a test engine at a test point, the manufacturer's test data will be accepted as the official data for that test point: *Provided*, That if the Administrator makes a determination based on testing under paragraph (b)(2) of this section that there is a lack of correlation between the manufacturer's test equipment and the test equipment used by the Administrator, no manufacturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer: *And further provided*, That if the Administrator has reasonable basis to believe that any test data submitted by the manufacturer is not accurate or has been obtained in violation of any provision of this part, the Administrator may refuse to accept that data as the official data pending retesting or submission of further information.

(iii)(A) The emission-data engine presented to the Administrator for testing shall be calibrated within the production tolerances applicable to the manufacturer's specifications to be shown on the engine label (see § 86.079-35(a)(2)(iii) as specified in the application for certification. If the Administrator determines that an engine is not within such tolerances, the engine shall be adjusted at the facility designated by the Administrator prior to the test and an engineering report shall be submitted to the Administrator describing the corrective action taken. Based on the engineering report the Administrator will determine if the engine shall be used as an emission-data engine.

(B) If the Administrator determines that the test data developed under paragraph (b)(3)(iii)(A) of this section would cause the emission-data engine to fail due to excessive 125-hour emission values or by the application of the appropriate deterioration factor, then the following procedure shall be observed.

(*1*) The manufacturer may request a retest. Before the retest, the engine may be readjusted to manufacturer's specifications if these adjustments were made incorrectly prior to the first test, and other maintenance or repairs may be performed in accordance with § 86.079-25. All work on the engine shall be done at such location and under such conditions as the Administrator may prescribe.

(*2*) The engine will be retested by the Administrator and the results of this test shall comprise the official data for the emission-date engine.

(iv) If sufficient durability data are not available at the time of any emission test conducted under paragraph (b)(2) of this section to enable the Administrator to determine whether an emission-data engine would fail, the manufacturer may request a retest in accordance with the provisions of paragraphs (b)(3)(iii)(B) (*1*) and (*2*) of this section. If the manufacturer does not promptly make such request, he shall be deemed to have waived the right to a retest. A request for retest must be made before the manufacturer removes the engine from the test premises.

5. By adding a new § 86.082-22 to read as follows:

§ 86.082-22 Approval of application for certification; test fleet selections; determinations of parameters subject to adjustment for certification and Selective Enforcement Audit testing, adequacy of limits, and physically adjustable ranges.

(a) After a review of the application for certification and any other information which the Administrator may require, the Administrator may approve the application and select a test fleet in accordance with § 86.080-24.

(b) The Administrator may disapprove in whole or in part an application for certification for reasons in-

cluding incompleteness, inaccuracy, inappropriate proposed mileage (or service) accumulation procedures, test equipment, or fuel, and incorporation of defeat devices in vehicles (or on engines) described by the application.

(c) Where any part of an application is rejected, the Administrator shall notify the manufacturer in writing and set forth the reasons for such rejection. Within 30 days following receipt of such notification, the manufacturer may request a hearing on the Administrator's determination. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If, after the review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078-6 with respect to such issue.

(d) The Administrator does not approve the test procedures for establishing the evaporative emission deterioration factors. The manufacturer shall submit the procedures as required in § 86.081-21(b)(4)(ii) prior to the Administrator's selection of the test fleet under § 86.080-24(b)(1) and if such procedures will involve testing of durability-data vehicles selected by the Administrator or elected by the manufacturer under § 86.080-24(c)(1), prior to initiation of such testing.

(e) *Light-Duty vehicles and Light-Duty trucks only.* When the Administrator selects emission data vehicles for the test fleet, he will at the same time determine those vehicle or engine parameters which will be subject to adjustment during certification and Selective Enforcement Audit testing; the adequacy of the limits, stops, seals, or other means used to inhibit adjustment; and the resulting physically adjustable ranges for each such parameter and notify the manufacturer of his determinations.

(1)(i) The Administrator may determine to be subject to adjustment the idle fuel-air mixture, idle speed, and initial spark timing parameters on gasoline-fueled vehicles (carbureted or fuel injected); the choke valve action parameter(s) on carbureted, gasoline-fueled vehicles; or any parameter on any vehicle (Diesel or gasoline-fueled) which is physically capable of being adjusted, may significantly affect emissions, and was not present on vehicles of the same engine family in the previous model year.

(ii) The Administrator may, in addition, determine to be subject to adjustment any other parameter on any vehicle which is physically capable of being adjusted and which may significantly affect emissions. However, the Administrator may do so only if he has previously notified the manufacturer that he might do so and has found, at the time he gave this notice, that the intervening period would be adequate to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period. In no event will this notification be given later than September 1 of the calendar year two years prior to the model year.

(iii) In determining the parameters subject to adjustment the Administrator will consider the likelihood that, for each of the parameters listed in paragraphs (e)(1)(i) and (e)(1)(ii) of this section, settings other than the manufacturer's recommended setting will occur on in-use vehicles. In determining likelihood, the Administrator will consider such factors as, but not limited to, information contained in the preliminary application, surveillance information from similar in-use vehicles, the difficulty and cost of gaining access to an adjustment, damage to the vehicle if an attempt is made to gain such access and the need to replace parts following such attempt, and the effect of settings other than the manufacturer's recommended setting on vehicle performance characteristics including emission characteristics.

(2)(i) The Administrator will determine a parameter to be adequately inaccessible or sealed if:

(A) In the case of an idle mixture screw, the screw is recessed within the carburetor casting and sealed with lead, thermosetting plastic, or an inverted elliptical spacer or sheared off after adjustment at the factory, and the inaccessibility is such that the screw cannot be accessed and/or adjusted with simple tools in one-half hour or for $20 (1978 dollars) or less.

(B) In the case of a choke bimetal spring, the plate covering the bimetal spring is riveted or welded in place, or held in place with nonreversible screws.

(C) In the case of a parameter which may be adjusted by elongating or bending adjustable members (e.g., the choke vacuum break), any elongation of the adjustable member is limited by design, or in the case of a bendable member, the member is constructed of a material which when bent would return to its original shape after the force is removed (plastic or spring steel materials).

(D) In the case of any parameter, the manufacturer demonstrates that adjusting the parameter to settings other than the manufacturer's recommended setting takes more than one-half hour or costs more than $20 (1978 dollars).

(ii) The Administrator will determine a physical limit or stop to be an adequate restraint on adjustability if:

(A) In the case of a threaded adjustment, the threads are terminated, pinned or crimped so as to prevent additional travel without breakage or need for repairs which take more than one-half hour or cost more than $20 (1978 dollars).

(B) The adjustment is ineffective at the end of the limits of travel regardless of additional forces or torques applied to the adjustment.

(C) The manufacturer demonstrates that travel or rotation limits cannot be exceeded with the use of simple and inexpensive tools (e.g., screwdriver, pliers, open-end or box wrenches) without incurring significant and costly damage to the vehicle or control system or without taking more than one-half hour or costing more than $20 (1978 dollars).

(iii) If manufacturer service manuals or bulletins describe routine procedures for gaining access to a parameter or for removing or exceeding a physical limit, stop, seal or other means used to inhibit adjustment, or if surveillance data indicate that gaining access, removing, or exceeding is likely, paragraphs (e)(2)(i) and (e)(2)(ii) of this section shall not apply for that parameter.

(iv) In determining the adequacy of a physical limit, stop, seal, or other means used to inhibit adjustment of a parameter not covered by paragraph (e)(2)(i) or (e)(2)(ii) of this section, the Administrator will consider the likelihood that it will be circumvented, removed, or exceeded on in-use vehicles. In determining likelihood the Administrator will consider such factors as, but not limited to, information contained in the preliminary application; surveillance information from similar in-use vehicles; the difficulty and cost of circumventing, removing, or exceeding the limit, stop, seal, or other means; damage to the vehicle if an attempt is made to circumvent, remove, or exceed it and the need to replace parts following such attempt; and the effect of settings beyond the limit, stop, seal, or other means on vehicle performance characteristics other than emission characteristics.

(3) The Administrator shall determine two physically adjustable ranges for each parameter subject to adjustment.

(i)(A) In the case of a parameter determined to be adequately inaccessible or sealed, the Administrator may include within the physically adjustable range applicable to testing under §§ 86.079-23 and 86.081-29 (certification testing) all settings within the production tolerance associated with the nominal setting for that parameter, as specified by the manufacturer

in the preliminary application for certifiation.

(B) In the case of other parameters, the Administrator shall include within this range all settings within physical limits or stops determined to be adequate restraints on adjustability. The Administrator may also include the production tolerances on the location of these limits or stops when determining the physically adjustable range.

(ii)(A) In the case of a parameter determined to be adequately inaccessible or sealed, the Administrator shall include within the physically adjustable range applicable to testing under § 86.608 (Selective Enforcement Audit testing) only the actual setting to which the parameter is adjusted during production.

(B) In the case of other parameters, the Administrator shall include within this range all settings within physical limits or stops determined to be adequate restraints on adjustability, as they are actually located and effective on the test vehicle.

(f) If the manufacturer submits the information specified in § 86.081-21(b)(1)(ii) in advance of its full preliminary application for certification, the Administrator shall review the information and make the determinations required in paragraph (e) of this section.

(g) Within 30 days following receipt of notification of the Administrator's determinations made under paragraph (e) of this section, the manufacturer may request a hearing on the Administrator's determinations. The request shall be in writing, signed by an authorized representative of the manufacturer, and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078-6 with respect to such issue.

6. In § 86.601 by revising it to read as follows:

§ 86.601 Applicability.

For 1977 model year vehicles produced before January 1, 1977, the provisions of this subpart with the exception of §§ 86.612 and 86.613 and paragraph (b)(2) of § 86.608 are applicable to new gasoline-fueled light-duty vehicles, new diesel light-duty vehicles, new gasoline-fueled light-duty trucks, and new diesel light-duty trucks. For 1977 vehicles produced beginning January 1, 1977 and later model year vehicles, the provisions of this subpart with the exception of paragraph (b)(2) of § 86.608 are applicable. For 1981 and later model year vehicles, all provisions of this subpart are applicable.

7. In § 86.608 by redesignating paragraph (b) to be paragraph (b)(1) and adding a new paragraph (b)(2) to read as follows:

§ 86.608 Test procedures.

* * * * *

(b)(1) * * *

(2) For 1981 and later model years the Administrator may adjust or cause to be adjusted any engine or vehicle parameter which the Administrator has determined to be subject to adjustment for new vehicle compliance testing (e.g., for certification or Selective Enforcement Audit testing) in accordance with § 86.081-22(c)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.081-22(e)(3)(ii), prior to the performance of any tests. However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a lower engine idle speed than will be possible within the physically adjustable range of the idle speed parameter on the vehicle when it has accumulated 4,000 miles, all other parameters being adjusted identically for the purpose of comparison. The Administrator, in making or specifying such adjustments, will consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use light-duty vehicles or light-duty trucks. In determining likelihood, the Administrator will consider factors such as, but not limited to, the effect of the adjustment on vehicle performance characteristics and surveillance information from similar in-use vehicles.

* * * * *

(Section 202, 206, and 301 of the Clean Air Act (15 U.S.C. 7521, 7525, 7601).)

[FR Doc. 79-527 Filed 1-11-79; 8:45 am]

FRIDAY, JANUARY 12, 1979
PART VII

DEPARTMENT OF JUSTICE

Bureau of Prisons

CONTROL, CUSTODY, CARE, TREATMENT AND INSTRUCTION OF INMATES

Proposed Rulemaking and Request for Comments

federal register

[4410-05-M]

DEPARTMENT OF JUSTICE

Bureau of Prisons

[28 CFR Parts 511, 512, 513, 522, 524, 527, 540, 543, 544, 545, 546, 549, 550, 551, 552, 570, 571, and 572]

CONTROL, CUSTODY, CARE, TREATMENT, AND INSTRUCTION OF INMATES

Proposed Rulemaking and Request for Comments

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rules.

SUMMARY: The Bureau is proposing its next installment of proposed regulations for the management of inmates in federal correctional institutions. This proposal is part of the Bureau's overall program to publish in the FEDERAL REGISTER and subsequently in the Code of Federal Regulations, Bureau rules relating to the control, custody, care, treatment, and instruction of inmates presently contained in Program Statements and Operations Memoranda. These Program Statements and Operations Memoranda have been made available in each institution's inmate law library and to members of the general public upon request. This installment proposes rules for administrative procedures relating to the management of inmates in federal correctional institutions as detailed below in the supplementary information section.

DATES: Comments must be received on or before March 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202-724-3062.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96(t), notice is hereby given that the Bureau of Prisons intends to publish in the FEDERAL REGISTER, as proposed rules, those regulations which generally govern the control, custody, care, treatment, and instruction of inmates in federal correctional institutions administered by the Bureau of Prisons.

The regulations according to which the Bureau of Prisons manages inmates in federal correctional institutions are presently contained in Program Statements and Operations Memoranda which have been made available to inmates in each institution's inmate law library and to members of the general public upon request. Most of these regulations have not been published in the Code of Federal Regulations.

While the Bureau of Prisons has frequently received and considered comments from the public relating to Bureau regulations, there has not been a systematic process whereby these comments are solicited and considered before regulations take effect. This publication process will afford interested persons additional notice of Bureau regulations and proposed regulations and will create a formal process for solicitation and consideration of comments.

The Bureau of Prisons does not, however, intend to publish regulations which relate exclusively to the following:

(1) Employment or personnel policies with respect to Bureau of Prisons employees; and

(2) Internal management policies and nonsubstantive interpretations, such as administrative staff manuals, procurement and budget procedures, record keeping and reporting requirements, and instructions issued to implement those regulations which are published.

Prior publication of proposed rules occurred on May 23, 1977 (42 FR 26334 et seq.), August 16, 1977 (42 FR 41368 et seq.), December 21, 1977 (42 FR 64082 et seq.), July 17, 1978 (43 FR 30574 et seq.) and August 2, 1978 (43 FR 34062 et seq.).

In this issue of the FEDERAL REGISTER, the Bureau of Prisons has published proposed regulations which relate most directly to the following:

(1) Relationships with Professional Organizations
(2) Research
(3) Production or Disclosure of Material or Information: FBI Identification Records; FBI Criminal History Records
(4) Intake Screening
(5) Program Reviews
(6) Progress Reports
(7) Transfer of Inmates After Conviction
(8) Metal Detectors/Detaining and Searching Institution Visitors/Arresting Authority, Bureau of Prisons Employees
(9) Inmate Funds Donated Through the Mails
(10) Claims Under the Federal Tort Claims Act
(11) Minimum Standards for Educational Tests
(12) Recreation/Inmate Movies
(13) Guidelines for Social Education Activities
(14) Federal Prison Industries, Inc. Manual—Payrolls Section
(15) Lost Time Wages-Inmate Workers Assigned to Federal Prison Industries, Inc.
(16) Medical Experimentation and Pharmaceutical Testing
(17) Marijuana and Alcohol Testing
(18) Marriage of Inmates
(19) Pre-Trial Inmates
(20) Use of Force and Application of Physical Restraints on Inmates
(21) Hostages
(22) Work and Study Release
(23) Furloughs
(24) Reimbursement by Participants of Community Employment Programs
(25) Pre-Release Program
(26) Fines and Costs
(27) Parole and Mandatory Release Violator Reports
(28) Procedures for the Implementation of section 4205(g) of the Parole Commission and Reorganization Act.

In future issues of the FEDERAL REGISTER the Bureau of Prisons will publish other regulations which relate to the control, custody, care, treatment, and instruction of inmates.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 910, 320 1st Street, NW., Washington, D.C. 20534. Comments received before March 22, 1979, will be considered before final action is taken on these proposals. Copies of all written comments received will be available for examination by interested persons at the Bureau of Prisons, Room 910, 320 1st Street, NW., Washington, D.C. 20534. The proposals may be changed in light of the comments received. No oral hearings are contemplated.

In consideration of the foregoing, it is proposed the following be added to 28 CFR, Chapter V: Parts 511, 512, 513, 522, 524, 527, 540, 543, 544, 545, 546, 549, 550, 551, 552, 570, 571, 572 as set forth below.

PART 511—GENERAL MANAGEMENT POLICY

Subpart A—[Reserved]

Subpart B—Relationships With Professional Organizations

Sec.
511.30 Purpose and scope.
511.31 Support to professional societies.
511.32 Encouragement of professional assistance.
511.33. Central and regional office relationships to professional organizations.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart A—[Reserved]

Subpart B—Relationships With Professional Organizations

§ 511.30 Purpose and scope.

The Bureau of Prisons encourages and assists professional societies which promote activities and interests related to and consistent with the mission and policy of the Bureau. The Bureau of Prisons communicates with and consults professional societies interest-

ed in finding solutions to problems related to the mission of the Bureau.

§ 511.31 Support to professional societies.

(a) The Warden may make available to eligible professional societies institution facilities which can be spared without detriment to institution programs, institution security or loss of productivity.

(b) The Warden may assist professional societies in granting awards to individuals who have contributed significantly to corrections. The assistance may be in the form of co-sponsorship of an award.

(c) The Warden may contract with professional societies for services otherwise unavailable to the institution.

(1) The Warden shall ensure that each proposed contract receives appropriate legal review by the Bureau of Prisons.

(2) A Bureau of Prisons employee may not receive payment from a professional society for work performed in connection with the contract.

§ 511.32 Encouragement of professional assistance.

(a) The Warden may invite members of a professional society to submit views and make recommendations on specific problems.

(b) The Warden may invite a member of a professional society who is not a federal employee to consult with Federal Prison Service officials at government expense.

§ 511.33 Central and regional office relationship to professional organizations.

The Director, Bureau of Prisons or the appropriate Regional Director or their designees shall provide support to and encourage the professional assistance of eligible professional societies within the Central and Regional Office respectively.

PART 512—RESEARCH

Subpart A [Reserved]

Subpart B—Research

Sec.

512.10 Purpose and scope.
512.11 Definitions.
512.12 Requirements for research projects and researchers.
512.13 Content of research proposal.
512.14 Processing of proposals.
512.15 Monitoring of approved research projects.
512.16 Informed consent.
512.17 Access to Bureau of Prisons records.
512.18 Incentives.
512.19 Institution rules.
512.20 Reports.
512.21 Publication of results of research project.
512.22 Copyright provision.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509 510; 28 CFR 0.95-0.99.

Subpart A—[Reserved]

Subpart B—Research

§ 512.10 Purpose and scope.

No one may conduct research within the Bureau of Prisons without prior approval as outlined in this rule. Whoever wishes to conduct a research project within the Bureau of Prisons shall submit to the Bureau a request providing specified information on the proposed research project. The Bureau of Prisons considers requests for authorization of routine and nonroutine proposals as described in § 512.11 (d) and (e).

§ 512.11 Definitions.

(a) For the purpose of this rule, a reasearch project is the systematic collection of information about or from former or present inmates or employees, analysis of the information, and preparation of a report of findings. Routine statistical tabulations undertaken by employees for administrative purposes only are not defined as research projects.

(b) For the purposes of this rule, an employee is a member of the staff of the Bureau of Prisons or a consultant under contract to the Bureau of Prisons who performs duties in furtherance of an agency function under supervision provided by the Bureau.

(c) For the purpose of this rule, a non-employee is any person not defined as an employee under § 512.11(b).

(d) A nonroutine proposal has one or more of the following characteristics:

(1) The proposed research will be conducted at the Central Office.

(2) Execution of the proposed research requires coordination between regions of the Bureau of Prisons.

(3) Execution of the proposed research requires coordination between divisions within a Department or between Departments of the Federal Government.

(4) The proposal raises major issues of research policy.

(5) The proposed research involves follow-up of an inmate after release from confinement.

(6) Execution of the proposed research requires sizeable financial or staff support from the Bureau of Prisons.

(e) A routine proposal has none of the special characteristics which define a nonroutine proposal.

(f) A researcher is a person who has received written approval from the Director, Bureau of Prisons, to conduct a research project within the Bureau of Prisons.

(g) A subject is a present or former inmate or employee of the Bureau of Prisons about or from whom a researcher collects information in the conduct of research project authorized under this rule.

§ 512.12 Requirements for research projects and researchers.

The Director, Bureau of Prisons, may authorize a researcher to conduct a research project, subject to the following conditions:

(a) The project has an adequate research design.

(b) The research will contribute to the advancement of knowledge about corrections.

(c) The project is consistent with Part 549, Subpart E, Medical Experimentation and Pharmaceutical Testing.

(d) The researcher has academic preparation or experience in the area of study of the proposed research.

(e) The researcher assumes responsibility for actions of a non-employee engaged to participate in the research project.

(f) The researcher agrees not to provide research information which identifies a subject to any person other than Bureau of Prisons research personnel without the subject's prior written consent to release of the information.

(g) The researcher agrees to adhere to applicable provisions of the Privacy Act of 1974 and regulations pursuant to this Act.

(h) The researcher who is a non-employee shall sign a statement in which he agrees to adhere to the provisions of this rule.

§ 512.13 Content of research proposal.

In submitting the research proposal, the applicant shall provide the following information:

(a) Summary statement which includes the names and vitae of the researcher(s); the title of the project; an abstract of the project; duration of the project; subjects required, including amount of time required from each and an indication of risk or discomfort involved as a result of participation.

(b) Comprehensive statement which includes information on the purpose of the study; methodology to be employed; anticipated results; their significance and perceived benefits; resources to be utilized; indication of whether Bureau of Prisons participation and cooperation are needed after completion of project; and appendices of all relevant research materials.

§ 512.14 Processing of proposals.

(a) A prospective researcher shall submit his research proposal in one of the following ways:

(1) Routine proposals are submitted at the institutional level.

(2) Non-routine proposals are submitted to the Director of Research, Central Office.

(b) The Director, Bureau of Prisons, has final authority to approve or disapprove a research proposal.

(c) The Central Office shall notify the region and institution of the decision on the research proposal. Staff at the office or institution which initially received the research proposal shall notify the prospective researcher of the Director's decision.

(d) An applicant may submit a preliminary research proposal for review by staff. Approval of this preliminary proposal does not constitute an authorization to conduct a research project within the Bureau of Prisons.

§ 512.15 Monitoring of approved research projects.

(a) The Director of Research, Central Office, shall review and, if appropriate, approve any major methodological changes in a research project prior to its implementation.

(b) The Warden shall appoint a committee to monitor all research conducted at the institution. Staff shall report any violation of research policy to the Regional Director, and to the Director of Research, Central Office.

(c) The Director, Bureau of Prisons, shall appoint a committee to monitor all research conducted through the Central Office. The committee shall report any violation of research policy to the Director, Bureau of Prisons.

(d) The Director, Bureau of Prisons, may suspend or terminate a research project if he believes that the project violates research policy or that its continuation may prove detrimental.

§ 512.16 Informed consent.

(a) Subject participation in a research project is voluntary.

(b) Before commencing a research activity requiring participation by staff or inmates, the researcher shall give each participant an Informed Consent statement containing the following information.

(1) A statement that a participant may withdraw consent and end participation in the project or activity at any time.

(2) Identification of the researcher(s).

(3) Objectives of the research project.

(4) Procedures to be followed in the conduct of the research.

(5) Purpose of each procedure.

(6) Anticipated uses of the results of the research.

(7) A declaration concerning discomfort and risk, including a description of anticipated discomfort and risk.

(8) An offer to answer any questions about procedures; and

(9) Appropriate additional information.

(c) A researcher who is an employee of the Bureau of Prisons shall add to the Informed Consent Statement a statement of the authority under which he conducts the research.

(d) A researcher who is a non-employee of the Bureau of Prisons shall obtain a signed statement of consent from each subject prior to initiation of the research activity.

(e) A researcher who is an employee of the Bureau of Prisons shall obtain a signed statement of consent from a subject in each of the following circumstances:

(1) If the activity of the subject is something other than a response to a questionaire or participation in an interview; or

(2) If a record is prepared from which a subject is identifiable.

§ 512.17 Access to Bureau of Prisons records.

(a) Employees of the Bureau of Prisons shall have access to those records which relate to the subject and are necessary to the purpose of the research project without having to obtain the subject's consent.

(b) A non-employee of the Bureau of Prisons is limited in access to information available under the Freedom of Information Act (5 USC 552).

§ 512.18 Incentives.

A researcher may not provide research subjects with incentives other than soft drinks and snacks given at the test setting.

§ 512.19 Institution rules.

A researcher shall observe the rules of the institution or office in which he conducts his research project. Staff of the responsible insitution or office shall inform the researcher of the local rules.

§ 512.20 Reports.

At least once a year, the researcher shall provide the Director of Research, Central Office, with a report on the progress of the research. Within 10 days after preparation of the report of findings, the researcher shall distribute at least one copy of the report of findings to each of the following: the Director of Research, Central Office; the Regional Director; and the Warden at each significantly mentioned institution. The researcher shall include an abstract in the report of findings.

§ 512.21 Publication of results of research project.

(a) A researcher may publish results of a research project conducted under this rule in book form and in professional journals.

(1) On publication of results, the researcher shall acknowledge participation in the research project by the Bureau of Prisons.

(2) The researcher shall expressly disclaim approval or endorsement of the published materials as an expression of the policies or views of the Bureau of Prisons.

(b) Prior to publication of the results of a research project conducted under this rule, the researcher shall provide a copy of the material accepted for publication to the Director of Research in the Central Office of the Bureau of Prisons.

§ 512.22 Copyright provisions.

(a) An employee of the Bureau of Prisons may not copyright a work prepared as a part of his or her official duties.

(b) Subject to a royalty-free, non-exlusive and irrevocable license, which the Bureau of Prisons reserves, to reproduce, publish, and translate and otherwise to use and to authorize others to publish and use such materials, a non-employee may copyright original materials developed as a result of research conducted under this rule.

(c) As a precondition to the conduct of research under this rule, a non-employee shall grant in writing to the Bureau of Prisons a royalty-free, non-exlusive, and irrevocable license to reproduce, publish, translate and otherwise to use and to authorize others to publish and use original materials developed as a result of research conducted under this rule.

PART 513—ACCESS TO RECORDS

Subpart A—[Reserved]

SUBPART B—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION: FBI IDENTIFICATION RECORDS; FBI CRIMINAL HISTORY RECORDS

Sec.
513.10 Purpose and scope
513.11 Procedures applicable where an FBI identification record is sought.
513.12 Procedures applicable where an FBI criminal history record (NCIC/CCH) is sought.
513.13 Inmate request for record clarification.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart A—[Reserved]

Subpart B—Production or Disclosure of Material or Information: FBI Identification Records; FBI Criminal History Records

§ 513.10 Purpose and scope.

By authorization of the Federal Bureau of Investigation (FBI), the Bureau of Prisons may provide an inmate with a copy of his FBI identification record commonly known as a "rap sheet." Where an inmate's criminal history record has been computerized, staff may provide a copy of the National Crime Information Center Computerized Criminal History record (NCIC/CCH) at the inmate's request.

§ 513.11 Procedures applicable where an FBI identification record is sought.

(a) The inmate may ask institution staff for a copy of his FBI identification record.

(b) Staff shall provide the inmate with a copy of the requested record along with a copy of the Bureau of Prisons program statement governing disclosure of the FBI identification record.

(c) An inmate who so desires may obtain a copy of the identification record directly from the FBI by following the procedure outlined in 28 CFR 16.30 et seq.

(1) Bureau of Prisons staff shall assist the inmate to obtain the fingerprint impressions required to be submitted with such an application.

(2) The inmate may direct that funds be withdrawn from his institution account to pay the applicable fee.

§ 513.12 Procedures applicable where an FBI criminal history record (NCIC/CCH) is sought.

(a) An inmate whose criminal history record is stored in the FBI's National Crime Information Center/Computerized Criminal History records may ask institution staff for a copy of this record.

(b) Staff may provide the NCIC/CCH record only in response to a request from the inmate who is the subject of the record.

(c) Staff may honor only one such request per inmate per month.

(d) An inmate who so desires may address his request for his NCIC/CCH records directly to the FBI according to the procedure outlined in § 513.11(c).

§ 513.13 Inmate request for record clarification.

Where the inmate believes that the record is incorrect or inaccurate, he may follow procedures outlined in 28 CFR 16.30 et seq.

PART 522—ADMISSION TO INSTITUTION

Subpart A-B—[Reserved]

Subpart C—Intake Screening

Sec.
522.20 Purpose and scope.
522.21 Procedures.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart A-B—[Reserved]

Subpart C—Intake Screening

§ 522.20 Purpose and scope.

Bureau of Prisons staff screen newly arrived inmates to ensure that Bureau health and safety standards are met.

§ 522.21 Procedures.

(a) The Warden shall ensure that a newly arrived inmate is cleared by the Medical Department and provided a social interview by staff before assignment to the general population.

(1) Within 24 hours after an inmate's arrival, medical staff shall medically screen the inmate in compliance with Part 549 Subpart B, to find out if there are medical reasons for housing the inmate away from the general population.

(2) Within 24 hours after an inmate's arrival, staff shall interview the inmate to find out if there are nonmedical reasons for housing the inmate away from the general population. Staff shall evaluate both the general physical appearance and emotional condition of the inmate.

(3) Staff shall record results of the medical screening and the social interview in the inmate's central file.

PART 524—CLASSIFICATION OF INMATES

Subpart A-C—[Reserved]

Subpart D—Program Reviews

Sec.
524.30 Purpose and scope.
524.31 Procedures.
524.32 Notification.

Subpart E—Progress Reports

524.40 Purpose and scope.
524.41 Annual progress reports.
524.42 Parole progress reports.
524.43 Transfer summary.
524.44 Retention of reports.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart A-C—[Reserved]

Subpart D—Program Reviews

§ 524.30 Purpose and scope.

The Bureau of Prisons staff conduct a timely review of the program of each inmate within its institutions. Each inmate is given prior notice of the review and is offered the opportunity to attend the program review.

§ 524.31 Procedures.

(a) Each unit team shall conduct at least once every 90 days a review of the program of each inmate within the unit.

(b) Staff at institutions without unit management shall conduct at least once a year a review of the program of each inmate within the institution. When an inmate is within two years of anticipated release, staff shall conduct a review of the program of the inmate at least once every 90 days.

(c) When circumstances warrant additional review of the inmate's program, the unit team or committee chairman may schedule such additional review.

§ 524.32 Notification.

(a) Staff shall notify the inmate at least 48 hours prior to a scheduled review of his program.

(b) The inmate may attend and participate in the program review.

Subpart E—Progress Reports

§ 524.40 Purpose and scope.

The Bureau of Prisons maintains current information regarding an inmate's response to confinement through progress reports regularly completed by staff. Staff summarize in the progress report information relating to an inmate's offense and background, with emphasis on the inmate's response to institutional experience and readiness for release. The report serves as a basis for deciding on institutional programs and release for an inmate.

§ 524.41 Annual progress reports.

(a) Staff shall prepare an updated progress report on each inmate on at least a yearly basis: *Provided*, That no other progress report, special report or transfer summary has been prepared during the preceding year.

(b) Staff shall include in the progress report a summary of the institutional adjustment reflected in any previous report and a detailed summary of the inmate's present response to confinement. Staff shall include the following information in the report:

(1) Name and age,
(2) Registration number,
(3) Offense,
(4) Sentence,
(5) Date of commencement of service of sentence,
(6) Time served to date, including jail time credit,
(7) Extra good time,
(8) Good time withheld or forfeited,
(9) Current mandatory release date,
(10) Detainers and pending charges on file,

(11) Most recent Parole Commission action, including any special requests or requirements,

(12) Names of the inmate's co-defendants, their sentences, present location and Parole Commission action relating to them.

(c) Staff shall include in the progress report significant new information on such topics as:

(1) The offense for which the inmate is confined, including any change in the inmate's attitude towards it;

(2) Prior record;

(3) Background, including social, educational, military and employment history.

(d) Staff shall include in the progress report a detailed summary of the inmate's response to confinement.

(e) Staff shall analyze and interpret information included in the progress report in light of the inmate's abilities.

(f) Staff shall include in the report information about the inmate's physical and mental health.

(g) Staff shall include in the report a statement of the inmate's proposed residence, employment, and advisor on release.

§ 524.42 Parole progress reports.

(a) When an inmate becomes eligible for parole, staff shall prepare a progress report containing information covered in § 524.41 plus:

(1) A summary of the inmate's anticipated involvement in pre-release programming and identification of verified resources available to the inmate;

(2) A definitive statement of the proposed release plans, including residence, employer, advisor and the name and address of the supervising U.S. Probation Officer;

(3) An evaluation of the individual's readiness for release;

(4) A recommendation for or against parole.

(b) When an inmate is so disturbed that to force an appearance before the Parole Commission might prove disruptive, in lieu of the inmate's appearance staff shall provide the Parole Commission with a statement specifying the nature of the inmate's behavior.

§ 524.43 Transfer summary.

Staff shall prepare a transfer summary as a current progress report on an inmate who is being recommended for transfer and whose progress has not been summarized within the preceding 90 days. Staff shall prepare the summary in compliance with the provisions of § 524.41(b)-(g).

§ 524.44 Retention of reports.

Staff shall maintain in the inmate's file only the most current progress report. Staff shall destroy all previous progress reports.

PART 527—TRANSFERS

Subpart A-B—[Reserved]

Subpart C—Transfer of Inmates After Conviction

Sec.
527.20 Purpose and scope.
527.21 Procedures.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166. 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart A-B—[Reserved]

Subpart C—Transfer of Inmates After Conviction

§ 527.20 Purpose and scope.

The Bureau of Prisons adheres to Rule 38(a)(2) of the Federal Rules of Criminal Procedures by giving an inmate reasonable opportunity to file his appeal and to confer with his counsel after the appeal is filed. An inmate shall also be given access to his attorney or the sentencing court following his conviction, with respect to filing a motion for the reduction of sentence.

§ 527.21 Procedures.

(a) After conviction, unless the inmate indicates in writing that he will not file an appeal, he shall be held in the judicial district in which he was convicted for a period of not less than 10 days, the amount of time allowable for appeal. If an appeal is noted within 10 days, paragraph (b) of this section shall apply. Where a motion for a new trial is filed, the above provisions shall take effect from the date the motion is denied.

(b) If a notice of appeal is filed the inmate is normally allowed to remain in the judicial district for a period of 30 days from that date.

(c) If the inmate indicates a motion for reduction of sentence under Rule 35 of the Federal Rules of Criminal Procedure is filed or is to be filed, the inmate is normally allowed to remain in the judicial district for a period of 30 days from the date sentence is imposed.

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

Subpart A-F—[Reserved]

Subpart G—Metal Detectors/Detaining and Searching Institution Visitors/Arresting Authority, Bureau of Prisons Employees

Sec.
540.80 Purpose and scope.
540.81 Procedures for searching visitors.
540.82 Controlled visiting-denying visits.
540.83 Detaining visitors.
540.84 Termination of a visit.
540.85 Use of arrest authority.

Subpart H—Inmate Funds Donated Through the Mail

540.90 Purpose and scope.
540.91 Procedures.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart A-F—[Reserved]

Subpart G—Metal Detectors/Detaining and Searching Institution Visitors/Arresting Authority, Bureau of Prisons Employees

§ 540.80 Purpose and scope.

(a) The Bureau of Prisons takes steps to prevent the introduction of contraband (drugs, alcohol, weapons, etc.) into its institutions. Staff may subject all visitors entering or leaving an institution to a search of their person and effects.

(b) Title 18, U.S. Code, section 3050 authorizes Bureau of Prisons Employees (this does not include United States Public Health Services employees) to make an arrest without warrant for any violation of the provisions of Section 751—Prisoners in Custody of Institution or Officer; 752—Instigating or Assisting Escape; 1791—Traffic in Contraband Articles; and 1792—Mutiny, Riot, Dangerious Instrumentalities Prohibited. Such an arrest may be made when staff has good reason to believe a person has committed one of these offenses and when there is likelihood of the person fleeing or escaping before a warrent can be obtained.

§ 540.81 Procedures for searching visitors.

(a) The Warden may requre visitors entering the institution from outside the secure perimeter to submit to a search:

(1) By electronic means (for example, walk-through or hand held metal detector);

(2) Of personal effects. Staff may provide locker space for personal effects not taken into the visiting room.

(b) The Warden may authorize a pat search of a visitor as a prerequisite to a visit when there is reasonable suspicion to believe the visitor possesses contraband or is introducing or attempting to introduce contraband or is introducing or attempting to introduce contraband into the institution.

(1) Staff may find resonable suspicion based on reliable although confidential information; by a positive reading of a metal detector; or when contraband or indicia of contraband is found during search of a visitor's personal effects.

(2) Only staff of the same sex as the visitor may perform a pat search.

(3) Staff shall conduct a pat search out of the view of other visitors and inmates.

§ 540.82 Controlled visiting—denying visits.

(a) The Warden may restrict visiting to controlled situations or to supervised visits when there is reasonable suspicion (see §540.81 (b)(1)) to believe the visitor is introducing or attempting to introduce contraband, or when there has been a prior incident of such introduction or attempted introduction.

(b) The Warden may deny visiting privileges when a controlled or staff supervised visit is not possible.

(c) Staff shall deny admission to the institution to a visitor who refuses to be screened by a metal detector or who refuses to undergo a search of his person and effects as dictated by these rules.

§ 540.83 Detaining visitors.

(a) Staff may detain a visitor found to be introducing or attempting to introduce such contraband as guns, knives or other serious weapons pending notification and arrival of appropriate law inforcement officials.

(b) Staff shall employ only the minimum amount of force necessary to detain the individual.

§ 540.84 Termination of a visit.

Staff may terminate a visit upon determination that a vistor is in possession of or is passing or attempting to pass contraband not previously detected during the search process.

§ 540.85 Use of arrest authority.

To effect an arrest under any of the cited sections in §540.80(b), staff shall have reasonable suspicion that the suspected individual is knowingly attempting to circumvent the law and this circumvention would seriously threaten the security and/or orderly operation of the institution. Wherever possible, the Warden or his designee shall make the determination as to whether an arrest should occur.

Subpart H—Inmate Funds Donated Through the Mails

§ 540.90 Purpose and scope.

Inmates may not solicit funds nor initiate requests which might result in the solicitation of funds from persons other than the inmate's immediate family or friends. Procedures for the disposition of unsolicited funds donated to an inmate by an unknown source are described.

§ 540.91 Procedures.

(a) An inmate may receive funds from his family or friends, for crediting to his inmate trust account.

(b) An inmate may not receive through the mail funds for specific goods or direct services such as special food, clothing or medical services.

(c) An inmate may receive a money gift of congratulations or sympathy through the mail as long as the gift is not designated for the purpose of care for inmates and is not associated with unlawful activities.

(d) When unsolicited funds donated to an inmate through the mail are received the Warden may accept the donation and credit it in the inmate's spending account, if the funds appear appropriate and their source legitimate. An inmate may not receive more than $25.00 per year from any source other than family.

(e) If the Warden finds the donation inappropriate, staff shall return the money to the sender along with information on the reason for the return. Staff shall inform the inmate of the reason for the return.

(1) If the source of unsolicited cash cannot be identified, staff shall place the money in the inmate's trust fund account and give it to him at the time of his release.

(2) If the source of the unsolicited funds cannot be identified, and if it is in the form of a check, the Warden shall return the check to the bank on which it was drawn together with a transmittal letter of explanation. A copy of this letter is sent to the inmate. The sender of the check may make claim to the bank to receive refund, or the inmate, after he is released, may make claim as payee and receive the check.

(3) If the unsolicited funds are in the form of a U.S. Postal money order, the Warden shall return the money order to the U.S. Postal Service together with a transmittal letter requesting that the funds be placed in the Postal Service suspense account. The sender of the money order or the inmate, as payee, may then make claim to the money order. A copy of the transmittal letter is sent to the inmate.

(4) Staff shall return other money orders to the issuing officer with a transmittal letter of explanation. A copy of this letter is sent to the inmate.

PART 543—LEGAL MATTERS

SUBPART A-B—[Reserved]

Subpart C—Claims Under the Federal Tort Claims Act

Sec.
543.30 Purpose and scope.
543.31 Procedures.
543.32 Depreciation.

AUTHORITY: 5 U.S.C. 301, 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99

Subpart A-B [Reserved]

Subpart C—Claims Under the Federal Tort Claims Act

§ 543.30 Purpose and scope.

The Director of the Bureau of Prisons is delegated authority by 28 CFR 0.96, 0.172, to settle those tort claims where the proposed settlement does not exceed $2500. This authority is redelegated to the Regional Counsel when the claim's proposed settlement does not exceed $500. The Office of General Counsel, Central Office, has authority to settle those claims where the proposed settlement is between $500 and $2500.

§ 543.31 Procedures.

(a) Staff shall provided the necessary forms to the inmate who wishes to file a claim based on an incident occurring on or after January 18, 1967.

(b) Claims are ordinarily submitted and investigated locally (where the incident occurred).

(c) The Warden shall submit the Investigation Report, with recommendations, to the Regional Office's Legal Counsel.

(d) Staff shall attempt to make a claim determination within six months from the date of filing. The inmate may institute a suit upon denial of the claim. If a final disposition is not made within the six month period, the individual may assume that the claim is denied.

§ 543.32 Depreciation.

Staff may take depreciation into account in settling Tort Claims under the Federal Tort Claims Act which involve loss or damage to personal property.

PART 544—EDUCATION

Subpart A—[Reserved]

Subpart B—Minumum Standards for Educational Tests

Sec.
544.10 Purpose and Scope.

Subpart C—[Reserved]

Subpart D—Recreation Inmate Movies

544.30 Purpose and scope.
544.31 Staffing patterns.
544.32 Movies.

Subpart E-I—[Reserved]

Subpart J—Guidelines for Social Education Activities

544.90 Purpose and scope.
544.91 Program characteristics and staff.

AUTHORITY: 15 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart A—[Reserved]

Subpart B—Minimum Standards for Educational Tests

§ 544.10 Purpose and scope.

(a) The Bureau of Prisons administers appropriate educational tests to inmates confined within its institutions. Staff shall administer the Stanford achievement Test (SAT) within one month of arrival of a newly committed inmate sentenced to a term of one year or more: *Provided*, That that inmate reads English. Staff may administer the Revised BETA, the General Aptitude Test Battery (GATB) and other appropriate achievement and attitude tests as needed to take a specific measure of achievement or aptitude.

(b) When test results are required for program placement and other purposes, the Warden may approve the administration of an SAT to a newly committed inmate who is serving a sentence of less than one year.

(c) Staff may not allow inmates to administer, score or interpret tests which are the subject of this rule. Staff may not assign the clerical handling of such tests to an inmate.

Subpart C—[Reserved]

Subpart D—Recreation/Inmate Movies

§ 544.30 purpose and scope.

The Bureau of Prisons considers that well-directed leisure activities programs are a highly effective force for the social re-education of an inmate and for the positive use of leisure time. The Warden shall establish appropriate leisure activities. Staff may recommend the use of these activities for an inmate as an integral component of his correctional program.

§ 544.31 Staffing patterns.

(a) A fully qualified staff person shall direct the leisure activities program.

(b) an inmate may be utilized as assistant coach, administrative clerk, equipment clerk, sports official, instructor or general leisure activity aide where his interest is expressed and ability is apparent.

§ 544.32 Movies.

The Warden may approve the showing of movies at the institution. A committee designated by the Warden shall review suggested films and submit the list to the Warden for final approval. The committee shall comprise staff and inmate representatives. X-rated films may not be shown.

Subpart E—I—[Reserved]

Subpart J—Guidelines for Social Education Activities

§ 544.90 Purpose and scope.

The Bureau of Prisons recognizes that skills to improve interpersonal relationships, communication, self-motivation, realistic goal setting, and a positive basic self-concept develop with the passage of time. Therefore, the Warden shall make available to an inmate throughout the term of his commitment programs to foster such skills, reinforced by staff contacts. The Warden shall establish procedures for social education activities which follow prepared curricular and scheduled timetables.

§ 544.91 Program characteristics and staff.

(a) The Warden shall designate staff to serve as social education coordinator(s).

(b) Staff shall qualify an activity as social education if it meets any of the following criteria:

(1) It teaches or reinforces self-development and personal growth;

(2) It helps to increase self-knowledge;

(3) It fosters the development of a realistic self-concept;

(4) It develops appropriate skills in interpersonal relationships.

PART 545—WORK AND COMPENSATION

Subpart A—[Reserved]

Subpart B—Federal Prisons Industries, Inc. Manual-Payrolls Section

Sec.
545.10 Purpose and scope.
545.11 Definitions.
545.12 Assignments.
545.13 Grade structure and standard hourly rate.
545.14 Individual and group piece rates.
545.15 Wage fund-group piece workers.
545.16 Overtime compensation.
545.17 Longevity pay.
545.18 Vacation pay.
545.19 Administrative pay.
545.20 Holiday pay.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042; 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart A—[Reserve]

Subpart B—Federal Prison Industries, Inc. Manual-Payrolls Section

§ 545.10 Purpose and scope.

It is the policy of Federal Prison Industries, Inc. to provide employment to inmates confined in an institution. This employment is designed to afford the inmate maximum opportunity to acquire the knowledge, skill and work habits which will be useful when released from the institution. There is no requirement that Federal Prison Industries pay inmates for employment in industry. 18 U.S.C. 4126, however, provides for discretionary compensation to inmates employed in industry. Under this authority, inmates of the same grade jobs, regardless of the basis of pay (hourly, group piece, or individual piece rates) shall receive approximately the same compensation. All pay rates under this part are established at the discretion of Federal Prison Industries, Inc. Any alteration or termination of the rates shall require the approval of the Corporation's Board of Directors. While the Warden is responsible for the local administration of Inmate Industrial Payroll regulations, no pay system is initiated or changed without prior approval of the Associate Commissioner of Federal Prison Industries, Inc.

§ 545.11 Definitions.

Federal Prison Industries, Inc., as used in this part, has the same meaning as used in 18 USC 4121 et seq.

§ 545.12 Assignments.

(a) Industrial work programs and assignments are made on an optional basis and the permanent assignment of an inmate to industries is made only with the concurrence of the inmate.

(b) Staff may promote an inmate to a higher grade job only when a vacancy exists.

(c) At the request of the inmate concerned, the Warden shall review any reassignment involving a reduction in pay.

§ 545.13 Grade structure and standard hourly rate.

An inmate employed in Federal Prison Industries, Inc. is classified in one of four grades, based upon job assignment and level of skill. Fourth grade is the base, third, second, and first grades are compensated at 50%, 100%, and 150% above the base grade, respectively.

§ 545.14 Individual and group piece rates.

(a) Piece rates based upon full time production of a capable worker of average speed are established by the Superintendent of Industries, upon recommendation of the factory manager or foreman of the industry or department affected and upon approval of the Warden.

(b) New rates may occur whenever new equipment, new processes or other conditions change labor requirements.

§ 545.15 Wage fund-group piece workers.

The amount of the available "Wage Fund" is determined by multiplying the units of production completed by the group by the applicable rate or rates. The hours actually worked in the 3rd, 2nd and 1st grade jobs are in-

creased by the percentages specified in § 545.13. These hours are then added to the hours worked in 4th grade jobs to determine basic hours. The total wage fund is then divided by the basic hours to determine the hourly rate for 4th grade jobs. Rates for other grade jobs are determined by increasing the 4th grade rate by the same percentage as stated in § 545.13. All decimals beyond the fourth are dropped and any remaining balance is added to the wage fund for the next period.

§ 545.16 Overtime compensation.

All hours worked in excess of the regular scheduled inmate workday are overtime. For example, if the scheduled inmate workday consists of 7½ hours and the inmate works 10 hours in one day, he has earned 2½ hours overtime pay on that day. Hours worked on days other than the scheduled workweek may be compensated at the overtime rate. Compensation for overtime is double the hourly rate for hourly and group piece workers. For individual piece workers, the amount is based on total earnings divided by the number of total hours worked. This will give the piece workers' rate per hour. This rate times the overtime hours worked will provide the amount of overtime compensation due the inmate.

§ 545.17 Longevity pay.

(a) An inmate may earn longevity pay for continuous employment regardless of whether the employment was continuous in one or more institutions, as long as the inmate is not excluded under § 545.17 (c) and (d).

(b) An inmate may earn an additional five cents for each actual hour in pay status when the inmate has earned industrial good time for 3 years or more, or when the inmate who is ineligible to earn good time has been employed for 3 years of more.

(c) Service of previous sentences may not receive consideration in determining longevity pay. For purposes of this section, a separate sentence or commitment which involves no break of time in custody is not considered a previous sentence.

(d) An inmate recommitted because of a violation of conditional release (mandatory or parole) and serving under the same or continuous sentence is not entitled to credit for time spent in industries prior to release.

§ 545.18 Vacation pay.

(a) An inmate may receive an annual vacation with pay when his work performance (quality, attendance, attentiveness and adherence to industry operating regulations) justifies it. A recommendation is made by the foreman to the Superintendent of Industries, who will approve the request if this standard is met. An inmate worker may receive vacation credit at the rate of ½ day for each month of industrial employment for the first year and at the rate of one day for each month of industrial employment in excess of one year.

(b) Inmates may take and receive pay for vacation credit after each annual eligibility date based on initial date of assignment to industries. Inmates may also take accrued vacation at any time, regardless of the anniversary date, for visits, participation in institutional programs or for other reasons at the discretion of the Superintendent of Industries. The Superintendent shall schedule vacations to be compatible with factory production requirements.

(c) The taking of vacation time is encouraged. However, an inmate who, for compelling reasons, elects not to take his vacation time must indicate this in writing. This inmate shall receive pay for his annual vacation credit in a lump sum on the regular monthly payroll. An inmate whose employment is terminated by release, reassignment, transfer, or other reasons, and who has unused vacation credit shall also receive pay for this credit on the monthly payroll.

(d) In consideration of work absences, either by routine call outs or enrollment in other institution programs, a monthly vacation credit rate is established. This is based on the percentage of standard factory hours worked by the inmate during that month.

Percentage worked	1st year credit rate	Subsequent years rate
90% or more	½ day	1 day
75% but less than 90%	¾ day	¾ day
60% but less than 75%	¼ day	½ day
45% but less than 60%	⅛ day	¼ day
Under 45%	0	0

(e) When the individual inmate takes and/or is paid for earned vacation, his monthly credit rates are totalled and successively multiplied by the standard factory hours and his regular rate of compensation to arrive at the compensation payable.

(f) An inmate temporarily assigned to industries, such as on a construction crew, who is placed on an industry payroll may earn vacation credit. The inmate may take and receive pay for vacation upon termination of the temporary assignment.

(g) An inmate may earn full vacation credit while confined to the hospital or to his quarters because of compensable work-related injuries: *Provided*, The inmate returns to the industrial work assignment upon termination of confinement.

(h) The Superintendent of Industries may declare a vacation credit unearned because of unsatisfactory work performance, appropriately documenting this for the month in which such unsatisfactory performance takes place. The Superintendent may not independently declare vacation credit unearned as a result of inmate misconduct which is subject to institution disciplinary committee action, but may recommend such action to the committee.

§ 545.19 Administrative pay.

When an inmate is excused from work for participation in the Blood Bank Program he is continued on his regular rate of pay for a period not to exceed two hours. Administrative pay is not authorized for any other purpose, except by the Associate Commissioner.

§ 545.20 Holiday pay.

An inmate worker on industrial assignments shall receive pay at the standard hourly rate, plus longevity pay where applicable, for the following Federal holidays:

(1) New Year's Day; (2) Washington's Birthday; (3) Memorial Day; (4) Independence Day; (5) Labor Day; (6) Columbus Day; (7) Veterans' Day; (8) Thanksgiving; and (9) Christmas, provided the inmate is in a normal pay status the work day before and the work day following the holiday.

Any other Federal holidays, approved and declared by the Congress of the United States, shall qualify the worker for industrial holiday pay, under the same conditions as above, without amendment of these regulations.

PART 546—SAFETY

Subpart A—[Reserved]

Subpart B—Lost-Time Wages—Inmate Workers Assigned To Federal Prison Industries, Inc.

Sec.
546.10 Purpose and scope.
546.11 Procedures.
546.12 Discontinuation of lost-time wages.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart A—[Reserved]

Subpart B—Lost-Time Wages—Inmate Workers Assigned to Federal Prison Industries, Inc.

§ 546.10 Purpose and scope.

The Bureau of Prisons follows a uniform procedure to determine the work-relatedness of an injury sustained by an inmate at a work assignment in Federal Prison Industries, Inc., or at a work assignment related to the maintenance or operation of the institution. To secure documentation of an injury sustained by an inmate at a work assignment, the

Bureau of Prisons follows the provisions of 28 CFR 301.2, 301.3, 301.4. In determining an inmate's eligibility for lost-time wages due to injury sustained at a work assignment and the rate of compensation, the Bureau of Prisons complies with 28 CFR 301.10.

§ 546.11 Procedures.

(a) After investigating the circumstances surrounding an injury reported in compliance with 28 CFR 301.3, the Safety Manager at the institution shall make an initial determination of the work-relatedness of the injury.

(b) If the Safety Manager determines that an inmate's injury was work-related, the Safety Committee may review that decision upon referral to the Committee by an involved staff member (e.g., inmate's immediate supervisor or a member of the medical staff).

(c) If the Safety Manager determines that the inmate's injury was not work-related, the Safety Committee shall review that determination.

(d) The Safety Committee shall make its determination as to work-relatedness of an injury sustained by an inmate within 30 days:

(1) Of the alleged accident or injury, if the inmate reports the accident or injury to his work supervisor within 48 hours of its occurrence;

(2) Of receipt of notice of the alleged accident or injury, if the inmate does not report the accident or injury to his work supervisor within 48 hours of its occurrence.

(e) An inmate may appeal the decision of the Safety Committee through the Administrative Remedy Procedure (Part 542, Subpart B).

§ 546.12 Discontinuation of lost-time wages.

(a) Staff shall continue to provide the inmate with lost-time wages until one of the following occurs:

(1) The inmate returns to his work assignment;

(2) The inmate is employed at a different work assignment;

(3) There is medical certification that the inmate is fit to return to work;

(4) Transfer of the inmate from the institution for reasons unrelated to the work injury;

(5) Release of the inmate from federal custody.

(b) An inmate who refuses to return to an industrial work assignment after medical certification of fitness to return to work may not receive, from date of refusal, further payment of lost-time wages.

PART 549—MEDICAL SERVICES

Subpart A-D—[Reserved]

Subpart E—Medical Experimentation and Pharmaceutical Testing

Sec.
549.60 Purpose and scope.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart A-D—[Reserved]

Subpart E—Medical Experimentation and Pharmaceutical Testing

§ 549.60 Purpose and scope.

(a) The Bureau of Prisons does not permit medical experimentation or pharmaceutical testing on inmates. However, as warranted for diagnosis or treatment of a specific inmate, the Director, Bureau of Prisons, may authorize the use of, and collection of data related to, experimental diagnostic and therapeutic measures under conditions which have been approved by the United States Department of Health, Education and Welfare.

(b) The Director may not authorize experimental diagnostic and therapeutic measures without a prior recommendation by the responsible physician and the prior full and informed consent of the affected inmate.

PART 550—DRUG PROGRAMS

Subpart A—[Reserved]

Subpart B—Marijuana and Alcohol Testing

Sec.
550.10 Purpose and scope.
550.11 Consent for marijuana testing.
550.12 Positive test results.
550.13 Refusal to participate in testing.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart A—[Reserved]

Subpart B—Marijuana and Alcohol Testing

§ 550.10 Purpose and scope.

The Bureau of Prisons maintains a surveillance program in order to deter and to detect the illegal introduction or use of marijuana or alcohol in its institutions. In an effort to reduce the introduction or use of marijuana and alcohol, the Warden shall establish procedures for monitoring and testing individual inmates or groups of inmates who are known or suspected to be users of marijuana or alcohol, or who are considered high risks based on behavior observed or on information received by staff.

§ 550.11 Consent for marijuana testing.

(a) Staff shall solicit the consent of an inmate prior to performing the mouth-swabbing portion of the marijuana test. However, the consent of the inmate is not required when the Warden or, in his absence, the Acting Warden, Duty Officer, or Administrative Duty Officer authorizes staff to perform the mouth-swabbing portion of the marijuana test.

(b) Staff who administer a marijuana test to an inmate shall record this fact in the central file of the inmate.

§ 550.12 Positive test results.

Staff may prepare a disciplinary report on an inmate who shows a positive substantiated test result for marijuana or alcohol.

§ 550.13 Refusal to participate in testing.

Staff may initiate disciplinary action against an inmate who refuses to submit to a marijuana or alcohol test.

PART 551—MISCELLANEOUS

Subpart A—[Reserved]

Subpart B—Marriage of Inmates

Sec.
551.10 Purpose and scope.
551.11 Eligibility.
551.12 Ceremony.

Subpart C-H—[Reserved]

Subpart I—Pre-Trial Inmates

Sec.
551.90 Purpose and scope.
551.91 Definitions.
551.92 Commitment prior to arraignment.
551.93 Procedure for admission.
551.94 Housing.
551.95 Custody.
551.96 Institutional employment.
551.97 Good time.
551.98 Performance pay.
551.99 Community activities.
551.100 Religous programs.
551.101 Marriage.
551.102 Education.
551.103 Medical, psychiatric and psychological.
551.104 Recreation.
551.105 Discipline.
551.106 Access to legal resources.
551.107 Property.
551.108 Release of funds and property of pre-trial inmates
551.109 Visiting.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.099.

Subpart A—[Reserved]

Subpart B—Marriage of Inmates

§ 551.10 Purpose and scope.

The Warden may approve the marriage of an inmate confined in an institution of the Bureau of Prisons where there are compelling reasons to do so. The appropriate Regional Director may approve marriage of a federal inmate in U.S. Marshals' custody, in state custody, or in an approved jail.

§ 551.11 Eligibility.

(a) In a request for permission to marry, an inmate shall demonstrate legal eligibility to marry.

(b) The Warden may not approve the request of an inmate who is mentally incompetent to contract marriage.

§ 551.12 Ceremony.

(a) The Warden may approve the use of institution facilities for an inmate's marriage ceremony. If a marriage ceremony poses a threat to the security or orderly operation of the institution, the Warden may disapprove a marriage ceremony in the institution.

(b) Upon request of the inmate, the Chaplain may assist in a marriage ceremony at the institution.

(c) The Warden shall require that a marriage ceremony at the institution be a private ceremony conducted without publicity.

Subpart C-H—[Reserved]

Subpart I—Pre-Trial Inmates

§ 555.90 Purpose and scope.

The Bureau of Prisons houses, in addition to convicted inmates, persons awaiting commencement or completion of trial. Procedures and practices required for the care, custody and control of such inmates may differ from those established for convicted inmates. (Except as limited by this Rule, policies and standards applicable to persons committed to the custody of the Attorney General apply to detainees designated Pre-Trial Inmates.)

§ 555.91 Definitions.

(a) Pre-Trial inmate—an individual legally detained while awaiting trial, while in the process of trial or while awaiting a verdict.

(1) For purposes of this rule, an inmate committed for civil contempt is considered a pre-trial inmate.

(2) For purposes of this rule, an inmate in such status as indicated by paragraph (a) or (a)(1) of this section and who is at the same time serving a state or federal sentence is not considered a pre-trial inmate.

(3) For purposes of this rule, an inmate committed under 18 U.S.C. 4244 and 4246 is not considered a pre-trial inmate.

(b) Convicted inmate—an individual a court has found guilty of an offense punishable by law. For purposes of this rule, the term includes both a sentenced individual and one who is awaiting sentence following a court adjudication of guilt as recorded on an official report or document from the court.

§ 551.92 Commitment prior to arraignment.

On receipt of a U.S. Marshal's remand, the Bureau of Prisons shall accept an individual who has not been arraigned, for commitment as a pre-trial inmate.

§ 551.93 Procedure for admission.

(a) Staff shall establish procedures for admitting a pre-trial inmate to the institution, including, but not limited to:

(1) Verification of commitment papers;

(2) Search of the inmate;

(3) Disposition of clothing and personal possessions;

(4) Medical screening;

(5) Local guidelines governing telephone calls;

(6) Photographing and fingerprinting;

(7) Interview to obtain identification data;

(8) Orientation; and

(9) Assignment to an appropriate housing unit.

§ 551.94 Housing.

Unless a threat is posed to institutional security or order, staff shall house pre-trial inmates separately from convicted inmates.

§ 551.95 Custody.

(a) Staff may supervise a pre-trial inmate as if classified close (in) custody.

(b) Where circumstances warrant it, staff may supervise a pre-trial inmate according to procedures for other custody levels.

§ 551.96 Institutional employment.

(a) The Warden may not require a pre-trial inmate to work in other than housekeeping tasks in his own cell and living unit.

(b) Unless the pre-trial inmate signs a waiver, the Warden may not permit him to work with convicted inmates.

§ 551.97 Good time.

A pre-trial inmate does not earn good time.

§ 551.98 Performance pay.

The Warden may approve performance pay (see Rule 545, Subpart C) for a pre-trial inmate.

§ 551.99 Community activities.

(a) The Warden may not grant a furlough to a pre-trial inmate (18 U.S.C. 4082(c)).

(b) In an emergency, staff shall facilitate contact with the pre-trial inmate's attorney of record, who may seek appropriate action by the court for a decision concerning release from custody or an escorted trip.

(c) Except by order of the court, the Warden may not consider a pre-trial inmate for participation in community activities.

§ 551.100 Religious programs.

(a) Upon signing a waiver of separation, a pre-trial inmate may participate in religious programs with convicted inmates.

(b) Staff may enlist the aid of contract or volunteer chaplaincy personnel for religious programs within the area where pre-trial inmates are confined.

§ 551.101 Marriage.

A pre-trial inmate may apply for approval to marry in accordance with Rule 551, Subpart B. Staff shall contact the Court and U.S. Attorney, and in the case of an alien the Immigration and Naturalization Service, for clearance of the marriage request of the pre-trial inmate.

§ 551.102 Education.

(a) A pre-trial inmate may participate in correspondence and self-study educational courses. Institutional staff may also arrange educational assistance to the pre-trial inmate through the use of contract personnel or community volunteers.

(b) Upon signing a separation waiver, a pre-trial inmate may have full access to the institution's educational program.

§ 551.103 Medical, psychiatric, and psychological.

(a) Staff shall provide the pre-trial inmate with the same level of medical, psychiatric and psychological care provided to convicted inmates.

(b) Staff shall notify the Court of medication the pre-trial inmate receives which may alter his courtroom behavior.

(c) In event of serious illness or death of a pre-trial inmate, staff shall notify the committing Court, U.S. Attorney's office, and the designated family member or next of kin (see Part 549, Subpart B).

§ 551.104 Recreation.

(a) Upon signing a waiver of separation, a pre-trial inmate may participate with convicted inmates in recreational activities.

(b) At minimum, staff shall provide the pre-trial inmate with the following recreational opportunities:

(1) One hour daily of outside recreation, weather permitting; or

(2) Two hours daily of indoor recreation.

(c) Staff shall make recreation equipment available to the pre-trial inmate including, but not limited to, physical exercise equipment, books, table games, and television.

§ 551.105 Discipline.

(a) Staff shall require the pre-trial inmate to abide by the disciplinary rules (Rule 541, Subpart B) of the institution, subject to the limitations of §§ 551.96(a) and 551.97.

(b) Staff shall advise the court, through the U.S. Marshal, of repeated or continuing disruptive behavior by a pre-trial inmate.

§ 551.106 Access to legal resources.

(a) Staff shall provide the opportunity for pre-trial inmate-attorney visits on a seven-day-a-week basis.

(b) Staff shall provide pre-trial inmates with access to legal materials in the institution.

(c) Staff shall allow the pre-trial inmate, upon his request, to telephone his attorney as often as resources of the institution allow.

§ 551.107 Property.

(a) A pre-trial inmate may retain personal property as authorized for convicted inmates by Rule 552, Subpart E.

(b) Staff shall store the pre-trial inmate's unauthorized personal property until the individual is released, transferred to another facility, or sentenced and committed to a federal institution.

(c) Staff may supply the pre-trial inmate with court clothing or the inmate may supply his own.

§ 551.108 Release of funds and property of pre-trial inmates.

(a) Staff shall establish procedures that allow for the release of funds and personal property on a 12 hour basis, Monday through Friday.

(b) Staff shall ensure that pre-trial inmates are informed of existing policy relative to the commissary account and release of funds.

§ 551.109 Visiting.

Staff shall allow pre-trial inmates to receive visits in accordance with Rule 540, Subpart D. Staff may allow a pre-trial inmate special visits to protect his or her business interests or to help prepare for trial.

PART 552—CUSTODY

Subpart A-B—[Reserved]

Subpart C—Use of Force and Application of Physical Restraints on Inmates

Sec.
552.20 Purpose and scope.
552.21 Procedures.
552.22 Use of chemical agents.
552.23 Documentation.

SUBPART D—HOSTAGES

Sec.
552.30 Purpose and Scope.
552.31 Negotiations.
552.32 Hostages-no authority.
552.33 Non-negotiable items.
552.34 Notifications.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart A-B—[Reserved]

Subpart C—Use of Force and Application of Physical Restraints on Inmates

§ 552.20 Purpose and scope.

The Bureau of Prisons authorizes application of physical restraints on an inmate who becomes violent or displays signs of imminent violence. When an inmate behaves violently or displays signs of imminently becoming violent, staff shall use only that amount of force necessary to insure the safety of staff, inmates, and others, and to protect government property. This rule does not restrict the use of restraints in situations requiring precautionary restraints, particularly in the movement or transfer of inmates, e.g., the use of handcuffs in moving inmates to and from detention.

§ 552.21 Procedures.

(a) The correctional supervisor in charge of the shift may apply or supervise the application of restraints necessary to gain control of an inmate who appears to be dangerous because:

(1) The inmate assaults any person;

(2) The inmate destroys property;

(3) The inmate attempts suicide;

(4) The inmate inflicts wounds upon himself;

(5) The inmate displays signs that such violence may be imminent.

(b) Staff may apply restraints to or continue the use of restraints on an inmate while in Admninistrative Detention or Disciplinary Segregation only with approval of the Warden or duty officer.

(c) Staff shall seek the assistance of medical or mental health staff upon gaining physical control of the inmate. Where possible, staff shall seek such assistance at the onset of the violent behavior.

(d) Where medical or mental health staff determine that an inmate requires continuing mental health care, they shall assume responsibility for the care of the inmate.

(e) When it is necessary to restrain an inmate for longer than 24 hours, staff shall apply medically acceptable restraints attached to a hosptial bed. Staff shall check these restraints at least every 30 minutes and periodically rotate the inmate's position.

(f) Staff may not secure an inmate to a fixed object, such as a cell door.

§ 552.22 Use of chemical agents.

The Warden may authorize the use of chemical restraints only when the situation is such that the:

(a) Inmate is armed and barricaded, or

(b) Cannot be approached without danger to personnel or to self, and

(c) It is determined that a delay in bringing the situation under control would constitute a serious hazard to the inmate, other people, or result in a major disturbance or major property damage.

§ 552.23 Documentation.

Staff shall write a report detailing the need for the use of restraints and the use of force. A copy of this report is placed in the inmate's central file.

Subpart D—Hostages

§552.30 Purpose and scope.

The Warden of each institution has the authority to resolve a situation in which a hostage is taken in his institution. Staff's primary objectives in these situations are to safely free the hostage and to regain control of the institution.

§ 552.31 Negotiations

(a) The Warden is not normally directly involved in negotiations.

(b) Where possible, the Warden shall assign the responsibility of negotiation to staff who have a relationship with the captors.

(c) A staff member assigned as negotiator has no decision-making authority but acts as a go-between.

(d) A staff member assigned as negotiator shall attempt to keep communications open at all times with the captors.

§ 552.32 Hostages—no authority.

Captive staff have no authority, and their directives shall be disregarded.

§ 552.33 Non-negotiable items.

The following items are non-negotiable:

(a) Release of captors from custody;

(b) Immunity from prosecution.

§ 552.34 Notifications.

(a) The Warden shall assign staff to handle all news releases and news media inquiries in accordance with § 540.65.

(b) The Warden shall arrange to have the family members of the hostages notified as soon as practical after the incident occurs.

PART 570—COMMUNITY PROGRAMS

Subpart A—[Reserved]

Subpart B—Work and Study Release

Sec.
570.10 Purpose and scope.
570.11 Definitions.
570.12 Custody Status.
570.13 Authorization of participation.
570.14 Limitations to program participation.
570.15 Cases requiring special approval.
570.16 Transportation and subsistence.
570.17 Clothing.
570.18 Expenses.
570.19 Compensation for injury.
570.20 Supervision of an inmate on work or study release.
570.21 Termination.

Subpart C—Furloughs

570.30 Purpose and scope.
570.31 Definitions.
570.32 Justification for furlough.
570.33 Expenses of a furlough.
570.34 Eligibility requirements.
570.35 Limitations on eligibility.
570.36 Procedures.
570.37 Violation of furlough.

Subpart D—Reimbursement by Participants of Community Employment Programs

570.50 Authorization.
570.51 Policy.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart A—[Reserved]

Subpart B—Work and Study Release

§ 570.10 Purpose and scope.

The Bureau of Prisons uses work and study release programs to allow selected inmates, in preparation for release from confinement, to attend school or to work in the local community during the day, returning to the institution at night. An inmate may not work as a strikebreaker or under any conditions which, in the Warden's judgment, could evoke adverse public response.

§ 570.11 Definitions.

The term "Work and Study Release" means an inmate's authorized absence from an institution other than a community treatment center, for the purpose of employment or to participate in an academic or vocational education activity.

§ 570.12 Custody status.

An inmate participant in a community program remains in the custody of the Attorney General. The Warden shall credit time during which an inmate participates in a community program toward service of the inmate's sentence. The Warden shall process an inmate who absconds from a community placement as an escaped federal prisoner. The Warden may subject an inmate who violates the conditions of a community program to disciplinary action as provided in Part 541.

§ 570.13 Authorization of participation.

(a) Except as provided in § 570.15, the Warden may approve an inmate's placement for work or study release. The Warden may not further delegate this authority.

(b) The Warden may consider an inmate for placement in a work or study release program under the following procedure and conditions:

(1) The inmate makes application for placement on the required form;

(2) The inmate has community custody status;

(3) The Warden determines that the placement will contribute to the inmate's preparation for release from confinement;

(4) The Warden determines that the inmate is physically and mentally capable of performing the proposed work or study;

(5) The Warden determines that the inmate has demonstrated a level of responsibility which provides reasonable assurance that he will comply with the requirements of a placement;

(6) The Warden finds the proposed placement appropriate under this subpart; and

(7) The Warden verifies the conditions of the proposed placement.

§ 570.14 Limitations to program participation.

(a) Except as provided in paragraph (b) of this section, the Warden may not consider for placement

(1) An inmate who will not be within 6 months of a probable date of release from confinement at the time of the program placement;

(2) An inmate who is to be transferred to a community program facility, such as a community treatment center or work release facility, in the inmate's area of release;

(3) An inmate who has a history of violent or assaultive behavior;

(4) An inmate commited for an offense which involved a violation of financial trust; or

(5) An inmate whose presence in the community would attract unusual public attention.

(b) When the Warden determines that an inmate needs a work or study release program placement and that the community will not be endangered thereby, he may make an exception to any of the limitations in paragraph (a) of this section.

(c) An inmate may not participate in study release on a full time basis in excess of one academic year without the approval of the Warden and Regional Director.

§ 570.15 Cases requiring special approval.

An inmate designated or tentatively designated as a Central Monitoring Case must have approval as authorized in Part 524 Subpart C, in order to participate in a work or study release program.

§ 570.16 Transportation and subsistence.

(a) Where feasible, an inmate shall use and pay for commercial transportation to and from the program placement. When commerical transportation is not feasible, the Warden may authorize the use of institution vehicles and may charge the inmate a fee comparable to the cost of commercial transportation.

(b) Under 18 U.S.C. 4082(c)(iii), "* * * A prisoner authorized to work at paid employment in the community under this subsection may be required to pay, and the Attorney General is authorized to collect, such costs incident to the prisoner's confinement as the Attorney General deems appropriate and reasonable. Collections shall be deposited in the Treasury of the United States as miscellaneous receipts. An inmate who is fully employed in the community shall pay a fixed charge of $2.00 per calendar day into the United States Treasury except there will be no charge made for the first 30 calendar days of community employment.

(c) The Warden may waive transportation and subsistence costs under paragraphs (a) and (b) of this section when he determines that the costs would unduly burden the inmate financially.

(d) An inmate may not reimburse the Government for expenses of work or study release except as provided in paragraphs (a) and (b) of this section.

§ 570.17 Clothing.

The Warden shall provide an inmate who is approved for work or study program placement with appropriate attire for the placement. The inmate may purchase supplemental or replacement clothing with personal funds. The inmate may not wear clothing acquired through the program placement inside the institution unless authorized by the Warden to do so.

§ 570.18 Expenses.

(a) The inmate, his family, or other sources approved by the Warden shall bear all expenses incidental to a work or study release program, such as the cost of meals in the community, laundry fees for clothing, cost of special equipment, etc.

(b) An inmate who has sufficient personal financial resources shall bear the cost of his study release program. The Warden may authorize government financing, within budgetary limi-

tations, of the study release program of an inmate without sufficient personal financial resources for whom alternative funding sources are not available. If an inmate withdraws, or is terminated from a course of study which the Government has funded, the Warden may initiate action to recover the Government's portion of the cost of the course.

§ 570.19 Compensation for injury.

The Federal Government assumes no responsibility for injury received by an inmate on work or study release. However, the Government shall provide needed medical treatment so long as the inmate remains in the custody of the Attorney General.

§ 570.20 Supervision of an inmate on work or study release.

Staff shall supervise an inmate on a work or study release placement to ensure the appropriateness of the placement and to monitor the performance of the inmate.

§ 570.21 Termination.

The Warden may terminate an inmate's participation in a work or study release program for any of the following causes:

(a) Completion of the program by the inmate;

(b) The inmate's misconduct or willful negligence;

(c) Cancellation of a placement for reasons beyond the inmate's control, e.g., budget cutbacks, job layoffs, etc.

Subpart C—Furloughs

§ 570.30 Purpose and scope.

The Attorney General has delegated the authority to grant furloughs under 18 U.S.C. 4082(c) to the Director, Bureau of Prisons (28 CFR .96(d)). The furlough program of the Bureau of Prisons is intended to help the inmate to attain correctional goals. A furlough is not a right, but a privilege granted an inmate under prescribed conditions. It is not a reward for good behavior, nor a means to shorten a criminal sentence.

§ 570.31 Definitions.

(a) A furlough is an authorized absence from an institution by an inmate who is not on a work/study release program nor under escort of a staff member or a U.S. Marshal. The two types of furlough are:

(1) Day Furlough—A furlough within the geographic limits of the commuting area of the institution (approximately a 50 mile radius), which lasts 16 hours or less, and ends before midnight.

(2) Overnight Furlough—A furlough other than a day furlough.

(b) An anticipated release date, for purposes of this rule, refers to the first of the following dates which applies to an inmate requesting a furlough:

(1) The inmate's mandatory release date,

(2) The date of expiration of the inmate's minimum term,

(3) The inmate's presumptive parole date,

(4) The inmate's effective parole date, or

(5) In the absence of a presumptive or effective parole date, the top of the range of months to be served for the inmate's specific offense and salient factor score, using the Parole Commission guidelines.

§ 570.32 Justification for furlough.

(a) The Warden may approve a furlough for an inmate:

(1) To be present during a crisis in the immediate family; or in other urgent situations;

(2) To participate in the development of release plans;

(3) To reestablish family and community relationships;

(4) To participate in selected educational, social, civic, religious, and recreational activities which will facilitate release transition;

(5) To transfer directly to another institution or to a non-federal facility;

(6) To appear in court in connection with a civil action;

(7) To comply with an official request to appear before a grand jury, or to comply with a request from a legislative body or regulatory or licensing agency; or

(8) To appear in a criminal court proceeding, but only when the use of a furlough is requested or recommended by the forum court or prosecuting attorney.

(b) The Warden may recommend a furlough for an inmate to obtain necessary medical/surgical/dental/psychiatric treatment not otherwise available. In addition to the recommendation of the Warden, a furlough of this nature requires the recommendation of the Chief Medical Officer (Chief of Health Programs). Approval for a furlough of this type occurs in one of the following ways:

(1) Staff shall contact the regional office for approval when the cost of medical care is at the expense of the government. In case of medical emergency, staff may authorize a furlough for hospitalization and shall notify the regional office as soon after the emergency admission as possible.

(2) When medical care expenditures are borne by the inmate, or other nongovernmental source, the furlough request requires the approval of the Medical Director and the Assistant Director, Correctional Programs Division.

(c) The Warden may refer a request for a furlough in other situations through the Regional Director to the Assistant Director, Correctional Programs Division for approval.

§ 570.33 Expenses of furlough.

(a) Except as provided in paragraph (b) of this section, the inmate or his family or another appropriate source the Warden may approve, shall bear all expenses of a furlough, including transportation, food, lodging and incidentals.

(b) The Government bears the expense of a furlough when the purpose of furlough is to obtain necessary medical or dental treatment not otherwise available, or to transfer an inmate to another correctional institution.

§ 570.34 Eligibility requirements.

(a) The Warden may grant a furlough only to an inmate with community custody.

(b) The Warden may grant a furlough only to an inmate he judges to be physically and mentally capable of completing the furlough.

(c) The Warden may grant a furlough only to an inmate who has acted so responsibly as to promote reasonable assurance that he will fully comply with furlough requirements.

(d) The Warden shall determine the eligibility of an inmate for furlough in accord with the inmate's anticipated release date and the basis for his furlough request.

(1) The Warden may approve only emergency furloughs (family crisis or other urgent situation) for an inmate with more than two years remaining until his anticipated release date.

(2) The Warden may approve for day furlough an inmate with two years or less remaining until his anticipated release date.

(3) The Warden may approve for overnight furlough within the institution's commuting area an inmate with 18 months or less remaining until his anticipated release date.

(4) The Warden may approve for an overnight furlough outside the institution's commuting area an inmate with one year or less remaining until his anticipated release date. The Warden may normally approve a furlough in this category not more than once each 90 days.

(5) If the Warden approves a furlough outside these guidelines, he shall document his reasons by memorandum for placement in the inmate's central file.

§ 570.35 Limitations on eligibility.

(a) The Warden may not grant a furlough to an inmate convicted of a seri-

ous crime against the person and whose presence in the community could attract undue public attention, create unusual concern, or depreciate the seriousness of his offense, unless the Warden determines that the value of the furlough is greater than the attendant risk. If the Warden approves a furlough for such an inmate, the Warden shall place a statement of the reasons for this action in the inmate's central file.

(b) The Warden may approve a furlough for an inmate designated a Central Monitoring Case upon compliance with the requirements of this rule and the requirements of 524 Subpart C.

(c) Staff at a contract facility may approve a furlough for a sentenced inmate housed in the contract facility provided the requirements set forth in this rule are met. The Community Programs Officer is available to receive questions on these cases.

§ 570.36 Procedures.

(a) An inmate who meets the eligibility requirements of this rule may submit to staff an application for furlough.

(b) Before approving the application, staff shall verify that a furlough is indicated.

(c) Staff shall notify an inmate of the decision on the inmate's application for furlough. Where an application for furlough is denied, staff shall notify the inmate of the reasons for denial.

(d) Upon completion of an inmate's furlough, staff shall record in the inmate's central file anything unusual which occurred during the furlough.

§ 570.37 Violation of furlough.

An inmate who absconds from furlough or fails to meet any of the conditions of his furlough is deemed to be an escapee under federal law, 18 U.S.C. 4082, 751.

(1) Staff shall process as an escapee an inmate who absconds from furlough.

(2) Staff may take disciplinary action against an inmate who fails to comply with any of the conditions of his furlough.

Subpart D—Reimbursement by Participants of Community Employment Programs

§ 570.50 Authorization.

Under 18 U.S.C. 4082(c)(2) the Attorney General may require a participant in a community work program to pay appropriate and reasonable costs incidental to his confinement.

§ 570.51 Policy.

(a) A fully employed participant in a community work program shall pay a fixed charge of $2.00 per calendar day into the U.S. Treasury in reimbursement for services and supplies normally made available to inmates of federal institutions. Services and supplies may include, but are not limited to, lodging, meals taken at the residential facility, clothing, bedding, laundry, allowances and medical care, but excludes transportation to and from the inmate's place of work.

(b) The Center Director may impose an additional charge for transportation to and from the inmate's place of work.

(c) No charge is made during the inmate's first thirty calendar days of community employment.

(d) A Center Director may waive the fixed charge for an inmate after the first thirty days of employment upon demonstration of emergency or compelling reasons for doing so.

(e) A Center Director may waive the fixed charge for an inmate who lives away from the center as an integral part of his program.

(f) There is no charge to an inmate who works less than 4 hours a day.

(g) The fixed charge may be prorated to an inmate on layoff from employment.

(h) The fixed charge may be prorated to an inmate who works less than forty hours a week but more than 4 hours a day.

PART 571—RELEASE FROM CUSTODY

Subpart A—[Reserved]

Subpart B—Pre-Release Program

Sec.
571.10 Purpose and scope.
571.11 Program responsibility.
571.12 General characteristics.

Subpart C-D—[Reserved]

Subpart E—Fines and costs

571.40 Purpose and scope.
571.41 Definitions.
571.42 Procedures relating to a committed fine.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161-4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95-0.99.

Subpart A—[Reserved]

Subpart B—Pre-Release Program

§ 571.10 Purpose and scope.

The Bureau of Prisons recognizes that an inmate's preparation for release begins as soon as he is committed to the institution. The Warden shall provide a Pre-Release Program to prepare an inmate for return to the community.

§ 571.11 Program responsibility.

The Warden shall delegate to a staff member the responsibility to:

(a) Coordinate the Pre-Release Program for the entire institution;

(c) Establish outlines of inmate need areas; and

(e) Contact and schedule volunteers from the local community.

§ 571.12 General characteristics.

(a) Staff shall structure the Pre-Release Program to make extensive use of staff, inmate, and community resources.

(b) The institution staff shall strongly encourage and support an inmate's participation in a Pre-Release Program. Staff may require an inmate to participate in a specific number of Pre-Release sessions.

(c) The inmate who is approved for a Community Treatment Center shall participate in a specific number of programs sessions prior to actual placement in the Community Treatment Center.

(d) To assist in the release process, the Warden may, in accordance with Part 570 Subpart C, grant a furlough for release preparation purposes to an inmate.

(e) Staff shall help an inmate obtain proper identification (Social Security Card and any other documents needed to help an inmate establish himself in the community) prior to release.

Subpart C-D—[Reserved]

Subpart E—Fines and Costs

§ 571.40 Purpose and Scope.

When the court directs that an inmate remain confined until a fine or other penalty is paid, the Bureau of Prisons shall confine the inmate until he pays or arranges to pay the fine, unless the inmate qualifies for release under 18 USC 3569 as an indigent. If the inmate is indigent, the Warden may allow the inmate to take the oath of an indigent prisoner which states that the inmate has no money or assets exceeding $20 with which to pay the fine. Prior to administering the oath, the Warden must make a finding that the inmate is indigent.

§ 571.41 Definitions.

(a) Committed Fine—a monetary penalty imposed, with the conditions of imprisonment until the fine is paid.

(b) Non-committed Fine—a fine with no condition of imprisonment.

(c) Costs of prosecution—monetary costs which the court may levy in addition to a penalty imposed.

Imposition of costs is similar in legal effect to impostion of a fine. The court may also impose costs with a condition of imprisonment.

§ 571.42 Procedures relating to a committed fine.

(a) Staff shall inform the inmate that there is a committed fine on file against him. Staff shall then impound

the inmate's trust fund account until the fine is paid except—

(1) The inmate each month may spend an amount from the trust fund account to purchase items from the commissary, not exceeding the maximum monthly allowance authorized for such purchases;

(2) Staff may authorize withdrawals by the inmate from the trust fund account for emergency family or personal needs or for purposes of furlough.

(b) If the inmate pays the committed fine, or if staff verifies payment made prior to confinement, staff shall document payment in the appropriate file and release the inmate's trust fund account from impoundment.

(c) The Warden may not transfer to a contract Community Treatment Center or to a state institution an inmate against whom there is an unpaid committed fine on file.

(d) If an inmate has an unpaid committed fine prior to release, staff shall interview the inmate about intent to pay the fine and shall require the inmate to execute the appropriate form. The inmate may refuse to execute the form and may make a statement inconsistent with the options provided by the form, if that is his wish.

(e) Ninety days prior to probable release date, staff shall have the inmate who has not paid the committed fine complete the "Financial Statement of Debtor" form. Twenty-one days before the inmate's release date, staff shall interview him to review all completed forms and other documents relative to the unpaid fine.

(1) Staff shall advise an inmate not considered to be indigent to apply to the U.S. Magistrate in the district of confinement for disposition of the fine. If the U.S. Magistrate has not scheduled a hearing for the inmate within seven (7) days of the inmate's probable release date, staff shall contact the U.S. Magistrate to inquire about the status of the hearing and inform the inmate. The Warden may not release the inmate on the scheduled date of release without an order from the U.S. Magistrate.

(2) When the inmate's trust fund account balance is less than twenty dollars and the completed forms indicate that the inmate is indigent, staff shall conduct its own review of all available information and notify the Warden of their findings.

(3) When the Warden finds that the inmate is indigent, he shall advise the inmate and notify him that he will allow the inmate to take the oath of an indigent prisoner on the date of release: *Provided,* That no information to the contrary is found prior to release. Upon administering of the oath, the Warden may discharge the indigent inmate in accordance with provisions of 18 USC 3569.

(f) Staff shall keep the U.S. Attorney, of the district in which the fine was imposed, informed on matters which relate to the inmate's fine. The Warden shall invite the U.S. Attorney to comment on the information provided.

PART 572—PAROLE

Subpart A–C—[Reserved]

Subpart D—Parole and Mandatory Release Violator Reports

Sec.
572.30 Purpose and scope.
572.31 Procedures.

Subpart E—Procedures for the Implementation of Section 4205(g) of the Parole Commission and Reorganization Act

572.40 Purpose and scope.
572.41 Initiation of request.
572.42 Approval of request.
572.43 Denial of request.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart A–C—[Reserved]

Subpart D—Parole and Mandatory Release Violator Reports

§ 572.30 Purpose and scope.

The Bureau of Prisons provides the United States Parole Commission with a Violator Report for use at the revocation hearing of a parole or mandatory release violator, when that hearing is conducted in an institution of the Bureau of Prisons.

§ 572.31 Procedures.

Staff shall prepare the Violator to include the following information:

(a) The inmate's original offense, sentence imposed, date and district;

(b) Description of release procedure;

(c) Alleged violation(s) of parole or mandatory release;

(d) Inmate's comments concerning the alleged violation(s);

(e) An outline of the inmate's activities while under supervision on parole and mandatory release; and

(f) At the option of the inmate, statement of current release plans and available community resources.

Subpart E—Procedures for the Implementation of Section 4205(g) of the Parole Commission and Reorganization Act

§ 572.40 Purpose and Scope.

Under 18 U.S.C. 4205 (g), a sentencing court, on motion of the Bureau of Prisons, may make an inmate immediately eligible for parole by reducing the minimum term of his sentence to time served. The Bureau utilizes Section 4205 (g) only in particularly meritorious or unusual circumstances which could not reasonably have been foreseen by the court at the time of sentencing. The section may be used, for example, if there is an extraordinary change in an inmate's personal or family situation or if an inmate becomes severely ill.

§ 572.41 Initiation of request.

(a) An inmate may submit a written request for a motion under 18 U.S.C. 4205 (g) to the Warden. In the request, the inmate shall relate the circumstances that he believes warrant his consideration under 18 U.S.C. 4205 (g). In addition, the inmate shall include the following information about himself in the request:

(1) Offense,

(2) Plea,

(3) Length and date of sentence,

(4) Name and location of sentencing court,

(5) Date service of sentence began,

(6) Parole eligibility date, and

(7) Mandatory release date.

(b) The Bureau of Prisons processes a request made by another person on behalf of an inmate in the same manner as an inmate's request. Staff shall refer a request received at the Central Office or at a Regional Office to the Warden of the institution where the inmate is confined.

§ 572.42 Approval of request.

(a) The Bureau of Prisons makes a motion under 18 U.S.C. 4205 (g) only after review of the request by the Warden, the Regional Director, the General Counsel, the Medical Director or the Assistant Director, Correctional Programs Division, and with the approval of the Director, Bureau of Prisons.

(1) If the Warden upon an investigation of the inmate's request determines that the request has merit, he shall refer the matter in writing with his recommendation to the Regional Director.

(2) If the Regional Director determines that the requests warrants approval, he shall prepare a written recommendation and refer the matter to the Office of General Counsel.

(3) If the General Counsel determines that the request warrants approval, he shall solicit the opinion of either the Medical Director or the Assistant Director, Correctional Programs Divisions, depending upon the nature of the basis for the request. With this opinion, the General Counsel shall forward the entire matter to the Director, Bureau of Prisons, for final decision.

(4) If the Director, Bureau of Prisons, grants a request, he shall ask the U.S. Attorney in the district in which the inmate was sentenced to move the sentencing court on behalf of the

Bureau of Prisons to reduce the minimum term of the inmate's sentence to time served.

(b) Upon receipt of notice that the sentencing court has entered an order granting the motion under 18 U.S.C. 4205 (g), the Warden of the institution where the inmate is confined shall schedule the inmate for hearing on the earliest Parole Commission docket.

(c) In event of medical emergency certified by the physician of the institution where the inmate is confined, staff shall expedite the request at all levels.

§ 572.43 Denial of Request.

(a) When the Director, Bureau of Prisons, denies a request, he shall provide the inmate with written notice and a statement of reasons within 20 workdays after receipt of the referral from the Office of General Counsel. A denial by the Director constitutes a final administrative decision.

(b) When the inmate's requests for consideration under 18 U.S.C. 4205 (g) is denied by the General Counsel, this denial constitutes a final administrative decision.

(c) When the inmate's request is denied by the Warden or Regional Director, the inmate may appeal the denial through the Administrative Remedy Procedure (Rule 542, Subpart B).

NORMAN A. CARLSON,
Director, Federal Bureau of Prisons.

JANUARY 8, 1979.

[FR Doc. 79-1095 Filed 1-11-79; 8:45 am]

federal register

FRIDAY, JANUARY 12, 1979
PART VIII

DEPARTMENT OF COMMERCE

Office of the Secretary

DRAFT UNIFORM PRODUCT LIABILITY LAW

[3510-17-M]

DEPARTMENT OF COMMERCE

Office of the Secretary

DRAFT UNIFORM PRODUCT LIABILITY LAW

INTRODUCTION

The Department of Commerce is seeking public comment on the Draft Model product Liability Law which follows. On the basis of the public comment the draft law will be revised. That work product will be reviewed by the Administration and a final version will be published as a model law for use by the states.

BACKGROUND OF THE DRAFT LAW

The Department chaired an 18-month interagency study on the topic of product liability. The Task Force's Final Report was published on November 1, 1977.

On the basis of that report, representatives from the Office of Management and Budget and the Domestic Policy Staff of the White House asked the Department of Commerce to prepare an options paper regarding what action, if any, the Federal Government should take to address the product liability problem. That paper was published in the FEDERAL REGISTER On April 6, 1978 (43 FR 14612 (1978)). A synthesis of the public comment on the options paper was published in the FEDERAL REGISTER on September 11, 1978 (43 FR 40438 (1978)).

On July 20, 1978, the Administration announced its program to address the product liability problem. Its short-range measure, a tax proposal, was enacted into law (Revenue Act of 1978, Pub. L. No. 95-600, § 371).

A principal long-range measure was a model uniform product liability law. The model law is intended to balance the interests of product users and sellers and to provide uniformity in the major areas of tort law that may affect product liability insurance rate-making.

SOURCES OF THE LAW

The model law is based, in part, on the work products of the Interagency Task Force on Product Liability, including its Final Report, its Legal Study, its Industry Study, and its Insurance Study.[1] Also, a thorough review was conducted of all major case law and law review literature that had been published since the time of the Task Force's Legal Study.

As will be apparent from the Law's section-by-section analysis, attention was given to:

(1) Findings of the extensive Product Liability Closed Claim Survey conducted by the Insurance Services Office in 1976-1977;

(2) All product liability legislation that has been enacted at the state level plus major proposals that had been before state legislatures in the past two years;

(3) Congressional hearings on product liability and the Report of the House Subcommittee on Capital, Investment and Business Opportunties of the Committee on Small Business (see Report No. 95-997 (Congressman John LaFalce, Chairman)); and

(4) Privately drafted model product liability legislation.

A bibliography of some of the major resources considered by the Department is set forth in Appendix A.

CRITERIA FOR THE LAW

Aside from the principal goal of balancing the interests of product users and sellers, six criteria were utilized in evaluating provisions of the model code:[2]

(1) *Ensure the availability of "affordable" product liability insurance with adequate coverage to product sellers that engage in reasonably safe design and quality control practices.*

This consideration suggests that the law should attempt to create a situation in which "affordable" product liability insurance is available to manufacturers that follow reasonably safe manufacturing practices. It should not, however, be modified in order to provide such insurance to manufacturers who are unwilling or unable to follow reasonably safe manufacturing practices.

(2) *Ensure that a person injured by an unreasonably unsafe product receives reasonable compensation for his or her injury.*

Many proposed alterations in product liability law are primarily justified by the fact that they contain "cost-saving devices" for product liability insurers or their insureds. This consideration would balance this projected "cost saving" against the responsibility of product sellers for providing reasonable compensation to persons harmed by unreasonably unsafe products.

(3) *Place the incentive for risk prevention on the party or parties who are best able to accomplish that goal.*

Part of the product liability problem has, in part, been caused by unsafe manufacturing practices. Obviously, it is in the interest of all groups affected by the product liability problem to reduce the number of accidents caused by products. The Task Force study showed that product liability law can help bring about this goal. The threat of tort law liability and product liability judgments has prompted manufacturers to make a greater effort to produce safe products. Nevertheless, existing state product liability law does not place the incentive for risk prevention on the party or parties who can best implement that goal.

The placement of an incentive for risk prevention is not an easy task. At least two factors helped determine where it should be located. One is based on pure economics—which party can prevent the risk at lowest cost. Economic analysis of preliminary drafts of this law were helpful in that regard.

A second factor focused on who is in the best practical position to prevent a product-related injury. This factor may point to another party. Sometimes a product seller may be in a better practical position to implement a risk prevention technique although a product user could do so at a lesser cost.

(4) *Expedite the reparations process from the time of injury to the time the claim is paid.*

Delays in the reparations process do not serve any social interest. A seriously injured claimant can ill afford to endure long delays between the time of his injury and the time he is paid. Therefore, the law has placed emphasis on arbitration and other means that will help expedite the reparations process.

(5) *Minimize the sum of accident costs, prevention costs, and transaction costs.*

This goal, while worthwhile, is not easy to fulfill within the tort-litigation system. For example, one can minimize "transaction costs" by abolishing trial by jury; however, this would be at the expense of other societal values which are particularly important in product liability cases, such as the need for the individualized judgment of cases and the experience of ordinary persons in making those judgments. Nevertheless, this consideration is significant enough to weigh in formulating the draft law.

(6) *The remedy is comparatively specific and concrete in nature and format.*

Many product liability proposals that appear sound when stated in a broad and general manner break down when one focuses on the practicality of their implementation. In drafting the law, practicality, as well as conciseness and clarity of language, were important goals. The law was drafted as

[1] The Task Force's reports are available from the National Technical Information Service, Springfield, Virginia 22161. Reference should be made to the appropriate accession number, and a check made payable to NTIS in the proper amount should be enclosed. Final Report: Accession Number PB 273-220, price $20.00; Legal study: PB 263-601, price $31.25 (Volume I is an Executive Summary and may be ordered separately—PB 265-450, price $6.50); Industry Study: PB 265-542 price $21.25; Insurance Study: PB 263-600, price $9.00.

[2] A more extensive discussion of these criteria appears in the Task Force Report, pp. VII-29.

a guideline for courts, not as a detailed legal contract between product seller and user.

Other considerations were utilized in the process of formulating each of the sections. They are high-lighted in the section-by-section analysis that accompanies the law. Again, permeating the discussion of all remedies is the concern that the provision is fair to all of the many groups that have an interest in the product liability problem.

Finally, it is important to understand the basic philosophy that underlies the model product liability law. Product liability law is a branch of the law of torts. The function of tort law is to shift the cost of an accident from a claimant to a defendant when that person is deemed "responsible" for the claimant's injuries. This responsibility should be defined in terms that everyone can understand. It should indicate why a particular individual product seller should bear the cost of that injury.

Tort law is not a compensation system similar to Social Security or Worker Compensation. A product seller is not being asked to pay merely because his product caused an injury. If that were the case, it would be far more efficient and less expensive to make purchasers of products third-party beneficiaries of product sellers' insurance policies and provide a limited damage recovery, as is the case with other compensation systems. In sum, product liability law should impose liability only where it is fair to deem the product seller responsible for an injury.

REQUEST FOR COMMENT

We would appreciate your comments and regret that we may be unable to provide individual acknowledgements to each communication. Out time will be reserved for giving close attention to your suggestions and observations. Comment should be addressed to Victor Schwartz, Chairman, Task Force on Product Liability and Accident Compensation, Room 5027, U.S. Department of Commerce, Washington, DC 20230. Because of the need for prompt action in this matter, comments must be forwarded within 45 days. We anticipate publishing a final version in June 1979.

C. L. HASLAM,
General Counsel.
VICTOR E. SCHWARTZ,
Chairman, Task Force on Product Liability and Accident Compensation.

OUTLINE: DRAFT UNIFORM PRODUCT LIABILITY ACT

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UNIFORM PRODUCT LIABILITY ACT

PREAMBLE

This Act sets forth uniform standards for state product liability tort law. It does not cover all issues that may be litigated in product liability cases; rather, it focuses on those where the need for uniform rules is the greatest. The purpose of these uniform rules is to eliminate existing confusion and uncertainty on the part of both product users and product sellers about their respective legal rights and obligations. Improving the level of certainty as to how state product liability law will deal with claims for injuries caused by allegedly defective products should also, over time, promote greater availability and affordability in product liability insurance and greater stability in rates and premiums.

SEC. 100. SHORT TITLE

This Act shall be known and may be cited as the "Uniform Product Liability Act."

SEC. 101. FINDINGS

(a) Sharply rising product liability insurance premiums have created serious problems in interstate commerce resulting in:

(1) Increased prices of consumer and industrial products;

(2) Disincentives to develop high-risk but potentially beneficial products;

(3) Businesses going without product liability insurance coverage, thus jeopardizing the availabiltiy of compensation to injured persons; and

(4) Panic "reform" efforts that would unreasonably curtail the rights of product users.

(b) One cause of these problems is that product liability law is frought with uncertainty; the rules vary from jurisdiction to jurisdiction and are in a constant state of flux, thus militating against predictability of litigation outcome.

(c) Insurers have cited uncertainty in product liability law and litigation outcome as a justification for setting rates and premiums that, in fact, may not reflect actual product risk.

(d) Product liability insurance rates are set on the basis of a countrywide, not an individual state, experience. Thus, individual states can do little to solve the problem because a product manufactured in one state can readily cause injury in any one of the other 49 states or the District of Columbia.

(e) Uncertainty in product liability law and litigation outcome is added to litigation costs and may put an additional strain on the judicial system.

(f) Recently enacted state product liability legislation has widened already existing disparities in the law.

SEC. 102. DEFINITIONS

(1) *Product Seller.*

"Product seller" means any person or entity, including a manufacturer, wholesaler, distributor, or retailer, who is engaged in the business of selling such products, whether the sale is resale, or for use or consumption. The term "product seller" also includes lessors or bailors of products who are en-

gaged in the business of leasing or bailment of products.

(2) *Product Liability Claim.*

"Product liability claim" includes all claims or actions brought for personal injury, death, or property damage caused by the manufacture, construction, design, formula, preparation, assembly, installation, testing, warnings, instructions, marketing, packaging, or labeling of any product. It includes, but is not limited to, all actions based on the following theories: strict liability in tort; negligence; breach of warranty, express or implied; breach or failure to discharge a duty to warn or instruct, whether negligent or innocent; misrepresentation, concealment, or nondisclosure, whether negligent or innocent; or under any other substantive legal theory in tort or contract.

(3) *Claimant.*

"Claimant" means a person asserting a legal cause of action or claim and, if the claim is asserted on behalf of an estate, claimant includes claimant's decedent. Claimants include product users, consumers, and bystanders who are harmed by defective products.

(4) *Harm.*

"Harm" includes damage to property and personal physical injuries including emotional harm. It includes damage to the product itself. Damage caused by loss of use of a product is not included, but a claim may be allowed if the seller expressly warranted this protection and this warranty was intended to extend to claimant.

(5) *Manufacturer.*

"Manufacturer" includes product sellers who design, assemble, fabricate, construct, process, package, or otherwise prepare a product or component part of a product prior to its sale to a user or consumer. It includes a product seller or entity not otherwise a manufacturer that holds itself out as a manufacturer.

(6) *Reasonably Anticipated Conduct.*

"Reasonably anticipated conduct" means conduct which would be expected of an ordinary prudent person who is likely to use the product.

(7) *Clear and Convincing Evidence.*

"Clear and convincing evidence" is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established.

SEC. 103. SCOPE OF THIS ACT

(a) A product liability claim provided by this Act shall be in lieu of all existing claims against product sellers (including actions in negligence, strict liability, and warranty) for harms caused by a product.

(b) A claim may be asserted successfully under this Act even though the claimant did not buy the product from or enter into any contractual relationship with the product seller.

(c) The previously existing applicable state law of product liability is modified only to the extent set forth in this Act.

SEC. 104. THE BASIC STANDARDS OF RESPONSIBILITY

A product seller may be subject to liability for harm caused to a claimant who proves by a preponderance of the evidence that one or more of the following conditions apply: the product was defective in construction (Subdivision 104A); the product was defective in design (Subdivision 104B); or the product was defective in that adequate warnings or instructions were not provided (Subdivision 104C).

104(A) *The Product Was Defective in Construction.*

The harm was caused because the product was not made in accordance with the product seller's own design or manufacturing standards. In determining whether the product was defective, the trier of fact may consider the product seller's specifications for the product, and any differences in the product from otherwise identical units of the same product line.

104(B) *The Product Was Defective in Design.*

The harm was caused because the product was defective in design. In determining whether the product was defective, the trier of fact shall consider whether an alternative design should have been utilized, in light of:

(1) The likelihood at the time of manufacture that the product would cause the harm suffered by the claimant;

(2) The seriousness of that harm;

(3) The technological feasibility of manufacturing a product designed so as to have prevented claimant's harm;

(4) The relative costs of producing, distributing, and selling such an alternative design; and

(5) The new or additional harms that may result from such an alternative design.

104(C) *The Product Was Defective Because Adequate Warnings or Instructions Were Not Provided.*

The harm was caused because the product seller failed to provide adequate warnings or instructions about the dangers and proper use of the product.

(1) In determining whether adequate instructions or warnings were provided, the trier of fact shall consider:

(a) The likelihood at the time of manufacture that the product would cause the harm suffered by the claimant;

(b) The seriousness of that harm;

(c) The product seller's ability to anticipate at the time of manufacture that the expected product user would be aware of the product risk, and the nature of the potential harm; and

(d) The technological feasibility and cost of warnings and instructions.

(2) In claims based on Section 104(C), the claimant shall prove that if adequate warnings or instructions had been provided, a reasonably prudent person would not have suffered the harm.

(3) A product seller may not be considered to have provided adequate warnings or instructions unless they were devised to communicate with the person(s) best able to take precautions against the potential harm.

SEC. 105. UNAVOIDABLY UNSAFE ASPECTS OF PRODUCTS

(a) An unavoidably unsafe aspect of a product is that aspect incapable of being made safe in light of the state of scientific and technological knowledge at the time of manufacture.

(b) A product seller may be subject to liability for failing to provide an adequate warning or instruction about an unavoidably unsafe aspect of the seller's product, if the factors set forth in Section 104, subdivision (C) indicate that such warnings or instructions should have been given. This obligation to warn or instruct may arise after the time the product is manufactured.

(c) If Section 104(C) is not applicable, the product seller shall not be subject to liability for harm caused by an unavoidably unsafe aspect of a product unless the seller has expressly warranted by words or actions that the product is free of such unsafe aspects.

SEC. 106. RELEVANCE OF THE "STATE OF THE ART" AND INDUSTRY CUSTOM

(a) For the purposes of this section, "state of the art" means the safety, technical, mechanical, and scientific knowledge in existence and reasonably feasible for use at the time of manufacture.

(b) Evidence of changes in a product design, in the "state of the art," or in the custom of the product seller's industry occurring after the product was manufactured is not admissible for the purpose of proving that the product was defective in design under Section 104(B), or that a warning or instruction should have accompanied the product at the time of manufacture under Section 104(C). The evidence may be admitted for other purposes if its probative value outweighs its prejudicial effect.

(c) Evidence of custom in the product seller's industry is generally admissible. The product seller's compliance or non-compliance with custom may be considered by the trier of fact in determining whether a product was defective in design under Section 104(C), or whether there was a failure to warn or instruct adequately under Section 104(C).

(d) Evidence that a product conformed to the "state of the art" at the time of manufacture, raises a presumption that the product was not defective within the meaning of Sections 104(B) and (C). This presumption may be rebutted by clear and convincing evidence that in light of the factors set forth in Section 104 (B) and (C), the product was defective.

(e) A product seller may by a motion request the court to determine whether the injury-causing aspect of the product conformed to a non-governmental safety standard having the following characteristics:

(1) It was developed through careful, thorough product testing and a formal product safety evaluation;

(2) Consumer as well as manufacturer interests were considered in formulating the standard;

(3) It was considered more than a minimum safety standard at the time of its development; and

(4) The standard was up-to-date in light of the technological and scientific knowledge reasonably available at the time the product was manufactured.

If the court makes such a determination in the affirmative, it shall instruct the trier of fact to presume that the product was not defective. This presumption may be rebutted by clear and convincing evidence that in light of the factors set forth in Sections 104(B) and (C), the product was defective.

SEC. 107. RELEVANCE OF COMPLIANCE WITH LEGISLATIVE OR ADMINISTRATIVE STANDARDS

(a) A product seller may by a motion request the court to determine whether the injury-causing aspect of the product conformed to an administrative or legislative standard having the following characteristics:

(1) It was developed as a result of careful, thorough product testing and a formal product safety evaluation;

(2) Consumer as well as manufacturer interests were considered in formulating the standard;

(3) The agency responsible for enforcement of the standard considered it to be more than a minimum safety standard at the time of its promulgation; and

(4) The standard was up-to-date in light of the technological and scientific knowledge reasonably available at the time the product was manufactured.

(b) If the court makes such a determination in the affirmative, it shall instruct the trier of fact to presume that the product was not defective. This presumption may be rebutted by clear and convincing evidence that in light of the factors set forth in Section 104 (B) and (C), the product was defective.

SEC. 108. NOTICE OF POSSIBLE CLAIM REQUIRED

(a) An attorney who anticipates filing a claim under this Act shall present a notice of this claim stating the time, place and circumstances of events giving rise to the claim along with an estimate of compensation or other relief to be sought.

(b) This notice shall be given within six months of the date of entering into an attorney-client relationship with the claimant in regard to the claim. For the purposes of this Act, such a relationship arises when the attorney, or any member or associate of the attorney's firm, agrees to serve the claimant's interests in regard to the anticipated claim. Notice shall be given to all persons or entities against whom the claim is likely to be made.

(c) Any product seller who receives notice pursuant to subsection (a) promptly shall furnish claimant's attorney with the names and addresses of all persons the product seller knows to be in the chain of manufacture and distribution, if requested to do so by the attorney at the time the notice is given. Any product seller who fails to furnish such information shall be subject to liability as provided for in subsection (e).

(d) A claimant who delays entering into an attorney-client relationship to delay unreasonably the notice required by subsection (a) shall be subject to liability as provided in subsection (e).

(e) Any person who suffers monetary loss because of the failure of a claimant or his attorney or of a product seller in the chain of manufacture and distribution to comply with the requirements of this section may recover damages, costs, and reasonable attorneys' fees from that party. Failure to comply with the requirements of this section does not affect the validity of any claim or defense under this Act.

SEC. 109. LENGTH OF TIME PRODUCT SELLERS ARE SUBJECT TO LIABILITY FOR HARM CAUSED BY THEIR PRODUCTS

(A) Useful Safe Life.

(1) A product seller may be liable to a claimant for harm caused by the seller's product during the useful safe life of that product. "Useful safe life" refers to the time during which the product reasonably can be expected to perform in a safe manner. In determining whether a product's useful safe life has expired, the trier of fact may consider:

(a) The effect on the product of wear and tear or deterioration from natural causes;

(b) The effect of climatic and other local conditions in which the product was used;

(c) The policy of the user and similar users as to repairs, renewals and replacements;

(d) Representations, instructions and warnings made by the product seller about the product's useful safe life; and

(e) Any modification or alteration of the product by a user or third party.

(2) A product seller shall not be liable for injuries or damage caused by a product beyond its useful safe life unless the seller has so expressly warranted.

(B) Statutes of Repose.

(1) Workplace Injuries.

(a) A claimant entitled to compensation under a state worker compensation statute may bring a product liability claim under this Act for harm that occurs within ten (10) years after delivery of the completed product to its first purchaser or lessee who was not engaged in the business of selling products of that type.

Where this Act precludes a worker from bringing a claim because of subdivision (1)(a), but the worker can prove, by the preponderance of evidence, that the product causing the injury was unsafe, the worker may bring a claim against the workplace employer. If possible, the claim should be brought in a worker compensation proceeding, and shall include all loss of wages that otherwise would not be compensated under the applicable worker compensation statute.

(c) Where this Act precludes a worker's beneficiaries under an applicable wrongful death statute from bringing a wrongful death claim because of subdivision (1)(a), but they can prove, by a preponderance of evidence, that the product that caused the worker's death was unsafe, they may bring a claim against the workplace employer. If possible, the claim must be brought in a Worker Compensation proceeding, and shall include pecuniary losses that would not have otherwise been compensated under the applicable worker compensation statute.

(d) An employer who is subject to liability under either subsection (1) (b) or (c) shall have the right to seek contribution from the product seller in an arbitration proceeding under Section 116 of this Act. Contribution shall be limited to the extent that the product seller is responsible for the harm incurred under the principles of Section 104 of this Act. The final judgment in

that proceeding shall not be subject to trial *de novo*, but shall be treated as a final judgment of a trial court.

(2) Non-Workplace Injuries.

For product liability claims not included in subdivision (B) that involve harms occurring more than ten (10) years after delivery of the completed product to its first purchaser or lessee who was not engaged in the business of selling products of that type, the presumption is that the product has been utilized beyond its useful safe life as established by subdivision (A). This presumption may be rebutted by clear and convincing evidence.

(3) Limitations on Statutes of Repose.

(a) Where a product seller expressly warrants or promises that the seller's product can be utilized safely for a period longer than ten (10) years, the period of repose shall be extended according to these warranties or promises.

(b) The ten (10) year period of repose established in Section 109(B) does not apply if the product seller intentionally misrepresents a product, or fraudulently conceals information about it, where that conduct was a substantial cause of the claimant's harm.

(c) Nothing contained in Section 109(B) shall affect the right of any person found liable under this Act to seek and obtain contribution or indemnity from any other person who is responsible for harm under this Act.

(d) The ten (10) year period of repose established in Section 109(B) does not apply if the harm was caused by prolonged exposure to a defective product, or if an injury-causing aspect of the product existing at the time it was sold did not manifest itself until ten years after the time of its first use.

(C) Statute of Limitations.

All claims under this Act shall be brought within three years of the time the claimant discovered, or in the exercise of due diligence should have discovered, the facts giving rise to the claim.

SEC. 110. RELEVANCE OF THIRD-PARTY ALTERATION OR MODIFICATION OF A PRODUCT

(a) A product seller shall not be liable for harm that would not have occurred but for the fact that his product was altered or modified by a third party unless:

(1) The alteration or modification was in accordance with the product seller's instructions or specifications;

(2) The alteration or modification was made with the express consent of the product seller; or

(3) The alteration or modification was the result of conduct that reasonably should have been anticipated by the product seller.

(b) For the purposes of this section, alteration or modification includes changes in the design, formula, function, or use of the product from that originally designed, tested or intended by the product seller. It includes failure to observe routine care and maintenance, but does not include ordinary wear and tear.

SEC. 111. RELEVANCE OF CONDUCT ON THE PART OF PRODUCT LIABILITY CLAIMANTS

(a) General Rule.

In any claim under this Act, the comparative responsibility of, or attributed to, the claimant, shall not bar recovery but shall diminish the award of compensatory damages proportionately, according to the measure of responsibility attributed to the claimant.

(b) Apportionment of Damages.

In any claim involving comparative responsibility, the court, unless otherwise requested by all parties, shall instruct the jury to give answers to special interrogatories, or the court shall make its own findings if there is no jury, indicating—

(1) The amount of damages each claimant would have received if comparative responsibility were disregarded, and

(2) The percentage of responsibility allocated to each party, including the claimant, as compared with the combined responsibility of all parties to the action. For this purpose, the court may decide that it is appropriate to treat two or more persons as a single party.

(3) In determining the percentage of responsibility, the trier of fact shall consider, on a comparative basis, both the nature and quality of the conduct of the party.

(4) The court shall determine the award for each claimant according to these findings and shall enter judgment against parties liable on the basis of the common law joint and several liability of joint tortfeasors. The judgment shall also specify the proportionate amount of damages allocated against each party liable, according to the percentage of responsibility established for that party.

(5) Upon a motion made not later than one year after judgment is entered, the court shall determine whether all or part of a party's share of the obligation is uncollectible from that party, and shall reallocate any uncollectible amount among the other parties, including a claimant at fault, according to their respective percentages of fault. A party whose liability is reallocated is still to be subject to contribution and to any continuing liability to the claimant on the judgment.

(c) Conduct Affecting Claimant's Responsibility.

(1) Failure to Discover a Defective Condition.

(i) A claimant is not required to have inspected the product for defective condition. Failure to have done so does not render the claimant responsible for the harm caused.

(ii) Where a claimant using a product is injured by a defective condition that would have been apparent to an ordinary prudent person, the claimant's damages are subject to reduction according to the principles of subsections (a) and (b).

(2) Using a Product With a Known Defective Condition.

(i) A claimant who knew about a product's defective condition, but who voluntarily and unreasonably used the product, shall be held solely responsible for injuries caused by that defective condition.

(ii) In circumstances where a claimant knew about a product's defective condition and voluntarily used the product, but where the reasonableness of doing so was uncertain, claimant's damages shall be subject to reduction according to the principles of subsections (a) and (b).

(3) Misuse of a Product.

(i) Where a claimant has misused a product by using it in a manner that the product seller could not have reasonably anticipated, the claimant's damages shall be reduced according to the principles of subsections (a) and (b).

(ii) Where the injury would not have occurred but for the misuse defined in subsection (3)(i), the product is not defective for purposes of liability under this Act.

SEC. 112. MULTIPLE DEFENDANTS: CONTRIBUTION AND IMPLIED INDEMNITY

(a) Rights of contribution and implied indemnity among multiple defendants shall be determined by reference to the principles of Section 111 (a & b).

(b) If the proportionate responsibility of the parties to a claim for contribution has been established previously by the court, as provided in Section 111, a party paying more than its share of the obligation, upon motion, may recover judgment for contribution.

(c) If the proportionate responsibility of the parties to the claim for contribution has not been established by the court, contribution may be enforced in a separate action, whether or not a judgment has been rendered against either the person seeking contribution or the person from whom contribution is being sought.

(d) Contribution is available to a person who enters into a settlement with a claimant only: (1) if the liability of the person against whom contribution is sought has been extinguished, and (2) to the extent that the

amount paid in settlement was reasonable.

(e) If a judgment has been rendered, the action for contribution must be brought within one (1) year after the judgment becomes final. If no judgment has been rendered, the person bringing the action for contribution either must have: (1) discharged by payment the common liability within the period of the statute of limitations or repose applicable to the claimant's right of action against him and commenced the action for contribution within one year after payment, or (2) agreed while action was pending to discharge the common liability and, within one year after the agreement, have paid the liability and brought an action for contribution.

SEC. 113. THE RELATIONSHIP BETWEEN PRODUCT LIABILITY AND WORKER COMPENSATION

In the case of any claim brought under this Act by or on behalf of a person who has been or will be compensated for injuries under a state worker compensation law, where an employer's failure to comply with any statutory or common law duty relating to workplace safety contributed to the claimant's injuries, the employer shall be subject to a contribution claim as provided in Section 112 of this Act for a sum not to exceed the amount of the worker compensation lien.

SEC. 114. THE INDIVIDUAL RESPONSIBILITY OF PRODUCT SELLERS OTHER THAN MANUFACTURERS AS COMPARED TO OTHER PRODUCT SELLERS

(a) Manufacturers shall be responsible for defective conditions in their products according to the provisions of this Act. In the absence of express warrantees to the contrary, other product sellers shall not be subject to liability in circumstances where they do not have a reasonable opportunity to inspect the product in a manner which would or should, in the exercise of reasonable care, reveal the existence of the defective condition.

(b) The duty limitation of subsection (a) shall not apply, however, if:

(1) The manufacturer is not subject to service of process in the claimant's own state;

(2) The manufacturer has been judicially declared insolvent;

(3) The court determines that the claimant would have appreciable difficulty enforcing a judgment against the product manufacturer.

SEC. 115. SANCTIONS AGAINST THE BRINGING OF FRIVOLOUS CLAIMS AND DEFENSES

(a) After final judgment has been entered under this Act, either party, by motion, may seek reimbursement for reasonable attorneys' fees and other costs that would not have been expended but for the fact that the opposing party pursued a claim or defense that was frivolous.

(b) For the purposes of this Act, a claim or defense is considered frivolous if the court determines that it was without any reasonable legal or factual basis.

(c) If the court decides in favor of a party seeking redress under this section, it shall do so on the basis of clear and convincing evidence. In all motions under this section, the court shall make and publish its findings of fact.

(d) The motion provided for in subsection (a) may be filed and the claim assessed against the person who was responsible for the frivolous nature of the claim or defense.

(e) In situations where a claimant has been represented on a contingent fee basis and no legal costs have been or will be incurred by that claimant, the attorney for claimant may recover reasonable attorneys' fees based on the amount of time expended in opposing a frivolous defense.

(f) Claims for damages under this section shall not include expenses of persons not parties to the action.

SEC. 116. ARBITRATION

(a) Applicability.

In any claim brought under this Act where the amount in dispute is less than $30,000, exclusive of interest and costs, and the court determines in its discretion that any non-monetary claims are insubstantial, either party may by a motion institute a pre-trial arbitration proceeding.

(b) Rules Governing.

(1) The substantive rules of a Section 116 arbitration proceeding shall be those contained in this Act as well as those in applicable state law.

(2) The procedural rules of a Section 116 arbitration proceeding shall be those contained in this section. If this section does not address a particular issue, guidance may be obtained from the the Uniform Arbitration Act.

(3) A legislatively designated state agency may formulate additional procedural rules under this Act.

(c) Arbitrators.

(1) Unless the parties agree otherwise, the arbitration shall be conducted by three persons, one of whom shall be either an active member of the state bar or a retired judge of a court of record in the state, one shall be an individual who possesses expertise in the subject matter area that is in dispute, and one shall be a lay person.

(2) Arbitrators shall be selected in accordance with applicable state law in a manner which will assure fairness and lack of bias.

(d) Arbitrators' Powers.

(1) Arbitrators to whom claims are referred pursuant to Section 116 shall have the power within the territorial jurisdiction of the court, to conduct arbitration hearings and make awards consistent with the provisions of this Act.

(2) State laws applicable to subpoenas for attendance of witnesses and the production of documentary evidence shall apply in procedures conducted under this chapter. Arbitrators shall have the power to administer oaths and affirmations.

(e) Commencement.

The arbitration hearings shall commence not later than 30 days after the claim is referred to arbitration, unless for good cause shown the court shall extend the period. Hearings shall be concluded promptly. The court may order the time and places of the arbitration.

(f) Evidence.

(1) The Federal Rules of Evidence [or designated state evidence code] may be used as guides to the admissibility of evidence in an arbitration hearing.

(2) Strict adherence to the rules of evidence, apart from relevant state rules of privileges, is not required.

(g) Transcript of Proceeding.

A party may have a recording and transcript made of the arbitration hearing at its own expense. A party that has had a transcript or tape recording made shall furnish a copy of the transcript or tape recording at cost to any other party upon request.

(h) Arbitration Award and Judgment.

The arbitration award shall be filed with the court promptly after the hearing is concluded and shall be entered as the judgment of the court after the time for requesting a trial *de novo* has expired, unless a party demands a trial *de novo* before the court pursuant to subsection (i). The judgment so entered shall be subject to the same provisions of law, and shall have the same force and effect as a judgment of the court in a civil action, except that it shall not be subject to appeal.

(i) Trial *De Novo.*

(1) Within 20 days after the filing of an arbitration award with the court, any party may demand a trial *de novo* in that court.

(2) Upon demand for a trial *de novo*, the action shall be placed on the calendar of the court and treated for all purposes as if it had not been referred to arbitration. Any right of trial by jury that a party would otherwise have shall be preserved inviolate.

(3) At the trial *de novo*, the court shall not admit evidence that there had been an arbitration proceeding, the nature or amount of the award, or any matter concerning the conduct of

the arbitration proceeding, except that the testimony given at the arbitration hearing may be used for impeachment purposes at a trial *de novo*.

(4) A party who has demanded a trial *de novo* but fails to obtain a judgment in the trial court, exclusive of interest and cost, more favorable than the arbitration award, shall be assessed the cost of the arbitration proceeding, including the amount of the arbitration fees, and—

(i) If this party is a claimant and the arbitration award is in its favor, the party shall pay to the court an amount equivalent to interest on the arbitration award from the time it was filed; or

(ii) If this party is a product seller, it shall pay interest to the claimant on the arbitration award from the time it was filed.

SEC. 117. EXPERT TESTIMONY

(a) Appointment.

The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of its own selection. An expert witness shall not be appointed by the court unless he or she consents to act. An expert witness appointed by the court shall be informed of his or her duties in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. An expert witness so appointed shall advise the parties of any findings; shall be available for deposition by any party; and may be called to testify by the court or any party. The court appointed expert witness shall be subject to cross-examination by each party, including a party calling that expert as a witness.

(b) Compensation.

(1) Expert witnesses appointed by the court are entitled to reasonable compensation in whatever amount the court may allow. The court, in its discretion, may tax the costs of such expert on one party or apportion them between both parties in the same manner as other costs.

(2) In exercising this discretion, the court may consider:

(i) Which party won the case;

(ii) Whether the amount of damages recovered in the action bore a reasonable relationship to the amount sought by the claimant or conceded to be appropriate by the product seller.

(c) Disclosure of Appointment.

In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court has appointed the expert witness.

(d) Parties' Experts of Own Selection.

Nothing in this section limits the parties in calling expert witnesses of their own selection.

(e) Pre-Trial Evaluation of Experts.

The court in its discretion may conduct a hearing to determine the qualification of proposed expert witnesses. The court may order a hearing on its own motion or on the motion of either party.

(1) Need for Pre-Trial Evaluation.

In determining whether to grant such a motion, the court shall consider:

(i) The complexity of the issues in the case; and

(ii) Whether the hearing would deter the presentation of witnesses who are not qualified as experts on the specific issues.

(2) Factors in Evaluation.

If the court decides to hold such a hearing, it shall consider:

(i) The scope of the proposed witness' background and skills;

(ii) The formal and self-education the proposed witness has undertaken relevant to the instant case or similar cases; and

(iii) The proposed witness' potential bias.

(3) Findings of Fact.

In making a determination that a proposed expert witness is or is not qualified, the court shall state its findings of fact.

SEC. 118. NON-PECUNIARY DAMAGES

(a) Non-pecuniary damages, including "pain and suffering," shall be determined by the trier of fact. The court shall have the power to review such damage awards.

(b) In cases where the claimant has not suffered permanent serious disfigurement, permanent impairment of bodily function, or permanent mental illness as a result of the product-related harm, non-pecuniary damages shall be limited to $25,000.

SEC. 119. THE COLLATERAL SOURCE RULE

In any claim brought under this Act, the claimant's recovery shall be diminished by any amount he or she has received or will receive in compensation for the same damages from a public source. This provision shall also apply to parties who may be subrogated to the claimant's rights under this Act.

SEC. 120. PUNITIVE DAMAGES

(a) Punitive damages may be awarded if the claimant shows by clear and convincing evidence that the harm suffered was the result of the product seller's reckless disregard for the safety of product users, consumers, or bystanders who might be injured by the product.

(b) If the trier of fact determines that punitive damages should be awarded, the court shall determine the amount of those damages. In making this determination, the court shall consider:

(1) The likelihood at the time of manufacture that a serious harm would arise from the product seller's misconduct;

(2) The degree of the product seller's awareness of that likelihood;

(3) The profitability of the misconduct to the product seller;

(4) The duration of the misconduct and any concealment of it by the product seller;

(5) The attitude and conduct of the product seller upon discovery of the misconduct;

(6) The financial condition of the product seller; and

(7) The total effect of other punishment imposed or likely to be imposed upon the product seller as a result of the misconduct, including punitive damage awards to persons similarly situated to claimant and the severity of criminal penalties to which the product seller has been or may be subjected.

SEC. 121. EFFECTIVE DATE

This Act shall be effective with regard to all claims accruing on or after September 1, 1979.

ANALYSIS

PREAMBLE

The importance this Act places in increasing the degree of certainty in the product liability litigation process is tempered by the recognition that even with a nationwide adoption of a uniform code, its application may vary from state to state on some issues. The goal is to promote a greater degree of certainty than the present system.

ANALYSIS

SEC. 100. SHORT TITLE

This is the customary "short title" provision. It may be placed wherever state legislative practice dictates. If a state legislature introduces parts of the Uniform Product Liability Act as separate measures, the short title should be adjusted accordingly.

ANALYSIS

SEC. 101. FINDINGS

Chapter VI and VII of the "Final Report" of the Interagency Task Force on Product Liability (Task Force Report) provide support for most of the findings made here. Additional support comes from the Report of the Subcommittee on Capital, Investment and Business Opportunities, "Product Liability Insurance," 95th Cong., 2d Sess., Report No. 95-977

(1978) (Subcommittee Report). Among other things, this Report called for clarification and simplification of "present tort law relating to product liability for formulating Federal standards to be adopted by the States * * *" (Subcommittee Report, at 76).

Individual state studies on product liability conducted in Missouri (Report of the Senate Select Committee on Product Liability, 1977); Illinois (Judiciary I Subcommittee on Product Liability: Report and Recommendations—Part 1, undated); Georgia (Report of the Senate Products Liability Study Committee, 1978); Maine (Governor's Task Force, 1978); Michigan (Department of Commerce Task Force on Product Liability Insurance, 1978); and Wisconsin (Product Liability, An Overview, Wisconsin Legislative Council Staff, 1978) provide additional support for individual findings.

The Maine and Georgia reports emphasize that individual state tort reforms can do little to affect the product liability problem. Governor Grasso's message vetoing a product liability tort bill passed by the Connecticut legislature in 1978 emphasized that individual state tort action will not stabilize product liability insurance rates.

More specific references to the findings appear in the following citations keyed to the various findings:

(a)(1) Task Force Report at VI-27-28, V-19.

(2) Task Force Report at VI-28-32.

(3) Task Force Report at VI-2-26.

(4) Options Paper on Product Liability and Accident Compensation Issues, 43 FR 14612-4 (1978); Georgia Report Appendix B; Johnson Products Liability "Reform": A Hazard to Consumers, 56 N. "Carol L. Rev." 677 (1978); Comment, "State Legislative Restrictions on Product Liability Actions," 29 "Mercer L. Rev." 619 (1978). *See* Product Liability Legislation, Federal-State Reports, Inc. (1977-1978).

(b) Task Force Report at I-26-28, VII-15-17; Subcommittee Report at 72; Michigan Report at p. 6 (1978).

(c) Task Force Insurance Study (citing uncertainty); Task Force Report at V-48-49 (relationship of premium to risk).

(d) Task Force Report at I-28; Maine Report at 23.

(e) Task Force Report at VII-214-216; *see* ISO Product Closed Claim Survey at 118-130.

(f) *See* Federal State Product Liability Legislation; Federal State Reports (1977-1978); Product Liability Trends at 97-98, 104-05, 157-58 (1978); Business Insurance, p. 22 (12/25/78); *see also* Wisconsin Report at 29-37 (describing twenty-five separate bills on product liability introduced in one legislative session).

ANALYSIS

SEC. 102. DEFINITIONS.

(1) *"Product seller"* includes all parties in the regular commercial distribution chain. It does not include the occasional private seller. This is in accord with the "Restatement (Second) of Torts." The term also includes lessors and bailors of products, in accord with the majority of case law decisions that have addressed that issue. *See* Annot. 52, "A.L.R." 3d 121 (1973).

The Act does not address several definitional problems of "product seller." First, it does not address the problem of the product seller engaged in a service. *See* "Newmark v. Gimbel's, Inc.," 54 N.J. 585, 258 A.2d 697 (1969). It is suggested that a party be considered a product seller where a sale of a product is a principal part of the transaction and where the essence of the relationship between the buyer and seller is *not* the furnishing of professional skill or services. *See* Annot., 29 "A.L.R." 3d 1425 (1970).

Second, the Act does not address the potential product liability problems of the seller of real property. It is suggested that it is only appropriate to apply product liability standards to builder-vendors who engage in the mass production and sale of homes. *See* "Schipper v. Levitt & Sons, Inc.," 44 N.J. 70, 207 A.2d 314 (1965); *But see* "Wright v. Creative Corp.," 30 Colo. App. 575, 498 P.2d 1179 (1972) (rejecting "Schipper").

Finally, the Act does not indicate whether a commercial seller of used products is subject to liability under this Act. This issue is left for resolution as a matter of individual state policy. *See* "Peterson v. Lou Bachrodt Chevrolet Co.," 61 Ill.2d 17, 329 N.E.2d 785 (1975).

(2) *"Product Liability Claim."* One key purpose of this act is to consolidate product liability actions that traditionally have been separated under theories of negligence, warranty, and strict liability. This approach was suggested by the Task Force "Legal Study" as well as the report of the Subcommittee on Capital, Investment and Business Opportunities. While an argument may be made that negligence theory is qualitatively different from strict liability and, therefore, should be preserved, product liability theory and practice has become an entity in and of itself and can only be stabilized if there is one, and not a multiplicity of causes of action.

"Product liability claim" embraces express as well as implied warranties.

(3) *"Claimant."* Both living persons and those claiming through or on behalf of an estate are included within the meaning of the word "claimant." This would include both wrongful death and survival actions.

Although the "Restatement (Second) of Torts" left open the question of whether bystanders should be included within the compass of strict liability claims, subsequent case law has been almost uniform that bystanders should be included. *See* "Giberson v. Ford Motor Co.," 504 S.W.2d 8 (Mo. 1974) (collecting cases). *See also*, Annot., 33 "A.L.R." 3d 415 (1970). The definition follows this line of decisions.

Bystanders include rescuers who come upon the scene. *See* "Guarino v. Mine safety Appliance Co.," 25 N.Y. 2d 460, 255 N.E. 2d 173 (1969).

(4) *"Harm."* The "Restatement" provision included physical harm to persons and property. This Act also includes emotional harm, but only as an element of parasitic damages, *e.g.*, when a person has also been harmed physically. The Act leaves open the question of whether an individual may recover for emotional harm alone under a product liability theory; this issue is left to common law development.

The Act also includes damage to the product itself. *See* "Gherna v. Ford Motor Co.," 246 Cal. App. 2d 639, 55 Cal. Rptr. 94 (1966). Some courts consider this an economic loss and relegate the claimant to whatever rights he or she has under the sales provision of the Uniform Commerical Code. *See* "Hawkins Construction Co. v. Matthews Co., Inc.," 190 Neb. 546, 209 N.W.2d 643 (1973).

Apart from a very limited express warranty claim, the Act does not include damages for consequential economic losses. Most courts have been in accord with "Seely v. White Motor Co.," 63 Cal. 2d 9, 45 Cal. Rptr. 17 (1965) on this issue and have left the claimant with whatever rights he or she has under the Uniform Commerical Code. *See* "Brown v. Western Farmers Assn.," 268 Or. 470, 521 P.2d 537 (1974); "Eli Lilly and Co. v. Casey," 472, S.W.2d 598 (Tex. Civ. App. 1971); "Paul O'Leary Lumber Corp. v. Mill Equipment, Inc.," 448 F.2d 536 (5th Cir. 1971).

The insurance costs of extending consequential economic losses beyond parties to a contract would be enormous. It is much cheaper and more efficient for the product purchaser to obtain insurance against consequential economic losses caused by business stoppage. Also, most courts believe that a commercial purchaser should be charged with the risk that his product will not match his economic expectations unless the manufacturer agrees it will. *See* Note, "Economic Loss in Products Liability Jurisprudence," 66 "Colum. L. Rev." 917 (1966). However, a claimant can recov-

er for consequential economic losses under an express warranty theory. *See* "Seely v. White Motor Co.," *supra.*

(5) *"Manufacturer."* This definition is based on one in Arizona's product liability law. *See* "Ariz. Rev. Stat. Ann." § 12-681 (1) (1978). Its greatest import within this act is in regard to the responsibility of a manufacturer for defective products as contrasted with other product sellers. *See* Section 114.

(6) *"Reasonably Anticipated Conduct."* The definition is based in part on Arizona product liability law. *See* "Ariz. Rev. Stat. Ann." § 12-681(4) (1978). The meaning of "reasonably anticipated" should be contrasted with "foreseeable." Almost any kind of misconduct with regard to products can be foreseeable—especially if the trier of fact is permitted to use hindsight, *e.g.,* that a soda bottle will be used for a hammer, that someone will attempt to drive a land vehicle on water, that perfume will be poured on a candle in order to scent it. *See* "Moran v. Faberge, Inc.," 273 Md. 538, 332 A.2d 11 (1975).

The approach taken places incentives for risk prevention on product sellers, while also ensuring that the price of products is not affected by the liability insurance costs that would spring from providing coverage for abnormal product use.

(7) *"Clear and Convincing Evidence."* Proof that is clear and convincing carries with it not only the power to persuade the mind as to its probable truth or correctness of fact; it has an additional element of clinching such truth. The term is understood best in context. It requires more proof than the mere preponderance of evidence (the ordinary standard under this Act), but does not require proof beyond a reasonable doubt. *See e.g.,* "Aiello v. Knoll Golf Club," 64 N.J. Super. 156, 165 A.2d 531 (1960); "Cross v. Ledford," 161 Ohio St. 469, 120 N.E.2d 118 (1954); "Brown v. Warner," 78 S.D. 647, 107 N.W.2d 1 (1961).

ANALYSIS

SEC. 103. SCOPE OF THIS ACT

(a) The Act consolidates all product liability recovery theories into one. The approach taken is in accord with the Task Force "Legal Study." While some have argued that for trial tactics purposes it is useful to retain the negligence cause of action as distinct from strict liability, a claimant's attorney can retain the essence of this utility by showing the basic wrongfulness of the product seller's conduct under Section 104.

(b) The Act is in accord with the "Restatement (Second) of Torts" in that it is unnecessary for the claimant to be in contractual privity with the product seller. *See* "Restatement (Second) of Torts" § 402A, Comment c.

(c) The Act and its accompanying commentary do not purport to be an exhaustive compilation of the entire subject of product liability law; rather, they focus on subject matter areas that the Task Force Report suggested have created the most problems and are of major importance.

The interstices of the Act will be filled by statutory or common law additions of the individual states. Some of these interstitial issues will be pointed out in the section-by-section commentary; others will be discovered in the course of litigation under the Act.

ANALYSIS

SEC. 104. BASIC STANDARDS OF RESPONSIBILITY

Perhaps no single product liability issue has generated more controversy than the question of defining the basic standard of responsibility to which product sellers are to be held. Much of this controversy appears to have sprung from the fact that the authors of § 402A of the "Restatement (Second) of Torts" were focusing on problems relating to product mismanufacture or defects in construction; they were not directly concerned with problems relating to defects in design or to the duty to warn. *See* Wade, "On the Nature of Strict Tort Liability for Products," 44 "Miss. L. J." 825, 830-32 (1973).

Courts continue to struggle to articulate the standards of responsibility of product sellers. A multiplicity of approaches have been offered. *See e.g.,* "Barker v. Lull Engineering Co., Inc.," 20 Cal. 3d 413, 143 Cal. Rptr. 225 (1978); "Cepeda v. Cumberland Engineering Co. Inc.," 76 N.J. 152, 386 A.2d 816 (1978); "Phillips v. Kimwood Machine Co.," 269 Ore. 485, 525 P.2d 1033 (1974).

The approach taken in Section 104 is to distinguish cases based on defects in construction, defects in design, and defects caused by a failure to instruct or warn. Each type of case calls for a particular type of treatment. For this reason, this Act does not have a "single" definition of the term "defect," nor does it attempt to resolve the debate over whether a product liability claimant should have to prove that the product was "unreasonably" dangerous. *Compare* "Barker v. Lull Engineering Co., Inc.," *supra,* and "Byrns v. Riddell, Inc.," 113 Ariz. 264, 550 P.2d 1065 (1976). Instead, Section 104 takes an approach which avoids terminological difficulties by focusing on practical considerations that courts and juries have looked to in deciding product liability cases.

This approach should not lead to problems of characterization. The claimant's pleading should indicate the theory on which he or she is proceeding within the framework of Section 104, subdivisions A, B, and C.

A product may be defective in more than one way. Furthermore, there is an important linkage between the duty to warn and defective design. In appropriate cases, a product may be found not to be defective in design if the product seller has given adequate warning about the alleged hazard. *See, e.g.,* "Wagner v. Larsen," 257 Iowa 1202, 136 N.W.2d 312 (1965); "Penn v. Inferno Mfg. Corp.," 199 So.2d 210 (La. App.), *aff'd,* 251 La. 27, 202 So.2d 649 (1967). There are limits to this possibility, however, since a product seller will not be shielded from liability for a poorly designed product, simply by indicating that the product "may be hazardous."

The following commentary discusses each subdivision of Section 104 in turn. First:

(A) *The Product Was Defective in Construction.* The history of imposing strict liability for defects in the construction of products goes back as far as 1913 when sellers of food were first held liable for failure to produce a product reasonably fit for its intended use. *See* "Masetti v. Armour & Co.," 75 Wash. 622, 135 P.633 (1913); Prosser, "The Assault Upon the Citadel," 69 "Yale L.J." 1099 (1960).

Subdivision (A) imposes pure strict liability on the product seller in accordance with Section 402A of the "Restatement (Second) of Torts." This has been an evolving area of strict liability intended to protect the consumer. As Comment c to the "Restatement" states, the seller "has undertaken and assumed a special responsibility toward any member of the consuming public who may be injured [by the product]." Furthermore, "the public has the right to and does expect, in case of products which it needs and for which it is forced to rely upon the seller, that reputable sellers will stand behind their goods * * *" *Id.*

In the course of its study, the Interagency Task Force on Product Liability found that many product sellers can absorb the financial impact of strict liability based on defects in construction. *See* Task Force Report, at VII-17. The product seller as a distributor of many products absorbs the costs of injuries caused by such a defect (even though having exercised all reasonable care) as part of a responsibility inextricably connected with the modern merchandising of products.

Second:

(B) *The Product Was Defective in Design.* As compared to the situation with respect to defect in construction, no court yet has imposed true strict or absolute liability on product sellers for defects in design appreciating, no doubt, the unlimited liability potential

inherent in such cases where it is almost always possible to design a product more safely. Rather, the courts have balanced a variety of factors in determining whether a particular product is defective in design. *See, e.g.,* "Barker v. Lull Engineering Co., Inc.," *supra;* "Cepeda v. Cumberland Engineering Co. Inc.," *supra;* "Schell v. AMF, Inc.," 567 F.2D 1259 (3d Cir. 1977).

There are several possible ways to limit the unlimited liability potential of design defect cases. One is to create a limited damage compensation system—private or governmental—analogous to worker compensation. Another is to continue to base liability on the individual's moral responsibility under the tort system. Subdivision (B) takes the latter course and places the burden on the claimant to show that in light of a balance of practical, objective factors, the product seller should bear the full cost of the injury and have the responsibility for attempting to distribute that cost through product pricing. Basic principles of tort law suggest that the claimant should carry the burden of proof on this issue. *See* Kalven, Jr., "Torts: The Quest for Appropriate Standards," 53 "Calif. L. Rev." 189 (1965). *But see* "Barker v. Lull Engineering Co., Inc.," *supra.*

The factors listed in this subdivision for the trier of fact to consider have been derived from a very wide variety of sources. *See, e.g.,* "Barker v. Lull Engineering Co. Ltd.," *supra. See also* Vetri, "Products Liability: Developing a Framework for Analysis," 54 "Ore. L. Rev." 293, 310 (1975); Henderson, Jr., "Judicial Review of Manufacturers' Conscious Design Choices: The Limits of Adjudication," 73 "Colum. L. Rev." 1531 (1973); Keeton, "Product Liability and the Meaning of Defect," 5 "St. Mary's L. J." 30 (1973); Wade, "On the Nature of Strict Tort Liability for Products," 44 "Miss. L. J." 825 (1973). The factors selected also have been reviewed from an economic perspective.

Factor (1) addresses the problem of judging design cases by hindsight, a significant and justifible concern of product sellers. By focusing on the time of manufacture, Section 104(B) provides an incentive to product sellers to reduce risks, both by design testing and by warning of potential hazards.

Factor (2) raises the possibility that if at the time of manufacture there is the possibility of a very serious harm, the product seller's obligation to take steps to avoid it increases.

Factor (3) overlaps the Act's consideration of the "state of the art" in Section 106. The trier of fact should consider the scientific and technological knowledge available to the product seller at the time of manufacture as well as the custom in the industry.

Factor (4) recognizes that increased costs associated with an alternative design may play a part in deciding whether it is feasible to pursue. Courts occasionally have indicated that it is appropriate for the trier of fact to consider whether because of increased costs of an alternative design, "it would still be reasonable to market the product despite the danger." "Lynd v. Rockwell Manufacturing Co.," 276 Or. 341, 554 P.2d 1000, 1006 (1976).

Factor (5) indicates that if a weighing of considerations, (1)-(4) suggests that an alternative design should have been pursued, it still is appropriate for the trier of fact to consider any new or additional harms that would arise if this alternative design were chosen.

Thus, Subdivision (B) does not set out an algebraic formula as to how each of these factors should be weighed. Certainly, as factors (1) and (2) increase, the trier of fact is more likely to find that the product was defective. On the other hand, it must balance these factors against (3), (4), and (5).

Two factors relied on by some courts in design cases were not included in the Section 104(B) balancing process. First is the "utility" of the product to the user or to society in general. Economic analysis suggests that this element would render the balancing test totally subjective and unworkable. Tested by its "utility," a whole-grain health food cereal conceivably might be subject to a lower standard of responsibility than one that was heavily sugar-coated (less "useful" to society as a whole). On the other hand, if the trier of fact focused on the subjective "value to the user," it might come to the opposite conclusion. The approach of Section 104(B) is to focus the trier of fact on how the product was made and what its dangers are, rather than making macroeconomic judgments about its value to society or to certain individuals.

The second factor not included in the Section 104(B) balancing process is a "consumer expectation" test. The reasons for this are rooted in both economics and practicality. As Professor Wade, Reporter for the "Restatement (Second) of Torts," has stated:

> [T]he consumer would not know what to expect, because he would have no idea how safe the product could be made.

Wade, *supra,* 44 "Miss. L.J." at 829. Again, the notion of consumer expectations suffers from an "overkill" of subjectivity. Each trier of fact is likely to have a different understanding of abstract consumer expectations. Section 104(B) leaves consumer expectations aside and focuses the trier of fact on what design alternatives were possible as a practical matter.

Third:

(C) *The Product Was Defective Because Appropriate Warnings or Instructions Were Not Provided.* A product seller may be held liable under this subdivision even though the product was not found to be defective in design or construction. Even where lack of scientific knowledge or cost factors precludes the use of an alternative design, the product seller still may be required to provide a warning about the product's hazards or to instruct about the product's use. *See* "Brown v. North Am. Mfg. Co," 576 P.2d 711 (Mont. 1978).

As the Task Force Report noted, rules relating to a product seller's duty to warn have changed drastically in recent years, and are unclear in some jurisdictions. *See* Task Force Report, at VII-18. Product sellers want to be informed about the scope of their duty. Nevertheless, practical problems make it impossible to develop a general rule that will inform the product seller—in advance of manufacture—precisely how to instruct or warn about a particular product. On the other hand, some general guidelines can be provided.

Subdivision (C) (1) lists practical factors that a trier of fact shall weigh in determining whether a particular product warning or instruction was adequate. The trier of fact should focus on both instructions and warnings; all representations about a product must be considered in evaluating whether the duty to warn has been discharged. *See* "McCormack v. Hankscraft Co.," 278 Minn. 322, 154 N.W.2d 488 (1967).

Factor (a) is similar to subsection (1) of subdivision (B). The trier of fact is to consider the likelihood that the harm against which the warning is directed will occur. Where the harm is more likely, the duty is greater.

Factor (b) is similar to subsection (2) of subdivision (B). The more serious the anticipated harm, the greater the duty to warn. *See* "Davis v. Wyeth Laboratories, Inc.," 399 F.2d 121 (9th Cir. 1968).

Factor (c) is of special importance. It recognizes that warnings are not made in a vacuum. The product seller must construct warnings and instructions in light of the training, experience, education and knowledge of those who are likely to avail themselves of those warnings or instructions. *See* "Halvorson v. American Hoist & Derrick Co.," 307 Minn. 48, 240 N.W.2d 303 (1976); *compare* "Ford Motor Co. v. Rodgers," 337 So.2d 736 (Ala. 1976); *See also* "Greiner v. Volkswagenwerk Aktiengesellschaft," 429 F.Supp. 495 (E.D.Pa. 1977).

This factor also allows the trier of fact to judge whether the danger was so obvious as not to require a warning. Some courts have followed the much criticized "patent danger" rule that shields the product seller from an obligation to warn about obvious hazards. Numerous jurisdictions have rejected the rule. *See, e.g.* "Byrns v. Riddell, Inc.," 113 Az. 264, 550 P.2d 1065 (1976); "Casey v. Gifford Wood Co.," 61 Mich. App. 208, 232 N.W.2d 360 (1975); "Brown v. North Am. Mfg. Co.," *supra.* In situations where it is inexpensive and easy to do so, it may be appropriate to warn about an obvious danger that is highly likely to cause very serious injuries. *See* Marschall, "An Obvious Wrong Does Not Make a Right: Manufacturers' Liability for Patently Dangerous Products," 48 "N.Y.U.L. Rev." 1065 (1973).

A product seller should be able to assume that the ordinary product user is familiar with obvious hazards—that knives cut, that alcohol burns, that it is dangerous to drive automobiles at high speeds.

Factor (d), the technological feasibility and cost of a warning, may not be significant in many cases because warnings are often relatively inexpensive to provide. However, in some situations, it may not be feasible technologically to provide a warning, or at least the type of warning that claimant suggests should have been provided.

Subsection (2) provides that a claimant must show that if adequate warnings had been given, it is more probable than not that the injury would not have occurred. In other words, a claimant must show that the failure to provide an appropriate warning was a cause of his or her harm. In this regard the claimant can show that if the warning had been given, either the product would have been used without incident, or it would not have been used at all. The later situation is likely to arise with pharmaceuticals. The test stated in subsection (2) is an objective one which looks toward the conduct of the reasonably prudent person. *Cf.* "Cobbs v. Grant," 8 Cal. 3d 229, 502 P.2d 1, 104 Cal. Rptr. 505, (1972) (informed consent).

Subsection (3) indicates that the warnings or instructions should be devised so as to communicate with the person best able to take suitable precautions. The product seller's duty to warn does not go beyond the technological and other information available at the time of manufacture. This is in accord with the overwhelming majority of court decisions. *See* "Robbins v. Farmers Union Grain Terminal Assn.," 552 F.2d 788 (8th Cir. 1977).

ANALYSIS

SEC. 105. UNAVOIDABLY UNSAFE ASPECTS OF PRODUCTS

Section 105 follows the "Restatement (Second) of Torts" with respect to "products which, in the present state of human knowledge, are quite incapable of being made safe for their intended and ordinary use." *See* "Restatement (Second) of Torts" § 402A, Comment k; *see also* "N.H.Rev. Stat. Ann." § 507-D:4 (1978).

With the exception of one Illinois decision ("Cunningham v. MacNeal Memorial Hospital," 47 Ill. 2d 443, 266 N.E.2d 897 (1970)), subsequently overruled by "Ill. Ann. Stat." ch. 91 §§ 181-84 (1971 as amended), this approach has been followed by the common law courts throughout the United States. *See, e.g.,* "Moore v. Underwood Memorial Hospital," 147 N.J. Super. 252, 371 A.2d 105 (1977) (serum hepatitus contracted from blood supplied); "Dalke v. Upjohn Co.," 555 F.2d 245, (9th Cir. 1977) (tooth discoloration from tetracycline); "Chambers v. G. D. Searle & Co.," 441 F. Supp. 377 (D. Md. 1975) (stroke allegedly from birth control pills); "Coffer v. Standard Brands, Inc.," 30 N.C. App. 134, 226 S.E.2d 534 (1976) (shell in nuts); "Hines v. St. Joseph's Hospital," 86 N.M. 763, 527 P.2d 1075 (1974) (blood transfusion).

Subsection (a) sets the time from which to judge the state of scientific and technological knowledge as the point when the product leaves the manufacturer's control. *See* "Cochran v. Brooke," 243 Or. 89, 409 P.2d 904 (1966).

Subsection (b) makes clear that a product seller may be subject to liability for failure to provide an adequate warning about an unavoidably unsafe aspect of a product. There are certain hazards, particularly in the pharmaceutical field, which are known or can be discovered through the exercise of reasonable care even though they cannot be avoided. *See* "Dalke v. Upjohn Co.," *supra;* "Chambers v. G. D. Searle & Co.," *supra;* "Toole v. Richardson-Merrell, Inc.," 251 Cal. App. 2d 689, 60 Cal. Rptr. 398 (1967).

The factual question underlying the legal issue of whether warnings or instructions were adequate is whether product sellers meet their duty to promulgate warnings and instructions commensurate with their *actual* knowledge gained from research and adverse reaction reports and their constructive knowledge as measured by scientific literature and other available means of communication. *See* "Dalke v. Upjohn Co.," *supra,* at 248; "McEwen v. Ortho Pharmaceutical Corp.," 270 Or. 375, 528 P.2d 522, 528-29 (1974). *Contra,* "Bruce v. Martin-Marietta Corp.," 544 F.2d 442 (10th Cir. 1976).

Subsection (b) also supports the concept of continuing obligation to warn and instruct based on new information about an unavoidably unsafe aspect of a product, discovered *after* it has been manufactured. *See* "Love v. Wolf," 226 Cal. App.2d. 378, 38 Cal. Rptr. 183 (1964); "Sterling Drug, Inc. v. Yarrow," 408 F.2d 978 (8th Cir. 1969).

Finally, subsection (c) subjects a product seller to liability for an unavoidably unsafe aspect of a product if the seller expressly warrants that a product is free from such defects. For example, if the product seller states that a product is "free and safe from all dangers of addiction" and the claimant becomes addicted to the drug, the seller would be subject to liability. *See* "Crocker v. Winthrop Lab., Div. of Sterling Drug, Inc.," 514 S.W.2d 429 (Tex.1974).

The approach taken in Section 105 recognizes that there may be circumstances where a seriously injured person is left without compensation for an injury caused by an unavoidably unsafe aspect of a product. This is unlikely to be a common occurrence, however, given the presence of other parties in the distributive chain. *See* Willing, "The Comment k Character: A Conceptual Barrier to Strict Liability," 29 "Mer. L. Rev." 545, 580-81 (1978). For reasons of policy, Section 105 proposes that a product seller not be held responsible for harms that are simply unavoidable. *See* A. Johnson, "Products Liability 'Reform': A Hazard to Consumers," 56 "N. Carol. L. Rev." 676, 690 (1978). If the costs of these harms are to be shifted from the individual, they should be borne by society at large. Section 105 should help encourage the development of new products without unleashing on the public unsafe products that are defective in construction or design under Section 104. It also makes clear to policy-makers that the tort-litigation system is not the means for addressing injuries caused by this type of hazard.

ANALYSIS

SEC. 106. RELEVANCE OF THE STATE OF THE ART AND INDUSTRY CUSTOM

Subsection (a) adopts a fundamental principle of evidence law for the purposes of product liability cases. It excludes the showing of post-accident changes in the design of a product, the "state of the art," or industry custom when that evidence is offered to show that the product was defective at the time of manufacture. *See* Federal Rule of Evidence 407 and Advisory Committee commentary.

The reasons underlying this rule are twofold: first, subsequent changes are deemed irrelevant (all they show is as one gets older, one may get wiser); and second, admission of such evidence may discourage the making of repairs.

While the latter rationale has been challenged, *see* "Ault v. International Harvester Co.," 13 Cal. 3d 113, 528 P.2d 1148, 117 Cal. Rptr. 812 (1975), the relevance of such evidence on the issue of defectiveness is of very limited value. On the other hand, the prejudicial effect of showing the subsequent change or repair—particularly one undertaken by the product seller himself—is quite substantial. *See* "LaMonica v. Outboard Marine Corp.," 48 Ohio App.2d 43, 355 N.E.2d 533 (1976); "Haysom v. Coleman Lantern Co.," 89 Wash.2d 474, 573 P.2d 785 (1978).

Subsection (a) does permit the introduction of evidence of changes in the "state of the art" when it is relevant for purposes other than showing that the product was defective at the time of manufacture. Thus, evidence of such changes may be admissible to show that the product seller knew of the defect at a certain point in time. It might also be admissible where the product seller claimed the product hazard was impossible to avoid. In cases of this kind, the court should balance the probative value of the evidence against its prejudicial nature. Allowing the introduction of evidence in these cases should not become a vehicle for avoiding the basic purpose of the rule.

Subsections (b), (c), (d), and (e) address one of the major issues that have divided product sellers and consumer groups concerned about product liability. Product sellers have argued that when their products comply with the "state of the art," it is unfair to deem them defective. They further contend that industry custom is likely to incorporate all cost-justified product safety features. *See* R. Posner, "Economic Analysis of Law," 71 (1972). Consumers respond that it is inappropriate to permit product sellers to fix indirectly their own standard of liability. *See* Johnson, "Products Liability 'Reform': A Hazard to Consumers," 56 "N. C. L. Rev." 677, 680-81 (1978).

In reality, there may be less of a dispute between product sellers and consumers on this issue than appears on the surface. The approach taken in Section 106 attempts to clarify matters by distinguishing between "custom" and "state of the art."

Subsection (a) defines "state of the art" to distinguish it from custom in the industry. It was derived from a recently enacted section of Arizona law. "Ariz. Rev. Stat. Ann." § 12-681 (6)(1978). The subsection (a) definition comprehends a level of safety that was possible as a practical matter at the time of manufacture.

Under subsection (b), compliance with industry custom is merely evidence that the trier of fact may consider in determining whether a product was defective under subdivisions (B) and (C) of Section 104. *See, e.g.,* "Bruce v. Martin-Marietta Corp.," 544 F. 2d 442 (10th Cir. 1976); "Baker v. Chrysler Corp.," 55 Cal. App. 3d 710, 127 Cal. Rptr. 745 (1976); "Maxted v. Pacific Car & Foundry Co.," 527 P. 2d 832 (Wyo. 1974); "Roach v. Kononen," 269 Ore. 457, 525 P. 2d 125 (1974); "Olson v. Arctic Enterprises, Inc.," 349 F. Supp. 761 (D. N.D. 1972).

Subsection (c) also permits introduction of evidence of non-compliance with custom—evidence likely to be introduced by a product liability claimant. While it might be argued that non-compliance with custom should signal that, in fact, the product was defective, situations may arise where the product manufacturer followed an alternative procedure that was no less safe (perhaps even safer) than custom in the industry. For that reason, non-compliance with custom is admissible, but does not create a situation where the trier of fact would consider the product defective *per se*. *See* "Poches v. J. J. Newbury Co.," 549 F.2d 1166 (8th Cir. 1977).

Subsection (d) raises a presumption of nondefectiveness if a product conformed to the "state of the art" at the time of manufacture. This follows "Colo. Rev. Stat. ann." § 13-21-403 (1978), but does not go as far as "Ky. Rev. Stat. Ann." ch. 411, § 3(2)(1978), which creates a presumption for both "state of the art" and custom in the industry. The overwhelming majority of case law probably would direct a verdict for defendant in this instance. *See, e.g.,* "Olson v. Arctic Enterprises, Inc.," *supra;* "Wilson v. Piper Aircraft Corp.," 282 Ore. 61, 577 P.2d 1322, 1326 (1978)(". . . plaintiff's *prima facie* case of a defect must show more than the technical possibility of a safer design"); "Bruce v. Martin-Marietta Corp.," *supra;* "Maxted v. Pacific Car and Foundry Co.," *supra;* "Roach v. Kononen," *supra.*

Only a few intermediate appellate court decisions, primarily from one state, impose liability where the product was in accord with the technical, mechanical, and scientific knowledge reasonably feasible for use at the time of manufacture. *See, e.g.,* "Gelsumino v. E. W. Bliss Co.," 10 Ill. App. 3d 604, 295 N.E.2d 110 (1973) and its progeny. *But see* "McClellan v. Chicago Transit Authority," 34 Ill. App. 3d 151, 340 N.E. 2d 61 (1975). *Compare* "Olson v. A. W. Chesterton Co.," 256 N.W. 2d 530 (N. Dak. 1977).

Section 106 thus provides special protection for the interests of product liability claimants in that it allows the trier of fact, in extraordinary situations, to find a manufacturer liable even though his product conformed to the "state of the art."

All presumptions authorized by this section can be rebutted by clear and convincing evidence that, in light of the factors set forth in § 104(2) or (3), that the product was defective. An example under § 104(2) where the presumption might be rebutted is where a product that conferred with a standard posed a very high probability of extremely serious injury and at the time of manufacture there were inexpensive and safer alternative methods of designing the product.

An example under § 104(3) where the presumption might be rebutted is if a product seller learned about a product hazard after the product was manufactured. In that instance, even though his product conformed with the "state of the art", the trier of fact may find that he should have made a reasonable effort to warn product users about such hazards. See Commentary to section 105.

Subsection (e) acknowledges that non-governmental entities may develop product standards that are both rigorous and sound. *See* Task Force Report, at IV-13-17. The review of such standards is a complex matter, and it is left to the court to decide whether a particular standard meets the criteria of subsection (e). Qualifying standards are given a special status—they create a presumption that the product was not defective in design under Section 104, subdivision (B).

ANALYSIS

SEC. 107. RELEVANCE OF COMPLIANCE WITH LEGISLATIVE OR ADMINISTRATIVE STANDARDS

Product sellers have contended that it is unfair to call a product defective when the challenged aspect of that product conformed to an applicable administrative or legislative standard. Some product liability loss prevention experts have suggested that making compliance with such standards a defense might create incentives for manufacturers to comply with them. Interagency Task Force on Product Liability, "Selected Papers," at 266 (Remarks of Professor Alvin S. Weinstein).

On the other hand, consumer groups have criticized such standards, claiming that many are formulated solely by and for industry. The approach of the common law as well as that embodied in the Consumer Product Safety Act, 15 "U.S.C." § 2074a (1976), is that most government safety standards are merely minimum standards. They are not set at a level that would make it appropriate to regard compliance with such standards as an absolute defense in a product liability case. *See* "Roberts v. May," 583 P.2d 305, 308 (Colo. App. 1978). Even if the standards were set above minimum

safety criteria when formulated, keeping them up-to-date remains a problem.

Section 107(a) comports with this general approach by not treating compliance with legislative and administrative standards as an absolute defense. Nevertheless, it allows some "credit" for compliance with such standards in appropriate circumstances. In sum, Section 107(b) creates a rebuttable presumption of non-defectiveness if the product seller persuades the court that the standard:

(1) Was developed as the result of careful, thorough product testing and a formal product safety evaluation;

(2) Was developed through a procedure where both consumer and manufacturer interests were considered;

(3) Was more than a minimum safety standard; and

(4) Was up-to-date at the time the product was manufactured.

The section follows the existing case law that has made adjustment for standards that are sound. See "Jones v. Hittle Service, Inc.," 219 Kan. 627, 549 P.2d 1383 (1976) (universally accepted standards for odorizing LP gas outweigh expert opinion); "McDaniel v. McNeil Laboratories, Inc.," 197 Neb. 190, 241 N.W. 2d 822 (1976) (determination of the FDA prevails in absence of proof that the manufacturer furnished incomplete, misleading, or fraudulent information); "Raymond v. Riegel Textile Corp.," 484 F.2d 1025 (1st Cir., 1973) (standard promulgated under the Flammable Fabric Act was outdated). *Cf.* "Restatement (Second) of Torts" § 288c (1965) (requiring claimant in all cases of compliance to show that a reasonable person would have taken additional precautions).

Section 107 does not speak to two topics relating to compliance with governmental standards. First, it does not treat "failure to comply." This area is left to common law development under the general principles of negligence *per se*. *See* W. Prosser, "Torts," at 190, n. 31. Second, the Act does not cover the situation where the government has issued mandatory design and installation specifications. *See* "Hunt v. Blasius," 55 Ill. App.3d 14, 370 N.E.2d 617 (1977) (holding that compliance is an absolute defense).

ANALYSIS

SEC. 108 NOTICE OF POSSIBLE CLAIM REQUIRED

The purpose of this section is to inform product sellers at an early date that the product they produce may be defective. Under present law, a claimant may delay informing a product seller about a claim until the statute of limitations nearly has expired. In most jurisdictions, this period is two or three years. Although 77.8 percent of all bodily injury claims are reported within six months, *see* ISO, "Closed Claim Survey," at 100 (1977), the 22.2 percent that are not reported during this period are of concern because they represent about 68 percent of the claim payments.

A reasonable notice of claim requirement in product liability law promotes the interests of product users because it is a low-cost means of assisting product safety. Presumably, if informed about defective conditions at an early stage, a product seller is more likely to take action to correct such conditions and thus forestall future injuries. This is why notice of claim provisions have been utilized in other contexts. *See, e.g.*, Uniform Commercial Code § 2-607 (warranty breaches); 18 E. McQuillan, "Municipal Corporations" § 53.154 (ed. rev. 1977) (suits against municipalities for injuries); 3 A. Larson, "Workmen's Compensation Law" § 78.00 *et seq.* (1976) (notice of injury to employer). *See also* Comment, "Notice Requirement in Warranty Actions Involving Personal Injury," 51 "Calif. L. Rev.," 586 (1963); Phillips, "Notice of Breach in Sales and Strict Tort Liability Law: Should There Be a Difference?," 47 "Ind. L. J." 457, 468-69 (1972) (observing that requiring notice of claims may encourage defendants to make reasonable settlements).

This section is adapted from the recently enacted "Minn. Stat. Ann." § 604.04 (1978). It differs from analogous notice of claim provisions in that it does not provide that a claim or defense will be barred by the failure to meet its conditions. As the court noted in "Greenman v. Yuba Power Products, Inc.," 59 Cal.2d 57, 377 P.2d 897, 27 Cal. Rptr. 697, 700 (1962), such a provision may "become a booby trap for the unwary. The injured consumer is seldom 'steeped in the business practice which justifies the rule,' [James, Product Liability, 34 Texas L. Rev. 192, 197] and at least until he has had legal advice it will not occur to him to give notice * * *"

Instead, Section 108 places a duty to give the notice of claim on the attorney. It imposes a cost on the attorney for investigation and other expenses that stem from the failure to give notice.

Section 108 also places a burden on product sellers, who are notified of an anticipated claim, to provide the attorney with the names and addresses of others known to be in the chain of distribution. Product sellers may also be held liable under this section for costs that stem from the failure to provide these names.

Section 108 assumes that claims arising under this section can be consolidated with the principal product liability claim brought under this Act.

ANALYSIS

SEC. 109 LENGTH OF TIME PRODUCT SELLERS ARE SUBJECT TO LIABILITY FOR HARM CAUSED BY THEIR PRODUCTS

Perhaps more than any other single factor alleged to be "the cause" of the countrywide product liability problem are the rules governing the responsibility of manufacturers for older products. Most product liability policies not only include claims based on products manufactured or sold during the given year, but also products manufactured or sold in the past. In the case of sellers of durable goods, this creates an "open-ended" liability situation.

The Supreme Court of Oregon summarized the general common rule with the statement: "Prolonged use of a manufactured article is but one factor, albeit an important one, in the determination of whether a defect in the product made it unsafe * * *" *See* "Tucker v. United Crane & Shovel Corp.," 256 Ore. 318, 473 P. 2d 862 (1970) (boom crane manufactured in 1956, collapsed in 1965). *See also* "Gates v. Ford Motor Co.," 494 F. 2d 458 (10th Cir. 1974) (24-year-old tractor); "Kaczmarek v. Mesta Machine Co.," 463 F. 2d 675 (3d Cir. 1972) (30-year-old pickling machine); "Mondshour v. General Motors Corp.," 298 F. Supp. 111 (D. Md. 1969) (17-year-old bus).

Partly in response to this open-ended liability potential, a number of states have enacted statutes of repose that begin at the time a product is first sold and distributed. *See, e.g.*, "Ariz. Rev. Stat. Ann." § 12-551 (1978) (12 years after product "first sold for use or consumption * * *"); "Fla. Stat. Ann." § 95.031(2) (1978) ("12 years after the date of delivery of the completed product"); "Ill. Ann. Stat." § 21.2(b) (1978) (12 years from date of first sale—strict liability); "Ind. Stat. Ann. § 33-1-1.5-5 (1978) ("10 years after the delivery * * * to the initial user"); "Neb. Rev. Stat." 25-702(2) (1978) (10 years after first sale); "Utah Code Ann." § 78-15-3(1) (1977) (6 years after date of initial purchase; 10 years after date of manufacture).

The advantages of these statutes are that they: (1) establish an actuarially certain date after which no liability can be assessed; and (2) eliminate tenuous claims involving older products for which evidence of defective condition may be difficult to produce. *See* "Telegraphers v. Ry. Express Agency," 321 U.S. 342 (1944).

On the other hand, a fundamental problem with these statutes is that they *may* deprive a person injured by a product of the right to sue even before the injury has occurred. *See* Johnson, "Products Liability 'Reform': A Hazard to Consumers," 56 "N. C. L. Rev." 677, 689-90 (1978); "Victorson v.

Bock Laundry Machine Co.," 37 N.Y. 2d 295, 335 N.E. 2d 275 (1975).

The limited available data show that the concern about older products may be exaggerated. *See* ISO, "Closed Claim Survey," at 105-108 (indicating that over 97 percent of product-related accidents occur within six years of the time the product was purchased and in the captive goods area 83.5 percent of all bodily injury accidents have occured within ten years of manufacture). Nevertheless, as the Task Force Report indicated, the underwriters' concern about *potential* losses associated with older products may be an important factor in the recent increase in liability insurance premiums for manufacturers of durable goods. *See* Task Force Report, at VII-21.

Section 109 attempts to provide product sellers with some security against stale claims, while preserving the claimant's right to obtain damages for injuries caused by unsafely manufactured products. It accomplishes this result through provisions on useful safe life, statutes of repose (with separate provisions for workplace and nonworkplace injuries), and a statute of limitations.

(A) *Useful Safe Life.* The common law in most states is that "[t]he age of an allegedly defective product must be considered in light of its expected useful life and the stress to which it has been subjected." "Kuisis v. Baldwin-Lima-Hamilton Corp.," 457 Pa. 321, 319 A.2d 914, 923 (1974) (brake-locking mechanism on a crane fell after more than 20 years of use). The "Kuisis" court noted further that in "certain situations the prolonged use factor may loom so large as to obscure all others in the case." *Id.*

The basic problem with most proposals to codify this rule into a useful life limitation has been the vagueness of the concept. Thus, while the Task Force Report noted that "if a useful life limitation were identified in statutory form, it might be expected that it would be given more serious attention by both judge and jury," Task Force Report, at VII-27, it also observed that "the concept would still lack specificity." *Id.*

Subdivision 109(A) was derived from "Minn. Stat. Ann." § 604.03 (1978). It serves to remind the court and the trier of fact that a product seller may be held liable only for harms caused during the useful safe life of the product. It does not attempt to apply fixed useful life standards for all products. *See* Phillips, "An Analysis of Proposed Reform of Products Liability Statutes of Limitations," 56 "N. C. L. Rev." 663, 673 (1978). Rather, it identifies factors that may help the trier of fact determine how long a product reasonably can be expected to perform in a safe manner. Section 109 uses the term "useful safe life" (as compared to "useful life") because the period in which the product can have some utility may be well beyond the period in which the product is safe. For example, some drivers may continue to use tires that lack sufficient treads for safety.

Factors (a)-(e) are self-explanatory. Factor (d) refers to the useful safe life stated by the product seller. Relying on this provision, a product seller could indicate that a product should not be used beyond a certain period of time. However, subdivision (A) does not give the product seller absolute power to limit a product's useful safe life. While this was suggested in "Velez v. Craine & Clark Lumber Corp.," 33 N.Y. 2d 117, 305 N.E. 2d 750 (1973), subdivision (A) gives the trier of fact the power to determine whether the product seller's limitation was a reasonable one. *Cf.* "Henningsen v. Bloomfield Motors, Inc.," 32 N.J. 358, 161 A.2d 69 (1960). Further, this subdivision makes clear that a product seller's limitation on useful life cannot bind the rights of a bystander. Nevertheless, where the product seller imposes a reasonable limitation, the trier of fact should give very serious consideration to this fact in determining whether the product was used beyond its useful life.

Factor (e), dealing with modifications of the product by users or third parties, relates to conduct that might shorten the useful life of the product. While the Act treats product modifications in a separate section, they are also factors in determining whether a product has been used beyond its useful life.

(B) *Statutes of Repose.* Statutes of repose differ from statutes of limitations in that they set a fixed limit after the time of the product seller's allegedly wrongful conduct—a limit beyond which the product seller will not be held liable. The rationale of such statutes is two-fold: First, if not aware of a claim, the passing of time may make it extremely difficult for a product seller to construct a good defense because of the obstacle of securing evidence. Although the burden of proof on the issue of defectiveness remains on the claimant under the Act, a jury, as a practical matter, may demand an explanation from a product seller when the claimant has suffered a severe injury. The second rationale is that persons ought to be allowed, as a matter of policy, to plan their affairs with a reasonable degree of certainty. This goes to the heart of the product liability insurance rate setting problem. Even though past data show that 83.5 percent of bodily injury claims arise within a ten-year period, there is no safeguard in the existing law that the past will portend the future. There is always the possibility that the number of claims for older products will increase. *See* ISO, "Closed Claim Survey," at 107.

(1) *Workplace injuries.* In the context of workplace injuries, the product seller's tort liability ends ten years from the date of the delivery of the completed product to its first purchaser or lessee who is not himself primarily engaged in the business of selling such a product. According to ISO data, 97.4 percent of product liability incidents occur within 72 months of the time a product is purchased. *See ISO, "Closed Claim Survey," at 108. Although the number of claims that would be cut off by this statute is small, the potential for such claims to arise has been a cause of the increase in product liability premiums.*

Although the data are limited, it appears in many instances that the reason for an unsafe workplace product has less to do with conduct of the product seller than it has to do with the party having direct responsibility for the care and maintenance of the workplace product—the employer. *See* ISO, "Closed Claim Survey," at 141. This is even more likely to be the case with products that are more than ten years old.

Therefore, subsection (1)(b) grants a product liability claimant subjected to an unsafe workplace product a claim against the workplace employer for lost wages and reasonable medical costs. As a practical matter, this provision amends state worker compensation law. The same is true of subsection (1)(c), which grants beneficiaries under state wrongful death acts a right to recover the pecuniary loss they suffered because an employer exposed the decedent to an unsafe product.

For purposes of this subsection an "unsafe" product is not only one that is defective within the meaning of Section 104, but also one that has been improperly maintained, altered or modified by the employer. The term also includes products that are no longer safe because they have simply worn out.

The Act places a strong incentive for accident prevention on the party who is in the best position to accomplish that goal. When a product is more than ten years old and is in an unsafe condition, the employer—not the product seller—is in the best position to take action to prevent workplace product injuries. This value of this incentive outweighs any new potential cost that may arise in the worker compensation system.

In the very few cases where an employer may be subject to additional liability, the product seller is not totally "off the hook." If the product seller has produced an unsafe product that

has failed after a ten-year period because of a defective condition inherent in the equipment at the time of manufacture, the employer who is liable under this subsection has the right in an arbitration proceeding to bring a contribution claim against the product seller. The employer will then be able to recover, on a comparative responsibility basis, the amount that is appropriate under the circumstances of the accident.

As compared to ordinary arbitration proceedings under this Act (which are subject to a trial *de novo*), the results of this arbitration proceeding are treated as a final judgment.

While product sellers may question the constitutionality of this arbitration provision, no serious constitutional issue can arise. The product seller benefits from this provision compared to present law which subjects product sellers to unlimited liability claims for full *tort* damages, including costs arising from pain and suffering and the possibility of punitive damages.

(2) *Non-workplace injuries.* For the most part, this subsection deals with consumer products. ISO data reflect that very few claims for consumer goods arise after a ten-year period. Most such claims are for durable goods and would be handled under subsection (1) provisions relating to workplace injuries. *See* ISO, "Closed Claim Survey," at 105-197 (1977). Nevertheless, consumers justifiably are concerned about overly broad absolute cut-offs to their right to sue. This provision recongizes consumer concerns in three basic ways:

(1) The term of the statute is ten years—beyond the term enacted or proposed in a number of states;

(2) The statute begins to run at the time of purchase, not the time of manufacture; and

(3) The statute does not contain an absolute cut-off, but rather a presumption that the product has been used beyond its useful life. Colorado law adopts this approach, "Colo. Rev. Stat. Ann." § 13-21-403(3) (1978); most other state product liability statutes do not.

Consumer concerns are also addressed by three of the additional restrictions contained in the next section. These restrictions are applicable to both consumer and workplace products.

(3) *Limitations on statutes of repose.* The statute contains four key limitations on its scope of operation.

First, liability may result where a product seller has expressly warranted or promised that a product can be safely for a period longer than ten (10) years. *See also* Uniform Commercial Code § 2-725(2).

Second, the statute of repose provisions do not apply where product sellers intentionally have misrepresented their products.

Third, subdivision (B) does not affect contribution and indemnity claims. Thus, an interim seller will not have to absorb a liability loss that was the true responsibility of the original manufacturer. *See* Defense Research Institute (Monograph) "Products Liability Position Paper," at 22; *See also* Phillips, "An Analysis of Proposed Reform of Products Liability Statutes of Limitations," 56 "N. C. L. Rev." 663, 670-71 (1978).

Fourth, there is an exception for pharmaceuticals that cause harms that take many years to manifest themselves, *see, e.g.,* "Krug v. Sterling Drug, Inc.," 416 S.W.2d 143 (Mo. 1967), and products that cause perceptible harm only through prolonged exposure. *See* "Michie v. Great Lakes Steel Div., National Steel Corp.," 495 F.2d 213 (6th Cir. 1974). *See also* Johnson, "Products Liability 'Reform': A Hazard to Conumers," *supra,* at 690-91 ("slumbering defects").

(c) *Statutes of Limitation.* Tort statutes of limitations traditionally begin at the time a person is injured. This subdivision follows that approach. Nevertheless, in accord with consumer concerns, subdivision (C) extends the limitation period beyond the time of injury in situations where the claimant would be unlikely to discover that he or she has been harmed, *e.g.,* long-term pharmaceutical harms. *See* Birnbaum, "First Breaths' Last Gasp: The Discovery Rule in Products Liability Cases," 13 "The Forum" 279 (1977). 000

ANALYSIS

SEC. 110 RELEVANCE OF THIRD-PARTY ALTERATION OR MODIFICATION OF A PRODUCT

This section deals with the situation where a third party—one other than the product seller or the claimant—has altered or modified the product and this has led to claimant's harm.

A Few courts have imposed liability on the product seller in this situation provided that te third party's conduct was in some manner "foreseeable." *See, e.g.,* "Blim v. Newbury Industries, Inc.," 443 F.2d 1126 (10th Cir. 1971) (machine safety guard removed by co-worker). Decisions that hold the original product seller responsible in these instances border on absolute liability. Thus, insurers appear to have a just concern about broad-scale imposition of liability where third party intervention has been the principal cause of the accident. As the American Insurance Association has noted:

> It is difficult enough to calculate the risk associated with a given product even where there is access to knowledge about its basic inherent characteristics * * * The task becomes impossible if the premium calculations must take into account not only the inherent properties of the machine, but also its transformation in the hands of others, and their neglect of repair and maintenance.

AIA (monograph) "Product Liability Legislative Package," at 16 (1977). Moreover, if the law ignores modification of products, it will fail to place the incentive for risk prevention on the party or parties who have engaged in the wrongful conduct.

The authors of the "Restatement (Second) of Torts" § 402A recognized this fact and only subjected the product seller to liability when the seller's product reached "the user or consumer without substantial change in the condition in which it [was] sold." Comment g to this section stated the matter more firmly:

> The seller is not liable when he delivers the product in a safe condition, and subsequent mishandling or other causes make it harmful by the time it is consumed. The burden of proof that the product was in a defective condition at the time that it left the hands of the particular seller is upon the injured plaintiff; and unless evidence can be produced which will support the conclusion that it was then defective, the burden is not sustained.

Recently, a number of state legislatures have enacted the essence of this comment into law. *See* "Ariz. Rev. Stat. Ann." § 12-683(2) (1978); "Ind. Stat. Ann." 33-1-1.5 § 4(b)(3) (1978); "Ky. Rev. Stat. Ann." ch. 411, § 4 (1978); "N.H. Rev. Stat. Ann." § 507-D:3 (1978); "R.I. Gen. Laws Ann." ch. 299, § 9-1-31 (1978); "Tenn. Code Ann." ch. 703, § 9 (1978); "Utah Code Ann." § 78-15-5 (1977).

According to ISO's statistics, product modification occurs only in approximately 13 percent of the cases. Of these cases, the largest number of product modifications result from the conduct of employers (39 percent). *See* ISO "Closed Claim Survey," at 140-41. This raises the main problem of rules that limit a product seller's responsibility for subsequent product alterations or modifications—often the injured worker cannot sue the one who is really at fault because of the "exclusive remedy" provisions or worker compensation statutes. However, it seems fair to suggest that the destruction of a tort remedy against the employer

> Should not of itself create a third-party remedy against the manufacturer or distributor of the product in question. If Worker Compensation is regarded as the proper remedy in other cases of an exclusive employer's wrong, then so too should it be where that wrong involves [a] product acquired from third party defendants.

AIA (monograph) "Product Liability Legislative Package," at 15-16 (1977). Nevertheless, Section 110 takes ac-

count of the hardship that can result from an overly broad liability limitation on product modification or alteration; the provision is very narrowly drawn.

First, a product seller may avoid liability for a defective product *only* where the harm would not have occurred "but for" the alteration or modification. In contrast, the "Restatement" and the recently enacted state statutes cited above would shield the manufacturer whenever the third party's conduct was a "substantial cause." A rule of this type, however, invites litigation over what is "substantial," and also may diminish a product seller's responsibility for otherwise culpable conduct.

Cases in accord with the approach taken in Section 110 include "Temple v. Wean United, Inc.," 50 Ohio St.2d 317, 364 N.E.2d 267 (1977); "Santiago v. Package Machinery Co.," 123 Ill. App. 2d 305, 260 N.E.2d 89 (Ill. App. 1970); "St. Pierre v. Gabel," 351 So. 2d 821 (La. App. 1977).

Second, as subsections (a)(1) and (2) indicate, the product seller can not avoid responsibility for product alterations or modifications which the seller suggested (per instructions) or which the seller expressly consented.

Third, the product seller has a duty to anticipate certain modifications or alterations of his product. As Section 102(6) (Definitions) indicated, this refers to conduct that would be engaged in by a reasonably prudent person. Subsection (a)(3) is not intended to encompasss every type of act foreseeable by virtue of hindsight or otherwise.

Finally, subsection (b), adapted from Rhode Island Gen. Law Annot. ch. 299, Sec. 1 (1978), makes clear that ordinary wear and tear in a product is not the equivalent of a modification or alteration. However, a third party's failure to observe routine care and maintenance is considered a modification. In such instances, the third party is responsible for the injury. *See* "Ore. Rev. Stat." § 30.915 (1977); "N.H. Rev. Stat. Ann." § 507-D:3 (1978); "Utah Code Ann." § 78-15-5 (1977).

ANALYSIS

SEC. 111. RELEVANCE OF CONDUCT ON THE PART OF PRODUCT LIABILITY CLAIMANTS

Section 111 attempts to resolve existing uncertainty in the law about the relevance of a product liability claimant's conduct. It does this in two ways: First, it applies principles of comparative responsibility to situations where claimant's conduct suggests that he or she has some responsibility for the product-related incident. Second, it characterizes three basic kinds of such conduct and provides rules for each of them, namely, failure to inspect for a defective condition, use of a product with a known defective condition, and misuse of a product.

Although there is no assurance that the use of comparative responsibility principles will lower the cost of product liability claims, the inherent fairness of such principles has led to their adoption by over 30 states, and also has resulted in the adoption of a Uniform Comparative Fault Act (UCFA) by the National Conference of Commissioners of Uniform State Laws. This Act borrows freely from the UCFA and its accompanying commentary.

Some courts and commentators have voiced concern about the semantical and theoretical difficulties of mixing the "apples" of negligence with the "oranges" of strict liability. *See, e.g.,* "Kirkland v. General Motors Corp.," 521 P.2d 1353 (Okla. 1974); Robinson, "Square Pegs (Products Liability) in Round Holes (Comparative Negligence)," 52 "Calif. St. B.J." 16 (1977). These concerns appear to be more theoretical than real, particularly under this Act (as well as in common law product liability) where defendants are held liable based on conduct which may reflect varying degrees of fault. The utility of comparative responsibility for product liability cases has been appreciated by both state legislatures, *e.g.,* "Ark. Stat. Ann. §§ 27-1763-1765) (Supp. 1977); "Me. Rev. Stat. Ann." tit. 15 § 156 (Supp. 1978)), and courts *e.g.,* "Thibault v. Sears, Roebuck & Co.," 6 Prod. Saf. & Liab. Rep. 1000 (S. Ct. N.H. 1978); "Daly v. General Motors Corp.," 20 Cal. 3d 725, 575 P.2d 1162, 144 Cal. Rptr. 380 (1978); "Busch v. Busch Const., Inc.," 262 N.W.2d 377 (Minn. 1977); "Butaud v. Suburban Marine & Sport. Goods, Inc.," 555 P.2d 42 (Alaska 1976). It has also been recommended by a congressional subcommittee. *See* Report of the House Subcommittee on Capital, Investment and Business Opportunities at 76 (1978).

Section 111 places a strong incentive for risk prevention on the party who is best able to accomplish that goal. It also avoids burdening the careful product user with liability insurance costs assessed to persons who misuse or are otherwise at fault in their handling of products. While some economic analyses indicate that a comparative responsibility system creates a risk of economic inefficiency because of an over-investment in safety, the Act makes a value judgment that such an "over-investment" is a risk worth taking.

(a) *General Rule.* This subsection describes the general principle of comparative responsibility that will be applied under this Act. It *assumes* that the product seller has engaged in conduct that would lead to liability under this Act. Where the claimant has engaged in subsection (c)-type conduct and thus is at least partially responsible for the injury, such conduct will diminish the amount of the claimant's award proportionately to that measure of responsibility.

Section 111 adopts the consumer-oriented fairness of pure comparative negligence as compared with the "nondiscriminating rough justice of the modified type . . ." *See* "Prefatory Note," UCFA.

(b) *Apportionment of Damages.* In order to apply comparative responsibility principles under this Act, it is necessary for the trier of fact to supply certain information in written interrogatories. Subsection (b)(1) indicated that the trier of fact should set forth the amount of damages a claimant would receive if his comparative responsibility were disregarded. This helps assure that the trier of fact does not inflate or deflate the amount of damages claimant would deserve if he were free from responsibility.

Subsection (b)(2) requires the trier of fact to indicate the percentage of responsibility allocated to each party, including the claimant. Persons not before the court are not included, in part because of the extreme difficulty of determining the fault of such parties. Also, a jury's determination of an absent person's "fault" would not be binding on that person. In any event, both claimants and product sellers will have a significant incentive for joining available defendants since the greater the number of parties at fault, the smaller the percentage of fault allocated to each, whether claimant or product seller.

Subsection (b)(3) provides a general guideline to assist the trier of fact in comparing "fault" among the parties. The UCFA comments indicate that in appropriate cases, the trier of fact may also consider:

(1) Whether the conduct was mere inadvertence or engaged in with an awareness of the danger involved;

(2) The magnitude of the risk created by the conduct, including the number of persons endangered and the potential seriousness of the injury;

(3) The significance of what the actor was seeking to attain by his conduct;

(4) The actor's superior or inferior capacity; and

(5) The particular circumstances, such as the existence of an emergency requiring a hasty decision.

Section 111 departs from the UCFA in one respect—it does not consider "the extent of the casual relationship between the conduct and the damages claimed" as a factor in apportioning responsibility. While the distinction may be a difficult one to draw, this Act is premised on apportioning *responsibility* only—pure causation in

terms of the physical cause of the particular injury is irrelevant to that concept. *See* Malone, "Ruminations on Cause-In-Fact," 9 "Stan. L. Rev." 60 (1956).

Subsection (b)(4) helps to assure that the mathematics of comparative responsibility will be correctly determined. The court must determine the award for each claimant according to its findings made under this subsection. The subsection also indicates that the common law rule of joint and several liability of joint tortfeasors continues to apply under this Act. Claimant can recover the total amount of his or her judgment against any product seller who is liable under this Act.

However, as with the UCFA, the judgment for each claimant will also show the share of each party's total obligation to the claimant. This should save litigation costs and avoid the need for a special motion or a separate action on the issue. In situations where an employer would be immune from suit by the product claimant, the limitation of Section 113 applies.

Subsection (b)(5) follows the UCFA in providing for the reallocation of damages among the parties at fault when one of the parties' share is uncollectable. The reallocation procedure applies to a claimant who is contributorily at fault. This approach avoids the unfairness of the common law rule of joint and several liability, which would cast the total risk of uncollectibility upon the solvent defendants, and of a rule abolishing joint and several liability, which would cast the total risk of uncollectibility on the claimant.

(c) *Conduct Affecting Claimant's Responsibility.*

(1) *Failure to Discover a Defective Condition.* At common law the product user had an obligation to inspect for defects; failure to do so could bar a claim. *See* "Palmer v. Massey-Ferguson, Inc." 3 Wash. App. 508, 476 P. 2d 713 (1970). However, under modern tort law, the product user is assured of a product that is reasonably safe for its ordinary use. *See.* "Restatement (Second) of Torts" § 402A (1965): "Cepeda v. Cumberland Eng. Co.," 76 N.J. 152, 386 A. 2d 816 (1978). Section 111(c) follows these cases and does not require the product user or consumer to inspect a product for a defect. *See* "Kassouf v. Lee Bros. Inc.," 209 Cal. App. 2d 568, 26 Cal. Rptr. 276 (1962) (plaintiff without inspection, ate a chocolate bar containing worms and maggots).

Cases can arise where a defect would be very apparent to an ordinary prudent person. In such cases, it is appropriate to allow the trier of fact to diminish claimant's damages according to the latter's responsibility for the injury that occurred. Thus, in the example of the candy bar, if a claimant with good eyesight ate a candy bar that had bright green worms crawling over it, he or she should bear some responsibility for any ill effects suffered. If the product seller was aware of the defect in the goods at the time of sale, the punitive damages section of the Act (Section 120) would provide a strong disincentive to not sell such a product.

(2) *Using a Product With a Known Defective Condition.* Where it is clear that a claimant both voluntarily and unreasonably used a product with a known defective condition, the product seller is not liable under this Act. To allow a claim in such a situation would permit individuals, in effect, to create their own product liability claim. In that regard, it should be noted that consent is a defense to even intentional wrongs. *See* W. Prosser, "Torts," *supra*, at 101.

However, there may be cases where an individual voluntarily uses a product with a known defective condition, but the reasonableness of this conduct becomes a matter of dispute. For example, if a person discovers a welt in a tire, should that person be required to stop immediately and call for assistance, or is it reasonable to proceed to a nearby gasoline station to have the tire repaired? Many cases arise in this shadowy zone. *See* "Henderson v. Ford Motor Co.," 519 S.W. 2d 87 (Tex. 1974) with "Ford Motor Co. v. Lee," 237 Ga. 554, 229 S.E. 2d 379 (1976). Subsection (c)(2) allows the trier of fact to consider claimant's conduct and reduce damages where it is appropriate to do so.

Subsections (c)(1) and (2) avoid a problem that existed under the "Restatement," though through no fault of the "Restatement" drafters. Persons who engaged in very similar conduct were treated in a very different manner. For example, those who used a product after failing to discover a defective condition were granted a full claim and those who used a product after they had discovered that defective condition were barred. *See* "Restatement (Second) of Torts" § 402A, Comment n. This dichotomy caused litigation and appeals over the issue of whether or not plaintiff "knew" of a particular defect at the time he utilized a product. *See* "Karabatsos v. Spivey Co., 49 Ill. App. 3d 317, 364 N.E.2d 319 (Ill. App. 1977); "Teagle v. Fischer & Porter Co.," 89 Wash. 2d 149, 570 P.2d 438 (1977); "Poches v. J. J. Newberry Co.," 549 F.2d 1166 (8th Cir. 1977).

(3) *Misuse of a Product.* Subsection (c)(3) imposes no liability on the product seller where an injury occurs solely because claimant misused the product in some way that the product seller could not reasonably anticipate. Reasonably anticipated conduct is conduct which would be expected of an ordinary and prudent person. *See* Section 102(6) and commentary. Misuse by claimant in this context is equivalent to modification or alteration of the product by a third party. *See* "Rogers v. Unimac Co., Inc.," 115 Ariz. 304, 565 P.2d 181 (1977); "General Motors Corp. v. Hopkins," 548 S.W.2d 344 (Tex. 1977); "Edwards v. Sears, Roebuck & Co.," 512 F.2d 276 (5th Cir. 1975); *see also* Section 110.

In determining whether the product seller should have warned or instructed the claimant about potential misuses, the trier of fact should consider the factors listed in Section 104(C).

Where misuse of a product was a partial cause of an injury, claimant's damages are subject to reduction. *See* "General Motors Corp. v. Hopkins," *supra.*

ANALYSIS

SEC. 112. MULTIPLE DEFENDANTS: CONTRIBUTION AND IMPLIED INDEMNITY

Section 112 is based on sections 4 and 5 of the UCFA. Here, however, contribution and implied indemnity are merged in one section. Express indemnity—where one party has agreed to hold the other harmless for damages arising out of product liability actions—is left to commercial and common law. *See* Task Force Report, at VII-99. There is clear precedent for the merger of contribution and implied indemnity. *See* "Safeway Stores, Inc. v. Nest-Kart," 21 Cal. 3d 322, 146 Cal. Rptr. 550 (1978); "Dole v. Dow Chemical Co.," 30 N.Y.2d 143, 282 N.E.2d 288, (1972); "Skinner v. Reed-Prentice Division, Etc.," 70 Ill. 2d 1, 374 N.E.2d 437 (1977); "Busch v. Busch Constr., Inc.," 262 N.W.2d 377 (Minn. 1977). *See also* "N.Y. Civ. Prac. Law" § 1402 (McKinney Supp. 1976). This approach avoids the all-or-nothing aspect of implied indemnity law. In most situations, fault will be apportioned among product seller defendants. However, a situation could arise where the trier of fact could find that one product seller in the distribution chain was responsible for a product injury. This section should be read in conjunction with Section 113.

Subsection (a) establishes the basic rule that contribution will be determined by the proportionate responsibility of the defendants. Section 111 outlines the procedure for the trier of fact to make the appropriate determinations.

Subsection (b) outlines a simplified procedure where a party who has paid more than a proportionate share can recover from one who has paid less.

Subsection (c) indicates that if the court has not determined the proportionate responsibility of the parties,

contribution may be obtained in a separate action.

Subsection (d) indicates when a contribution action may be brought by a joint tortfeasor who has settled with claimant.

Subsection (e) sets time limits for bringing a contribution action.

It should be noted that contribution is appropriate among joint tortfeasors: each defendant contributing to the same harm is liable to the claimant for the whole amount of damages. If the defendants are liable for separate harms, contribution is not appropriate. *See* UCFA, comment on section 4.

Finally, an important issue in the area of contribution is left to the states, that is, the effect of a release of one tortfeasor but not the others. UCFA section 6 suggests an appropriate approach to this issue; the commentary on that section discusses the pros and cons of alternative approaches.

ANALYSIS

SEC. 113. THE RELATIONSHIP BETWEEN PRODUCT LIABILITY AND WORKER COMPENSATION

The relationship between product liability and worker compensation is a major topic covered in depth in the Task Force Report. *See* VII-85-113. Under current law in a number of states, the interaction of product liability and worker compensation law may result in the manufacturer of a workplace product paying the entire out-of-pocket cost of a product-related workplace injury plus damages for pain and suffering. This result occurs because the product manufacturer is unable to place a portion of the cost of that injury on an employer whose *negligence* may have helped bring about the claimant's injury. *See* "Liberty Mut. Ins. Co. v. Westerlind," 373 N.E.2d 957 (Mass. 1978); "Seaboard Coast Line R. Co. v. Smith," 359 So.2d 427 (Fla. 1978); Task Force Report, at VII-89-99.

After weighing many considerations, the Task Force and the United States Department of Commerce concluded that the development of worker compensation as a sole source for recovery in product-related accidents would be the best solution to the problem, but only if the worker received additional benefits in the course of overall worker compensation reform. A model product liability law is an inappropriate vehicle for making major alterations in worker compensation law.

The search for the next solution is not an easy one. If full contribution or indemnity by the product manufacturer against the employer is permitted, the employer may be forced to pay an employee—through the conduit of the third-party tortfeasor—an amount in excess of the employer's statutory worker compensation liability. This, arguably, thwarts a central concept behind worker compensation, *i.e.*, that the employer and employee receive the benefits of a guaranteed, fixed schedule, non-fault recovery system, which constitutes the *exclusive* liability of the employer. On the other hand, if contribution or indemnity is not allowed, the product manufacturer will bear the burden of a full common law judgment, despite the possibly greater responsibility of the employer. As the Supreme Court of Minnesota recently noted, this "obvious inequity is further exacerbated by the right of the employer to recover directly or indirectly from the third party the amount he has paid in compensation regardless of the employer's own negligence." *See* "Lambertson v. Cincinnati Corp.," 257 N.W.2d 679, 684 (Minn. 1977).

Equally troublesome is the fact that the present system appears to dull employer incentives to keep workplace products safe. The ISO "Closed Claim Survey" suggests that employer negligence is involved in 56 percent of product liability workplace cases. *See* ISO "Closed Claim Survey," Report 10, at 81 (1978).

The solution adopted by Section 113 has the support of the Supreme Court of Minnesota in "Lambertson v. Cincinnati Corp.," *supra*. The product manufacturer is allowed limited contribution up to the amount of the worker compensation lien. This reduces the inequity against the product manufacturer, but preserves the employer's interest in not paying more than worker compensation liability. *Compare* "Skinner v. Reed-Prentice Division, Etc.," 70 Ill. 2d 1, 374 N.E.2d 437 (1977) (full contribution allowed).

Admittedly, a shortcoming of Section 113's approach is that it does not reduce transaction costs substantially. *Compare* the approach suggested by the American Insurance Association, "Product Liability Legislative Package," *supra*, at 64. Also, the employer will not necessarily bear a full share of the economic costs of the injury sustained by the claimant. Nevertheless, considering all of the equities involved, Section 113 appears to offer the soundest solution apart from totally modifying worker compensation law to create a sole source remedy.

ANALYSIS

SEC. 114. THE INDIVIDUAL RESPONSIBILITY OF PRODUCT SELLERS OTHER THAN MANUFACTURERS

Section 114, derived in part from Tennessee law, *see* "Ten. Code Ann." § 23-3706 (Supp. 1978), addresses the problem of excessive product liability costs for parties in the distribution chain other than manufacturers in a way that does not compromise incentives for risk prevention. It also leaves the claimant with a viable defendant whenever he or she has been injured by a defective product.

The ISO "Closed Claim Survey" shows that manufacturers account for 87 percent of the total product liability payment amount, while wholesalers and retailers account for 4.6 percent. *See* ISO "Closed Claim Survey," Report 3, at 35 (1977). Case law suggests that distributors and retailers of products often shift this cost on to the manufacturer through an indemnity suit. *See e.g.*, "Hales v. Monroe," 544 F.2d 331, 332 (8th Cir. 1976); "Anderson v. Somberg," 158 N.J. Super. 384, 386 A.2d 413, 419-20 (1978); "Litton Systems, Inc. v. Shaw's Sales & Serv. Ltd.," 119 Ariz. 10, 579 P.2d 48, 50 (1978).

Despite their relatively small role vis-a-vis manufacturers as product liability defendants, retailers and distributors frequently are brought into a product liability suit. *See, e.g.*, "Tucson Industries, Inc., v. Schwartz," 108 Ariz. 464, 501 P.2d 936 (1976); "Vergott v. Deseret Pharmaceutical Co., Inc.," 463 F.2d 12 (5th Cir. 1972); "Duckworth v. Ford Motor Co.," 320 F.2d 130 (3d Cir. 1963). In view of ISO data showing that for every dollar of claims paid, at least 35 cents is spent in defense costs, *see* ISO, "Closed Claims Survey," Report 14, at 118, the net result is that retailers and distributors are subject to substantial product liability costs, both in terms of premiums and defense costs. These costs are added to the price of products and waste legal resources. *See* "Pender v. Skillcraft Industries, Inc.," 358 So.2d 45 (Fla. App. 1978).

Under Section 114, product sellers other than manufacturers must exercise reasonable care in their handling of products. This obligation includes warning about discoverable hazards. The focus of judicial inquiry will be on the opportunity the product seller (other than a manufacturer) had to discover the hazard and on whether circumstances put the seller on notice as to the character of the product. *See* "Edwards v. E. I. DuPont de Nemours & Co.," 183 F.2d 165, 167 (5th Cir. 1950).

Subsection (a) provides that non-manufacturer product sellers are not subject to liability when they had no reasonable opportunity for product inspection which would or should, in the exercise of the defective condition. For example, if a defective product is in a sealed container and there is no way for a retailer to be aware of the condition, the retailer is not liable. In general, Section 114 does not impose liability on non-manfacturer product sellers where there are defects in con-

struction or defects in design that a reasonable person would have had no opportunity to discover. The manufacturer can avoid many of these defects; the distributor or retailer cannot. However, a non-manufacturer product seller can waive the benefits of subsection (a) through an express warranty. *Cf.* "Ky. Rev. Stat." § 411.340 (1978). For the purposes of this section, the term manufacturer is defined in Section 102(5).

Subsection (b) addresses the justifiable concern of Justice Traynor in "Vandermark v. Ford Motor Co.," 61 Cal. 2d 256, 37 Cal. Rptr. 896, 899, (1964) that:

> In some cases the retailer may be the only member of that enterprise reasonably available to the injured plaintiff. In other cases the retailer himself may play a substantial part in ensuring that the product is safe or may be in a position to exert pressure on the manufacture to that end.

It should be noted that a number of courts have extended strict liability to retailers. *See, e.g.,* "McKisson v. Sales Affiliates, Inc.," 416 S.W.2d 787 (Tex. 1967); "Houseman v. C. A. Dawson & Co.," 106 Ill. App. 2d 225, 245 N.E.2d 886 (1969). *See also* U.C.C. § 2-315.

If the manufacturer is not subject to service of process or has been judicially declared insolvent, or where a court determines that the claimant would have appreciable difficulty in enforcing a judgment against the product manufacturer, the retailer or distributor has the same strict liability obligations as a manufacturer. Thus, subsection (b) only operates where a member of the enterprise *is* reasonably available to the injured plaintiff.

Some economists may criticize the thrust of Section 114 to the extent that it makes compensation of the victim paramount to the structuring of incentives that would optimize product safety. Another approach is that of a recently enacted Nebraska statute which flatly exempts non-manufacturer product sellers from liability unless they have been negligent. *See* Neb. Legis. Bill No. 665(3)(1978). *See also* "Sam Shamberg Company of Jackson v. Barlow," 258 So.2d 242, 244 (Miss. 1972) (same result under case law). However, the Nebraska approach can leave a person injured by a *defective* product (as defined by Section 104) without compensation. While this would be the unusual case, the law makes clear that in these situations the party who actually sold the product should bear the loss.

From another perspective on incentives for risk prevention, the obligation under Section 114 to make a reasonable examination of the product should ensure that the retailer or distributor will exert pressure on the manufacturer to make the product safe. Also, retailers or distributors can become manufacturers for the purposes of this Act if they design, assemble, fabricate, or otherwise prepare a product or component part of a product prior to sale, as well as if they hold themselves out as the manufacturer. *See* Section 102(5) (Definitions) and accompanying commentary.

ANALYSIS

SEC. 115. SANCTIONS AGAINST THE BRINGING OF FRIVOLOUS CLAIMS AND DEFENSES.

The ISO data indicate that a substantial amount of product liability costs are incurred in the defense of product liability claims and lawsuits. *See* ISO, "Closed Claim Survey," Report No. 14 (1977) (defense costs equal about 35 percent of claim payments. Some have placed the blame for unnecessary defense costs and needless litigation on the contigent fee system. Nevertheless, as the plaintiff's bar properly observes, the contingent fee brings no return to a claimant's attorney where he or she is unsuccessful. On the other hand, some have argued that the contingent fee system has a negative impact in certain product liability cases to the extent that it causes insurers to settle even nonmeritorious cases because the cost of defending such cases may be greater than the amount of settlement.

Analysis of the countervailing arguments suggests that the best solution to reducing unnecessary litigation costs is to address the heart of the problem—in short, discourage frivolous claims and defenses.

Section 115 is based, in part, on § 41 of the "Illinois Civil Practice Act" (as amended, 1976). It is also predicated on a proposal of the California Citizens' Commission on Tort Reform advocating sanctions against "frivolous" claims or defenses. *See* Report of the California Citizens' Commission on Tort Reform, "Righting the Liability Balance," at 146-47, 153-54 (1977).

The underlying purpose of Section 115 has broad support in existing statutes and court rules. Support comes from Rule 11 of the Federal Rules of Civil Procedure, which subjects an attorney to disciplinary action if he or she knowingly files a pleading or defense where no grounds support it. *See* "Barnett v. Laborers's Inter. U. of North America," 75 F.R.D. 544 (W.D. Pa. 1977). Similarly, Federal Rule of Appellate Procedure 38 permits a court to award "just damages and single or double costs" to a party who has been subject to a "frivolous" appeal. Additionally, Federal Rule of Civil Procedure 37(c) provides sanctions for an unreasonable failure to admit averments of fact or the genuineness of documents. In the Federal courts, the above rules are supplemented by 28 "U.S.C." § 1927 (1976) (imposing costs on an attorney who "multiplies the proceedings * * *). *See* "A.L.R." 3d 209 (1976).

Under subsection (a), the statute may be invoked by either a product liability claimant or seller. Recovery is limited to reasonable attorney's fees and other costs that would not have been expended but for the fact that the opposing party pursued a claim or defense that was frivolous.

Under subsection (b), to make a finding that the claim was frivolous, the court must make a finding that the claim was without *any* reasonable legal or factual basis. This standard allows full room for bringing claims under novel legal theories.

Subsection (c) provides additional assurances that only frivolous claims will be sanctioned. First, the court may only impose damages under Section 115 on the basis of clear and convincing evidence, not merely the preponderance, of evidence. *See* "State of West Virginia v. Chas. Pfizer & Co.," 440 F.2d 1079, 1092 (2d Cir. 1971). Second, the court must set forth its findings of fact.

Subsection (d) gives the court latitude to impose costs on either attorney or client. As the Task Force Report noted, it is unlikely that many plaintiffs will be financially able to respond to such a claim. Task Force Report, at VII-61. It must be remembered that the attorney is in the best position to make a judgment about the reasonableness of bringing a claim or raising a defense. *See* ABA Code of Professional Responsibility, DR 7-102(A)(1)(2).

Subsection (e) protects a claimant's attorney who has expended time opposing a frivolous *defense*. This section can be invoked even where the claimant has *lost* a case.

Subsection (f) makes clear that recovery under this section is limited to expenses invoked by plaintiff or defendant and not those of parties outside the lawsuit.

ANALYSIS

SEC. 116. ARBITRATION

The Task Force Report suggested that compulsory non-binding arbitration may result in more accurate decisions, reduce overall litigation costs, and expedite the decision process. *See* Task Force Report, at VII-229-39.

Other reasons offered in support of arbitration procedures in product liability cases include: (1) Cases would be decided more accurately because a small group, with a member who is an expert in the field, should be able to comprehend the esoteric details of product liability cases; (2) Overtime, a resource bank of relatively neutral experts less easily misled (in technical areas) than a jury of laypersons could

be developed; (3) Arbitrators should be less affected by the emotional aspects of the case or by the artistry of counsel; and (4) The privacy of arbitration proceedings (as compared to judicial proceedings) should prompt more complete revelation of special manufacturing designs or processes. This, in turn, would permit more accurate judgments. *See* Task Force Report, at VII-235.

The ISO "Closed Claim Survey" suggests further that arbitration should also reduce accident reparation transaction costs. Even allowing for the fact that more substantial product liability claims are litigated to a verdict than are handled by arbitration, ISO data indicate that the average expense for lawyers as well as other allocated loss adjustments costs is considerably less when the case is handled by binding arbitration as compared with a court verdict. *See* ISO, "Closed Claim Survey," Report 14, at 120.

On the other hand, costs may increase under arbitration if there are numerous appeals for trials *de novo*. This potential problem may not be as serious, however, as once thought. Data collected by the Department of Justice show that appeal rates at the state level for a trial *de novo* have ranged from 5 to no more than 15 percent of all cases arbitrated. *See* Hearings before the Committee on the Judiciary, Subcommittee on Improvements in Judicial Machinery, United States Senate, 95th Cong., 2d Sess., April 14, 1978. (Statement of Attorney General, Griffin B. Bell). *See also* Report of the California Citizens Commission on Tort reform, "Righting the Liability Balance," at 143 (1977) citing rejection of arbitration should expedite the reparations process. The Task Force Report showed that in the medical malpractice area, for example, the arbitration process had achieved a more expeditious resolution of claims than those operating under the jury system. *See*, Task Force Report, at VII-238.

Indeed, the benefits of arbitration have prompted the Department of Justice to recommend that mandatory non-binding arbitration be used in federal courts in all tort and contract cases. The Department of Justice reached this conclusion after its Office of Judicial Improvements made a thorough analysis of the matter in a study conducted wholly independently of the Task Force Report. These concurrent efforts appear to have reached the same conclusion.

Section 1-6 draws on portions of the Department of Justice's proposed bill on mandatory, non-binding arbitration, *see* S. 2253, 95th Cong. 1st Sess., H.R. 9778, 95th Cong., 1st Sess., the Statement of Attorney General Griffin B. Bell, *supra*, as well as state legislation on the topic of arbitration.

(a) *Applicability.* The Act provides for mandatory arbitration where the amount in dispute is less than $30,000, exclusive of interest and cost. While the figure is $20,000 less than the Department of Justice Bill's $50,000 level, it should cover the bulk of product liability claims. In that regard, the ISO closed claim data, trended for severity, show that the average paid claim in bodily injury cases is $26,004. While some have suggested limiting arbitration to smaller claims, it is the larger claims that have been the greater cost items in product liability cases. *See* ISO, "Closed Claim Survey," at 113.

While there has been no state experience with cases at the $30,000 level, Attorney General Bell has noted that when Pennsylvania increased the jurisdictional amount for the state's arbitration program from $3,000 to $10,000, there was no increase in the appeal rate. *See* Statement of Attorney General Griffin B. Bell, *supra*.

It seems relatively certain that an arbitration procedure will help expedite and reduce costs connected with smaller claims. ISO closed claim data show that the large majority of product liability payments are relatively small (more than two-thirds are under $1,000—even when trended for severity). *See* ISO, "Closed Claim Survey," at 113.

(b) *Rules Governing.* Subsection (1) indicates that arbitrators should apply the product liability substantive law rules of this Act. Where the Act does not provide a rule of decision, relevant state law would be applied.

Subsection (2) indicates that where a procedure is not covered, *e.g.*, when a court can vacate a judgment, the Uniform Arbitration Act (UAA) (enacted in a number of states) is to be used as a resource.

The Act also permits the state to designate an alternative source of rules in subsection (3)

(c) *Arbitrators.* The rules provide latitude for the parties to select a single arbitrator. Otherwise, the arbitration is to be conducted by three persons; one who is a lawyer or retired judge, one who has expertise in the subject matter area that is in dispute, and one who is a layperson. This provision differs slightly from the Department of Justice proposal in light of the needs of product liability. Having an individual who is familiar with the esoteric nature of the subject matter involved will help expedite the case and serve as a deterrent to the presentation of biased expert testimony. In addition, this subsection provides for a layperson to be included to help assure that the consumer perspective regarding product safety is represented. The process of selecting a layperson may be complicated, but it is suggested that either normal jury rolls be utilized or a list of laypersons be compiled for this purpose.

Aside from general guidelines regarding fairness and lack of bias, the Act does not outline the method of choosing arbitrators, but leaves that matter to the individual states. A state can help implement the general guidelines by requiring each arbitration panel candidate to disclose any personal acquaintance with the parties or their counsel and allow a *voir dire* examination. *see* Mich. "Comp. Laws Ann." § 600.5045(1) (2) (Supp. 1978). Some of the better procedures include:

(1) Having the American Arbitration Association select a pool of candidates according to its established selection procedures. Each party is allowed to reject certain candidates and rate the remainder in order of preference. Additional provisions take effect if this procedure fails to produce a panel. *See* "Mich. Comp. Laws Ann." § 600.5044(4)(5) (Supp. 1978);

(2) Having the court appoint arbitrators. "Mass. Gen. Laws Ann." ch. 231, § 60B (1978).

(3) Having an arbitration administrator appoint arbitrators. "Wis. Stat. Ann." § 655.02 (1978).

(4) Having the parties and court combine to appoint arbitrators. "Neb. Rev. Stat." § 44-2840, 2841 (1976); "Ohio Rev. Code Ann." § 21(A) (1977).

(d) *Arbitrators' Powers.* These provisions are taken from the Department of Justice proposal on arbitration. They grant the arbitrators jurisdiction and also give them powers of subpoena.

(e) *Commencement.* This provision is also derived from the Department of Justice proposal. Its purpose is to help expedite the proceeding. The Act contains a slight modification of the Justice proposal in order to allow an extension for "good cause shown." This seems appropriate in light of the fact that some product liability cases are very complex. *Cf.* "Ariz. Rev. Stat. Ann." § 12-567(C) (Supp. 1978) (medical malpractice).

(f) *Evidence.* One method of expediting the process is to use informal means of proof. Nevertheless, some guidelines are needed. The Act follows the department of Justice proposal in referring to the Federal Rules of Evidence as general guidelines. Strict adherence to rules of evidence is not required. *See* "Ariz. Rev. Stat. Ann." § 12-567-(D) (Supp. 1978).

(g) *Transcript of Proceeding.* With respect to the provision of a transcript of proceeding, the Act generally follows the Department of Justice draft.

(h) *Arbitration Award and Judgment.* The Act follows the Department of Justice proposal provisions on award and judgment. The parties may

request a trial *de novo* on issues of law or fact. If they do not so request in a timely manner, the action is at an end—there is no appeal.

(i) *Trial De Novo.* The Act follows the Department of Justice proposal provisions on trial *de novo.* Additional guidance on this topic may be found in the Uniform Arbitration Act § 8-131. The Act excludes evidence about the existence of a prior arbitration proceeding, the nature or amount of the award, and matters concerning the conduct of the arbitration (with the exception of the admission of testimony for impeachment purposes) at the trial *de novo.* A number of state medical malpractice arbitration statutes have taken the opposite view, *i.e.,* they admit the results of the arbitration proceeding on the premise that this will be a deterrent against persons seeking retrials of the proceeding. *See, e.g.,* "Ariz. Rev. Stat. Ann." § 12-567(M) (Supp. 1978); "Mass. Gen. Laws Ann." ch. 231 § 60B (Supp. 1978). *Cf.* "Wis. Stat. Ann." § 655 19(2) (1978) (excluding findings and order of arbitration panel). *See also* Volume VI, "Legal Study " at 155-56.

The approach of Section 116 would appear to be in accord with the Federal Constitution. *Cf.* "ExParte Peterson," 253 U.S. 300, 309 (1920). Moreover, with the exception of two Ohio lower court decisions, state courts have upheld the constitutionality of provisions that do admit panel findings before the jury. *See* "Eastin v. Broomfield," 116 Ariz. 576, 570 P.2d 744, 750 (1977); "Attorney General v. Johnson," 282 Md. 168, 385 A.2d 57, 67-68 (1978); "Paro v. Longwood Hospital," 369 N.E.2d 985 (Mass. 1977); "Prendergast v. Nelson," 199 Neb. 97, 256 N.W.2d 657 (1977); "State ex rel. Strykowski v. Wilkie," 81 Wis.2d 491, 261 N.W.2d 434 (1978). *Contra* "Simon v. St. Elizabeth Medical Center," 3 Ohio Op. 3d 164, 355 N.E.2d 903, 907-909 (C.P 1976); "Graley v. Satayatham," 74 Ohio Op.2d 316, 343 N.E.2d 832 (C.P 1976). *See generally,* Redish, "Legislative Response to the Medical Malpractice Insurance Crisis: Constitutional Implications," 55 "Tex. L. Rev." 759, 793 (1977); Lenore, "Mandatory Medical Malpractice Mediation Panels—A Constitutional Examination," 44 "Ins. Counsel J." 416, 422 (1977).

Nevertheless, a jury may have difficulty evaluating the conclusions of another fact finder where the jury was not privy to the prior fact finder's qualifications and mode of operation. Even if these matters could be explained to the jury, it might get sidetracked from the actual evidence in the case. *See* the observations of Judge Hinton in a classic comment, 27 "Ill. L. Rev." 195 (1932); 18 "A.L.R." 2d 1287 (1951). *But see* Federal Rule of Evidence 803 (22) (admitting felony convictions in a cognate civil case). For these reasons, the Act has followed the Department of Justice proposal on the issue.

Section 116(i)(iv)(aa) chooses an alternative deterrent against ill-considered appeals for trials *de novo* that does not interfere with the trial *de novo.* If a party fails to obtain a judgment more favorable than the arbitration award, the court will assess the cost of the arbitration proceeding, including the amount of arbitration fees, plus interest, against that party.

In light of the fact that the present product liability system has created serious problems and the fact that compulsory binding arbitration has the potential for dealing with some of those problems, this slight incentive for retaining a sound arbitration award should not run afoul of constitutions in most states. *See* Task Force Report, at VII-233. The Act does not enumerate grounds upon which a court may vacate an arbitration award. Guidance on this issue may be obtained from section 12 of the Uniform Arbitration Act.

ANALYSIS

SEC. 117. EXPERT TESTIMONY

In General. The Task Force's "Legal Study" demonstrated that product liability cases often are compromised because of the lack of standards with regard to selecting and presenting expert testimony *See* Volume IV "Legal Study," *supra* at 153-155. One part of the problem is the biased expert; another is the unqualified expert.

Even if experts are properly qualified and objective, a jury of laypersons is often in a poor position to determine which expert is correct. For this reason, this Act gives the court power to make greater use of pre-trial arbitation where an unbiased, qualified expert will serve on the panel. *See* Section 116. Where arbitration is not used, however, this section should promote the goal of presenting objectives and sound expert testimony to the jury.

(a) *Appointment of Experts.* Subsection (a) is based on Rule 706 of the Federal Rules of Evidence and similar state rules. It indicates that courts have the power to appoint experts on their own authority. A number of courts have utilized this power even without the benefit of Federal Rule of Evidence 706 or a similar state rule. *See* 95 "A.L.R." 2d 390 (1964). As the Task Force Report noted, the presence of a court-appointed expert "has a cautionary impact on the expert for hire whose theories at trial are subject to dispute not only by an adversary expert, but also by a neutral-court-appointed one." Task Force Report, at VII-43, citing, Mitchell, "The Proposed Federal Rules of Evidence: How They Affect Product Liability Practice," 12 "Duquesne L. Rev." 551, 557-58 (1974). *See also* 2 J. Wigmore, "Evidence" § 563, at 648 (3d ed. 1940) ("* * * this expedient would remove most * * * abuses").

One problem with court-appointed experts is that the trier of fact may give them an aura of infallibility they do not deserve. Under Section 117, this possibility is diminished because the experts are subject to cross-examination by *both* parties. Also, the section allows the court in its descretion to decline to disclose to the jury that the expert witness is, in fact, court-appointed.

(b) *Compensation.* Under Federal Rule of Evidence 706 and similar state rules, compensation of experts is left to the judge's discretion. This subsection goes a step further and provides two guidelines for compensating experts. Both guidelines should serve as an added inducement for attorneys to present objective expert testimony The guidelines suggest that the court may impose the cost of the court-appointed expert on losing parties as well as on parties the court finds have been wrong in their estimation of damages.

(c) *Disclosure of Appointment.* This section follows Federal Rule of Evidence 706. In most instances, it is important for the trier of fact to appreciate that the witness is court-appointed. However, circumstances may arise where the court believes that disclosure of that fact will give the witness too much credence with the jury. Therefore, the court has discretion to withhold the information when it is appropriate to do so.

(d) *Parties' Experts of Own Selection.* This section also allows Federal Rule of Evidence 706. Precluding the parties from introducing their own experts would vest too much power in court-appointed experts.

(e) *Pre-Trial Evaluation of Experts.* A rule authorizing a court-appointed expert does not, in and of itself, provide guidance about who is properly qualified to testify in product liability cases. There are many approaches to that issue. One approach, used in some medical malpractice statutes, would require that an expert witness "spend a substantial portion of his professional time in the actual practice of his area of expertise. This was not followed because a person may be well-versed in technical product liability matters even if he does devote substantial time to testifying in cases. *See* Task Force Report, at VII-44. Unfortunately, it is impractical to utilize a "standard test" for all experts in product liability cases. *See* Donaher, Piehler, Twerski, and Weinstein, "The

Technological Expert in Products Liability Litigation," 52 "Tex. L. Rev." 1303, 1325 (1974).

(1) *Need for Pre-Trial Evaluation.* It is not necessary or cost-efficient to utilize the procedure outlined by Donaher *et. al., supra,* in *all* cases. This rule gives some guidance to the trial court in deciding whether to conduct a pre-trial hearing on the qualifications of expert witnesses. It is appropriate to do so in more complex cases and also where the pre-trial hearing would serve as a deterrent to the presentation of witnesses who were not qualified. Either party may bring this matter before the court by motion.

(2) *Factors in Evaluation.* The factors in evaluation are drawn from Donaher *et. al., supra.*

The court should inquire into the expert witness' background and skills and determine whether they are appropriate for the purpose of the case. The court should not only examine the witness' formal education, but also whether he or she had undertaken specific preparation for the litigation before the court. Finally, the court should examine a witness for bias. A witness with marginal expert skills, but who also had a strong bias should be considered unqualified.

(3) *Findings of Fact.* If it seems clear to the court that the expert's background and experience do not qualify the expert to testify, it should state this conclusion in its findings of fact under section (h).

ANALYSIS

SEC. 118. NON-PECUNIARY DAMAGES

Non-pecuniary damages include awards for pain and mental suffering. They are to be contrasted with pecuniary damages which compensate victims for lost wages, medical costs, and other expenditures brought about by a product-related accident.

According to the ISO Closed Claim Survey, 70 percent of claims closed with payment include amounts in addition to a claimant's pecuniary loss. *See* ISO, "Closed Claim Survey," at 54 (1978). Moreover, the average amount of payment above pecuniary loss increases significantly in the higher payment ranges. *Id.*, at 54-55. A most important reason for the difficulty in setting product liability rates is the "open-endedness" of damages for pain and suffering. *See* Task Force Report, at VII-64-65.

The Task Force Report suggested that limits on awards for pain and suffering "would reduce uncertainty and thereby mitigate the 'apprehension factor' that has contributed to the rise in product liability insurance rates." *Id.*, at VII-65. Nevertheless, such awards have deep historical roots and should not be limited in a manner that unreasonably curtails the rights of injured parties.

Section 118 addresses each of the major rationales offered in support of awards for non-pecuniary damages. First, in proposing to limit such awards, this section implicitly takes the position that the common law rationale for pain and suffering awards generally does not apply under this Act. The award for non-pecuniary damages arose in early common law cases as a substitute for an injured plaintiff seeking personal "vengeful retaliation." *See* Task Force Report, *Id.* In those cases, the defendant usually committed an intentional wrong. This rationale has little application to cases arising under strict product liability. Under this Act, a manufacturer is liable for harm caused by products found to be defective in construction regardless of fault. In cases of harm caused by products found to be defective in design or defective because of the absence of adequate warnings, the trier of fact must consider more sophisticated matters than whether the defendant "acted as a reasonable person under all the circumstances"—the general negligence standard.

A second rationale to support awarding damages for pain and suffering is that they have an important deterrent function. The Task Force Report found evidence that the general product liability problem caused manufacturers to devote more attention to product liability loss prevention techniques. *See* Task Force Report, at VI-50. Section 117 retains this deterrent function while placing some reasonable limits on awards for pain and suffering.

A third rationale, supported by members of the plaintiff's bar and some economic legal scholars, is that awards for pain and suffering are a reasonable attempt to provide some compensation for the serious discomfort that a plaintiff endures. *See* R. Posner, "Economic Analysis of the Law," 82 (1972). Other studies have questioned whether monetary awards for pain and suffering do anything to alleviate the symptoms they are alleged to address. *See* J. O'Connell and R. Simon, "Payment for Pain & Suffering" (1972); Peck, "Compensation for Pain: A Reappraisal in Light of New Medical Evidence," 72 "Mich. L. Rev." 1355 (1974). Section 117 adheres to the former assumption to this degree: When a claiment has suffered permanent serious disfigurement or serious mental illness, the amount of damages for pain and suffering are left to the sound discretion of the trier of fact with appropriate review by the court in cases of abuse of that discretion.

However, where the claimant has not suffered permanent serious disfigurement or permanent mental illness as a result of the product-related harm, damages for pain and suffering are limited to $25,000.

An ample body of case law in the area of worker compensation and more recently automobile injury reparation statutes serve as guidance for courts in determining "permanent serious disfigurements." *See, e.g.,* "Falcone v. Branker," 135 N.J. Super. 137, 342 A.2d 875 (1975) (collecting cases). That term has been held to provide a sufficient basis for legal interpretation. *See* "In Re Requests of Governor and Senate, Etc.," 389 Mich. 411, 208 N.W.2d 469, 480 (1973).

Courts also have defined and explained the term "mental illness" in a number of contexts. *See,* "Carroll v. Cobb," 139 N.J. Super. 439, 354 A.2d 355 (1976) (voter registration requirements); "Sachs v. Commercial Insurance Co. of Newark, N.J." 119 N.J. Super. 226, 290 A.2d 760 (1972) (insurance policy); "In re Humphrey," 236 N.C. 141, 71 S.E.2d 915 (1952) (incompetency proceedings); "Commonwealth v. Moon," 383 Pa. 18, 117 A.2d 96 (1955) (committal proceedings); "Interstate Life & Accident Insurance Co. v. Houston," 50 Tenn. App. 172, 360 S.W.2d 71 (1962) (insanity exclusion provision).

Objections to limits on awards for non-pecuniary damages take several forms: One is that such limits may violate due process or equal protection clauses of some state constitutions. *Cf.* "Wright v. Central DuPage Hosp. Assoc.," 63 Ill. 2d 313, 347 N.E.2d 736, 743 (1976) (restriction of amount of general damages in medical malpractice); "Graley v. Satayatham," 74 Ohio Op. 2d 316, 343 N.E.2d 832, 836 (C.P 1976) (requiring list of collateral source benefits in medical malpractice). Another is state constitutional prohibitions on damage limitations. *See, e.g.,* "Ariz. Rev. Stat. Ann.," Const. Art. 18, § 6 (1956); "Ky. Rev. Stat. Ann.," Const. § 54 (1963); "Penn. Stat. Ann.," Const. Art. 3, § 18 (1969). An argument that § 117 does not violate such prohibitions is that a strict product liability cause of action did not exist at the time the constitution was adopted and is therefore exempt from its interdictions. *See* "Rail N Ranch Corp. v. State," 7 Ariz. App. 558, 441 P.2d 786, 788 (1968).

These objections notwithstanding, Section 118 can be supported by three basic rationales. First, the common law reason for the rule does not support the application of damages for pain and suffering in strict liability cases. Second, the common law rule will continue to operate where injuries are serious. *Cf.* "Rybeck v. Rybeck," 141 N.J. Super. 481, 358 A.2d 828, 836 (1976), *appeal dism'd,* 150 N.J. Super. 151, 375 A.2d 269 (1977) (limited court

access for pain and suffering in no-fault—"the law is permitted to treat large problems differently from small problems if there is a rational basis for the difference"). Finally, some ceiling or limit on damages for pain and suffering will reduce uncertainty in one of the greatest liability insurance rate-making problem areas.

ANALYSIS

SEC. 119. THE COLLATERAL SOURCE RULE

The collateral source rule is a principle of tort law under which the defendant is not permitted to take "credit" for any money that an injured plaintiff received from another (collateral) source. The rule embraces both payments for loss of wages and medical expenditures.

The rule may permit double recovery by the plaintiff and also increase transaction costs. Section 119 recognizes these possibilities and provides for a limited modification of the collateral source rule where the claimant has received compensation for the same damages from a public source. Its approach is similar to that followed in medical malpractice by the states of Tennessee and Pennsylvania. *See* Task Force, "Legal Study," Vol. V at 146.

There are two significant arguments against proposals to modify the existing rule. The first is that the "wrongdoer" should not have the benefit of a windfall. Proponents contend that it is better that the plaintiff have the benefit of a windfall than the defendant.

This argument can be rebutted in the context of product liability. Under Section 104 of this Act and the law of most states, product sellers may be held responsible for damages on a strict liability basis not merely because the defendant has engaged in negligent or intentionally wrongful conduct. Therefore, a selective modification of the collateral source rule in the context of product liability as compared with medical malpractice, may be justified. *Cf.* "Graley v. Satayatham," 74 Ohio Op. 2d 316, 343 N.E. 2d 832 (C. P 1976); "Simon v. St. Elizabeth Medical Center," 3 Ohio Op. 3d 164, 355 N. E. 2d 903 (C. P 1976) (holding unconstitutional selective abolition in medical malpractice context). Other states, however, have upheld such selective abolition, or modification. *See* "Eastin v. Broomfield," 116 Ariz. 576, 570 P 2d 744, 751-752 (1977).

The second argument against modifying the collateral source rule is that a manufacturer should not be permitted to "externalize" the cost of an injury caused by its products. This argument is very strong where the injured plaintiff has purchased health and accident coverage. In that instance, the defendant product seller should not be able to benefit from the claimant's prior prudence. Nevertheless, some proposals have modified the rule in that situation. *See* "Neb. Rev. Stat." § 44-2819 (Supp. 1976); "Prendergast v. Nelson," 199 Neb. 97, 256 N. W 2d 657, 669 (1977); National Product Liability Council, "Proposed Uniform State Product Liability Act," § 207 (undated). *See also* Comment, "An Analysis of State Legislative Responses to the Medical Malpractice Crisis," 1975 "Duke L. J." 1417, 1447-50.

On the other hand, where the claimant has received damages from a public source, the argument is less persuasive. The benefits received were not through the claimant's pre-accident financial planning or made a part of one's remuneration from employment; rather they were derived from public tax funds that accumulated in part by contributions from the product seller. Since the product seller would be able to distribute the same cost again among consumers through product pricing, the public may be subjected to excessive costs.

A probable effect of Section 119 will be to reduce double expenditures in the context of medical costs. The ISO "Closed Claim Survey" suggests that medical costs represent approximately 19.7 percent of product liability claims. *See* ISO, "Closed-Claim Survey," at 57 (1977). Nevertheless, the cost savings generated by this section probably will be modest. The ISO closed claim data, which were quite limited on this point, show that approximately 6.4 percent of claimants have been reimbursed by public collateral sources. *See* ISO, "Closed Claim Survey," at 181 (1977). Collateral sources paid for 19.8 percent of the claims in those cases. (This closely parallels the general percentage of medical benefits.) Although generating only modest savings, Section 119 should help reduce overall insurance costs. Liability insurers should take this matter into account when the formulate rates and premiums.

Section 119 also takes account of existing legislation that may authorize subrogation by public collateral sources. In order to reduce transaction costs and duplicative distribution costs, this section precludes subrogation.

Finally, Section 119 does not alter existing law that prohibits the defendant from introducing in evidence the fact that the plaintiff has been indemnified by a collateral source. That approach was rejected because it would leave the trier of fact in the role of balancing the delicate policy elements that surround proposals calling for abolition of the collateral source rule. Also, that approach would reduce the potential benefit of collateral source rule modifications in that it would increase transaction costs and lower predictability and consistency in the allocation of collateral benefits. *See* Task Force Report, at VII-74-75. *Cf.* Defense Research Institute, "Products Liability Position Paper," at 44-45 (1976) (advocating modification of evidentiary rules to allow trier of fact to consider all collateral benefits).

ANALYSIS

SEC. 120 PUNITIVE DAMAGES

Some product sellers and others have called for the abolition of punitive damages on the ground that they serve no proper "tort law" purpose, *see* Proposed Uniform State Product Liability Act § 206 (National Product Liability Council) (undated); *see generally* the Defense Research Institute Monograph, "The Case Against Punitive Damages" (1969) (marshalling arguments) and at least one court has accepted these arguments in the area of product liability. *See* "Walbrun v. Berkel, Inc.," 433 F Supp. 384-85 (E.D. Wis. 1976); "Roginsky v. Richardson-Merrell, Inc.," 378 F 2d 832 (2d Cir. 1967) (dictum).

Nevertheless, as Section 120 acknowledges, punitive damages serve an important function in deterring product sellers from producing, distributing, or selling dangerous products. *See* "Toole v. Richardson-Merrell, Inc.," 251 Cal. App. 2d 689, 60 Cal. Rptr. 398 (1967); "Gillham v. Admiral Corp.," 523 F.2d 102 (6th Cir. 1975). At the same time, this section recognizes and addresses problems that the concept has caused in the context of product liability.

While many product sellers have expressed great concern about the economic impact of punitive damages, the ISO Closed Claim Survey suggests that the number of cases in which such damages are imposed is insubstantial. *See* ISO, "Closed Claim Survey," at 183 (1977). Nevertheless, concern about punitive damages has caused some insurers to decline insurance coverage for these damages. Also, a number of states and some insurers have declined to do so for the policy reason that a product seller should not be permitted to pass this cost on to an insurer. Transcending all concerns is the total lack of structure surrounding punitive damages.

Subsection (a) addresses a basic argument against punitive damages, namely that they apply a criminal law sanction to a civil law case. The defendant does not have the benefit of constitutional protections that would be available to him under the criminal law. Section 120(a) moves away from the ordinary "preponderance of evidence" test of civil cases and toward the criminal standard, but does not turn completely to a pure criminal law

standard of proof "beyond a reasonable doubt." Instead, the Act requires the plaintiff to show by "clear and convincing" evidence that punitive damages are justified. *See* Section 102(7) (Definitions).

Section 120(a) also requires that the claimant show that the product seller's conduct demonstrated reckless disregard for the safety of others. By "reckless disregard" the provision means a conscious indifference to the safety of persons who might be injured by the product, the traditional barrier that the plaintiff must cross in order to obtain punitive damages. *See* W. Prosser, "Torts," at 9-10 (4th Ed. 1971). The reckless disregard standard is identified in statutory form to avoid any possible misinterpretation of this basic area of law—it should be clear that a product seller does *not* have to pay punitive damages under ordinary strict liability or negligence standards.

Subsection (b) follows the current common law system in allowing the jury to determine in its discretion whether punitive damages should be awarded. *See* Prosser, "Torts," *supra*, at 9. On the other hand, this subsection draws upon a newly enacted Minnesota statute (Minn. Stat. Ann. 549.21 (1978)) in having the court, rather than the jury, determine the amount of those damages. This approach is in accord with the general pattern of the criminal law where the jury determines "guilt or innocence" and the court imposes sentence. This is particularly appropriate in product liability cases where, under current law, product sellers are potentially subject to repeated imposition of punitive damages for harm caused by a particular product.

Subsection (b) provides guidelines for the court to determine the amount of punitive damages. The guidelines offered are based on "Minn. Stat. Ann." 549.21(3) (1978). The drafters of that statute relied on a very thorough analysis of product liability and punitive damages. *See* Owen, "Punitive Damages in Products Liability Litigation," 74 "Mich. L. Rev." 1257, 1299-1319 (1976).

Factors (1) and (2) are self-evident. If the facts show that the product seller actually was aware of the specific hazard *and* its seriousness, *and* marketed it anyway, a higher award is in order.

Factor (3), profitability, recognizes that punitive damages may be used to directly attack the profit incentive that generated the misconduct.

Factor (4) is important regardless of the basic requirement that the product seller must have reckless disregard for the safety of others. If the product seller consciously concealed its activities, this augurs for a higher award.

Factor (5) acknowledges that a product seller who was reckless in producing the product, but who acted quickly to remove the product from the market upon discovery of the hazard, should not be subject to as harsh a sanction as one who failed to act. Some have suggested that punitive damages should be awarded only where corporate management has either authorized, participated in, or ratified conduct that shows a conscious or reckless disregard for public safety. *See* Task Force Report, at VII-79. Section 120 rejects that approach because it could foster legal disputes as to whether an individual stood "high enough" in the corporate structure to cause that individual to bear responsibility for punitive damages. Nevertheless, in circumstances where a non-management employee caused the harm and management acted quickly to undo that harm once it was discovered, a lower award may be appropriate.

Factor (6) is traditional under the common law. It is one that has been subject to criticism from product sellers and economists. Nevertheless, in light of the fact that deterrence of wrongful conduct is the principal reason behind punitive damages, it is appropriate to consider the impact an award will have on a particular product seller.

Factor (7) is more important in product liability cases than in others because it addresses the problem of multiple exposure to punitive damages. This factor directs the court to consider both criminal and civil liability to which the product seller has been or may be subjected.

The Act takes the position that the award of punitive damages should go to the claimant and not the state. While the argument that since the damages are non-compensatory they should go to the state has some merit the approach was rejected because of constitutional problems and the fact that it might place a claimant's attorney in a potential conflict of interest situation (is he trying the case for his client or the state?). *See* Task Force Report at VII-79.

APPENDIX A

A BIBLIOGRAPHY OF MAJOR COMPENDIUM SOURCES REVIEWED IN CONNECTION WITH THE MODEL CODE

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A review was also conducted of all enacted state product liability laws, all proposed federal product liability laws, and major proposed state product liability laws, as well as all law review and other related literature and major case law reported or published since the completion of the Interagency Task Force's seven-volume Legal Study in December, 1976. That study reviewed case law and literature published prior to that date. Consideration was also given to pre-1976 sources that were not reviewed by the Legal Study. Some primary sources have been cited throughout the section-by-section analysis and a more detailed bibliography is available at the law library of the Department of Commerce, Washington, D.C., Thomas B. Fleming, Chief.

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